From:	Eric Wilson
To:	Kourtney Romine
Cc:	Amy Johnson
Subject:	FW: Follow up from last night"s rule making session
Date:	Monday, May 20, 2019 02:43:09 PM
Attachments:	image001.png image002.png image003.png 30 CFR 942.800 (OSM).pdf 43 CFR 3809.555 (BLM).pdf 43 CFR 3809.556 (BLM).pdf BLM_3809 Handbook_SurfaceManagement.pdf

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Kourtney,
Could you add this to the Comments with the attachments? Thank you.

Eric Wilson
Resource Protection and Assistance Bureau Chief

From: Hood, Chad C -FS <chad.hood@usda.gov>
Sent: Thursday, May 16, 2019 12:10 PM
To: Eric Wilson <EWilson@idl.idaho.gov>
Cc: Torrealday, Heidie -FS <heidie.torrealday@usda.gov>; Shoemaker, Sarah - FS <sarah.shoemaker@usda.gov>
Subject: Follow up from last night's rule making session

Eric,

Here is the link to our bond guide:

https://www.fs.fed.us/geology/bond_guide_042004.pdf.

I had a discussion with my colleague Sarah Shoemaker who has been in the thick of developing the trusts funds framework with Jeff Gabardi and the consensus was that since our attorneys did not support (yet, hopefully that will change) some of the direction we were recommending that we should probably not distribute. However, the attached documents from BLM and OSM are references that they used and are trying be consistent with to the extent possible.

The PDF docs include the 2 sections of BLM regs at 3809.555 and .556 that discuss trust funds (.555(e)), as well as the 3809 handbook section that talks about trust funds (6.3.4). Handbook direction for them is what specifies things like up to 70% stocks (6.3.4.5), and Appendix B walks through their Net Present Value calculation.

OSM doesn't actually have "manual" guidance for their processes, they just have an individual with a very unique skill set that combines industry and regulatory understanding with all the necessary economic and legal understanding . If we ever do get the green light on this, we are hoping he'd be willing to help develop our guidance on process. Unfortunately his skillset doesn't carry over to formal direction , so BLM guidance is all we have.

Cautions to note: BLM allows for insurance as bond mechanism – we wouldn't. OSM allows for a trust fund or an annuity – I don't know if we would allow annuities, that's not something that we've discussed with OGC one way or another. OSM also allows for an insurance company to be a trustee (942.800(c)(7)(iv)) – I don't think we would go for that either.

One final note, if you would like, Sarah would be happy to discuss any of this with you. She can be reached at 907-586-7886. I will be gone for next week's meeting but I know Heidi is planning on attending.

Chad Hood
Geologist

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Code of Federal Regulations
Title 30. Mineral Resources
Chapter VII. Office of Surface Mining Reclamation and Enforcement, Department of the Interior
Subchapter T. Programs for the Conduct of Surface Mining Operations Within Each State
Part 942. Tennessee (Refs & Annos)

30 C.F.R. § 942.800

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

Effective: April 2, 2007
Currentness

(a) Except as provided in paragraphs (b) and (c) of this section, part 800 of this chapter, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface mining and reclamation operations.

(b)(1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program,who gave the State collateral to guarantee reclamation, or who was required to take either of these actions.

(2) Where the Office determines that a bond amount is inadequate it shall notify the operator that additional bond is required. The operator shall post the required bond or collateral in the amount and within the time required by the Office. All bonds shall be made payable to "The United States or the State of Tennessee."

(3) Not later than 30 days after the effective date of this program each permanent program permittee shall either:

(i) Post an acceptable new bond in the required amount made payable to "The United States or The State of Tennessee" or

(ii) Provide an executed assignment of the required acceptable bond made payable to "The United States or The State of Tennessee."

(c) Special consideration for sites with long-term postmining pollutional discharges. With the approval of the Office, the permittee may establish a trust fund, annuity or both to guarantee treatment of long-term postmining pollutional discharges in lieu of posting one of the bond forms listed in § 800.12 of this chapter for that purpose. The trust fund or annuity will be subject to the following conditions:

(1) The Office will determine the amount of the trust fund or annuity, which must be adequate to meet all anticipated treatment needs, including both capital and operational expenses.

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(2) The trust fund or annuity must be in a form approved by the Office and contain all terms and conditions required by the Office.

(3) The trust fund or annuity must provide that the United States or the State of Tennessee is irrevocably established as the beneficiary of the trust fund or of the proceeds from the annuity.

(4) The Office will specify the investment objectives of the trust fund or annuity.

(5) Termination of the trust fund or annuity may occur only as specified by the Office upon a determination that no further treatment or other reclamation measures are necessary, that a replacement bond or another financial instrument has been posted, or that the administration of the trust fund or annuity in accordance with its purpose requires termination.

(6) Release of money from the trust fund or annuity may be made only upon written authorization of the Office or according to a schedule established in the agreement accompanying the trust fund or annuity.

(7) A financial institution or company serving as a trustee or issuing an annuity must be one of the following:

(i) A bank or trust company chartered by the Tennessee Department of Financial Institutions;

(ii) A national bank chartered by the Office of the Comptroller of the Currency;

(iii) An operating subsidiary of a national bank chartered by the Office of the Comptroller of the Currency;

(iv) An insurance company licensed or authorized to do business in Tennessee by the Tennessee Department of Commerce and Insurance or designated by the Commissioner of that Department as an eligible surplus lines insurer; or

(v) Any other financial institution or company with trust powers and with offices located in Tennessee, provided that the institution's or company's activities are examined or regulated by a State or Federal agency.

(8) Trust funds and annuities, as described in this paragraph, must be established in a manner that guarantees that sufficient moneys will be available to pay for treatment of postmining pollutional discharges (including maintenance, renovation, and replacement of treatment and support facilities as needed), the reclamation of the sites upon which treatment facilities are located and areas used in support of those facilities.

(9) When a trust fund or annuity is in place and fully funded, the Office may approve release under § 800.40(c)(3) of this chapter of conventional bonds posted for a permit or permit increment, provided that, apart from the pollutional discharge and associated treatment facilities, the area fully meets all applicable reclamation requirements and the trust fund or annuity is sufficient for treatment of pollutional discharges and reclamation of all areas involved in

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such treatment. The portion of the permit required for postmining water treatment must remain bonded. However, the trust fund or annuity may serve as that bond.

Credits
[72 FR 9636, March 2, 2007]

AUTHORITY: 30 U.S.C. 1201 et seq.

Current through March 1, 2019; 84 FR 6978.

End of Document

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Code of Federal Regulations
Title 43. Public Lands: Interior
Subtitle B. Regulations Relating to Public Lands
Chapter II. Bureau of Land Management, Department of the Interior
Subchapter C. Minerals Management(3000)
Group 3800. Mining Claims Under the General Mining Laws (Refs & Annos)
Part 3800. Mining Claims Under the General Mining Laws (Refs & Annos)
Subpart 3809. Surface Management (Refs & Annos)
Individual Financial Guarantee

43 C.F.R. § 3809.555

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

Currentness

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.

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(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.

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.; 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.

Current through March 1, 2019; 84 FR 6978.

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Code of Federal Regulations
Title 43. Public Lands: Interior
Subtitle B. Regulations Relating to Public Lands
Chapter II. Bureau of Land Management, Department of the Interior
Subchapter C. Minerals Management(3000)
Group 3800. Mining Claims Under the General Mining Laws (Refs & Annos)
Part 3800. Mining Claims Under the General Mining Laws (Refs & Annos)
Subpart 3809. Surface Management (Refs & Annos)
Individual Financial Guarantee

43 C.F.R. § 3809.556

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

Currentness

(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.

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.; 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.

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Form 1221-2
(June 1969)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release	
3-336	
Date	
09/17/2012	

Subject

H – 3809-1 – Surface Management

1. **Explanation of Materials Transmitted: This release transmits an entirely new Handbook Section, H-3809-1 - Surface Management. The Handbook incorporates changes in policies resulting from the revision of regulations in 43 CFR 3809.**

2. **Reports Required: None**

3. **Materials Canceled: None**

4. **Filing Instructions: File as directed below**

REMOVE	INSERT
N/A	H – 3809 -1 (339 pages)

/s/ Michael D. Nedd

Michael D. Nedd
Assistant Director, Minerals and Realty Management

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Surface Management Handbook

BLM Handbook H-3809-1

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Chapter 1 Introduction

1.1 Purpose

This handbook provides the procedures and processes for the Bureau of Land Management (BLM) employees to implement the BLM's surface management program. This handbook conveys the BLM policies and procedures applicable to all surface disturbing activity conducted under the Mining Law of 1872, as amended,[1] the Federal Land Policy and Management Act of 1976 (FLPMA), and intersecting laws as given below under Authorities. Any interpretation of the guidance contained in this handbook is subservient to the applicable legal and regulatory mandates.

1.2 Objective

This handbook is to facilitate the administration of exploration, mining, and milling activities on the public lands, or interests in such lands in order to prevent unnecessary or undue degradation (UUD) of these lands.

1.3 Authorities

1.3.1 Statutes

Mining Law of 1872 (30 U.S.C. 22-42) as amended

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) as amended

Surface Resources Act of 1955 (30 U.S.C. 612)

1.3.2 Regulations

43 CFR 3809 - Surface Management

43 CFR 3715 - Use and Occupancy under the Mining Laws

43 CFR 3730 - Public Law 359 Mining in Powersite Withdrawals

43 CFR 3821 - Oregon and California (O&C) Lands

43 CFR 3838 - Special Procedures for Locating and Recording Mining Claims and Tunnel Sites on Stock Raising Homestead Act (SRHA) Lands

[1] Note that minerals that are considered locatable minerals under the Mining Law are leaseable minerals on acquired lands and are not covered by the Surface Management Regulations.

1.4 Roles and Responsibilities

1.4.1 BLM Director

The Director, through the Assistant Director for Minerals and Realty Management, provides national oversight for the BLM's surface management program. This includes developing and implementing programmatic policies and guidance, and conducting internal program reviews. Surface management program resources are allocated to the BLM State Offices through the budget process and program priorities are set at the national level.

1.4.2 BLM State Director

The State Director provides oversight to the District/Field Offices regarding program implementation in the state. This responsibility is delegated to the appropriate Deputy State Director, who allocates surface management program resources to the various District/Field Offices and sets statewide priorities. The State Office provides technical support and review to ensure uniform application of the regulations by the District/Field Offices. The role and responsibilities of the State Office are to:

- Review and approve mineral reports before authorizing mining operations on lands with suspected common variety minerals and lands segregated and withdrawn from mineral entry under the Mining Laws.

- Adjudicate all financial guarantees; this includes acceptance, obligation, termination, modifications, collection of financial guarantees, and tracking bankruptcy filings. Also, the office responsible for adjudicating financial guarantees will maintain the physical possession of all original bond contracts and their accompanying financial instruments.

- Conduct State Director Reviews and forward any appeals of the State Director's decision to the Interior Board of Land Appeals (IBLA) within 10 business days of receiving a Notice of Appeal.

- Enter into statewide agreements with state and other Federal agencies concerning the management of operations authorized by the mining laws on public lands.

- Provide oversight and program guidance to the District/Field Offices.

- Provide technical support and review to ensure uniform application of the regulations by the District/Field Offices.

1.4.3 District, Field, and Monument Managers

District, Field, and Monument Managers are responsible for the day-to-day implementation of the surface management program. They provide direction to Program Specialists to implement program activities and resolve program issues. They ensure that the Program Specialists receive

the necessary technical, administrative, and safety training. In addition, the managers oversee the program budget and budget submissions at the District/Field Office level. Manager responsibilities are to:

- Serve as the line officer for accepting Notices and approving or denying Plans of Operations (Plan).
- Establish the amounts of financial guarantees for reclamation of exploration and mining activities.
- Ensure that UUD does not occur from accepted Notices and approved Plans of Operations.
- Determine the appropriate enforcement action to take.
- Forward appeals to the appropriate parties (either the State Director or IBLA, and Office of the Solicitor) within 10 business days of receiving a Notice of Appeal.
- Sponsor public visits to mines if requested.
- Enter into agreements for management of site specific operations.
- Determine if escrow accounts are needed for a Notice or Plan until the status of the mineral material is determined.
- Maintain administrative records, case files, and the Legacy Rehost 2000 (LR2000) system database in accordance with BLM data and recordkeeping standards.
- Ensure that the qualifications of the program specialists are appropriate for the scope of the duties performed.
- Organize interdisciplinary teams (ID Teams), if necessary and when appropriate, to conduct environmental analysis and verify an operation's compliance with the terms and conditions of 43 CFR 3809.

1.4.4 Program Specialist

The program specialists, acting through the District/Field Manager, are responsible for the day-to-day implementation of the surface management program. They coordinate with other BLM resource specialists and applicable state or Federal agencies on the review of Notices and Plans of Operations. The roles and responsibilities of program specialists are to:

- Review submitted Notices, Plans of Operations, and associated modifications.
- Review and verify the amounts of reclamation cost estimates submitted by the operator for proposed activities and recommend the reclamation cost estimate amount to the manager.

- Identify the need for a trust fund or other funding mechanism to ensure the continuation of long-term, water quality, and post mining maintenance requirements.

- Conduct field inspections and make compliance determinations for operations conducted under a Notice or Plan.

- Identify situations of noncompliance or prohibited actions and recommend corrective actions to the manager.

- Ensure enforcement actions are implemented and monitored for a noncompliance situation.

- Serve as the point-of-contact between the BLM and an operator conducting activities on public lands.

- Prepare necessary documents to implement cost recovery.

- Prepare, or coordinate preparation of, the appropriate National Environmental Policy Act (NEPA) documents for approval of Plans of Operations and associated Plan modifications.

- Prepare, or cause to be prepared, mineral reports for determining mining claim validity before approving mining activity within a withdrawn area, or common variety determinations before approving operations under the Mining Law.

- Receive and properly handle confidential business information and information protected under the Privacy Act.

- Maintain administrative records and case files for surface management activities.

- Update the LR2000 database in accordance with BLM standards.

1.4.5 Delegation of Authority

The BLM Manual 1203, *Delegation of Authority,* and State Manual Supplements should also be consulted. These manuals are updated on a regular basis and will clarify the level at which decision-making authority is held within your respective state.

Chapter 2 Casual Use Activity

Under 43 CFR 3809.5, activities that ordinarily result in no or negligible disturbance of the public lands or resources are termed "casual use." In general, the operator may engage in casual use activities without consulting, notifying, or seeking approval from the BLM.[2] The operator does not need to file a Notice or Plan and does not need to provide the BLM with a financial guarantee. Such activities, including suction dredging (see Section 8.4 Suction Dredging) in certain situations, are considered to be casual use under the surface management regulations. This chapter provides guidance for determining when an operation is considered casual use under the 3809 regulations.

2.1 Negligible Disturbance

Activities that generally cause no or negligible disturbance would be considered casual use for purposes of 43 CFR 3809.5, including collecting geochemical, rock, soil, or mineral specimens using hand tools; hand-panning; or non-motorized sluicing. Use of certain equipment, such as small portable suction dredges, metal detectors, gold spears, small drywashers,[3] and other battery-operated devices, would generally be considered casual use. Operators may use motorized vehicles for casual use activities provided the use is consistent with the applicable regulations,[4] off-road vehicle use designations contained in the BLM land-use plan(s), and the terms of any temporary closures ordered by the BLM.

As the term "negligible disturbance" is subjective, the field staff and management must use their professional judgment in determining what activities would ordinarily result in no or negligible disturbance. Except for the use of equipment specifically listed in the regulations, the type of equipment itself or the commercial intent of the operator does not define whether an activity can be considered casual use. The amount and type of disturbance created by the activities of an operator, or the cumulative disturbance caused by the proximity of several operators, ultimately determines whether or not a particular activity will be determined to be casual use.

While no financial guarantee is required for casual use activity, the operator(s) remains responsible to prevent UUD and ensure full reclamation of any disturbance created while engaging in casual use activities, as required by 43 CFR 3809.1 and 43 CFR 3809.10.

2.2 Not Casual Use

Activities that result in more than negligible disturbance are not considered casual use. As defined in 43 CFR 3809.5, use of certain equipment, including mechanized earth-moving equipment, truck-mounted drilling equipment, and motorized vehicles in areas closed to off-road vehicle use, are not casual use. Operations that use chemicals in the recovery or processing of minerals, e.g., cyanide leaching, or explosives are also not considered casual use.

[2] 43 CFR 3809.10(a).
[3] Battery-powered and gas-powered drywashers under 10 horsepower (hp) may be considered casual use as long as the activity only results in no or negligible disturbance.
[4] 43 CFR 8340.

2.2.1 Cumulative Effects

Within certain areas, the cumulative effects of activities that individually would normally be considered casual use may result in more than negligible disturbance when the activity is conducted by a group, at a larger than usual scale, or over time. Whether these activities are conducted by an individual or a group, they are not considered casual use and require a Notice or Plan of Operations.

The State Director may designate specific areas where individuals or groups must contact the BLM before beginning such activities. These designated areas are established through the BLM's land use planning process. When established, the responsible BLM District/Field Office must notify the public via publication in the *Federal Register* of the boundaries of such specific areas and such information must be posted in each local District/Field Office having jurisdiction over those lands. A party that desires to undertake activities in these areas must notify the District/Field Office prior to commencing such activities. See Section 8.7 Land Use Plans for guidance on the cumulative effects of casual use activities.

Where an individual or group intends to conduct casual use activities within one of these designated areas, they must contact the District/Field Office a minimum of 15 calendar days before beginning activities.[5] Within that 15-day period, the District/Field Office will determine whether a Notice or Plan is required or that the activity is casual use and does not contribute to the cumulative effects of other disturbance in the area, and notify the individual or group of such finding in writing. Where required, submission and review of the Notice or Plan of Operations must conform to the requirements of 43 CFR 3809.300 through 3809.336 or 43 CFR 3809.400 through 3809.434, whichever is applicable.

2.2.2 Occupancy

Under 43 CFR 3715.0-5, occupancy on the public lands longer than 14 days in any 90-day period within a 25-mile radius of the initially occupied site, for purposes of conducting activities under the Mining Law, does not qualify as casual use and must be conducted under a Notice or a Plan of Operations.[6] Occupancies must be authorized by the District/Field Manager under the Use and Occupancy Regulations at 43 CFR 3715. The information reporting requirements of 43 CFR 3715.3-2 must be met through the submission of a Notice or a Plan.

2.2.3 Operator Notification

Official communications with the operator concerning their proposed activity must be made in writing. A decision will be issued when the District/Field Office makes a decision that the proposed activity does not qualify as casual use (see Appendix A, Template 2.2-1, Proposed Activity does not qualify as Casual Use). Where the District/Field Office is simply requesting additional information, a letter may be the most appropriate communication.

[5] 43 CFR 3809.31(a).
[6] 43 CFR 3809.5.

Chapter 3 Operations Conducted Under Notices

This chapter provides guidance for processing notice-level operations conducted under the regulations at 43 CFR 3809.300 through 3809.336. A Notice is required for exploration activity, greater than casual use, causing surface disturbance of 5 acres or less on public lands.[7] Activity causing more than negligible disturbance (Section 2.2 Not Casual Use) that does not qualify as a notice-level operation, including all mining, must be conducted under an approved Plan of Operations (Section 4.1 Requirement to File a Plan of Operations).

The following are section-by-section descriptions of the filing, reviewing, and operating requirements for notice-level operations.

3.1 Pre-January 20, 2001 Notice-Level Operations

Specific provisions of the regulations apply to notice-level operations that were on file with the BLM on January 20, 2001.[8]

3.1.1 Continued Pre-2001 Operations

Under 43 CFR 3809.300(a), an operator identified in a Notice on file with the BLM on January 20, 2001, was authorized to conduct operations for 2 years after that date, under the terms of the existing Notice and the regulations in effect immediately before that date. The ability to continue operating through the provisions of 43 CFR 3809.300(a) applied to all Notice operations that were on file with the BLM on January 20, 2001, even those operations that would have required a Plan of Operations under 43 CFR 3809.11 because they were for mining activities, rather than exploration activities.

An operator may modify such Notice operations or the District/Field Manager may require a modification under 43 CFR 3809.330 and 3809.331 (see Section 3.3 Notice Modification).

3.1.2 Extended Pre-2001 Notice

Pre-January 20, 2001, Notices that were extended for 2 years under 43 CFR 3809.333 may continue to be extended (see Section 3.4.2 Notice Extension). However, after January 20, 2003, operations conducted under the terms of an extended[9] Notice are subject to the enforcement and other procedural requirements of the current surface management regulations. In addition, before operations may continue under an extended Notice, the operator must provide the BLM with an acceptable financial guarantee (see Chapter 6 for the reclamation cost estimate and financial guarantee review and acceptance requirements).

The ability to continue operating on an extended Notice after January 20, 2003, applies to all pre-2001 Notice operations, even those operations that would require a Plan of Operations under 43

[7] 43 CFR 3809.21(a).
[8] 43 CFR 3809.300.
[9] 43 CFR 3809.333.

CFR 3809.11. The operator may modify the extended Notice, or the District/Field Manager may require a modification under 43 CFR 3809.330 and 3809.331. However, if the modification materially changes the terms of the original Notice or allows surface disturbance outside the outline of the acreage described in the original Notice, the operations will be subject to all provisions of the current surface management regulations.

3.1.3 Change of Operator on Pre-2001 Notice

If there is a change of operator to a pre-2001 Notice on file with the BLM, the new operator, upon satisfying the financial guarantee requirements of 43 CFR 3809.552, assumes the roles and responsibility of the previous operator[10] (see Section 3.3.6 Change of Operator). The new operator is not required to file a new Notice under 43 CFR 3809.301 or Plan of Operations under 43 CFR 3809.401.

3.1.4 Modified Pre-2001 Notice

The operator may modify, or the District/Field Manager may require a modification, as provided at 43 CFR 3809.330 and 3809.331. If the modified Notice does not alter the terms of the Notice, i.e., does not include additional acreage or otherwise make any material changes, the operator may continue to conduct operations under the regulations in effect immediately before January 20, 2001.[11] To be able to continue operating under the original Notice, the terms of the Notice, including operations facilities and activities described in the Notice, may not be modified in any material way. If the proposed modifications will cause material changes to the pre-2001 notice, then the new activities and surface disturbance are subject to current regulations.[12] Material changes are defined in the regulations as:

> *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.*[13]

3.1.5 Additional Acreage on Pre-2001 Notice

When a modified Notice includes operations on any additional acreage not identified in the pre-2001 Notice, the operations on that additional acreage are subject to all provisions of the current surface management regulations, including 43 CFR 3809.11 and 3809.21.[14] The operator may be required to submit a Plan of Operations under 43 CFR 3809.401, if the modification causes the total unreclaimed disturbance to exceed 5 acres, or if the proposed operations meet one or more of the criteria requiring a Plan of Operations. If a Plan of Operations is filed in these circumstances, the entirety of the operations is subject to the current regulations. Before the additional surface disturbance may occur the Notice must be accepted or Plan of Operations approved, and an acceptable financial guarantee must be provided to the BLM (see Section 6.1 Financial Guarantee Requirements).

[10] BLM Form 3809-5, Notification of Change of Operator and Assumption of Past Liability.
[11] 43 CFR 3809.300(c)(1).
[12] 43 CFR 3809.300(c)(2).
[13] 43 CFR 3809.331(a)(2).
[14] 43 CFR 3809.300(c)(2).

3.1.6 Expired Pre-2001 Notice

If the pre-2001 Notice expires because the operator failed to notify the BLM as to its intent to extend the Notice on or before the expiration date, had not provided additional information within the specified timeframe, or had not provided a financial guarantee within the specified timeframe (see Section 3.4 Notice Term and Section 3.5 Expired Notice), the operator may file a new Notice or Plan of Operations subject to all provisions of the current surface management regulations, including 43 CFR 3809.11 and 3809.21.

3.2 Filing a Notice

3.2.1 Required Filing

For exploration activity greater than casual use and which causes surface disturbance of 5 acres or less of public lands, the operator must file a complete Notice with the responsible BLM District/Field Office 15 calendar days before commencing operations.[15] Mining activity, regardless of acreage disturbed, may not be conducted under a Notice filed under the current regulations.

Figure 3.2-1, Filing and Reviewing a Notice, presents the main operator responsibilities in filing a Notice and the BLM District/Field Office's responsibilities in reviewing the filing. Proposed operations that require submittal of a Plan of Operations are addressed under 43 CFR 3809.11 (see Section 4.1, Requirement to File a Plan of Operations).

3.2.1.1 Complete Notice

The BLM does not require that a Notice filing be on a particular form. However, for a Notice to be considered complete under 43 CFR 3809.301(b), the operator must provide specific operator information, activity description, reclamation plan, and reclamation cost estimate (RCE). An example format for a Notice submission is provided in Appendix C – Example Formats, Format 3.2-1 Notice.

3.2.1.2 Notice Content

The content requirements for a Notice are listed below and should be applied as thoroughly as needed in order to understand what the operator is proposing. The content of the Notice will determine whether the operation qualifies as a notice-level operation and will not cause UUD. The District/Field Office will not require the submission of operational details that are not relevant to this objective.

[15] 43 CFR 3809.21.

Figure 3.2-1 - Filing and Reviewing a Notice
(1 of 2)

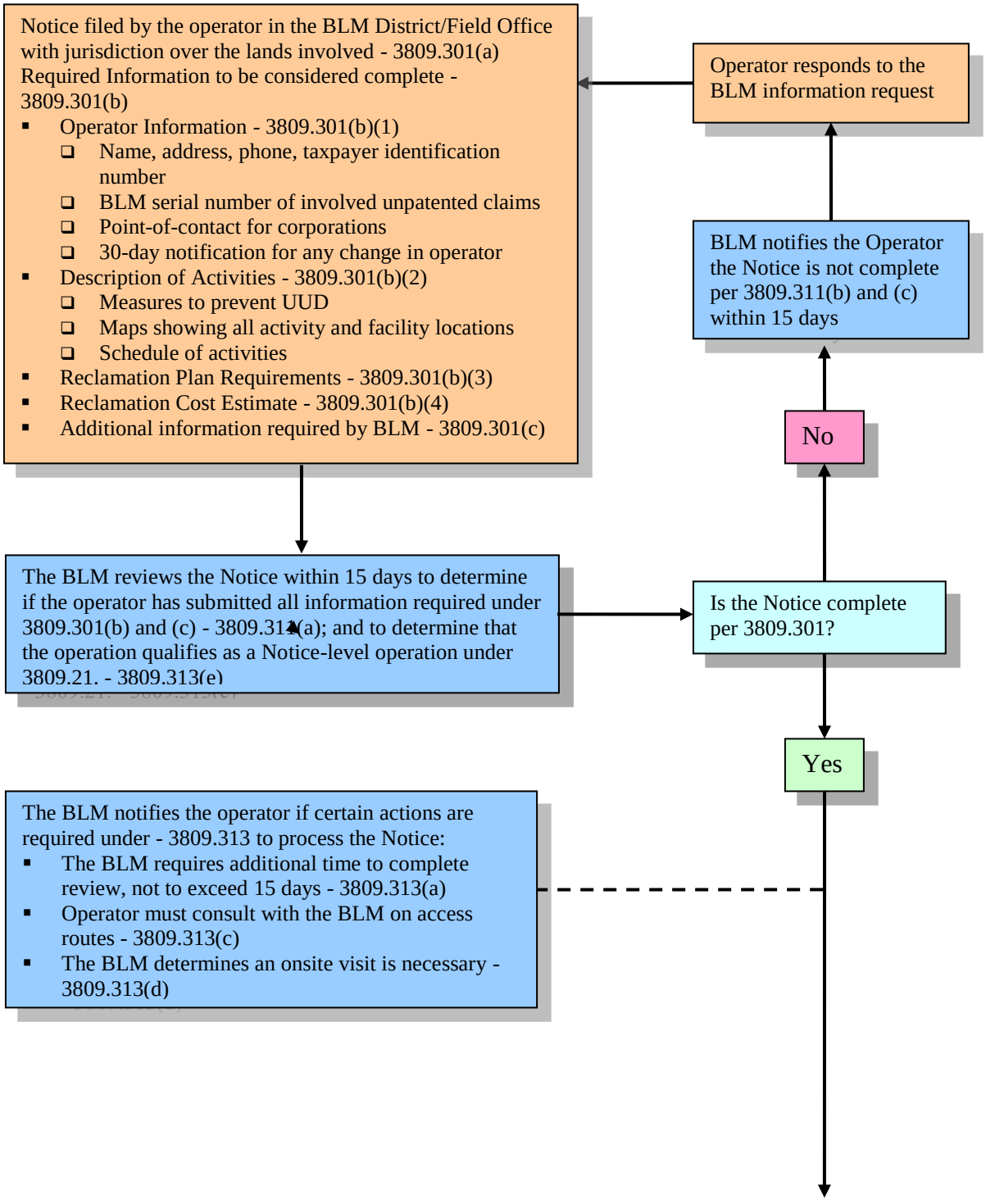
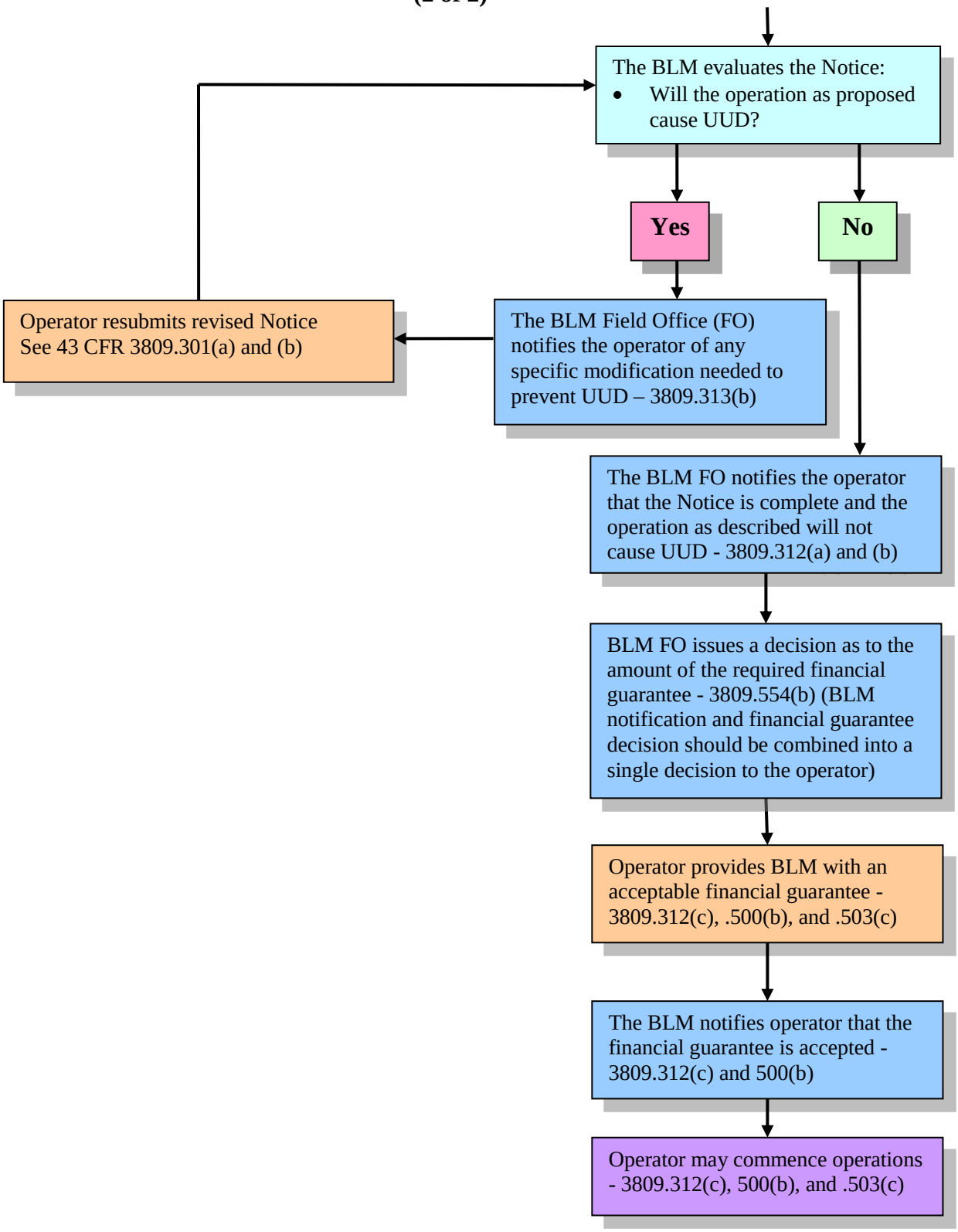


Figure 3.2-1
Filing and Reviewing a Notice
(2 of 2)



3.2.1.2.1 Operator Information

The operator(s) must provide their name, mailing address, phone number, U.S. taxpayer identification number, and the BLM serial number(s) of any unpatented mining claim(s) where the disturbance would occur.[16] If the operator is a corporation, the filing must identify one individual as the point of contact. Procedures for dealing with individual taxpayer identification numbers (Social Security number for an individual) and other protected privacy information are addressed in Chapter 13 Records Management. This issue is addressed in 43 CFR part 2, subpart G. The Collection and Billing System (CBS) also has procedural rules that prohibit the release of a person's Social Security number.

3.2.1.2.2 Activity Description

A complete Notice must include a description of the proposed activity with a level of detail appropriate to the type, size, and location of the activity. The description[17] must include:

- The measures that the operator will take to not cause UUD during operations.
- A map showing the location of the project area in sufficient detail for BLM to be able to find it and the location of access routes the operator intends to use, improve, or construct.
- A description of the type of equipment the operator intends to use.
- A schedule of activities, including the date when the operator expects to begin operations and the date the operator expects to complete reclamation.

3.2.1.2.3 Reclamation Plan

The Notice must describe how the operator will complete reclamation to the standards described at 43 CFR 3809.420.[18] The operator must provide sufficient information for the BLM to assess the adequacy of the proposed reclamation plan. This may involve the operator providing a description of the equipment, devices, or practices they propose to use during reclamation to meet the performance standards. See Section 5.3, Specific Performance Standards for Notices and Plans of Operations, and BLM Handbook H-3042-1, *Solid Minerals Reclamation Handbook*, for additional guidance on the reclamation requirements.

The reclamation plan must provide for the regrading and reshaping of disturbed areas, where applicable. Typical reclamation plans should include a description of the equipment to be used, slope grade, location and size of any runoff controls, cross-sections, etc. A post-grading topographic map showing the planned regrading, though not required, can be the best way to illustrate the regrading plan.

The reclamation plan needs to describe the location, plant species, seeding or planting rates, and any treatment methods proposed to re-establish vegetation over disturbed areas. Also, the plan

[16] 43 CFR 3809.301(b)(1).
[17] 43 CFR 3809.301(b)(2).
[18] 43 CFR 3809.301(b)(3).

must propose the criteria for what would constitute successful revegetation and describe any additional measures, such as temporary fencing or noxious weed control, which might be used on the reclaimed area.

Where applicable, the reclamation plan must describe how drill holes are going to be plugged. The District/Field Office's review must verify that plugging procedures will be in compliance with applicable state drill-hole plugging requirements.

3.2.1.2.4 Reclamation Cost Estimate

An estimate acceptable to the BLM of the cost to fully reclaim the operations, as required at 43 CFR 3809.552 (see Section 6.2, Reclamation Cost Estimates), must be included for the Notice filing to be considered complete.[19] The RCE must be based on the standards set forth at 43 CFR 3809.554(a) and adequate to meet all operator obligations identified in the reclamation plan.

3.2.2 Reviewing the Filing

3.2.2.1 Completeness

Within 15 calendar days of receipt of a Notice, the District/Field Office will review the filing to determine if it is complete according to 43 CFR 3809.301(b)[20] and includes the operator information, activity description, reclamation plan, and RCE as discussed in Section 3.2.1.2, Notice Content. The reclamation plan must include all reclamation, closure, and post-reclamation requirements needed to meet the performance standards described at 43 CFR 3809.420. The District/Field Office's review must determine that the submitted information is not only complete but also accurate.

3.2.2.2 Unnecessary or Undue Degradation

The BLM review is to confirm that the operations conducted under the Notice will not cause UUD. This means determining that there is a reasonable expectation that the proposed operation will:

- Comply with the performance standards.[21]
- Comply with the terms of the filed Notice.
- Comply with other Federal and state laws related to environmental and cultural resource protection.
- Conform to the requirements of 43 CFR 3715.

As part of this review, the District/Field Office will, whenever possible, conduct an onsite visit prior to determining if the proposed operation will cause UUD. As part of this onsite visit the BLM will document all existing disturbance.

[19] 43 CFR 3809.301(b)(4).
[20] 43 CFR 3809.311(a).
[21] 43 CFR 3809.420.

3.2.2.3 Enforcement Program

The BLM review and acceptance of a Notice is part of its enforcement program to ensure that operators comply with their legal responsibility to not cause UUD (see Section 9.2, Enforcement Actions). Any decision concerning the need, amount, acceptability, and/or forfeiture of a financial guarantee is also part of the BLM's compliance and enforcement program, but not an approval of the Notice (see Section 6.1, Financial Guarantee Requirements).

3.2.2.4 Additional Information

The District/Field Manager may require the operator to provide additional information to ensure that the operations will comply with the regulations.[22] For example, the District/Field Office may require some fairly simple baseline information, such as the depth to groundwater, or specific operations information, such as the nature and types of drilling fluid additives to be used. However, the District/Field Office should not require the operator to submit details that are not relevant to determining whether the operations will cause UUD or otherwise qualify as notice-level operations.

3.2.2.5 Additional Reviews

If the District/Field Manager takes any action listed at 43 CFR 3809.313, operations, having otherwise filed a complete Notice and provided the BLM with an acceptable financial guarantee, will not begin until the action is completed and any additional conditions are satisfied. If additional reviews are being required according to 43 CFR 3809.313, the responsible BLM District/Field Office must give written notice to the operator within 15 calendar days of receipt of the complete Notice.

3.2.2.5.1 Additional Review Time Needed

Where a complete Notice has been submitted, but the District/Field Office needs additional time to review the Notice to ensure the proposed operation will not cause UUD, the District/Field Manager will immediately give written notice to the operator. Operations may not begin until the District/Field Office has completed its review. The District/Field Office review is limited to 15 additional calendar days.[23]

3.2.2.5.2 Modifications Required

If the District/Field Office notifies the operator that the Notice must be modified to prevent UUD, the Notice must be modified before operations may commence.[24] The District/Field Manager will provide a written notification informing the operator that a modification is necessary.

[22] 43 CFR 3809.301(c).
[23] 43 CFR 3809.313(a).
[24] 43 CFR 3809.313(b).

3.2.2.5.3 Access Routes

Any concerns with existing and proposed access routes must be addressed before operations may commence.[25]

3.2.2.5.4 Onsite Visits

If the District/Field Office determines that additional time is necessary to conduct an onsite visit, operations may not commence until this site has been examined.[26] Any concerns arising from the visit must be resolved to the BLM's satisfaction before operations may begin. If a site visit cannot be conducted within the initial 15-calendar day review period, the BLM will notify the operator and include the reason(s) for the delay.

3.2.2.5.5 Plan Required

If the District/Field Office notifies the operator that the proposed operation does not qualify as a notice-level operation under 43 CFR 3809.21, the operator must submit and obtain approval of a Plan of Operations before beginning operations.[27] For example, bulk sampling that proposes to remove 1,000 tons or more of presumed ore (taking into consideration all material to be tested, whether or not it ultimately is determined to be ore grade material) requires the operator to file a Plan of Operations. Onsite field-scale testing using chemicals such as cyanide or sulfuric acid to evaluate leachability (e.g., test heaps) does not qualify for a Notice and must be done under a Plan of Operations, regardless of test sample size. Areas closed to off-road vehicle use require a Plan of Operations.[28] In addition, mining may not be conducted under a Notice filed under the current regulations.

If the District/Field Office determines that the proposed project has been segregated by filing a series of Notices for the purpose of avoiding filing a Plan of Operations, the District/Field Office will notify the operator that a Plan is required.[29]

The District/Field Manager will issue the determination that the proposed operation does not qualify for a Notice in a written decision that includes the appropriate appeals provisions (see Appendix A, Template 3.2-1, Proposed Operation does not qualify as a Notice).

3.2.2.6 Coordination with Other Agencies

Other Federal, state, and local agencies may require similar information concerning the proposed operation. The BLM should coordinate its information requirements with these other agencies to arrive at a standard level of detail. Since no particular form is required, the use of information required by other agencies, where appropriate, can be used to satisfy the BLM's Notice content requirements. If appropriate under existing agreements the BLM has with state and/or local agencies, the District/Field Office will ensure the appropriate state or local agency is provided a copy of the Notice.

[25] 43 CFR 3809.313(c).
[26] 43 CFR 3809.313(d).
[27] 43 CFR 3809.313(e).
[28] 43 CFR 3809.11(c)(5).
[29] 43 CFR 3809.21(b).

3.2.2.7 Multiple Operators' Filings

If two or more operators file Notices (or Plans of Operations) on the same area, the BLM will notify the respective operators and identified mining claimants of the potential conflict. Resolving mining claim ownership or a Notice and/or Plan conflict is a matter between the private parties. A conflict does not warrant the BLM taking any action under 43 CFR 3809.313 that would delay operations from commencing. The BLM will review each Notice based solely on its obligation to prevent UUD.[30]

If, because of mutually exclusive or conflicting activity, the BLM is not able to determine whether the operator(s) will cause UUD, the District/Field Manager may suspend the review until the conflict is resolved. The suspension will be issued in the form of a decision (see Appendix A, Template 3.2-2, Processing Notice or Plan Suspended).

3.2.3 Operator Notification

Official communications with the operator concerning the Notice filing must be made in writing, whether it is in the form of a letter, notice, or decision. A decision will be issued when the District/Field Office takes final action on a Notice or when the District/Field Office determines the amount of the required financial guarantee (see Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount). However, where the District/Field Office is notifying the operator that specific information is needed for the Notice filing to be complete, a letter may be the most appropriate communication.

3.2.3.1 Incomplete Filing

If the Notice is incomplete, the District/Field Manager will give written notice to the operator of the additional information required.[31] Prompt notification is necessary to comply with the requirement in the regulations to make a determination within 15 calendar days of the filing. Appendix A, Template 3.2-4, Notice Not Complete, provides an example notification to the operator that the filing does not meet the requirements at 43 CFR 3809.301.

3.2.3.1.1 Written Notice Required

The BLM District/Field Manager must give written notice of those areas deemed deficient. The District/Field Manager may, at his or her discretion, suggest corrective actions for any identified deficiencies.

3.2.3.1.2 Unacceptable Reclamation Cost Estimate

A Notice is not complete if the RCE is not acceptable.[32] For example, the BLM must advise the operator to incorporate the appropriate administrative costs if they are not included in the RCE. The responsible BLM District/Field Manager may suggest procedures for determining specific cost components or may provide the operator with the BLM's cost estimate for reclaiming the proposed operation.

[30] 43 CFR 3809.311.
[31] 43 CFR 3809.311.
[32] 43 CFR 3809.554(b).

3.2.3.1.3 Timeframes

The timeframes identified at 43 CFR 3809.311, 3809.312 and 3809.313 are not effective until the District/Field Office determines that the operator has filed a complete Notice. The Notice is not complete until the District/Field Office receives all of the information requested.[33]

In requesting additional information from the operator, the District/Field Manager should attempt to identify all deficiencies in the initial review and notification, and may establish a timeframe within which the additional information must be submitted. If a timeframe is included, the notification will let the operator know that the BLM will discontinue processing the Notice if the required information is not submitted in a timely manner.

The District/Field Office will review, within 15 calendar days, any additional information submitted by the operator.

3.2.3.2 Complete Filing

The District/Field Manager must notify the operator when the Notice is determined to be complete and issue a decision on the amount of the required financial guarantee.

The notification must be in writing, specifying the date the Notice is complete. This notification must be made within 15 calendar days of receipt of an acceptable Notice.[34] The notification must include a statement that the BLM has determined that the operation as proposed will not cause UUD.

When the BLM has received a RCE and finds that it is acceptable, the District/Field Manager must provide the operator with a written decision which will state the amount of the financial guarantee required (see Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount).[35] The decision will state that operations may not commence until an acceptable financial guarantee has been obligated by the BLM (see Section 6.3, Reclamation Cost Estimates) for the operation. A copy of this decision must be provided to the BLM office responsible for adjudication of the financial guarantee.

Notification that the Notice is complete and the decision on the amount of the required financial guarantee will, where practical, be combined into a single decision.

3.2.3.3 Modification Required

The District/Field Manager must notify the operator to modify a notice when necessary to prevent UUD.

3.2.3.3.1 New Operations

When a modification is required during the initial completeness review, the District/Field Manager will notify the operator that the Notice will cause UUD and modification is required

[33] 43 CFR 3809.311(c).
[34] 43 CFR 3809.311(a).
[35] 43 CFR 3809.554(b).

before the BLM can accept the Notice. In the notification, the District/Field Manager will inform the operator that operations must not begin until the Notice is modified to prevent UUD. The District/Field Manager will provide written notification to the operator.[36] The notification will state the reason(s) for which the notice was determined to cause UUD (see Appendix A, Template 3.2.5, Modification Required).

3.2.3.3.2 Existing Operations

At any time, the District/Field Manager may require the operator to modify the Notice to prevent UUD.[37] When a modification is required, the District/Field Manager will provide written notification informing the operator that a modification is necessary to prevent UUD. The notification will include the reason(s) for which the notice was determined to cause UUD.

3.2.4 Authorization

The BLM does not approve a Notice and therefore notice review does not require an environmental review under NEPA.[38] The BLM accepts Notice filings, and reviews a complete Notice to ensure the proposed operation qualifies as a notice-level operation according to 43 CFR 3809.11 and that the operator is able to conduct the proposed operations without causing UUD. The BLM will not issue a decision "approving" a notice; however the District/Field Office will issue a decision, Determination of Required Financial Guarantee Amount (see Appendix A, Template 3.2-3), stating the amount required for the financial guarantee. The BLM office responsible for adjudicating financial guarantees will issue a decision on the obligation of the financial guarantee.

Any decision concerning the need for, amount of, and/or acceptability of the RCE is considered part of the BLM's compliance and enforcement responsibilities, and not an approval of the Notice. The BLM office responsible for adjudicating financial guarantees will notify the operator and other affected entities when the BLM obligates a financial guarantee for the Notice. A copy of this decision will be provided to the BLM District/Field Office. Decisions concerning the required financial guarantee amount also do not require an environmental review under NEPA. All compliance and enforcement decisions are, however, subject to appeal under the provisions at 43 CFR 3809.800 through 3809.809.

The notice-level operation may be subject to authorization under the Use and Occupancy Regulations at 43 CFR 3715[39] if the proposed operations involve occupancy (e.g., placement of fences, gates, signs or occupancy at the site). Any proposed occupancy associated with notice-level operations must be approved by the District/Field Manager according to the 3715 regulations.

A completed Notice constitutes off-highway vehicle (OHV) authorization in areas designated as "limited" to off-road vehicle use, as defined by 43 CFR 8340.0-5(h). A separate authorization under 43 CFR 8344.1 and subpart 2930 is not required for notice-level operations in "limited" areas.

[36] 43 CFR 3809.313 (b).
[37] 43 CFR 3809.331(a).
[38] 43 CFR 3809.312(a).
[39] 43 CFR 3809.312(d).

3.2.5 Commencing Operations

If the BLM does not take any of the actions described in 43 CFR 3809.313, the operator may begin operations after 15 calendar days from the date the District/Field Office received the complete Notice and the BLM has obligated a financial guarantee.[40] If the operator does not receive an acknowledgement from the BLM, or has any doubt about the date the BLM received the complete Notice, the operator should contact the office to which the Notice was submitted. If the BLM provides the operator with a written notification that the review of the Notice has been completed before the end of the 15-calendar day period and the BLM has obligated the financial guarantee, the operator may begin operations.

Operations conducted under a Notice must meet all applicable performance standards;[41] see Section 5.3, Specific Performance Standards for Notices and Plans of Operations, for a full discussion of the applicable performance standards.

3.3 Notice Modification

3.3.1 Modifying a Notice

The operator may submit a modification to its Notice at any time, if the operator wants to materially change or modify the Notice activity.[42] The operator is required to modify the Notice before any material changes are made to the operation.[43] Material changes are changes that propose to disturb areas not described in the Notice on file with the BLM, change the reclamation plan, or change the type, intensity, or scope of activity. The operator must submit a Notice modification at least 15 calendar days before making any material changes to the operation. Information required for the Notice modification is at 43 CFR 3809.301(b), and the review process is similar to that required for the original Notice. The operator must not modify the activity/operation described in the current Notice until the modification has been reviewed and accepted.

3.3.2 BLM Required Modification

At any time, the District/Field Manager may require the operator to modify the Notice to prevent UUD.[44] Modification may be required by the BLM based on results of a compliance inspection, a change in site conditions, or availability of new information.

When a modification is required, the District/Field Manager will provide written notification informing the operator that a modification is necessary. The BLM will require the operator to modify the Notice when UUD is occurring and whenever the District/Field Manager determines a modification is needed to prevent UUD from occurring.

[40] 43 CFR 3809.312(a).
[41] 43 CFR 3809.420.
[42] 43 CFR 3809.330(a).
[43] 43 CFR 3809.331(a)(2).
[44] 43 CFR 3809.331(a).

3.3.3 Modification Review

The District/Field Office will review the Notice modification in the same manner as a new Notice.[45] The District/Field Office will provide a written notification to the operator providing the date a complete Notice modification was accepted. If the modification results in the District/Field Office establishing a new RCE, the District/Field Manager will issue a decision setting that new amount.

3.3.4 Commencing Operations

Except in the instance where immediate action is necessary to prevent UUD, the operator must provide the BLM an acceptable financial guarantee that meets the requirements of the regulations and is obligated by the BLM before beginning operations under the modified Notice.[46]

3.3.5 Continued Operations

Unless otherwise directed by the BLM District/Field Manager to prevent UUD, operations described in the original Notice may continue, pending completion of BLM's review of the proposed modification.

3.3.6 Change of Operator

The operator must notify the responsible BLM District/Field Office, 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.[47] The operator must notify the responsible BLM District/Field Office using Form 3809-5, Change of Operator, of any proposed change of operator. The BLM District/Field Office must approve the operator change subject to satisfactory financial guarantee being accepted and obligated to cover the proposed operator. The BLM District/Field Office will update LR2000 accordingly, as soon as possible.

3.4 Notice Term

3.4.1 Initial Term

A Notice remains in effect for 2 years from the date the BLM issued a decision on the amount of the required financial guarantee[48] unless the operator requests a Notice be terminated before that date or the BLM nullifies a Notice as part of an enforcement action under 43 CFR 3809.602 (see Section 9.2, Enforcement Actions). The BLM decision establishing the amount of the required financial guarantee must state the effective date and expiration date of the Notice.

[45] 43 CFR 3809.330(b).
[46] 43 CFR 3809.312(c).
[47] 43 CFR 3809.301(d).
[48] 43 CFR 3809.332.

3.4.2 Notice Extension

An operator may extend the Notice for an additional 2 years according to 43 CFR 3809.333. The Notice may be extended more than once.

3.4.2.1 Notification

To extend the original Notice, the operator must provide the District/Field Manager with written notice on or before the expiration date, indicating the operator intends to continue operations under the terms of the existing Notice for an additional 2 years. A Notice may not be extended if it has already expired.

Any information required for a complete Notice, according to 43 CFR 3809.301(b), that has changed or was never provided in the original filing must be included in the extension notification. Further, the operator must provide a revised RCE based upon the proposed operations.

Regardless of when the operator provides an extension notification or when the operator provides the BLM with an acceptable financial guarantee, the Notice expiration date is 2 years from the date the BLM issued a decision, Determination of Required Financial Guarantee Amount (see Appendix A, Template 3.2-3), as to the amount of the required financial guarantee.

If a decision has been issued by the District/Field Manager establishing a revised cost estimate for an entire operation, and the operator requests a Notice extension in compliance with the regulations,[49] the Notice expiration date is the 2-year anniversary date of that decision. Normally this situation would occur when the Notice is modified.

The District/Field Manager may consider an extension request anytime within the 2-year term of the Notice.

3.4.2.2 Notification Review

Where the BLM has received notification of an extension, the District/Field Manager must review the original Notice and any additional information submitted by the operator to verify that (1) the Notice qualifies for an extension (i.e., that it has not already expired), (2) the operation will not cause UUD, and (3) all information required for a complete Notice[50] has been submitted, including an acceptable revised RCE. If it is determined the Notice is complete and the operations as described in the filing will not cause UUD, the District/Field Manager must issue a decision as to the amount of the required financial guarantee (see Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount).

If the District/Field Manager determines that the Notice has already expired, the BLM will notify the operator that the Notice cannot be extended due to the operator's failure to comply with the requirements at 43 CFR 3809.333 and 3809.335 (see Appendix A, Template 3.4-1, Notice Expired).

[49] 43 CFR 3809.333.
[50] 43 CFR 3809.301(b).

Where an operator has filed for an extension of the Notice and the operator is also in noncompliance, the responsible BLM office will notify the operator of this noncompliance and any corrective actions necessary (see Section 9.2, Enforcement Actions). The existence of an outstanding noncompliance order will not, by itself, preclude a Notice from being extended. However, where a suspension order or immediate temporary suspension order has been issued, an extension will be withheld until such time as the order has been terminated.

3.4.2.3 Conditional Extension

When the operator notifies the BLM of its intent to extend the Notice on or before the expiration date, but the District/Field Manager determines that updated or additional information is required, and that information cannot be obtained before the expiration date, the Notice may be extended, conditioned upon the receipt of the required information.

Where the Notice has been extended subject to certain conditions, the operator and District/Field Office must promptly take the required actions to ensure those conditions are addressed. For the BLM, the required action may include notifying the operator of the required information (see Appendix A, Template 3.4-2, Conditional Extension) or issuing a decision on the amount of the required financial guarantee (see Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount). Whether it is a letter requesting additional information or a decision on the amount of the required financial guarantee, the communication with the operator must include a due date when the information and/or financial guarantee must be provided and a statement that failure to provide the required information and/or acceptable financial guarantee within the specified timeframe will result in the Notice expiring immediately upon conclusion of the timeframe. At that point, the BLM will notify the operator that the Notice has expired, that all activities except for reclamation must cease, and that the operator may submit a new Notice or Plan of Operations if the operator intends to continue operations (see Appendix A, Template 3.4-1, Notice Expired).

3.4.2.3.1 Additional Information Request

Where the District/Field Manager requires the submission of additional information, the operator must submit the required information within 30 days. Failure to provide the required information within the specified timeframe will result in the Notice expiring immediately upon conclusion of the timeframe unless the District/Field Manager determines an additional information request is warranted. If the District/Field Manager determines that additional information not originally requested or received is necessary, the manager may issue one additional request for information. The operator must submit the required information within 30 days of this second notification. Failure to provide the required information within the specified time will result in the Notice expiring immediately upon conclusion of the response period (see Appendix A, Template 3.4-1, Notice Expired).

3.4.2.3.2 Increased Financial Guarantee Required

Where an increase in the amount of the existing financial guarantee is required, the operator must provide the BLM with an acceptable financial guarantee within 60 days from the date when the District/Field Manager issues the decision on the amount of the financial guarantee (see Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount). Failure

to provide an acceptable financial guarantee increase within the specified timeframe will result in the Notice expiring immediately upon conclusion of the timeframe. A noncompliance order may also be issued for failure to maintain an adequate financial guarantee (see Appendix A, Template 9.2-1, Noncompliance Order).

3.5 Expired Notice

The Notice expires when (1) the operator fails to extend the Notice on or before the expiration date, (2) fails to provide any additional information required by the BLM within the timeframe provided, or (3) fails to provide the BLM with an acceptable financial guarantee within the time allowed. The BLM will notify the operator that the Notice has expired, that all activities except for reclamation must cease, and that the operator may submit a new Notice or Plan of Operations if the operator intends to continue operations (see Appendix A, Template 3.4-1, Notice Expired).

When a Notice expires, the operator must cease all operations, except reclamation.[51] The operator must promptly complete all reclamation according to the Notice. See Section 7.1, Activity Conducted under a Notice, for requirements when a Notice expires.

If an operator wishes to continue mining operations after expiration of a Notice, the operator must immediately submit a new Notice or Plan of Operations, if required by 43 CFR 3809.11. The new Notice must be accepted or Plan of Operations approved, and a financial guarantee obligated before operations, other than reclamation, may commence again.

3.5.1 Inspection

When a Notice has expired, as provided at 43 CFR 3809.332, the BLM District/Field Office will promptly conduct an inspection to verify whether the operator has met the reclamation obligations and will provide the operator with written notice of its findings, including a decision as to the amount of the required financial guarantee based on successful reclamation. Where appropriate, that decision would indicate that no financial guarantee is required.

Where the operator has let the Notice expire and has not commenced reclamation or submitted a new Notice or Plan of Operations, the responsible BLM District/Field Office must take the necessary enforcement actions at 43 CFR 3809.601 through 3809.605 and/or 43 CFR 3715 (see Section 9.2, Enforcement Action and Appendix A, Template 9.2-1 Noncompliance Order). If necessary, the BLM will initiate forfeiture procedures of the financial guarantee according to 43 CFR 3809.595 through 3809.599 (see Section 6.5, Forfeiture of Financial Guarantee) (see Appendix A, Template 6.5-1, Forfeiture of Financial Guarantee).

3.5.2 Closing the Case File

An operator's reclamation obligations continue beyond the expiration or any termination of the Notice until all reclamation requirements are satisfied.[52] Before the case file may be closed, the BLM must inspect the site, notify the operator of any outstanding reclamation requirements, and

[51] 43 CFR 3809.335.
[52] 43 CFR 3809.335(d).

ensure all required reclamation has been completed. The District/Field Office must not close the case file until the operator has completed all reclamation obligations, or in situations where the operator fails to reclaim the operation, the BLM completes the reclamation. In such cases, the case file may need to remain open until the debt is collected or written off.

When the District/Field Manager is notified that operations have ceased and reclamation is complete before the Notice expires, the District/Field Office will promptly conduct an inspection to verify if all reclamation responsibilities have been fulfilled. The District/Field Manager will notify the operator in writing of its findings (see Appendix A, Template 3.5-1, Reclamation Required). The District/Field Manager may then terminate the Notice[53] and close the case file (see Chapter 7 Cessations and Abandonment).

[53] 43 CFR 3809.332.

Chapter 4 Plan of Operations – Content and Processing

This chapter explains the operator's filing requirements and the BLM District/Field Offices' review and approval procedures for a Plan of Operations. It includes guidance on when a Plan of Operations is required, what needs to be included in the Plan, the steps for review, approval, or denial of a Plan, and the procedures to follow when considering a modification to a Plan of Operations.

4.1 Requirement to File a Plan of Operations

A Plan of Operations is required for surface disturbance greater than casual use, unless the activity qualifies for a Notice filing.[54] Surface disturbance greater than casual use on certain special category lands requires the operator to file a Plan of Operations and receive BLM approval (i.e., operations may not be conducted under the Notice provision of the regulations at 43 CFR 3809.11(c). Special category lands include the following:

- Lands in the California Desert Conservation Areas (CDCA) designated by the CDCA plan as "controlled" or "limited" use areas.

- Areas in the National Wild and Scenic Rivers System, and areas designated for potential addition to the system.

- Designated Areas of Critical Environmental Concern (ACEC). This does not include lands merely nominated for ACEC designation, but lands that have been designated through the land use planning process.

- Areas designated as part of the National Wilderness Preservation System administered by the BLM are subject to the 3809 regulations. Because such lands are withdrawn from location, subject to valid existing rights, the processing of a Plan of Operations requires a full mineral examination under 3809.100(a) and a determination that the mining claim is valid before approving the Plan. Note the regulations at subpart 3802 apply to lands under wilderness review (Wilderness Study Areas). Consult those regulations to process operations proposed in BLM Wilderness Study Areas.

- Areas designated as "closed" to off-road vehicle use, as defined in 43 CFR 8340.0-5(h). Note that a Plan of Operations is not required for areas with a "limited" designation, even if such a designation limits travel to existing roads and trails and the surface disturbance would occur off-road. An accepted Notice constitutes OHV authorization in limited areas. An approved Plan of Operations constitutes OHV authorization in limited or closed areas. A separate authorization under 43 CFR 8344.1 and subpart 2930 is not required for operations in these areas.

- Any lands or waters known to contain federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, unless the BLM allows for other action under a formal land use plan or threatened or endangered species

[54] 43 CFR 3809.11.

recovery plan. The requirement to file a Plan of Operations does not apply where the habitat is not occupied unless the habitat has been proposed or designated as "critical" in a recovery plan. In proposed or designated critical habitat, a recovery plan or land use plan may be used to establish a Notice-Plan threshold for exploration at less than the 5-acre disturbance threshold. This threshold would be based upon a programmatic review of mineral activity in the recovery area and development of standard operating practices through consultation between the BLM and the U.S. Fish and Wildlife Service (FWS).

- National Monuments and National Conservation Areas administered by the BLM. A Plan of Operations is always required for surface disturbance greater than casual use in these areas. In addition, many of these areas are withdrawn from location, subject to valid existing rights, and the processing of a Plan of Operations requires a full mineral examination under 3809.100(a) and a determination that the mining claim is valid before approving the Plan.

- Lands patented under the SRHA with Federal minerals. A Plan of Operations is required for activity greater than casual use on these lands only when the operator does not have the written consent of the surface owner. The requirements at 43 CFR 3814 are also applicable for processing these Plans.

- On split estate lands other than those patented under the SRHA, either a Notice or Plan of Operations must be filed with the BLM regardless of whether the operator has surface owner consent.

4.1.1 Existing Plans of Operations

For Plans of Operations that were either already approved or pending approval when the 43 CFR 3809 regulations were promulgated in 2001, the operator does not have to comply with the new Plan content requirements or the new performance standards unless the operator chooses to have those sections apply. Instead, the Plan content and performance standards that were in effect before January 20, 2001 are applicable.[55] All other portions of the current regulations such as the financial guarantee requirements, inspection and enforcement procedures, appeals processes, etc., must be followed. See Section 4.6.4 and 4.6.5 for a discussion on processing modifications to these Plans.

4.2 Plans of Operations - Overview of Processes

The stages in the BLM's review of a Plan of Operations can be divided into six general categories:

- Completeness review.

- Environmental analysis.

- Financial guarantee establishment.

[55] 43 CFR 3809.400.

- Approval decision.
- Monitoring.
- Reclamation and Closure.

These processes are not strictly sequential. The completeness review and environmental analysis are iterative, i.e., involve review, evaluation, modification, and reevaluation in order to develop both a complete Plan and a final environmental analysis. In addition, there can be overlap as the Plan completeness review may identify issues for the environmental analysis; scoping for the environmental analysis may target areas in the Plan of Operations where additional detail is needed to describe the proposed action for study in the environmental analysis document. Plan review and environmental analysis will likely result in changes to the financial guarantee requirements.

Plans may also be modified after they are approved, either by the operator or as required by the BLM. The BLM decisions approving, approving with conditions, or denying a Plan of Operations can be appealed or challenged in court. The general relationship between these processes is shown in the flowchart in Figure 4.2-1, Plan of Operations Processes.

4.2.1 Plan Review Timeline

The amount of time required to review and approve a Plan of Operations will vary considerably depending upon the type and complexity of the activity being proposed, resources potentially affected, required level of environmental analysis, amount of interagency coordination needed, and level of public controversy.

4.2.2 Plan Review Level of Detail and Effort

The intensity of the review effort is determined by the BLM's mandate to prevent UUD. This means that the scrutiny during Plan review is determined by the proposed level of activity and the anticipated impacts. A Plan of Operations for a one season, 6-acre exploration proposal will probably require less extensive review and analysis than a Plan of Operations for a 1,300-acre open pit, heap leach operation that is to be conducted over a 15-year mine life. The Plan content and processing regulations at 43 CFR 3809.401 through 3809.411 are to be applied as thoroughly as needed to determine whether the operation will cause UUD while review of operational details not relevant to this objective is to be avoided.

The level of detail needed in a Plan of Operations should be driven by site-specific conditions. BLM State Offices can develop state-specific review criteria or checklists, but the BLM reviewer must exercise considerable judgment in identifying the applicable information and levels of detail required from the operator and not rely on a one-size-fits-all approach.

For example, usually it is not important for the operator to specify the size of the dozer that will be used to reduce a dump slope, only that the slope will be reduced to a specific grade. In other situations, the size of the dozer could be important factor because the width of the access road is limited or because the duration or noise level of equipment operation could affect a particular wildlife species. In these cases, the Plan of Operations must describe the size/type of equipment to be used so that the impacts can be evaluated.

For a more detailed description of the process regarding the review, approval, and management of a Plan of Operation refer to Figures 4.2-2 through 4.2-8.

4.3 Plan of Operations – Filing and Content

Operators who are required to file a Plan of Operations must file the Plan in the BLM District/Field Office that has jurisdiction over the lands involved. A specific form is not required but the Plan must contain all the information required under 43 CFR 3809.401(b) in order to be considered complete. An example format (Format 4.3-1, Plan of Operations) for a Plan submission is provided in Appendix C – Example Formats. Additional information on environmental conditions and reclamation costs is required to be provided under 3809.401(c) and (d), respectively. An operator does not need to provide the information requested under 3809.401(c) or (d) in order for the Plan to be considered complete; however, the BLM may be unable to process the Plan until such information is provided.

Plan content should be as specific as necessary for the BLM to determine whether the proposed action will cause undue or unnecessary degradation. However, consideration should be given to operational flexibility so that frequent modifications are not necessary. For example, an operator may wish to indicate a range of earth-moving equipment that may be used rather than identify a specific make and model. Operational flexibility is considered appropriate as long the scope and intensity of the of the plan is not altered.

4.3.1 Pre-Plan Coordination

The BLM is available to meet with the operator and other local, state, or Federal agencies that may be involved in the approval process to discuss (1) what to include in the Plan of Operations and (2) what may be needed to support the NEPA analysis, especially for large projects. It may be beneficial to all parties for the BLM to informally review a pre-plan, conceptual plan, or study plan prior to the formal filing of the Plan of Operations to give the operator guidance on what to include in the submission and how the review process will be conducted.

Pre-Plan discussions are especially beneficial when extensive baseline studies are necessary to support NEPA review of a Plan, where collection of baseline data is anticipated to take several years, or where cost recovery is required. The more common types of baseline studies include (1) rock characterization for acid rock drainage (ARD) analysis, (2) hydrologic baseline studies, (3) wildlife and plant inventories, and (4) cultural resources inventories. To ensure the Plan of Operations approval process proceeds in a timely manner, operators need to provide sufficient water-related baseline data to the BLM when the Plan is submitted. For example, groundwater baseline data to support review of a Plan involving a large heap-leach metallic mining operation may require 2 years to collect and the drilling of several deep monitoring wells. Advanced planning with the operator for this type of baseline data collection is encouraged.

Figure 4.2-1 - Plan of Operations Process

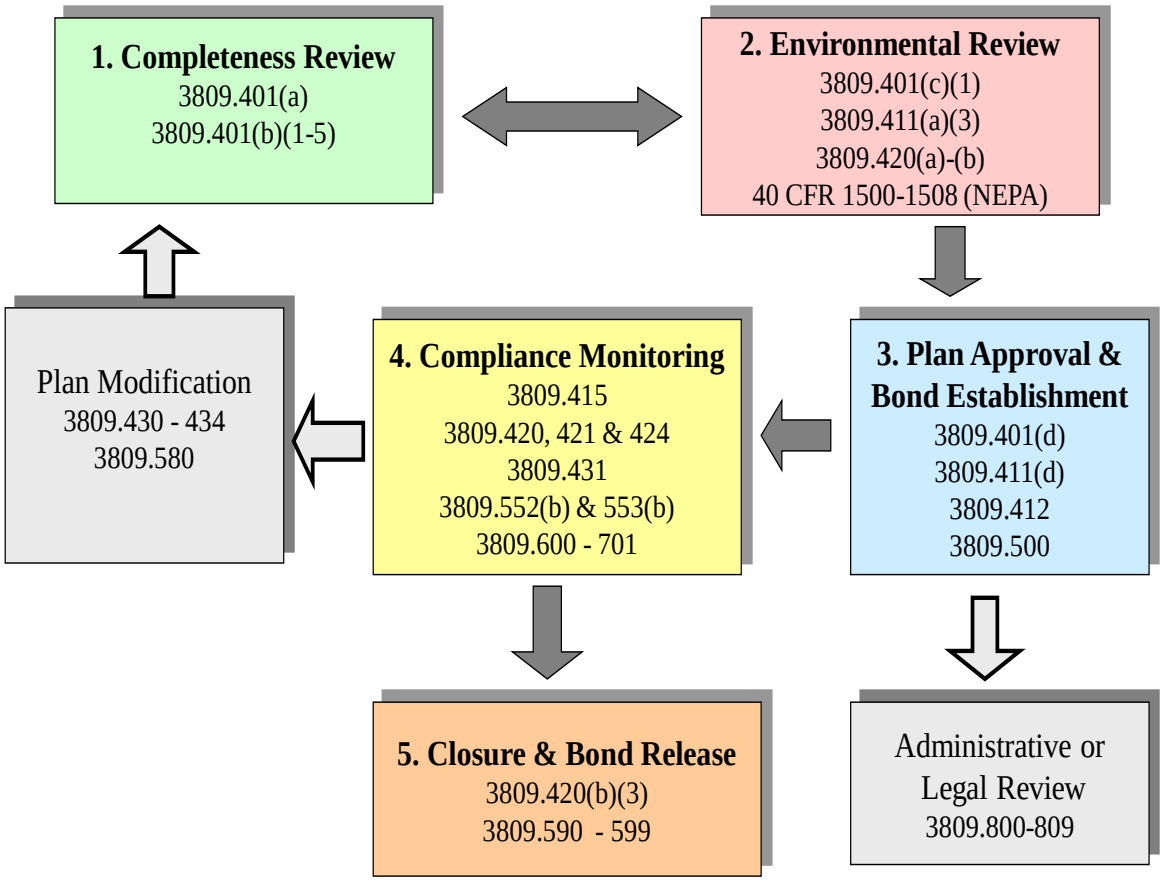


Figure 4.2-2 - Plan of Operations -- Completeness Review

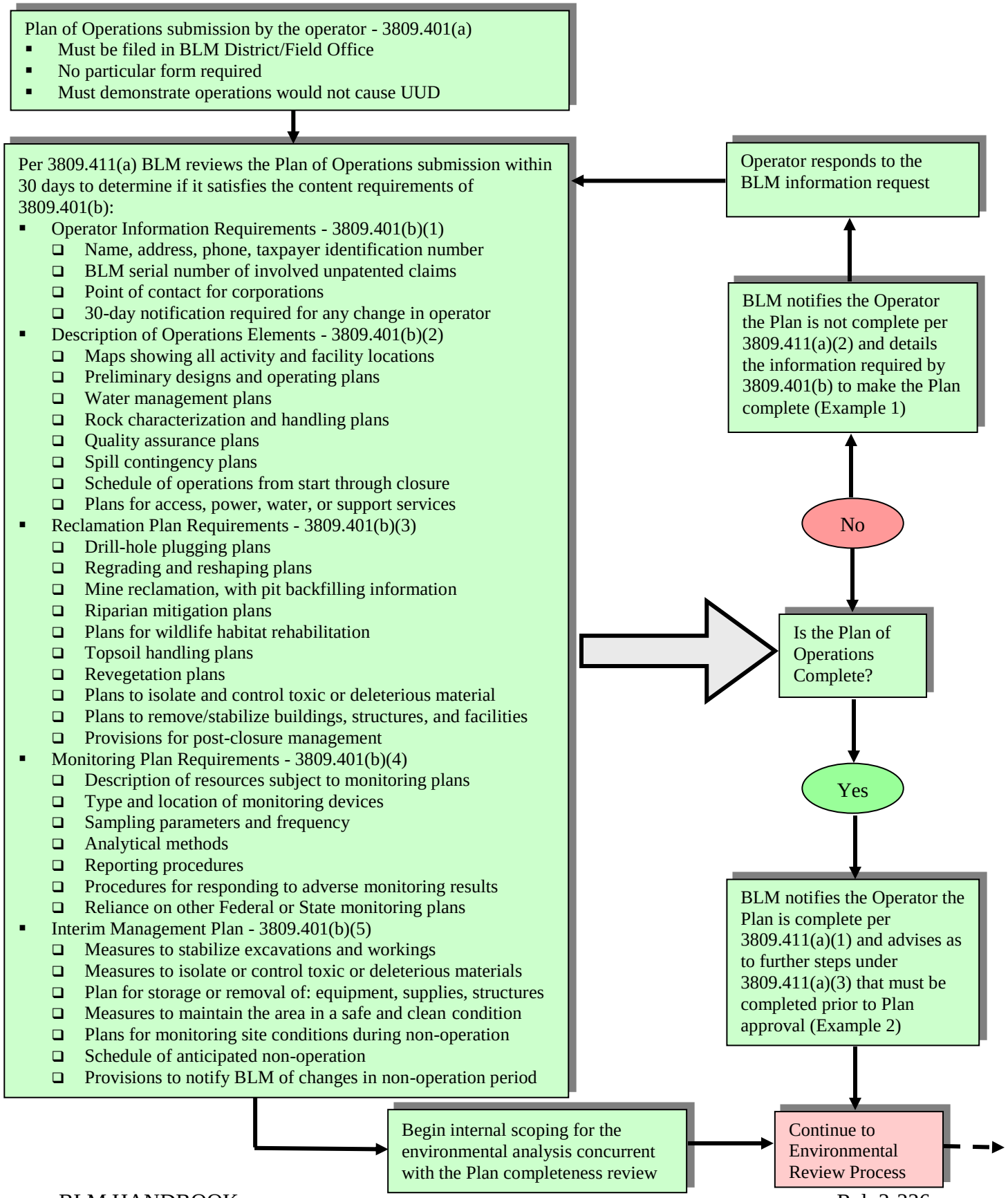


Figure 4.2-3 - Plan of Operations -- Environmental Review

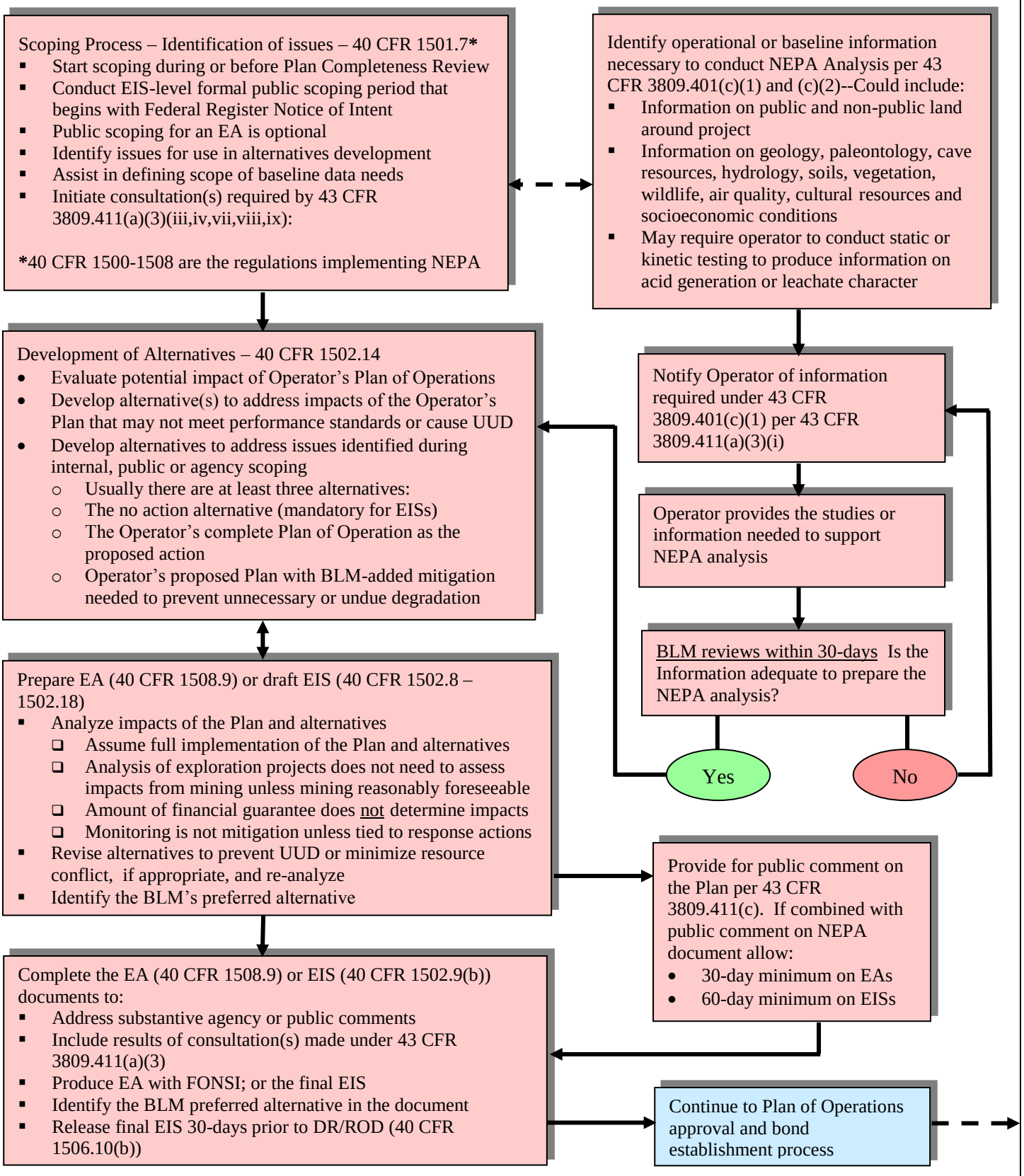


Figure 4.2-4 - Plan of Operations -- Approval and Financial Guarantee

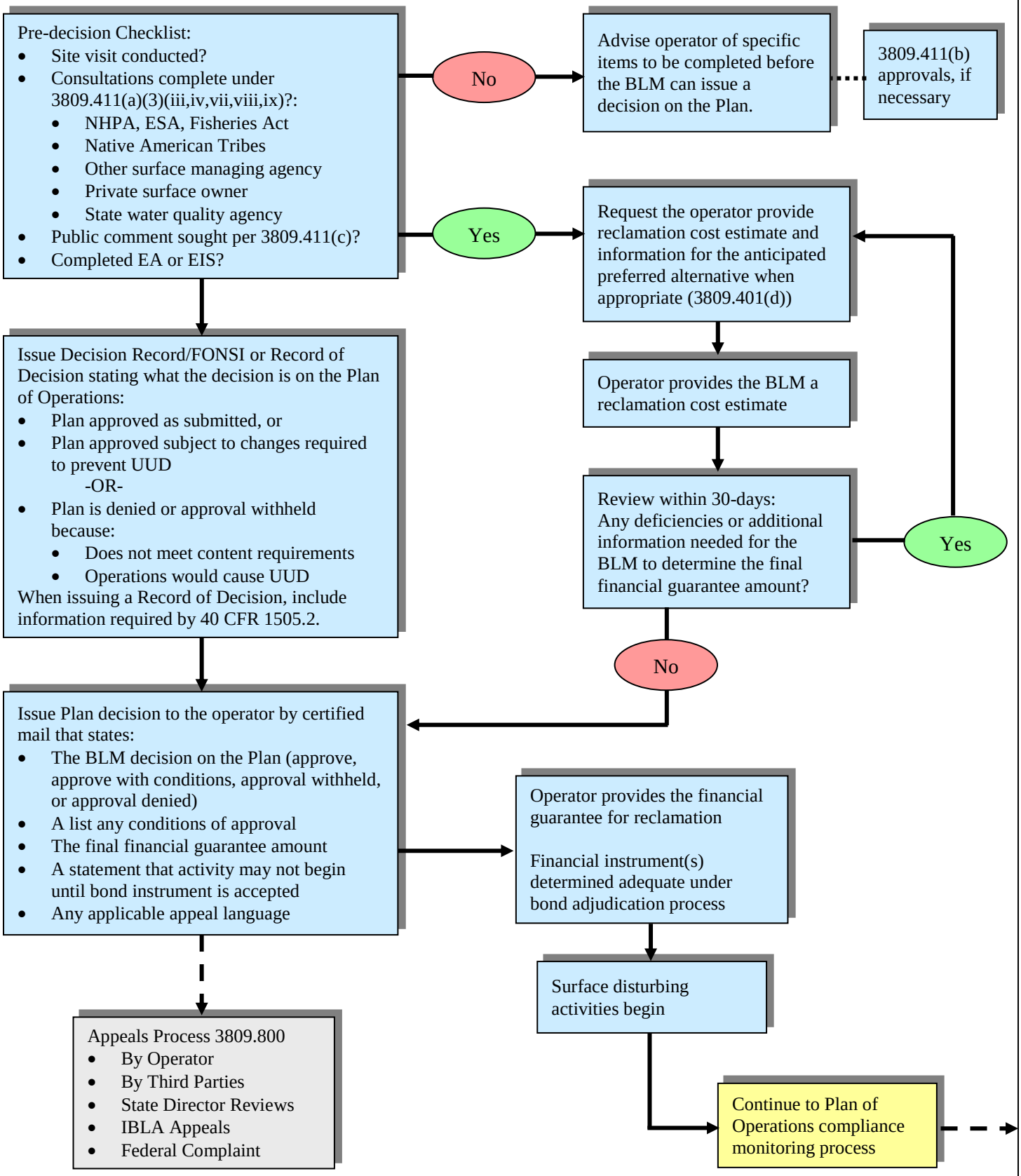


Figure 4.2-5 - Plan of Operations -- Compliance Monitoring

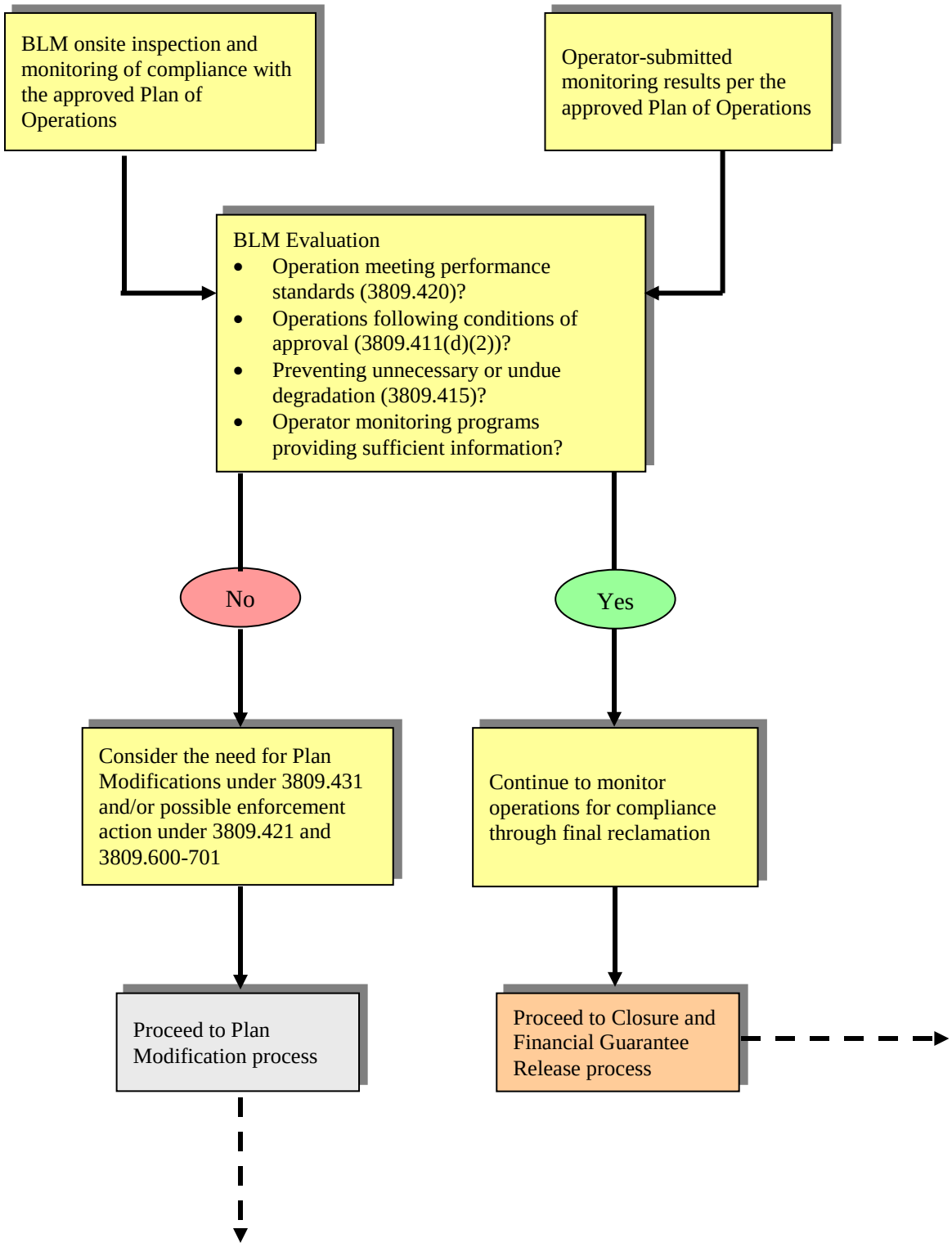


Figure 4.2-6 - Plan of Operations -- Closure and Financial Guarantee Release

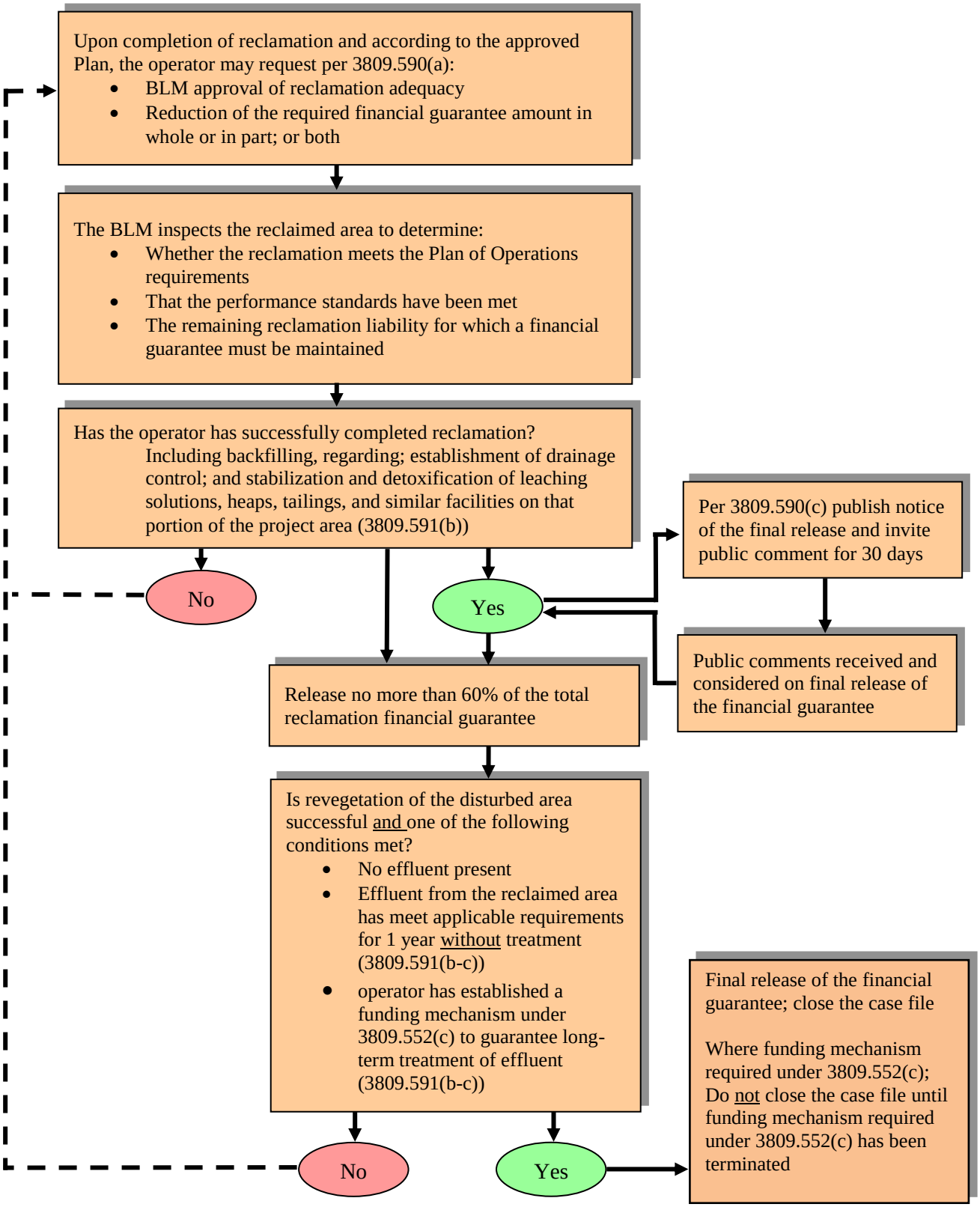


Figure 4.2-7 - Plan of Operations -- Modification

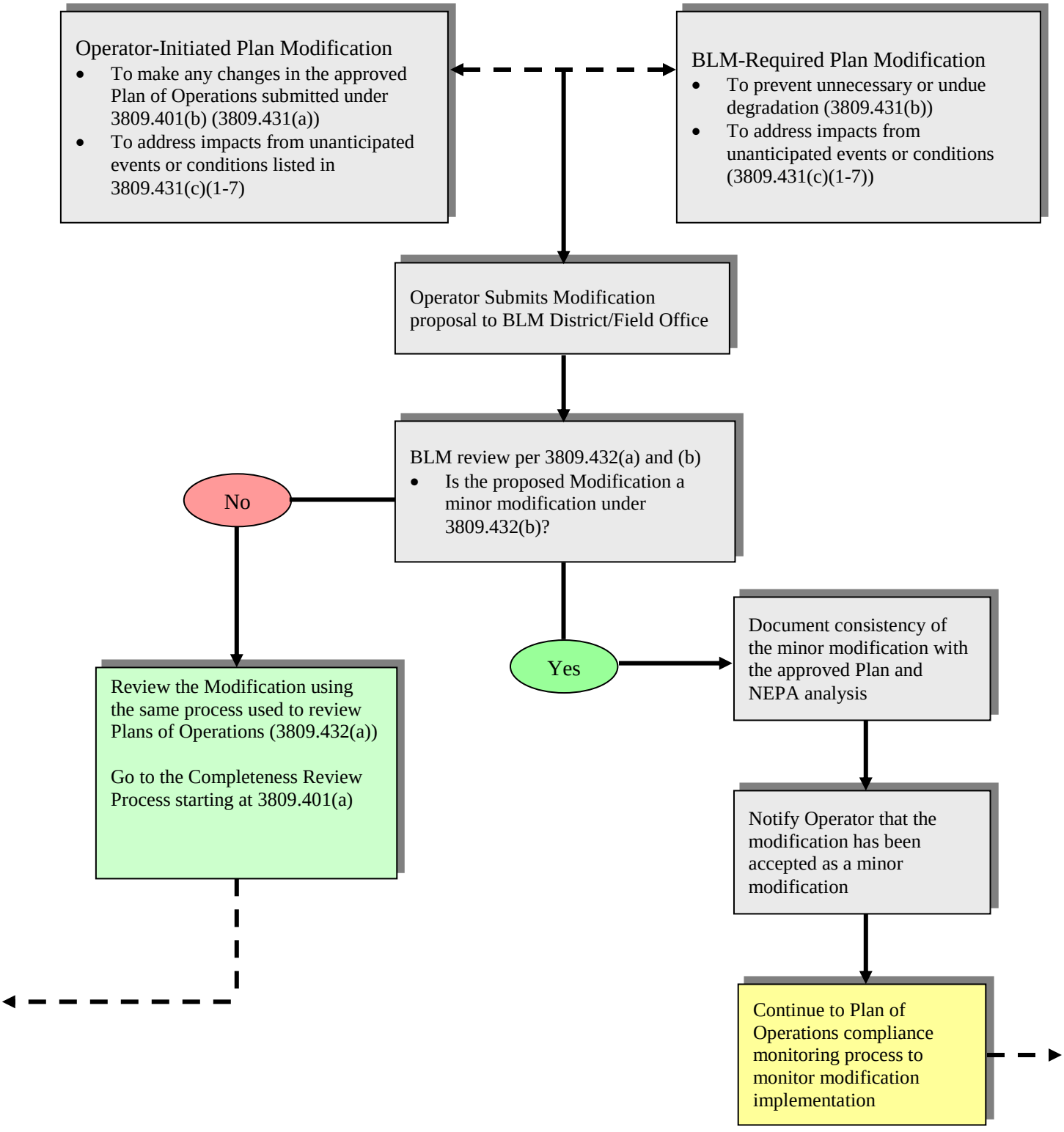
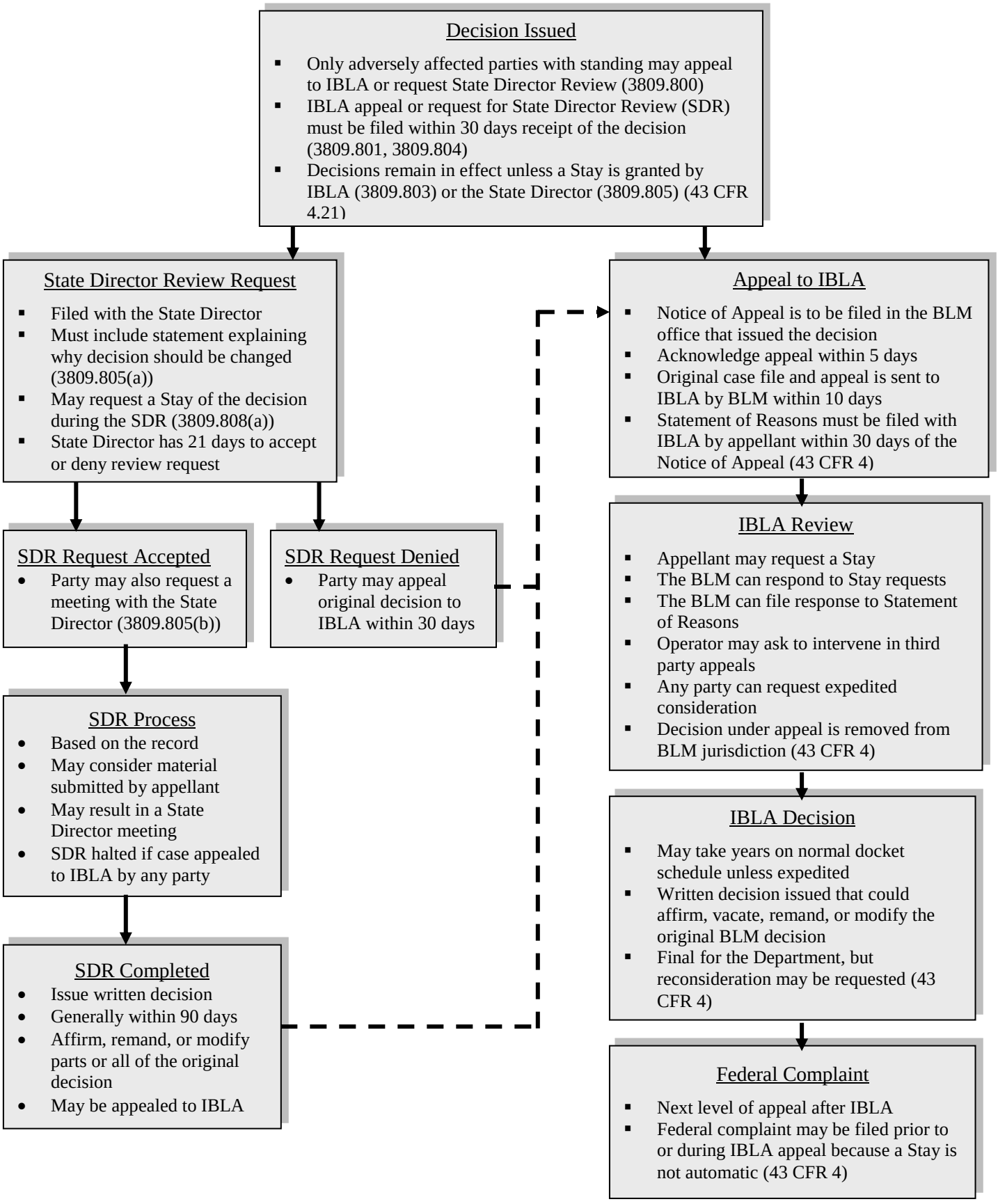


Figure 4.2-8 - Plan of Operations -- Administrative Review



This pre-Plan coordination is not required by the regulations, but may be arranged as a convenience to the operator. Be sure to document pre-Plan submissions and meetings for later inclusion in the case file if and when a proposed Plan of Operations is filed. Generally cost-recovery does not apply to pre-plan coordination (see Section 4.7).

4.3.2 Completeness Requirement

The regulations at 43 CFR 3809.401(b) list the items to be included in the Plan of Operations, when applicable to the proposed activity. Overall, the Plan of Operations must describe the proposed operation at a level of detail sufficient for the BLM to determine whether or not the proposed operations will cause UUD. Upon satisfying the requirements of 43 CFR 3809.401(b), the operator has submitted a complete Plan of Operations (see Section 4.4.1.1 and 43 CFR 3809.411(a)(1)).

A complete plan of operation will contain accurate operator information. To the extent that the information is verifiable, the BLM will review available public and internal records to ensure operator data in accurate. Provided mining claim data will be verified through the use of the BLM LR2000 mining claim database.

A complete Plan of Operations does not include environmental information needed to support the NEPA analysis, nor does it include the RCE (unlike a Notice which requires the RCE to be considered complete). The environmental information and the RCE are separate requirements. Rather, a complete Plan of Operations is a description of how the operator is proposing to conduct their operations. It contains information unique to that particular operation that only the operator can provide. It is this complete proposal that will constitute the proposed action in the NEPA analysis.

A complete Plan of Operations submission under 3809.401(b) may or may not be adequate to prevent UUD. The point of completeness is for the BLM to understand what the operator is proposing. It is only after the BLM conducts its environmental review that a determination can be made on whether the operator has proposed a Plan of Operations that would cause UUD.

4.3.3 Proposed Operations and Operator Identification

Section 3809.401(b) requires the operator to describe the proposed operations in five general categories. The categories are:

- Operator Information
- Description of Operations
- Reclamation Plan
- Monitoring Plan
- Interim Management Plan

The description must be at a sufficient level of detail for the BLM to identify the operator and to evaluate the proposed Plan of Operations to determine if the Plan would cause UUD.

4.3.3.1 Operator Information

The operator must provide basic identifying information. This includes the name, mailing address, phone number, taxpayer identification number(s), and the BLM serial number(s) of any unpatented mining claims upon which the surface disturbance would occur. Provided the land is open to mineral entry under the Mining Law, a mining claim is not required in order to conduct operations, and a Plan of Operations can be approved absent a mining claim.[56] In those cases, there may not be any mining claim serial numbers to include with the operator information.

4.3.3.1.1 Corporations and business entities

Corporations, LLCs, and other business entities must identify one individual as the point of contact. All business entities must provide a U.S. taxpayer identification number.

4.3.3.1.2 Individuals

For individual operators, the taxpayer identification number is the operator's social security number. Social security numbers are personally identifiable information under the Privacy Act and must be protected from disclosure. Operator social security numbers are not to be kept in the project case file that may be available to the public (see Chapter 13 Records Management).

4.3.3.1.3 Change of Operator

Operators must notify the BLM, in writing, within 30 days regarding any change in corporate point of contact or mailing address. Form 3809-5 is available for operators to file a proposed change of operator with the BLM. New operators must meet the operator information requirements, clearly acknowledge the assumption of any outstanding reclamation liability, and satisfy the financial guarantee requirements under 43 CFR 3809.551, 3809.581, and 3809.582 before a change of operator can be accepted. A change of operator is an administrative function and does not require a modification to the Plan of Operations under 43 CFR 3809.430 or 3809.431.

4.3.3.1.4 Multiple Plans

If two or more operators file Plans of Operations on the same area, the BLM will notify the respective operators of the potential conflict. The BLM will review each Plan based on the BLM's requirement to prevent UUD. See Section 4.4.3.3, Plan of Operations Denied or Approval Withheld, for guidance when there are mutually exclusive proposals that do not enable the BLM to evaluate whether the Plans would cause UUD.

[56] The BLM employees must not advise operators on the need to locate or not locate a mining claim for their Plan of Operations, nor give operators the impression that by filing a Plan of Operations they are secure from rival operators. A mining claim is required for operations on split estate lands or in segregated or withdrawn areas. See Handbook Sections 8.1 and 8.3.

4.3.3.2 Description of Operations

The description of the operations[57] can require the preparation of large volumes of information by the operator. Please note that while this section requires the operator to describe the equipment, devices, or practices proposed for use during operations, it is conditioned by the statement "where applicable," (e.g., maps or designs of a tailings disposal area are not required for an exploration project). The regulations intentionally list general subject areas so the BLM can determine the level of detail needed for its review. Close coordination with state and other Federal agencies is necessary to arrive at a consistent level of detail needed to review the project. Since no particular form must be followed, information required by other agencies can be used to meet the BLM's Plan content requirements (see Appendix C – Example Formats, Format 4.3-1, Plan of Operations, for a Plan submission example). The following discusses the categories of information that may be required in the description of operations.

4.3.3.2.1 Map Requirements

Good maps are the key to understanding how the project is going to function and where the impacts are likely to occur. The operator must provide a map 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.[58]

Maps vary in content, scale, etc., depending on the individual project proposed. Maps submitted to the BLM must be tied to the public land survey system so activities can be located on the ground and potentially affected public lands depicted with respect to the proposed exploration disturbance or mine facilities.

Maps must be of sufficient detail to allow the BLM can review, analyze, and make a decision on the proposed operations. For example, most exploration projects can be adequately reviewed from hand-plotted drawings made on enlarged U.S. Geological Survey (USGS) topographic quadrangles. At the other end of the spectrum, for review of complex mining projects, it may be advantageous for the operator to provide drawings, or maps and cross-sections in an agreed-upon electronic format, so that resource information can be overlaid and volume and area calculations conducted by the BLM. In addition to providing maps, the BLM District/Field Office may require the operator to mark or flag the proposed disturbance on the ground so that the area can be inspected concurrent with Plan review.

4.3.3.2.2 Preliminary or Conceptual Designs and Plans

Preliminary or conceptual designs, cross sections, and operating plans are required for mining areas, mineral processing facilities, waste rock or tailing impoundment locations, haul roads, etc.[59]

[57] 43 CFR 3809.401(b)(2).
[58] 43 CFR 3809.401(b)(2)(i).
[59] 43 CFR 3809.401(b)(2)(ii).

The design information needed for the initial Plan review is feasibility or conceptual level information so the BLM can understand the basics of where the facility is going to be constructed, how big the facility is going to be, how it would operate, the types of waste generated, and the limiting engineering factors that may affect its performance. Final engineering designs or plans are not required at the beginning of Plan review and can be incorporated into the Plan of Operations as a condition of Plan approval per 43 CFR 3809.411(d)(2). In addition to engineering designs, information may be needed on the equipment size, type, traffic levels, and periods of operation for these same facilities in order to assess the effects from operation.

Often the operator may need to size certain structures such as a waste rock dump or leach pad to account for changes or uncertainty regarding cut-off grades or the limits of the deposit. In these cases, the operator can propose an upper limit on the facility size or operating rate to accommodate their potential needs and to avoid fragmenting the approval process later with modifications. Ensure the geotechnical analysis addresses the adequacy of the engineered structures at each operating level as construction or loading proceeds in phases.

4.3.3.2.3 Water Management Plans

Water management plans include plans for management of all waters on the mine site, stormwater control, management of process solutions in leaching facilities, and the handling of any mine drainage including acid rock drainage (ARD)[60] and pit lake waters.[61] Key components include establishment of the design storm event, a determination of runoff from the design storm event, the location and sizing of runoff control structures (especially those control structures whose construction requires disturbance of public lands), the ability to contain leaching solutions during wet periods or extreme precipitation events, and contingency plans for the disposal or treatment of excess solutions (see also the discussion of the performance standards in Section 5.3, Specific Performance Standards for Notices and Plans of Operations).

Water management plans should integrate requirements from state or Federal agency permits for discharge under the National Pollutant Discharge Elimination System (NPDES) or dredge and fill permits under the U.S. Army Corps of Engineers' 404 permit program, and be prepared in coordination with the Regional Water Control Board and other state regulations or standards. This will help to ensure consistency between the construction of water management structures and the location of mine facilities.

Detailed plans for water treatment that will be conducted during mine operations, or will continue post-reclamation, must be provided. This includes information on treatment methods, system design, outfalls, rates, treatment threshold, and the expected duration of treatment. Other Federal or state permits that may be needed for the operation of the treatment system must be identified.

[60] BLM Technical Note – Passive Treatment System for Acid Mine Drainage (http://www.blm.gov/nstc/library/techno2.htm).
[61] 43 CFR 3809.401(b)(2)(iii).

4.3.3.2.4 Rock Characterization and Handling Plans

Rock characterization and handling plans describe how the operator will manage rock that may require special handling, e.g., due to its potential to generate acid or deleterious leachate, is to be managed.[62] The plans must include the analytical protocols and criteria that will be used to identify potential acidic or reactive rock. The plan must include how such material is to be (1) identified by testing prior to and during mining, (2) selectively handled, (3) processed or treated, and (4) reclaimed. These plans are integral to the "source control" of acid-forming, toxic, or other deleterious material as described in the performance standards (Section 5.3.11.1, Source Control Requirements).

Whether a particular deposit will be acid-generating requires a site-specific evaluation that considers factors such as deposit mineralogy, structure, hydrology, climate, mining method, milling process, etc. There is a large volume of technical information available on how to assess, handle, and reclaim potentially acid-forming materials. Consult BLM's *Solid Minerals Reclamation Handbook,* H-3042-1, for a list of information sources.

4.3.3.2.5 Quality Assurance Plans

Quality assurance plans describe the programs, plans, and procedures for how the operators intend to ensure their mine facilities are constructed as designed.[63] These plans include procedures and protocols for items such as compaction testing of foundation materials or seam testing of leach pad or pond liners. Even the best environmental engineering system designs will fail to function if not properly constructed and thus result in UUD. Therefore, the operator must incorporate thorough quality assurance and control procedures in the Plan of Operations to ensure the environmental compliance of mine facilities constructed on BLM lands.

Quality assurance plans for critical components such as leach pads, tailing impoundment, or solution storage ponds, may require operators to retain a third-party engineering firm to oversee facility construction and provide quality control reports to the BLM and applicable state agencies.

4.3.3.2.6 Spill Contingency Plan

A spill contingency plan is required for every Plan of Operations that involves chemical processing or the use or storage of hazardous substances.[64] These plans must describe what measures an operator will take to avoid spills of chemicals or hazardous substances including transport, storage, handling, and disposal as well as how an operator will respond to a spill, including containment and clean-up procedures, enhanced monitoring measures, and notification procedures to the appropriate regulatory agencies.

A copy of the spill contingency plan required by a state or other Federal agency will generally meet the BLM requirement for a spill contingency plan. However, the Plan must include who,

[62] 43 CFR 3809.401(b)(2)(iv).
[63] 43 CFR 3809.401(b)(2)(v).
[64] 43 CFR 3809.401(b)(2)(vi).

when, and how the operator will notify the BLM when a release or spill occurs on or that may affect BLM-managed lands. Review of the proposed spill contingency plan must be coordinated with the State Office or District/Field Office Hazardous Materials Coordinator.

4.3.3.2.7 Schedule of Operations

A schedule from startup through closure is needed to accurately predict potential impacts and ensure timely reclamation.[65] The schedule helps the BLM determine if the project would meet the performance standards in 43 CFR 3809.420, assess periods of non-operation under 43 CFR 3809.424, and evaluate the duration of potential impacts for the NEPA analysis.

An operation that intends to run for 5 years will likely have different potential impacts than one that will operate for 10 years, even if both are ultimately the same size and type. Similarly, knowing if the plan is to operate 24 hours a day compared to only during daylight hours, or seasonally compared to year-round, are critical to understanding the nature of the potential impacts, determining whether the impacts would result in UUD, and in developing necessary mitigating measures.

The schedule can be modified by the operator under 43 CFR 3809.430. While there is no limit on the duration an approved Plan of Operations can remain in effect, the BLM will not approve Plans with open-ended, or indefinite, operating schedules. Where Plans propose a mine life longer than 10 years, the BLM will include provisions in the approval decision for periodic reviews. Section 3809.431(c) can then be used to evaluate whether there are any changes in circumstances or conditions that may warrant requiring the operator to submit a Plan modification.

4.3.3.2.8 Support Facility Plans

Plans for access roads, conveyors, water supply pipelines, and power or utility services or any other such support facility to be built and run by the operator for the project are considered as part of the Plan of Operations and not as a separate right-of-way (ROW) permit where such facilities would be constructed to serve exploration or mining activity on BLM lands under a specific Plan of Operations.[66] However, an operator is not precluded from filing for a ROW under 43 CFR Group 2800, if the operator wants long-term protection or exclusive use of the route.

Plans for support facilities must include a basic description of the facility purpose, size, disturbance area, construction procedures, operating capacity, and reclamation procedures.

Third-party local or regional roads, power lines, or other utility services passing through or near the project area do not require approval as part of the Plan of Operations provided they exist independently of the Plan and have a separate authorization for where they cross public lands, most likely in the form of a right-of-way.

[65] 43 CFR 3809.401(b)(2)(vii).
[66] 43 CFR 3809.401(b)(2)(viii).

If approval of the Plan of Operations would result in upgrades, expansions, or increased maintenance requirements to local or regional roads, powerlines, or other support facilities operated by the third parties, the potential impacts of such support facilities need to be analyzed in the NEPA document prepared for the Plan because the approval of such facilities is connected to the proposed action. Therefore, the potential impacts of these facilities must be analyzed in conjunction with the proposed action for direct, indirect, and cumulative impacts. Involvement of the BLM realty specialist will be necessary to determine how to handle these situations.

4.3.3.3 Reclamation Plan

The reclamation plan may be the most important component of the Plan of Operations for the long-term mitigation of impacts and achievement of sustainable development levels or objectives. The reclamation plan serves as the basic construction plan for calculating the reclamation cost and financial guarantee amount, so detail is important. The operator is required to provide a description of the equipment, devices, and practices the operator proposes to use during reclamation in order to meet the performance standards in 43 CFR 3809.420.

The operator also needs to provide estimated volumes or quantities of earthwork that will be conducted, as appropriate. It may not always be relevant or appropriate to require the information listed in this paragraph, as not all operations will include the features listed for reclamation. See the BLM's *Solid Minerals Reclamation Handbook* H-3042-1 for technical guidance on reclamation requirements.

4.3.3.3.1 Drill Hole Plugging

Drill holes include all exploration holes, monitoring wells, water supply wells, and piezometers associated with the project.[67] Reclamation plans must include a description of how drill holes (that are not approved to be mined-out) are going to be sealed or plugged. Drill hole plugging procedures must describe measures to prevent:

- Mixing of waters from different aquifers.
- Impacts to beneficial uses.
- Downward water loss.
- Upward water loss from artesian conditions.
- The inflow of surface water into the drill hole.
- The open hole from creating a surface hazard.

Plugging plans can be as simple as shoveling the cuttings back in the hole for shallow, dry drill holes, or as involved as engineered grouting requirements where groundwater is encountered

[67] 43 CFR 3809.401(b)(3)(i).

under artesian pressure. The BLM engineers in the oil and gas program have experience with plugging requirements and should be consulted where complex plugging procedures are proposed or needed. At a minimum, all proposed plugging plans must meet state drill hole plugging requirements.

4.3.3.3.2 Regrading and Reshaping Plans

The plans for the regrading and reshaping of disturbed areas must be provided in the Plan of Operations[68]. The plans must include:

- A description of the amount and location of material to be moved.
- Equipment to be used.
- Slope grade.
- Spacing of benches.
- Location and size of run-on/run-off controls.
- Cross-sections.

A post-operation topographic map showing the planned surface configuration is usually the best way to (1) illustrate the regrading plan, (2) allow for verification of the amount of material to be moved at closure, and (3) assess the adequacy of runoff controls needed to manage post-closure sedimentation. For some mine waste units, such as ore heaps, the location of the leach pad liner

relative to the regraded spent-ore is needed to determine the adequacy of post-closure leachate management.

Obtaining information on the overall stability of the reclaimed facility is a critical requirement. Elements needed to determine stability include, but are not limited to, pre- and post-disturbance landform, original site topography, geology, depth to groundwater, regrade slope, construction methods, and type of material.

4.3.3.3.3 Closure Plans for Mine Openings and Pit Backfilling Information

Information on closure of all mine openings is required, whether the opening is an open pit, an adit, a portal, or a shaft associated with an underground operation. [69] The plans must include information on where the closures would be constructed, the nature of the material or devices used to achieve closure, and a description of any long-term care or maintenance requirements associated with closure of the opening. Information required for closure of underground operations includes items such as gate or bulkhead design, backfill placement and amendments, and provisions to control hydrostatic pressure.

[68] 43 CFR 3809.401(b)(3)(ii).
[69] 43 CFR 3809.401(b)(2)(iii).

Mine pit backfilling may be part of the reclamation plan proposed by the operator or required by the BLM as a condition of approval. Pit backfilling is one aspect of the reclamation plan where the operator must provide the BLM with specific information so the BLM can determine the appropriate amount of backfilling, if any, required. The operator is required to provide information and analysis on pit backfilling that details economic, environmental, and safety factors. This includes information on the anticipated backfilling costs, character of the potential backfill material, stability of highwalls or backfill material, size and quality of potential pit lakes, and safety issues that may be associated with backfilling. An operator statement of "pit backfilling is not feasible" without providing supporting technical, environmental, or economic data does not meet the Plan content requirement.

Reclamation plans for open pits must describe the likely presence or absence of a pit lake and the anticipated water quality and quantity over time, and include a description of post-closure safety controls around the pit.

While there is no set formula for how to consider information provided by the operator on the feasibility of pit backfilling, the BLM must weigh the costs, impacts, and difficulties of pit backfilling with the anticipated environmental and safety benefits on a case-by-case basis in order to determine the appropriate amount of pit backfilling, if any, needed to meet the performance standards (see Section 5.3.3.2, Reclamation Elements).

4.3.3.3.4 Riparian Area Mitigation Plans

The reclamation plan must describe how the operator proposes to avoid impacts to riparian areas, and if impacts cannot be avoided, plans to reclaim or restore the riparian area.[70] Mitigation plans must address the replacement of soil and re-establishment of riparian conditions and vegetation.

If the riparian area is not to be re-established after mining (i.e., if covered by a waste rock dump or other mine facility), then the reclamation plan must describe (1) the revegetation that will occur and (2) any new riparian areas proposed to be established during reclamation that may offset the loss in riparian acreage.

4.3.3.3.5 Wildlife Habitat Rehabilitation Plans

Wildlife habitat rehabilitation may include plans for re-establishing the same type of wildlife habitat, or plans for a change in habitat more suitable to the altered landform.[71] Plans for rehabilitation of wildlife habitat must be aligned with plans for revegetation. Providing for wildlife forage and cover through revegetation is part of wildlife habitat rehabilitation. The reclamation plans must place special emphasis on wildlife habitat rehabilitation measures to rehabilitate or restore critical value, pre-mine wildlife habitat, such as winter range or calving areas.

When a habitat is proposed to be restored or created, the plan must address how the proposed landform and vegetation will provide adequate shelter, habitat, and forage. To the extent

[70] 43 CFR 3809.401(b)(3)(iv).
[71] 43 CFR 3809.401(b)(3)(v).

practical, the BLM wildlife biologists are available to assist operators in development of their wildlife habitat rehabilitation plans.

4.3.3.3.6 Soil Handling Plans

The reclamation plan must describe the salvage, storage, redistribution, and treatment of topsoil (or growth medium) that is to be used in reclamation.[72] Soil handling plans must specify:

- How soil will be salvaged in advance of construction.
- Salvage depth.
- Salvage cutoff criteria.
- Segregation of topsoil and subsoil.
- Direct haul feasibility versus storage.
- Soil stockpile location and volumes.
- Measures to protect the stockpile from erosion.
- Measures to preserve soil viability.
- Placement thickness at reclamation.

4.3.3.3.7 Revegetation Plans

All reclamation plans must include plans for revegetation of the disturbed area.[73] Revegetation plans must specify:

- Seeding location.
- Species type.
- Seeding or planting rates.
- Treatment methods such as fertilization or inoculation.
- Stabilization of the reclamation area during vegetation establishment.

Revegetation plans must also include proposed criteria for what would constitute successful revegetation and describe any measures such as temporary fencing or noxious weed control that would be used on the reclaimed area.

[72] 43 CFR 3809.401(b)(3)(vi).
[73] 43 CFR 3809.401(b)(3)(vii).

4.3.3.3.8 Plans to Isolate or Control Acid-Forming, Toxic, or Deleterious Materials

Reclamation plans must include plans for the isolation and/or control of any acid-forming, toxic, or deleterious materials.[74] Specific reclamation covers proposed to isolate or control these materials must be described in detail and take into account the nature of the materials being reclaimed. The reclamation plans must incorporate identification, handling, and reclamation measures appropriate for such materials into the overall mine plan. For example, soil placed directly over strongly acid-generating waste rock can acidify, impeding the revegetation effort.

Plans for the reclamation of acid-forming or deleterious mine wastes must follow the general hierarchy of:

- Source control of the material to prevent generation of contaminants.
- Migration control to prevent the movement of contaminants to where they can cause harm.
- Capture and treatment of contaminants.

Reclamation plans must be integrated with the rock characterization and handling plans used during mine operations.

While most waste from mineral extraction and processing is exempt (under the Bevill Exemption) from the Resource Conservation and Recovery Act (RCRA) and considered a solid waste, it is possible that certain aspects of the operation may generate some wastes which are not exempt. The plans for the isolation or control of toxic or deleterious materials must describe how the operator will remove or dispose of any nonexempt waste products which may constitute a hazardous waste under RCRA Subtitle C.

The disposal of other waste, such as solid wastes from office facilities, labs, packing materials, etc., must also be described in the reclamation plans.

4.3.3.3.9 Plans to Remove or Stabilize Buildings, Structures, and Support Facilities

Reclamation plans must include a description of what the operator is proposing to do with any buildings, process equipment, or support facilities that are used during operations.[75] Usually, this requirement means the removal or demolition of support facilities. It may be necessary to leave certain structures in place for long-term, post-reclamation use, such as monitoring wells, ponds for stormwater management, or powerlines for treatment facilities.

Reclamation plans may include provisions for the BLM to accept ownership of some buildings, structures, or facilities after operations cease through a written agreement with the operator.

[74] 43 CFR 3809.401(b)(3)(viii).
[75] 43 CFR 3809.401(b)(3)(ix).

Operators may propose post-closure economic uses of facilities through partnerships with the local community and third-party business interests. These sustainable development opportunities may utilize the existing mine infrastructure (e.g., buildings, roads, power lines, water lines, etc.), such that reclamation and demolition of the site would be minimized to allow for use by a third party. For these options, it is critical the third party assumes the reclamation liability, if the operator transfers its interest in the facilities.

4.3.3.3.10 Post-Closure Management Plans

Sometimes reclamation-related activities must continue long after the majority of reclamation work has been completed.[76] Fencing may need to be maintained, signs replaced, water treatment systems operated or maintained, reclaimed slopes repaired, etc. The duration of such activity may be months, years, decades, or in the case of water treatment, the end date may be indefinite. The reclamation plan must clearly identify these post-closure activities and the operator's commitment to performing the required work over the necessary time period. See Section 6.3.4, Trust Funds or Other Funding Mechanisms for a discussion of post-reclamation financial guarantees to ensure performance of these requirements.

4.3.3.4 Monitoring Plans

4.3.3.4.1 Purpose

The Plan of Operations must include monitoring plans.[77] The purpose of monitoring is to:

- Demonstrate compliance with the Plan of Operations and other Federal or state laws and regulations.
- Provide early detection of potential noncompliance.
- Supply information to assist in directing corrective actions.

For each resource to be monitored the respective monitoring plan must describe the:

- Type and location of the monitoring devices.
- Sampling parameters and frequency.
- Analytical methods.
- Reporting procedures.
- Procedures for responding to adverse monitoring results.

[76] 43 CFR 3809.401(b)(3)(x).
[77] 43 CFR 3809.401(b)(4)

4.3.3.4.2 Resources to Monitor

Monitoring programs may be needed for the resources potentially affected and the issues identified during project review. The operator's monitoring plan must propose to monitor those resources with statutory monitoring needs or where monitoring may be essential to prevent the operator from causing UUD.

Examples of monitoring programs that may be required include surface and groundwater quality and quantity, air quality, meteorological conditions, revegetation condition, noise levels, slope movement, or wildlife mortality.

4.3.3.4.3 Type and Location of Monitoring Devices

The monitoring plan must describe what samples or measurements will be collected, by whom, and how often. A map should be included to show the location of monitoring points (whether for air, water, soil etc.) with respect to the mine facilities or activity, and tied to a description or table that lists the constituents to be sampled and states the frequency in which samples will be collected.

4.3.3.4.4 Sampling Parameters and Frequency

Monitoring programs can include sampling by the operator, a consultant, or some combination of the two. Quality control and assurance procedures must be included in the monitoring plan to ensure that samples collected are representative of site conditions. The BLM may take check samples to verify the results provided by the operator or consultant.

4.3.3.4.5 Analytical Methods

The monitoring plans must describe how samples will be analyzed, observations taken, and results documented. This includes:

- Whether it will be a field measurement or laboratory analysis.
- Whether the analysis will be done internally or by an outside lab.
- The specific test method to be employed.
- The quality control and assurance program that will be followed to ensure accurate results.

There can be considerable variation between field and lab results. Certain analytical methods are required by regulatory agencies for compliance purposes and their input should be sought when reviewing the operator's monitoring plans.

4.3.3.4.6 Reporting Procedures

The monitoring plan must describe how the results will be reported and to whom. Monthly monitoring reports may be standard for larger projects. Smaller projects may only warrant quarterly or annual monitoring reports to be submitted to the BLM. Reporting requirements depend on the resources being monitored. For example, while daily reporting may be necessary for water quality at a sensitive spring or wetland, the submittal of annual reporting may be all that is necessary for air quality. Issues identified during Plan review should be used to assist in determining the desired reporting frequency for the monitoring plan.

4.3.3.4.7 Response Actions to Adverse Monitoring Results

Monitoring does not constitute mitigation. The monitoring plan must be tied to a mitigation, response action, or corrective measure to reduce or prevent impacts if the monitoring results are adverse or unacceptable.

All monitoring plans must contain trigger levels that would require some action being taken to prevent the operator from causing UUD. Trigger levels may be linked to statutory requirements, such as a water quality standard or developed for that particular site, as in the case of acceptable soil loss on a reclaimed slope. Response actions could vary from enhanced monitoring to remedial actions. Development of trigger levels and response actions is a site-specific consideration that depends on the resources present and the activity proposed by the Plan of Operations.

4.3.3.4.8 Reliance on other Federal or State Monitoring Programs

Another important aspect of monitoring plans is to avoid duplication with the monitoring requirements of state or other Federal agencies. The operator can, and is encouraged to, incorporate other monitoring requirements into their Plan of Operations. In the following example, the monitoring described may be part of a state groundwater protection permit or an Environmental Protection Agency (EPA) discharge permit under the NPDES permit system. Combining the review of the Plan of Operations with the development of these permits is preferable to conflicting or duplicative monitoring programs, or to developing monitoring programs before it is known where and under what conditions the mine facilities might be approved by the mine permitting agencies.

4.3.3.4.9 Monitoring Example

The following is a hypothetical description from a monitoring plan for a single water quality parameter to illustrate the monitoring concepts:

> Monitoring well X-1 will be completed in the shallow alluvial aquifer 200 feet downgradient of the leach pad as shown on map 1. The well will be sampled daily by mine personnel and tested for cyanide. The test will be conducted using a DR100 colorimeter. All test results will be submitted on a monthly basis to the BLM and the state. Any test results showing free cyanide at greater than 0.05

> mg/L will be reported to BLM and the state within 24 hours. In the event that results exceed 0.05 mg/L, a sample will be collected and send to an outside lab for analysis. The well will be continuously pumped and the solution discharged into the leach pad until such time as cyanide levels drop to below 0.05 mg/L as confirmed by an outside lab analysis.

As shown in this simple example, the monitoring plan describes what is to be monitored, where and how it is monitored, and what is done when adverse results are reported. Whether the monitoring plan in the example is adequate to prevent the operator from causing UUD is determined during review of the Plan of Operations. Perhaps the well should be sampled twice a day, or maybe only once a week. The level of detail provided in the operator's monitoring plan allows the BLM reviewer to make that judgment.

A good monitoring plan has the effect of building mitigation into the Plan of Operations. This allows the BLM to include the effectiveness of the monitoring and associated response action when assessing impacts in the NEPA analysis. In the above example, perhaps the daily monitoring and pump-back contingency reduces potentially significant impacts to less than significant. It is preferred to review the Plan of Operations concurrently with state or other Federal permitting requirements that involve monitoring. This concurrent review ensures the monitoring program provides useful feedback on the Plan of Operation's effectiveness in preventing UUD and avoids duplication of effort.

4.3.3.5 Interim Management Plans

All Plans of Operations must contain an interim management plan. These plans establish actions required during periods of temporary or seasonal closure under 43 CFR 3809.424 to avoid causing UUD. There are six items that must be covered by the interim management plan:[78]

- Measures to stabilize excavations and workings.
- Measures to isolate or control toxic or deleterious materials.
- Provisions for the storage or removal of equipment, supplies, and structures.
- Measures to maintain the project area in a safe and clean condition.
- Plans for monitoring site conditions during periods of non-operation.
- Schedule of anticipated periods of temporary closure.

Operators may have prepared or other government agencies may have required a "care and maintenance" plan, which is the mining industry equivalent to a an interim management plan. Such a plan may be accepted by the BLM if it contains the content required at 43 CFR 3809.401(b)(5).

[78] 43 CFR 3809.401(b)(5).

The interim management plan also provides the BLM with a basis for determining when an operation might be considered abandoned. Interim management plans that propose inactive status for longer than 5 years are generally not acceptable.

4.3.3.5.1 Stabilize Excavations and Workings

If the project has any open excavations or drill holes, the interim management plan must describe how such openings will be closed during the period(s) of non-operation.[79] Temporary closure is usually accomplished by temporary measures: adits may be gated, trenches may be partially filled or fenced, temporary plugs or surface plugs can be placed in drill holes, and soil stockpiles, roadcuts, or slopes can be seeded with cover crops to limit erosion. If the period of non-operation is only a few days and the proposal is to leave excavations open, the proposal must also be clearly described as part of the interim management plan.

4.3.3.5.2 Isolate or Control Toxic or Deleterious Materials

The interim management plan must describe measures the operator proposes to prevent impacts from a variety of materials and conditions during the period of non-operation.[80] Interim fluid management plans are required in order to maintain leaching solution volumes at low levels to avoid overtopping or spills during the period of non-operation. For example, if there is a particularly reactive stockpile of sulfide waste rock that should be covered, or a cyanide process pond that needs to be detoxified prior to the period of non-operation per 43 CFR 3809.420(c)(12)(vii), the interim management plan must clearly describe the measures the operator will take to avoid causing UUD.

4.3.3.5.3 Storage or Removal of Equipment, Supplies, and Structures

The interim management plan must provide for the storage or removal of equipment and supplies during the period of non-operation.[81] If equipment and supplies are to be stored onsite, the plan must describe where they are proposed to be stored and how they will be secured, both for liability reasons and to ensure environmental protection.

4.3.3.5.4 Maintain the Project Area in a Safe and Clean Condition

Interim management plans must address how the operator proposes to keep the project area in a clean and safe condition during the period of non-operation.[82] A simple commitment to remove trash and unneeded equipment may address the "clean" requirement. To address safety, the interim management plans must include measures to remove public safety hazards during periods of non-operation, such as measures to secure mine openings, fuel, and processing reagents. The operator must also commit to maintaining any necessary permits during the period of non-operation.

[79] 43 CFR 3809.401(b)(5)(i).
[80] 43 CFR 3809.401(b)(5)(ii).
[81] 43 CFR 3809.401(b)(5)(iii).
[82] 43 CFR 3809.401(b)(5)(iv).

4.3.3.5.5 Monitoring During Non-Operation

The interim management plan must address the monitoring that will be conducted during the period of non-operation.[83] This could vary from no monitoring during the seasonal shutdown of an exploration or small mining operation, to continued implementation of the approved Monitoring Plan described in 43 CFR 3809.401(b)(4) for large mines. The amount and type of monitoring needed during a period of non-operation depends upon a variety of factors including the type of operation, risk of environmental impacts, and duration of the non-operational period.

4.3.3.5.6 Schedule of Temporary Closure or Non-Operation

The interim management plan must include a schedule of anticipated periods of temporary closure and describe the timing of any temporary closure or planned non-operation, as in the case of anticipated seasonal shutdowns. During these periods, the operator would implement the interim management plan, including provisions for notifying the BLM of any additional unplanned or extended temporary closures.[84]

Unplanned or extended periods of non-operation are, by definition, difficult to address in the interim management plans as part of the Plan of Operations. Many operations may not "plan" to have a period of non-operation at all. However, factors beyond the operator's control may force a situation where the operator has to shut down, sometimes for years. This may be the result of depressed commodity prices, changing financial conditions, natural disasters, or personal difficulties. It is therefore important that every Plan of Operations interim management plan include procedures for managing the project area should it enter a period of unplanned and/or extended non-operation. In addition, all interim management plans need to include provisions for notifying the BLM if the period of non-operation will exceed that originally anticipated. This notification allows the BLM to determine what, if any, changes need to be made to interim management plans to account for the new circumstances and will factor into the BLM's analysis when determining whether operations should be considered "abandoned" under 43 CFR 3809.424(a)(4).

4.3.4 Additional Information Requirements

The BLM may require the operator to provide information under 43 CFR 3809.401(c) in addition to the completeness requirements under paragraph 3809.401(b). This may include information to assist the BLM with its environmental analysis under NEPA, its National Historic Preservation Act (NHPA) consultation, or any other review process associated with the Plan of Operations. A Plan of Operations can still be considered "complete" without this information, but the BLM may not be able to finish processing the Plan until the information is provided (see also Section 4.4.1.3, The Plan is Complete - Other Information or Actions Required).

4.3.4.1 Operational or Baseline Information for NEPA Analysis

Under 43 CFR 3809.401(c)(1), the BLM may require the operator to conduct operational and baseline environmental studies so the BLM can analyze potential environmental impacts as

[83] 43 CFR 3809.401(b)(5)(v).
[84] 43 CFR 3809.401(b)(5)(vi).

required by NEPA and to determine if the operator's Plan of Operations will prevent UUD. The BLM may require the operator to supply baseline studies on a variety of resource subjects, including, but not limited to geology, paleontology, cave resources, hydrology, soils, vegetation, wildlife, air quality, cultural resources, and social and economic conditions. Resource information may be required on both Federal lands and for resources present on adjacent non-public lands, where the potential effects have to be considered and disclosed in the environmental analysis. See BLM's *National Environmental Policy Act Handbook*, H-1790-1, for further guidance.

4.3.4.1.1 Assisting the Operator

The BLM will assist the operator by detailing the operational or baseline information required. The BLM must independently evaluate the information submitted, verify its accuracy, and follow the procedure outlined at 40 CFR 1506.5(a) to use the information in preparing the environmental analysis.

4.3.4.1.2 NEPA and Cost Recovery

While the BLM can require the operator to supply environmental information needed to support the NEPA analysis, the BLM cannot require the operator to prepare or pay for an environmental assessment (EA). If the operator chooses to have a contractor prepare the EA, an agreement must be entered into with the BLM that details roles and responsibilities for the analysis consistent with the regulations at 40 CFR 1506.5(b). Regardless of who prepares the EA, the BLM has responsibility for the scope and content of the EA, and must independently evaluate the document.

If the NEPA analysis on the Plan of Operations is to be done at the EIS-level, then the cost recovery provisions at 43 CFR 3800.5(a) apply and the operator must pay for both the EIS preparation and for the BLM's internal costs to process the action. If a contractor is used for the preparation of an EIS, the BLM must follow the requirements of 40 CFR 1506.5(c) to avoid a conflict of interest. Like the EA, the BLM is ultimately responsible for the content and scope of the EIS.

4.3.4.1.3 Required Testing

The BLM can require testing of the overburden, waste rock, and ore in order to evaluate the acid-forming potential of the material. Testing may include, but is not limited to, acid-base accounting tests, simulated weathering tests, leachate extraction tests, and whole rock analysis. Consult the BLM's *Solid Minerals Reclamation Handbook,* H-3042-1, for additional information regarding the appropriate level of testing and test protocols for rock characterization. Because these characterization tests can be time-consuming and expensive, the BLM and the operator must jointly develop an acceptable testing plan. State or other Federal agencies are to be consulted to ensure the testing program will meet all parties' requirements.

4.3.4.2 Other Required Information

The BLM may require the operator to supply other information as described at 43 CFR 3809.401(c)(2) in the event additional information is needed to evaluate the Plan of Operations

that is not covered by the Plan content or environmental data requirements listed above. Examples of other required information include slope stability studies, special air or water quality modeling, and ethnographic studies.

4.3.4.3 Scope of Required Information

The BLM must not use the Plan of Operations to require an operator to obtain information or perform studies that are not relevant to evaluating the Plan of Operations. Environmental inventories and studies required from the operator are to be driven by the issues associated with the Plan of Operations, and not by research proposals or planning inventories that would normally be funded out of the agency's budget. The project-level NEPA analysis drives the environmental information requirements.

4.3.5 Reclamation Cost Estimate Information Requirement

The operator is required to provide the BLM with an RCE. However, the cost estimate cannot be determined until the Plan review and approval process has progressed to the point where the BLM and the operator can anticipate what the approved Plan might look like. Therefore, at 43 CFR 3809.401(d), the BLM is directed to advise the operator when it is appropriate to submit the RCE during the Plan review and approval process (see Appendix A, Template 4.3-1, Reclamation Cost Estimate for Plan Required).

For small, non-controversial Plans, the operator may be requested to provide the cost estimate with or soon after the BLM receives the Plan of Operations in anticipation that the Plan will be approved much as it was submitted. For other Plans with complex issues and alternatives, it may not be appropriate to request the RCE until after an EA or Final EIS is published identifying a preferred alternative and including all mitigating measures that will likely be required as conditions of approval.

4.3.5.1 Reclamation Cost Estimate Review

The operator's RCE must include all costs as outlined in 43 CFR 3809.552 and 3809.554 (see Section 6.2, Reclamation Cost Estimates, for further information on cost estimating). Within 30 days of receipt, the BLM will review the cost estimate and notify the operator of any deficiencies in the RCE and/or additional information required.

The types of information the BLM may identify as deficient or incomplete in the operator's RCE could include, but are not limited to, assumptions regarding equipment rates, material volumes to be moved, equipment time and efficiency factors, mobilization locale, heap pumping volumes, material costs, labor costs, overhead and contingency costs, or availability of onsite equipment. The BLM's response will specifically identify any area of disagreement with the operator's RCE and propose any alternative cost assumptions that the BLM believes to be appropriate (see Appendix A, Template 6.2-1, Unacceptable Reclamation Cost Estimate).

4.3.5.2 Establishing Financial Guarantee Amounts

The financial guarantee amount is set by the District/Field Manager, usually in consultation with the state, and after considering the operator's RCE and any supplemental information provided in response to the BLM. For some projects, the process of cost estimate review, revision, and resubmission may undergo several iterations. Also, it may take several meetings between the operator, the BLM, and the state before all factors are considered and a final RCE is established. The final RCE is the basis for the amount of the financial guarantee for the approved operations. The BLM will not obligate a financial guarantee until it receives a copy of the District/Field Office's decision establishing the amount of the financial guarantee.

The decision on the final RCE setting the financial guarantee amount is subject to appeal. Therefore, the process used to establish the RCE and the resulting financial guarantee amount must be carefully documented in the 3809 case file (see Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount).
Close coordination between the adjudication staff and District/Field Office staff is necessary to ensure:

- Copies of appropriate correspondence concerning the RCE and financial guarantee are included in the State Office bond case file.
- Copies of appropriate bond adjudication and decisions are included in the District/Field Office case file.

- If an agreement or Memorandum of Understanding (MOU) exists between the BLM and the state, copies of all pertinent BLM and operator correspondence are sent to the state.

- LR2000 Plan of Operations data corresponds to appropriate Bond and Surety System (BSS) data, and vice versa.

4.4 Processing the Plan of Operations

This section discusses the steps the BLM takes when processing the Plan of Operations submitted by the operator. It covers the completeness review process and NEPA analysis procedures, consultation requirements, and the issuance of a final decision on the operator's proposed Plan. The BLM review, environmental analysis, and approval process should be coordinated with other evaluation or permitting procedures of local, state, or Federal agencies as much as possible in order to avoid conflicting or overlapping requirements or delays.

4.4.1 Completeness Review

The regulations require the BLM to review the operator's proposed Plan of Operations for completeness and give notice within 30 calendar days as to one of three possible outcomes of that review.[85] The BLM may determine that the Plan is complete, not complete, or complete but other information or actions are required before a decision can be issued on the Plan.

[85] 43 CFR 3809.411(a).

Figure 4.2-2, Plan of Operations - Completeness Review Process, illustrates the completeness review procedures and requirements.

4.4.1.1 The Plan is Complete

A complete Plan of Operations is one that meets the content requirements at 43 CFR 3809.401(b). Once the operator has submitted all the information required at 43 CFR 3809.401(b), the BLM must notify the operator that the Plan is complete (see Appendix A, Template 4.4-1, Complete Plan Submitted) and that the next step in the review process is for the BLM to solicit public comment on the Plan of Operations under 43 CFR 3809.411(c), either separately from or as a part of the NEPA process. This step must occur before making an approval decision on the Plan of Operations according to 43 CFR 3809.411(d). The operator is to be advised as to the probable time required for the BLM to complete its review and make an approval decision on the Plan.

A complete Plan of Operations is not necessarily adequate to meet the performance requirements of the regulations and avoid UUD. The completeness determination states the operator has submitted sufficient information about its proposed operation as required under 43 CFR 3809.401(b) for the BLM to begin evaluating whether the plan complies with the 3809 regulations.

4.4.1.2 The Plan is Not Complete

A Plan of Operations is not complete if the Plan is missing any of the information required by 3809.401(b). Within 30 days of receiving the Plan of Operations, the BLM must send the operator, by certified mail return receipt requested, a letter clearly identifying the missing information required by 3809.401(b) that must be provided to the BLM before the BLM can continue processing the Plan of Operations.

Completeness questions or deficiencies can range from the very specific (e.g., What is the thickness of the PVC liner for the leach pad?) to the general (e.g., Provide the interim management plan required under 3809.401(b)(5)). An example completeness letter is shown in Appendix A, Template 4.4-2, Plan Not Complete.

The operator is not required to submit the identified information to the BLM within a certain timeframe. The cycle of operator submission and completeness review by the BLM may be repeated until the BLM determines that the Plan of Operations is complete. On major mining projects it would not be unusual for the completeness review process to take over a year and involve four or five iterations. For each information request, it is important for the District/Field Office to document the completeness review and correspondence in the case file.

4.4.1.3 The Plan is Complete - Other Information or Actions Required

The BLM may determine that the description of the proposed operation is complete under Section 3809.401(b), but that the BLM cannot make a decision on the Plan of Operations until certain additional processes are completed or information provided. There are a variety of

factors which influence when the BLM can make a decision on the Plan of Operations. The BLM will send a letter notifying the operator that the Plan is complete (i.e., meets the content requirements of 3809.401(b)), but advising the operator as to any baseline data requirements or reviews that must conducted before the BLM can issue a decision on the Plan of Operations. Appendix A, Template 4.4-1, Complete Plan Submitted, and Template 4.4-3, Additional Actions Required, are examples of such a notification to the operator.

4.4.1.3.1 Baseline Data

In addition to providing a complete description of the operations, the operator must also provide operational or baseline environmental information for the BLM to analyze impacts under NEPA and assess the potential for UUD.[86] Providing additional baseline data is separate from, but just as important as, the operator requirement to provide a complete Plan of Operations. Until the BLM has adequate baseline data on the project area, the necessary reviews cannot be completed to reach a decision on the Plan of Operations.

While ideally any baseline data requirements are communicated to the operator early in the process, perhaps even before a Plan of Operations is submitted, it could be that the long-term nature of some baseline data collection will have to continue after the Plan of Operations is determined complete (see Section 4.3.3.4 Monitoring Plan). The operator is to be advised as to any outstanding data collection requirements that must be satisfied before the BLM can process the Plan of Operations.

The BLM reviewer may need to consult the Council on Environmental Quality (CEQ) regulations at 40 CFR 1502.22 on incomplete or unavailable information to determine what information is required to support an agency decision under NEPA (see also BLM's *National Environmental Policy Act Handbook,* H-1790-1).

4.4.1.3.2 NEPA Analysis

The BLM must complete the environmental review required under NEPA (either with an EA or EIS) before it can issue a decision on the Plan of Operations.[87] Whether the environmental analysis is prepared by the BLM or by an outside contractor, the NEPA analysis has to be reviewed and accepted by the BLM. The operator will be advised as to the anticipated timeframe for completion of the NEPA process. Guidance regarding NEPA analysis of a Plan of Operations is discussed in detail in Section 4.4.2, NEPA Analysis on a Plan of Operations (see BLM's *National Environmental Policy Act Handbook,* H-1790-1).

4.4.1.3.3 NHPA or Wildlife Consultations

The BLM will notify the operator of any consultation that must be completed by the BLM under the NHPA, the Endangered Species Act (ESA), or the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) before the BLM can make a decision on the Plan

[86] 43 CFR 3809.411(a)(3)(i).
[87] 43 CFR 3809.411(a)(3)(ii).

of Operations.[88] These Acts require consultation with other government agencies and parties in timeframes not always determined by the BLM.

The operator will be informed about any consultation requirements under these Acts and invited to participate in the consultation process where appropriate (see Appendix A, Template 4.4-3, Additional Actions Required). Consultation required under NHPA, ESA, or the Magnuson-Stevens Acts is to be initiated as soon as practical after receipt of the initial Plan of Operations so that concerns and comments of these agencies can be considered during the completeness review process.

Completion of consultation may require the adoption of certain operating requirements or constraints that cause the operator to change the Plan of Operations or result in the BLM placing certain conditions of approval on the Plan. The District/Field Office must document the consultation process and results in the case file.

4.4.1.3.4 Native American Consultation or Other Responsibilities

The operator will also be notified of any other BLM or Department of the Interior (DOI) reviews or consultations that must be conducted along with an anticipated timeframe for completion.[89] For some Plans, the BLM must complete consultation with Native American governments before making a decision on the Plan of Operations.

Consultation with Native American governments regarding the potential impacts of the Plan of Operations on Tribal trust resources is a responsibility of the BLM and DOI that cannot be delegated.

Consultation may occur at a variety of levels and in different forums. It may involve written correspondence, discussions between the respective Tribal government staff and BLM program specialists, on-the-ground visits to the project area, and meetings between the Tribal government and the BLM decision maker. The appropriate level and extent of consultation will depend upon the site-specific circumstances and the potential for the Plan of Operations to affect trust resources. Tribes are entitled to confidential discussions with agency officials on the identification and protection of trust resources. While it is desirable to include the operator in such consultation, the operator can only participate with the concurrence of Tribal officials.

The consultation process does not mean Tribes have veto authority over the Plan of Operations; however, when necessary, measures must be adopted to identify and protect Tribal trust resources.[90] The result of consultation may not always be agreement between the BLM and the Tribal government on the acceptability of the Plan of Operations or even on the measures needed to protect trust resources. The consultation process and results must be thoroughly documented in the case file.

[88] 43 CFR 3809.411(a)(3)(iii).
[89] 43 CFR 3809.411(a)(3)(iv).
[90] 43 CFR 3809.420(a)(4).

4.4.1.3.5 Onsite Visit

The regulations give the BLM the option to delay action on a Plan of Operations until a site visit can be conducted.[91] The operator must be notified by letter that a site visit is required to process the Plan of Operations, citing the reason(s) for the site visit, when it might take place, and inviting the operator to be present (see Appendix A, Template 4.4-3, Additional Actions Required).

4.4.1.3.6 Public Comments

The BLM must not issue a decision on a Plan until it has considered all the public comments submitted within the comment timeframe. [92] If the public comment period is conducted as part of the NEPA analysis (either the EA or EIS) then there would normally not be a need to delay action on the Plan of Operations.

Section 3809.411(c) requires that after a complete Plan of Operations is filed, but before the BLM acts on it, that the BLM will publish a notice of the Plan's availability for review in either a local newspaper of general circulation or through the NEPA process. The BLM will accept public comments on the Plan of Operations for at least 30 calendar days. This means Plans of Operations, and Plan modifications made under 43 CFR 3809.432(a), are subject to public comment for at least 30 days. The requirement to solicit public comment includes all Plans, from the simplest exploration-level Plan, to Plans for large multi-year mining operations. The required public comment period does not apply to minor Plan modifications made under 43 CFR 3809.432(b).

While the mandatory public comment period cannot begin until after the Plan of Operations is determined complete under 43 CFR 3809.411(a), this provision does not preclude the BLM from formally beginning to solicit the public scoping process before the filed Plan is determined complete. In fact, public input on an EIS-level Plan in the form of scoping comments during the completeness review can be beneficial, especially on large projects. Similarly, internal scoping for an EA-level Plan can also be useful for identifying potential alternatives and issues.

The comment period required under 43 CFR 3809.411(c) may be conducted in combination with the release of an EA or draft EIS. Since there is a mandatory 45-day minimum comment period on all BLM draft EISs,[93] the comment period required under 43 CFR 3809.411(c) would not add to the overall processing time. Although EAs do not require a public comment, some form of public involvement is required.[94] It is recommended that any public review or comment sought on the EA be concurrent with the 30-day public comment period required on the Plan of Operations by 43 CFR 3809.411(c). Comments received on the EA and Plan can then be addressed in the Decision Record (DR) (and revised EA, if applicable).

[91] 43 CFR 3809.411(a)(3)(v).
[92] 43 CFR 3809.411(a)(3)(vi).
[93] BLM NEPA Handbook H-1790-1, Sec. 9.3.2.
[94] BLM NEPA Handbook H-1790-1, Sec. 8.2.

Public notification of the comment period is provided for EIS-level Plans through the normal *Federal Register* notification that is issued on the availability of the draft EIS and the usual press releases. If there is no EIS, public notification is conducted through press release, legal notice(s), or distribution using a mailing list.

The requirement at 43 CFR 3809.411(c) is intended to solicit public comment on the Plan of Operations itself, not necessarily the attendant NEPA document. This distinction does not make much difference in the type of comments likely to be received since the Plan of Operations is the proposed action in the EA or EIS. However, it will be necessary to have copies of the complete Plan available to those requesting it, or a viewing copy for large volume/oversized Plan material. Another option is to make the Plan of Operations available through the State or District/Field Office website. All substantive comments received on the Plan of Operations and/or the environmental analysis must be addressed in the final EIS (or revised EA or Decision Record, if preparing an EA) prior to issuing a decision on the Plan.

Information on the RCE and/or the financial guarantee amount, while public information, is not included in the environmental analysis nor is public comment requested. The RCE and the financial guarantee amount are not required components of a complete Plan of Operations but are part of the BLM's enforcement program. The public comment period should focus on the Plan of Operations and the associated environmental analysis.

4.4.1.3.7 Surface Managing Agency

In cases where the BLM does not have responsibility for managing the surface, the BLM consults with the appropriate surface-managing agency before making a decision on the Plan of Operations.[95] While these situations are anticipated to be rare, they could occur on lands managed by the Bureau of Reclamation (BOR), FWS, or other Federal agencies. These agencies do not have surface management regulations for locatable mineral development, yet the land is open to location under the Mining Law or has valid existing development rights that predate the withdrawal of these lands.

In these situations, the BLM must work closely with the surface-managing agency and operator to incorporate the concerns of all parties into the Plan of Operations. The operator should be invited to participate in these discussions, where appropriate. It is desirable to include the surface managing agency as a joint lead, or cooperating agency, in preparation of the NEPA document. Joint lead status is only appropriate where the other agency has the authority to make a decision. Where the decision is ultimately the BLM's, cooperating agency status is more appropriate. When joint lead status is used, an MOU should clearly delineate the decision-making role of each agency.

4.4.1.3.8 Surface Owner

In cases where the surface is owned by a non-Federal entity, the BLM consults with the surface owner.[96] The BLM must work with the surface owner and the operator to incorporate concerns

[95] 43 CFR 3809.411(a)(3)(vii).
[96] 43 CFR 3809.411(a)(3)(viii).

of both parties into the Plan of Operations. The BLM must follow procedures under the regulations at 43 CFR 3814 for protecting the surface owner improvements if the project is located on SRHA lands. (See Section 8.3, Split Estate Lands, for further discussion on the requirements for split estate lands.)

4.4.1.3.9 Water Quality Compliance

The BLM may delay making a decision on a Plan of Operations until it completes consultation with the state to ensure operations will be consistent with state's water quality requirements.[97] If consultation with the applicable state authority is required, the BLM will notify the operator that the Plan of Operations cannot be approved until the BLM has completed consultation with the state (see Appendix A, Template 4.4-3, Additional Actions Required).

The BLM, the state, and the operator should jointly participate in these discussions and include any operational requirements for compliance with water quality laws into the Plan of Operations. Written certification from the state or the issuance of discharge permits by the appropriate state water quality authority (or by EPA in non-primacy states) will constitute evidence that the permitting authority believes the project capable of complying with the water quality laws and completes the consultation requirement. The District/Field Office must document all consultation efforts and results in the case file.

4.4.1.3.10 Mineral Examination Report

The BLM will not make a decision on a Plan of Operations until it completes preparation of a mineral examination report for proposed operations on lands that have been withdrawn from mineral entry to determine if the claim(s) are valid.[98] The operator will be advised as to the anticipated timeframe for completion of the report (see Section 8.1, Withdrawn and Segregated Lands).

4.4.1.4 Approval of Certain Actions During Plan Review

Pending approval of a Plan of Operations, the 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 UUD. This provision at 43 CFR 3809.411(b) provides a mechanism where the BLM may approve certain activities immediately if needed for the operator to comply with other laws. This could include environmental or Mining Law requirements, or court orders. Examples where this might be applied include construction of monitoring wells and capture systems after a contaminant release, remediation of slope failure or prevention of imminent slope failure, installation of access roads to support cleanup, construction of treatment facilities, and emergency installation of runoff controls. Use this provision to avoid a regulatory conflict where another agency orders certain surface disturbing activity to be taken immediately, yet the action is not covered by the operator's approved Plan of Operations.

[97] 43 CFR 3809.411(a)(3)(ix).
[98] 43 CFR 3809.100(a).

The expedited approval of activity needed to comply with environmental laws or mitigate undesirable events may have to be given quickly, in a matter of days or even hours in the case of emergency actions. During that time, the BLM official must decide upon any terms or conditions that are to be placed on the activity to prevent UUD and communicate those in writing to the operator. This approval must be of limited duration and specify that the operator must follow up by filing for approval of the surface disturbing activity under the normal Plan of Operations process.

It may not be possible to complete the NEPA analysis required on these expedited surface disturbance actions prior to their implementation.[99] "Alternative arrangements" may be established to comply with NEPA in an emergency. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance. In the event of an emergency, you must contact the BLM Washington Office, Division of Decision Support, Planning and NEPA (WO-210) and complete the appropriate level of NEPA analysis for any activities approved under this provision of the regulations, as soon as practical. Where emergency circumstances necessitate that the BLM approve operator actions that BLM believes have significant environmental impacts without completing the NEPA process, the BLM must consult with the CEQ as described in 40 CFR 1506.11 and the BLM's *National Environmental Policy Act Handbook,* H-1790-1, Section 2.3.

It may also not be possible to get an acceptable reclamation financial guarantee in place prior to such surface disturbances. As soon as practical, the amount of the reclamation financial guarantee will be modified to reflect the additional reclamation liabilities on the ground.

The District/Field Office may decide actions taken under this provision of the regulations must be disclosed to the public by letter or through the press. All such disclosures will be released through the local or state Public Affairs office.

4.4.2 NEPA Analysis

The BLM must complete the environmental review required under NEPA (either with an EA or EIS) before the BLM can issue a decision on the proposed Plan of Operations or on a modification to an existing Plan under 3809.432(a).[100] While BLM's NEPA Handbook provides general guidance on how to prepare an environmental analysis under NEPA, the following guidance is specific to NEPA analysis of a 3809 Plan of Operations, whether prepared by the BLM or for the BLM by an outside contractor:

- The operator's complete Plan of Operations constitutes the proposed action. Preparation of the NEPA document cannot proceed beyond the scoping phase until the Plan of Operations is determined to be complete under 3809.401(b).

[99] Emergency actions to prevent a public health and safety situation, and circumstances that require immediate action to prevent environmental damage are exempt from NEPA (43 CFR 46.150).

[100] A determination of NEPA adequacy (DNA) finding that the existing environmental analysis is sufficient to cover the modification is most likely the extent of the NEPA documentation required for a minor modification to a Plan of Operations under 43 CFR 3809.432(b). See Section 4.6.3.1-*Minor Modification Procedures*.

- The focus of the NEPA analysis is the Plan of Operations, and not the operator. The environmental analysis of potential impacts from a particular Plan of Operations is based on the merits of the Plan itself and does not change depending upon the compliance history, resources, or experience level of the operator (compliance history is, however, a factor when conducting inspection and enforcement activity—See Chapter 9 Inspection and Enforcement).

- Evaluate the Plan of Operations and any alternatives on their inherent merits assuming full implementation, including all operation, mitigation, monitoring, reclamation, closure, and post-reclamation actions. While risk analysis or stability discussions with respect to acceptable engineering practices may be appropriate, do not prepare the NEPA analysis assuming there will be deviations from the Plan, noncompliance events, or worst-case analysis.[101] Because the operator is required by regulation to follow the approved Plan of Operations, it is not appropriate to speculate on impacts from actions outside either the proposed action or one of the alternatives.

- Provided the subject land is open to entry under the Mining Laws, a validity examination is not required to process a Plan of Operations and the NEPA analysis does not need to address mining claim status or validity. Nor does the NEPA analysis need to discuss how the information gained under a Plan of Operations could support an application to patent a particular mining claim. The issuance of mineral patents is a separate nondiscretionary action not subject to NEPA review.

- No Action Alternative - The "no action" alternative (i.e., not approving the Plan) must be fully analyzed as an alternative. This alternative does not mean no mining indefinitely, but that this particular Plan or Plan modification would not be approved. While an EA is not required to fully present and analyze a "no action" alternative, the inclusion of this alternative helps identify baseline conditions and provides a contrast for the action alternative(s). At a minimum, the EA must contrast the impacts of the proposed action and alternatives with the current condition and expected future condition in the absence of the project. When the proposed action is a modification to an existing Plan, the no action alternative would be continued operation under the already approved Plan without the modification.

- Preferred Alternative - If BLM determines that mitigation is necessary to prevent UUD, the proposed Plan of Operations, with any BLM-added mitigation measures needed to prevent UUD, is usually analyzed as a separate alternative and normally constitutes the preferred alternative. The EA or EIS must also disclose any impacts of implementing the mitigation measures, the effectiveness of the mitigation measures proposed, and residual effects of adverse impacts that would remain after mitigation measures are taken.[102] [103] This allows the effectiveness of the mitigation measures the BLM recommends to be evaluated and compared to the Plan as proposed without the mitigation or with mitigation measures proposed by the operator. In addition, analyzing the potential impacts of

[101] There is no requirement to do a "worst case analysis" in a NEPA document.
[102] 43 CFR 46.130 .
[103] BLM NEPA Handbook, H-1790-1, Sec. 6.8.4.

mitigation measures (for example, building a pipeline to bring supplemental water to mitigate the impacts of dewatering) in the EIS will allow all the mitigation measures to be implemented immediately if the need arises, rather than having to authorize the mitigation measure as a separate Federal action later. Including a simple list of mitigation measures in the NEPA document that might be required without an assessment of how they would change the impacts does not satisfy the environmental analysis requirement.

- Sustainable Development Alternatives - Opportunities for sustainable development, whether proposed by the operator as part of the reclamation plan or developed as a separate alternative, must be addressed in the NEPA document. If appropriate, this can be addressed as part of the Preferred Alternative.

- Baseline Data - Baseline data required under 3809.401(c) are usually reflected in the Affected Environment and Impacts sections of the analysis. Do not request the operator to supply additional baseline data or studies unless it is needed to support the analysis.

- Mining Claims - Mining claim status is not an environmental issue to be covered in the NEPA analysis. Nor is a validity examination required to process a Plan of Operations, unless the provisions or 43 CFR 3809.100 or 3809.101 apply.

- Exploration Plans - NEPA analysis of exploration Plans of Operations may need to analyze the potential environmental impact of possible mine development. Exploration does not always lead to mining, but may be considered an indirect or cumulative effect as defined at 40 CFR 1508.7 and 1508.8. When analyzing indirect and cumulative effects of an exploration plan, you must include reasonably foreseeable actions.[104] The analysis should not be limited to funded or licensed projects, but should also avoid speculation. The discussion of the potential environmental impacts should be commensurate with the size, stage, and history of the operations. See BLM NEPA Handbook, H-1790-1, Sec. 6.8.3, for more information about how to analyze indirect and cumulative effects.

- Financial Guarantee - The amount of the financial guarantee or a long-term trust is not subject to NEPA analysis, but is part of the enforcement program. The operating and reclamation plans determine potential impacts and constitute mitigation, not the reclamation financial guarantee amount. When assessing impacts, assume full implementation of the operating and reclamation plans independent of the financial guarantee amount. The financial guarantee does not constitute mitigation.

- Mitigation vs. Monitoring - Monitoring requirements are not to be confused with or be substituted for mitigation requirements. Monitoring by itself is not mitigation. The mitigation is the planned response action triggered by an undesirable monitoring event at a preset level of impact. Remember, the NEPA analysis is an estimate or prediction and not a guarantee as to the impacts that would occur.

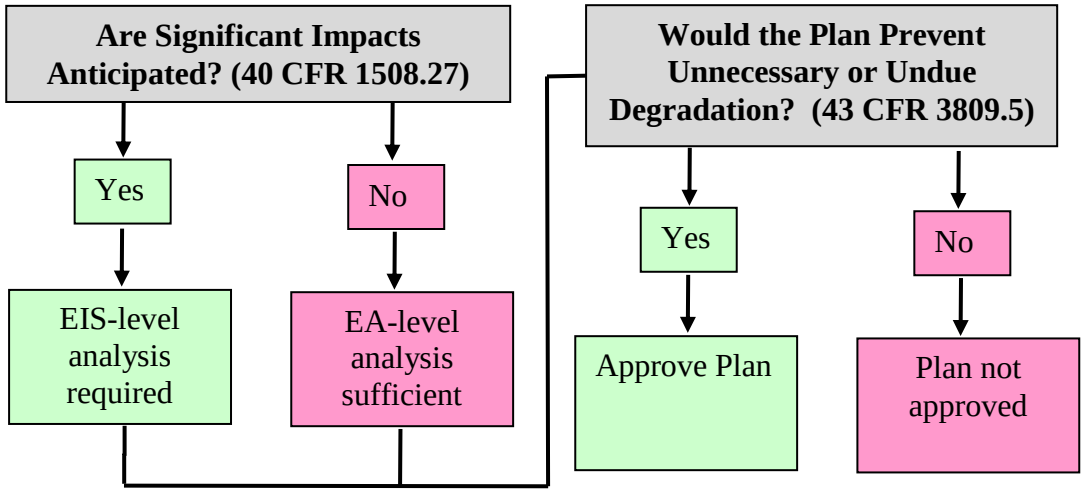
[104] BLM NEPA Handbook, H-1790-1, Sec. 6.8.3.4.

- New information and/or changed circumstances - If, prior to making the decision about whether to approve the Plan, there is a significant change in the affected environment or significant new information, it may be necessary to supplement the NEPA analysis and/or require changes to the Plan before making the decision. See BLM NEPA Handbook, H-1790-1, Sec. 5.3.2, page 30, for more information about how to address new information in the context to NEPA.

4.4.2.1 Unnecessary or Undue Degradation

The relationship between the procedural requirements of NEPA to evaluate and disclose impacts, and the substantive requirement of FLPMA to prevent UUD when making the decision analyzed in the NEPA document, is shown in Figure 4.4-1 – Approvable Plans and NEPA Analysis.

Figure 4.4-1 - Approvable Plans and NEPA Analysis



For a Plan of Operations to be approved, the Plan, including any required mitigation measures, must be adequate to prevent UUD and the appropriate level of NEPA analysis must be completed before the BLM makes the decision regarding whether to approve the plan. The level of NEPA analysis is independent of the requirement to prevent UUD. The two requirements, while different, are interrelated:

- The level of required NEPA analysis for a Plan of Operations depends upon the anticipated impacts of the Plan and whether they are "significant" as defined by 40 CFR 1508.27. Actions that are anticipated to result in significant impacts, or actions that have been analyzed in an EA and determined to have significant impacts, require the preparation of an EIS. Actions that would not normally result in significant impacts can be approved after preparation of an EA, if the analysis in the EA results in a Finding of No Significant Impact.[105] [106]

[105] Minor Plan modifications under 3809.432(b) can be accomplished with a DNA, but must also not result in UUD.
[106] NEPA is a procedural law, requiring the agency to analyze the proposed action, but not necessarily select the

- A Plan of Operations that would result in significant environmental impacts can be approved after an EIS is prepared as long as operations under the Plan would not result in UUD. Example: A Plan to disturb 2,500 acres and mine 400 million tons of rock would likely result in significant impacts. The Field Office would be required to prepare an EIS before deciding whether to approve the Plan. However, based on the analysis in the EIS, the Field Office may very well determine that the impacts, while significant, do not rise to the level of UUD and/or that the mitigation measures required under the selected alternative are adequate to prevent UUD.

- Plans that would result in or not prevent UUD cannot be approved.

- Occasionally a Plan may be submitted where it is obvious that UUD would not be prevented. Use the Plan completeness review process (Figure 4.2-2) to obtain at least a nominally acceptable Plan from the operator before beginning the NEPA analysis (i.e., do not waste time or resources preparing NEPA analysis on a grossly inadequate Plan).

- As the Plan review and analysis progresses, the EA or EIS may identify impacts (significant or insignificant) that indicate UUD would occur. In these instances, the applicant may need to develop mitigation or new alternatives to include in the NEPA analysis so that one or more of the Plan alternatives will be approvable (green column).

- Mitigation in the form of conditions of approval in the Decision Record (DR) or Record of Decision (ROD) and in the 3809 decision document can be applied to prevent UUD, thus making the Plan approvable. The mitigation could also reduce what would be significant impacts to less than significant, allowing for Plan approval at an EA-level of NEPA analysis.[107]

4.4.2.2 NEPA Decision Documents

The DR or ROD must explain how the selected alternative (the approved Plan) meets the requirements of the regulations to prevent UUD and is in conformance with the applicable land use plan(s).

Mitigating measures to the operator's proposed Plan must be required as "conditions of approval" in the DR or ROD and the 3809 decision document, with an explanation as to why the measures are needed to prevent UUD.

If the Plan contains any elements of occupancy,[108] the approval decision must also contain a written determination of concurrence or non-concurrence regarding the occupancy.[109]

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alternative with the least potential environmental impacts.

[107] BLM NEPA Handbook, H-1790-1, Sec. 7.1.

[108] 43 CFR 3715.3-4 and 3715.3-5.

[109] Appeals of decisions issued under the regulations at 43 CFR 3715 are directly to the IBLA, without a State Director Review. If a "3715" determination is combined with a Plan approval decision, the separate appeal procedures should be noted.

4.4.3 Issuing a Decision

Section 3809.411(d) describes the actions the BLM may take after finishing the Plan of Operations review, including the analysis and decision documents under NEPA, consideration of public comments, and completing any consultation requirements.

There are three possible courses of action BLM may take when issuing its decision on a Plan of Operations. The BLM may decide to:

- Approve the complete Plan basically as submitted.
- Approve the Plan subject to certain conditions imposed to ensure the operation meets the performance standards (see Chapter 5 Performance Standards) and does not result in UUD.
- Disapprove or withhold approval of the Plan.

The BLM decision must be sent to the operator via certified mail, return receipt requested, and include the appropriate appeals language (see Appendix A, Template 4.4-4, Decision on Plan). The BLM District/Field Office decision on Plan approval goes into effect immediately and remains in effect while appeals are pending unless a written request for a stay of the decision is granted (see Chapter 10 Decisions and Appeals). The decision may be included as part of the DR or ROD; there is no requirement that the ROD be a separate document from the decision. However, if the decision is included in the same document as the DR or ROD, it must still be sent to the operator as described above (in other words, publication of the document including both the DR or ROD and plan decision alone will not constitute the service on the operator described above).

4.4.3.1 Plan of Operations Approved

A complete Plan of Operations that will not cause UUD may be approved basically as submitted. Small exploration Plans, or Plans in areas without sensitive resource issues will generally not take as long to review and approve. In these situations, the BLM may sign the approval decision after completing the NEPA analysis and public comment period, and communicate the reclamation financial guarantee amount to the operator.

4.4.3.2 Plan of Operations Approved Subject to Conditions

The BLM may approve a Plan of Operations subject to any changes or conditions of approval needed to prevent UUD. The difference between what the operator is proposing in the Plan and actions that the BLM determines are needed to prevent UUD will become the conditions of approval that the BLM attaches to its decision. The conditions of approval must be written so that the desired on-the-ground results are achieved without mandating a specific design.

All mitigation measures applied as conditions of approval must be analyzed in the environmental analysis so that their effectiveness is determined and the residual impacts after

implementation of the mitigation are disclosed.[110] The conditions of approval must be clearly stated in the DR or ROD on the Plan with an explanation as to why the conditions are being required.[111]

A decision approving the Plan of Operations and stating the conditions of approval must be sent to the operator by certified mail, return receipt requested. The decision must state the estimated reclamation cost determination and the financial guarantee amount. The decision must also remind the operator that surface disturbing activity cannot begin until the financial guarantee has been accepted and obligated by the BLM (see Appendix A, Template 4.4-4, Decision on Plan).

Also, post-approval, the BLM may require the operator to update or revise the Plan content so as to reflect other agency permits, final designs, or certain stipulations. This allows for a single document describing the approved operation in detail that can be checked without having to consult other supplemental plans or permits. For example, the BLM may approve the Plan but condition it with the requirement that 18 inches of growth medium be placed over a certain waste rock dump instead of the proposed 12 inches. To create a comprehensive Plan of Operations document, the operator would supply replacement pages to the Plan, wherever needed, to change the reference from 12 inches to 18 inches.

For example, if another agency permit is required, such as an National Pollution Discharge Elimination System (NPDES) permit for discharge, it could be committed to by the operator and appended to the Plan once issued by the authorizing state or Federal entity. Deciding what and whether to require incorporation of such material into the Plan of Operations is a project-specific determination to be made by the individual District/Field Office.

In addition, the BLM must also include any other BLM requirements in the Plan approval decision. For example, inclusion of the BLM's determination regarding concurrence or non-concurrence on proposed use and occupancy is required by 43 CFR 3715.3-4 to be included in the BLM decision approving, modifying, or rejecting a Plan of Operations.

4.4.3.3 Plan of Operations Disapproved or Approval Withheld

The third possible outcome from the BLM review of a Plan of Operations is for the BLM not to approve the Plan.[112] The BLM may either disapprove or withhold approval of a Plan of Operations. There is a distinct difference between the two decisions.

4.4.3.3.1 Disapprove the Plan of Operations

A decision that disapproves the Plan of Operations is synonymous with denying the Plan of Operations. "Disapprove" or "Deny" should be used in the BLM decision when the intent is to issue a final BLM decision on the Plan's adequacy in preventing UUD. The decision must clearly state why the proposed Plan was denied (see Appendix A, Template 4.4-4, Decision on Plan).

[110] BLM NEPA Handbook, H-1790-1, Sec. 6.8.4.
[111] BLM NEPA Handbook, H-1790-1, Sec. 8.5.1.
[112] 43 CFR 3809.411(d)(3).

4.4.3.3.2 Withholding Plan of Operations Approval

A decision that says the BLM is "withholding" approval on the Plan of Operations is usually based on some procedural or legal requirement that must first be satisfied before the BLM can make a final determination on whether to approve or disapprove the Plan of Operations (see Appendix A, Template 3.2-2, Processing Notice or Plan Suspended).

4.4.3.3.3 Rationale

Four situations where it would be appropriate to disapprove or withhold approval on a Plan of Operations are discussed below.

Inadequate Information[113] - The BLM cannot approve or even begin analyzing the Plan until sufficient and appropriate information is received to make the Plan complete and to prepare the associated NEPA analysis. The BLM decision to *withhold* Plan approval can be issued after an extended time has elapsed without a response from the operator to one or more of the content requirements in 43 CFR 3809.401. In these cases the decision is conditional because the BLM would resume processing the Plan of Operations if the information were provided within time established in the decision. As such, no appeals language is included in a decision to withhold plan approval pending submission of adequate information.

A BLM decision to *disapprove* a Plan should be issued if the operator refuses to provide the required information within the specified timeframe or when there is no expectation of a meaningful response from the operator to BLM's information requests.

Lands Closed to Operation under the Mining Law[114] - If a Plan of Operations is proposed on lands and a valid existing rights determination of the involved mining claims is pending under 43 CFR 3809.100, the BLM may issue a decision *withholding* final action on the Plan of Operations pending the outcome of the mineral examination/valid existing rights determination. If the mineral examination concludes that some or all of the mining claims or mill sites located on withdrawn or segregated lands do not have valid existing rights, and if the Plan could not be modified to include only the valid claims and/or open lands, the BLM will continue the suspension of its processing of the Plan of Operations pending final Departmental decision declaring the mining claims null and void and any subsequent appeal. Following final Departmental decision to void the claim, the BLM will reject the proposed Plan and order any reclamation that may be necessary. See Section 8.1 Withdrawn and Segregated Lands for additional discussion on the requirements for segregated or withdrawn lands.

If a Plan of Operations is received that has no potential for the existence of valid existing rights (i.e., the Plan is proposed on segregated or withdrawn lands with no mining claims present), the Plan of Operations is to be "rejected." The Plan is to be *rejected* without going through the completeness review or NEPA analysis processes because there is no mechanism for the BLM to approve such a Plan under the surface management regulations.

[113] 43 CFR 3809.411(d)(3)(i).
[114] 43 CFR 3809.411(d)(3)(ii).

Plan of Operations Does Not Prevent UUD[115] - In some cases it may not be possible to develop the mitigation measures needed to prevent UUD. If after consideration of all reasonably available mitigation measures that might be imposed under 43 CFR 3809.411(d)(2) as conditions of approval, the Plan of Operations would still result in UUD, it must be disapproved. Examples include actions that would violate the Endangered Species Act, or actions that would not meet one or more of the performance standards in 43 CFR 3809.420 because those actions would be considered de facto UUD.[116]

If the BLM anticipates problems with the approvability of a portion of the Plan, the BLM must communicate its concerns early in the review process so the operator has the opportunity to modify the Plan before the BLM must issue a decision disapproving the Plan of Operations. A fundamental consideration is, at what point does BLM disapprove an unacceptable Plan of Operations versus trying to make it approvable through the imposition of mitigation measures. While there is no set threshold, the BLM is not to assume the responsibility for redesigning the operator's Plan. As a general rule, the BLM should simply disapprove the Plan of Operations instead of imposing conditions of approval so extreme that the conditions radically change the design of the operation (e.g., require underground vs. open-pit mining or vat leach vs. heap leach, etc.).

The BLM decision to disapprove the Plan of Operations must clearly state why the proposed project would result in UUD and why BLM was unable to develop mitigation measures that would prevent the UUD. The decision should not be written in a fashion that precludes any future re-submittals by the operator once the matter of UUD is resolved, and the operator may modify the Plan of Operations and resubmit it to the BLM at a later time.

Multiple Plans that are Mutually Exclusive - Generally, when there is more than one Plan of Operations proposed in the same geographic area, the BLM reviews each Plan based on its own merit and whether it will cause UUD. However, circumstances may exist where two or more Plans of Operations (or Notices) are filed that contain mutually exclusive activity. In such cases, the BLM does not get involved in disputes between rival claimants and/or operators. Relief for mine operators in such cases must be sought in a court of competent jurisdiction and not from the BLM.

For example, if one operator proposed to mine at a certain location at the same time a second operator proposed to construct a waste rock dump or facility on the same ground, the approval of such conflicting Plans would be almost impossible to assess in a NEPA analysis or in the analysis of whether operations under the plans would cause UUD. In addition, it would be extremely difficult for the BLM to calculate the RCE for each of the Plans, or take other enforcement action for the Plans after they are approved in cases of noncompliance.

In these cases, the BLM will withhold approval on conflicting or overlapping segments of either Plan until the priority rights have been resolved between the operators in a court of competent jurisdiction (see Appendix A, Template 3.2-2, Processing Notice or Plan Suspended).

[115] 43 CFR 3809.411(d)(3)(iii).
[116] 43 CFR 3809.5.

4.5 Beginning Operations

The operator must not begin operations until the BLM District/Field Office approves the Plan of Operations and the BLM office responsible for adjudicating financial guarantees issues a decision accepting and obligating the operator's financial guarantee for the estimated cost of reclamation.[117] All correspondence with the operator on Plan approval and financial guarantee decisions must clearly state when operations may begin.

4.5.1 State and Federal Permit Requirements

The BLM approval of a Plan of Operations does not constitute certification that the operator has obtained whatever other local, state, or Federal permits or approvals might be necessary for its operation (i.e., the BLM can approve a Plan without waiting for the operator to obtain other permits needed for the operation). Approval of a Plan of Operations by the BLM does not eliminate the requirement for the operator to obtain all other applicable local, state, and Federal permits (see Section 9.2.2 Regulatory Overlap of Enforcement Actions).

To prevent conflicting permit requirements and facilitate a comprehensive review, the BLM should coordinate its approval decision with the state or other Federal agencies that are also reviewing the operation when such permits are critical to the overall project plan (e.g., a National Pollutant Discharge Elimination System (NPDES) Permit for a tailing impoundment). Where the operator is relying on a particular permit to meet the Plan content requirements of 43 CFR 3809(b) (e.g., spill contingency plan or wetlands mitigation), the BLM may condition its approval on the operator obtaining the specific local, state, or Federal permit. The BLM may require the operator to provide a copy of the permit to be included in the Plan of Operations. Over the life of the operation, the BLM may ask the operator to provide proof that the permit is still in place.

4.5.2 Phased Approvals or Development

The scope of the BLM evaluation and decision on the Plan of Operations is to cover the entire operation. However, where the approved operation is to proceed in phases and the operator is posting a financial guarantee for only a part of the operation, the extent and limits of the on-the-ground activities that are being authorized must be clearly stated in the BLM decision.[118] For an authorized operation to proceed to a new phase, additional BLM authorization, other than those related to the RCE and financial guarantee, is not required.

Modifications to an approved Plan must be addressed under 43 CFR 3809.430 through 3809.434 and must not be incorporated into phased authorization (see Section 4.6 Modifications to Plans of Operations).

While phased approvals and financial guarantees are appropriate tools for the operator to manage project costs, at no time can the surface disturbance exceed the scope of the approval given for a particular Plan of Operations, nor can the reclamation liability exceed the amount of the financial

[117] 43 CFR 3809.412.
[118] 43 CFR 3809.553(a).

guarantee in place. See Section 6.2 Reclamation Cost Estimates and Section 6.3 Types of Financial Guarantees for further discussion of phased financial guarantees.

4.6 Modifications to Plans of Operations

Sections 3809.430 through 3809.434 of the regulations address modifications to the Plan of Operations, either at the request of the operator, or when required by the BLM.

4.6.1 Operator Requested Modifications

The operator may request a modification to their Plan at any time**.** Due to the incremental nature of exploration and mining, it is expected that operators may modify their Plans of Operations. As additional ore reserves are blocked out or cutoff grades change, or as areas are reclaimed, operators may propose to modify their Plans of Operations to increase or decrease the disturbance area, change mine facility layout, or modify mineral processing methods.

There is no limit on the number, type, or size of modifications that may be made to a Plan of Operations provided the modification is reviewed as required under the regulations. A single Plan of Operations may proceed through multiple modifications, from the early exploration stage through mine development and expansion, over decades, with some modifications exceeding the original disturbance acreage.

The NEPA analysis must capture the impact of all past modifications, as well as the present modification under review, in order to avoid overlooking the cumulative impacts of past, present, and reasonable foreseeable future actions on the environment.

4.6.2 Required Modifications

The operator must modify their Plan of Operations when making changes in the approved plan, to prevent unnecessary or undue degradation, and to address unanticipated events or conditions.

4.6.2.1 Before Making Changes in the Approved Plan

The operator cannot deviate from their approved Plan of Operations without a modification approved by the BLM,[119] During the initial approval, the BLM should communicate to operators that the approved Plan of Operations limits what can be done on the ground; and that any change outside the scope of the approved Plan the operator wants to make that alters the manner and degree of the plan must be made through the modification process. This may include adding disturbance area, changes in the size, configuration, timing, and equipment use as well. Modifications may also be needed for changes in monitoring plans or interim management plans.

The BLM and the operator need to have a common understanding as to the scope of the activity approved under the Plan and what changes in operation would trigger a minor or major modification of the Plan. For example, a change in equipment size or disturbance area to less

[119] 43 CFR 3809.431(a).

than that approved may not require a minor modification. The scope of the approval and when a modification (minor or major) is required is both site specific and project specific, depending on what impacts were analyzed and what limitations or conditions of approval were placed on the approved Plan.

4.6.2.2 To Prevent Unnecessary or Undue Degradation

If the BLM identifies or anticipates UUD (actions or conditions not meeting the performance standards) the BLM may order the operator to modify the Plan of Operations.[120] Modification orders can be made effective immediately as part of the inspection and enforcement program[121] (see also Chapter 9 Inspection and Enforcement). All BLM-ordered modifications still have to go through the review and approval process under 3809.432(a) if they do not qualify for acceptance under 3809.432(b) as a minor modification.

4.6.2.3 To Address Unanticipated Events or Conditions

A major or minor modification may be required before the final closure of operations in order to address impacts from unanticipated events, conditions, newly discovered circumstances, or information.[122] This requirement is intended to ensure that all Plans of Operations are reviewed prior to final closure in order to check for changes that need to be addressed during final reclamation. The above requirement does not preclude the BLM or the operator from addressing these concerns during operations. The following list is not exhaustive of the conditions or events that might lead to a modification of the Plan of Operations.

- Installation of treatment systems or changes in reclamation and monitoring plans may be needed to address development of acidic or toxic drainage.

- To the extent loss of surface springs or water supplies were not anticipated in the initial NEPA analysis, such events may warrant a Plan modification to address the conditions and develop mitigation.

- Operations where a need for long-term water treatment or other maintenance activities are later identified usually constitute a substantial change from the original Plan of Operations. To account for the long-term commitment, a modification in the Plan of Operations is usually needed. As a result of modifying the Plan of Operations it may become necessary to establish a long-term trust fund to address the long term water treatment costs. (See Section 6.3 Types of Financial Guarantees, for further discussion on trust funds.)

- To the extent repair and maintenance of reclamation were not addressed in the Plan of Operations, a modification may be necessary if it involves ongoing use of earthmoving equipment or changes in stormwater management structures.

[120] 43 CFR 3809.431(b).
[121] 3809.421 and 3809.600 through 3809.605.
[122] 43 CFR 3809.431(c).

- Because the exact nature of mine waste or leachate may not be known in advance, a modification may be needed to include measures required to manage closed waste units. This would be especially appropriate if long-term care and maintenance involves the use of mechanized earthmoving equipment or the use of vehicles off-road.

- Specific plans for post-closure monitoring and maintenance may not be finalized until after the closure activity is completed and site conditions are known. In these situations the plans for post-closure management submitted under 43 CFR 3809.401(b)(3)(x) may need to be modified.

- Hazards to public safety that result from the Plan of Operations must be reduced or eliminated as part of final reclamation. New or unanticipated hazards may require a Plan modification so that the necessary protective measures are included in the final closure plan.

4.6.3 BLM Review of Plan Modifications

The BLM will review and approve a modification to a Plan of Operations in the same manner as it reviewed and approved the initial Plan under 43 CFR 3809.401 through 3809.420 unless the modification is considered minor.

Increasing the area of disturbance, adding new mine facilities, or substantially changing mineral processing would require a modification that is processed similar to the initial Plan of Operations under 43 CFR 3809.401 through 3809.420. Modifications to change mine facility design or capacity may require the operator follow the Plan of Operations approval process. For example, if waste rock dump stability were a major issue during the initial Plan approval, then modification to the dump configuration might not qualify as a minor modification and processing would have to follow the more formal review and approval process.

Whether an action requires a formal modification or a minor modification depends in a large part on what issues were identified during the initial Plan approval. If the adequacy of cover soil thickness for reclamation were an issue during Plan review, then reducing the amount of soil to be spread from 10 inches to 8 inches may require a formal modification as it could impact reclamation performance. On the other hand, if the soil thickness were to be increased from 10 inches to 12 inches, a formal modification may not be needed since impacts to reclamation performance would not be anticipated. Conversely, if the issue were dust and traffic from haul trucks, then increasing the amount of soil to be applied by 20 percent could trigger a modification if limits given for truck traffic in the initial Plan of Operations were to be exceeded.

The review and approval process for modifications should focus on the changes proposed to the Plan of Operations and not create a second review and approval for actions already approved in the initial Plan. The appropriate type of NEPA document should be determined in consultation with the local NEPA coordinator and by referring to the NEPA Handbook, H-1790-1. The NEPA document prepared for the modification must disclose the impacts of the past actions by

reference or by tiering[123] to the NEPA analysis that has already been completed in order to maintain an assessment of all the impacts of the project. An impact assessment is especially important if an EA is being used for the modification's NEPA analysis in order to ensure that impacts from the modification are not significant when considered in combination with past project approvals. Note: The environmental analysis for a modification may tier off prior analyses; this does not constitute a supplemental EIS.

4.6.3.1 Minor Modification Procedures

The regulations provide that the BLM will accept a minor modification without formal approval if the modification is consistent with the approved Plan of Operations and does not constitute a substantive change from the activity analyzed in the NEPA document.[124]

Examples of minor modifications may include, but are not limited to, minor road realignments, facility design changes within approved design limits, minor changes in monitoring parameters or frequency, some changes in the schedule of operations, variations in the seed mixture used for revegetation, and additional drill holes on existing disturbance.

The BLM will prepare a Determination of NEPA adequacy (DNA), or other checklist-type NEPA review, in order to document that the minor modification is consistent with the approved Plan of Operation and does not constitute a substantial change that requires additional environmental analysis (see BLM Handbook H-1790-1, *National Environmental Policy Act*, Chapter 3 Using Existing Environmental Analysis). All minor modifications are to be documented in the case file and tracked to ensure they do not cumulatively exceed the minor modification threshold. A public comment period is not required on a minor modification.

Although the modification may be minor, some adjustment in the amount of the financial guarantee may be necessary.

4.6.4 Modifications to Plans Approved before January 20, 2001

Where a Plan of Operations was approved prior to January 20, 2001, under the "old" regulations,[125] there are two types of Plan modifications that may be received by the BLM. The operator may request to build a new mine facility or the operator may request a modification that changes an existing mine facility that was initially approved under the old regulations. The applicability of the January 20, 2001, regulations to each of these situations is discussed below.

Under any modification submitted to the BLM, the operator can elect to have the new Plan content and performance standards apply.

4.6.4.1 Modification to Add a New Mine Facility

Modifications for new mine facilities must follow the review, approval, and performance standards listed in the new regulations. If the operator proposes to modify the Plan of Operations

[123] BLM NEPA Handbook, H-1790-1, Sec. 5.2.2.
[124] 43 CFR 3809.432(b).
[125] 43 CFR 3809.433.

by constructing a new facility, such as waste rock repository, leach pad, impoundment, drill site, or road, then the Plan contents requirements[126] and performance standards[127] of the surface management regulations apply to the new facility. Mine facilities not included in the modification may continue to operate under the terms of the Plan of Operations that existed prior to January 20, 2001.

4.6.4.2 Modification of an Existing Mine Facility

If the operator proposes to modify the 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, then the plan contents requirements and performance standards of the current regulations apply to the modified portion of the facility, unless the operator demonstrates to the BLM's satisfaction it is not practical to apply the current regulations and standards for economic environmental, safety, or technical reasons[128]. If the operator makes the demonstration, the Plan content requirements[129] and performance standards[130] that were in effect immediately before January 20, 2001, apply to the modified facility (see 43 CFR parts 1000-end, revised as of November 21, 2000).

Regarding the cyanide leaching and acid-forming materials performance standards, every effort is to be made to achieve compliance with the standards in the current regulations at the modified facility. The cyanide leaching and acid-forming materials performance standards are critical to the prevention of UUD, usually required to meet state standards, and have been part of BLM policy since 1991 and 1996, respectively.

4.6.5 Modifications to Plans Pending on January 20, 2001

A pending modification is one that was submitted to the BLM prior to January 20, 2001 and the BLM had determined was substantially complete under the old 3809 regulations. If there are any pending modifications, the requirements are analogous to those described above for Section 3809.433.

4.7 Cost Recovery

The BLM regulations at 43 CFR 3800.5 require that an applicant for a Plan of Operations must pay a processing fee on a case-by-case basis as described in 43 CFR 3000.11 whenever the BLM determines that consideration of the Plan of Operations or Plan modification requires the preparation of an EIS-level environmental analysis. The processing fee must cover the cost of the BLM's review of the Plan of Operations, preparation of the EIS (or review of an EIS prepared by an outside consultant), and review of the RCE.

[126] 43 CFR 3809.401.
[127] 43 CFR 3809.420.
[128] 43 CFR 3809.434(b).
[129] 43 CFR 3809.1-5 (revised as of November 21, 2000).
[130] 43 CFR 3809.1-3(d) and 3809.2-2 (revised as of November 21, 2000).

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Chapter 5 Performance Standards and Operating Requirements

This chapter explains the operating requirements and performance standards that operators must achieve when conducting prospecting, exploration, and mine development activities on BLM-administered public lands. It includes guidance on how to review a Notice or Plan of Operations to determine if the operations will cause UUD under 43 CFR 3809.415, and how to ensure that operators are complying with the performance standards under 43 CFR 3809.420.

FLPMA prohibits anyone using the public lands from causing "unnecessary or undue degradation" (UUD).[131] By definition in 43 CFR 3809.5 as well as under 3809.415, operators cause UUD when they fail to comply with all the applicable performance standards. These performance standards are divided into two types, *general performance standards* and *specific performance standards*. The performance standards in 43 CFR 3809.415 applies to activities conducted under either a Notice or Plan of Operations.

As a practical matter, these same performance standards are generally applicable to Notices or Plans that were in effect before January 20, 2001. This is because the regulations at 43 CFR 3809.420 incorporated the pre- January 20, 2001, performance standards, and the then-existing policy requirements for management of operations using cyanide or with potential to produce acid rock drainage. See also Section 3.1 and Section 4.6.4.

5.1 Requirement to Prevent Unnecessary or Undue Degradation

This section takes the definition of *unnecessary or undue degradation* from 43 CFR 3809.5 and restates it as operating requirements. Operators avoid causing UUD while conducting operations on public lands by operating in accordance with the requirements in 43 CFR 3809.415(a) through (c).

As defined at 43 CFR 3809.5, UUD means conditions, activities, or practices that meet one of the following:

- Fail to comply with one or more of the performance standards in 43 CFR 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.

- Are not "reasonably incident" to prospecting, mining, or processing operations as defined in 43 CFR 3715.0-5.

- Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area (CDCA), Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

[131] 43 CFR 3809.415.

5.1.1 Requirements, Standards and Applicable Laws

To prevent UUD, operators must comply with the performance standards in 43 CFR 3809.420, which includes following their accepted Notice or approved Plan of Operations, and complying with other Federal and state laws related to environmental protection and protection of cultural resources.[132] Operators who deviate from the terms of their Notice or Plan are, by definition, causing UUD. This is true even if the action occurring on-the-ground is conducted exactly how it would have been if covered by a Notice or Plan. That is, one way operators cause UUD is by operating without a Notice or Plan for that particular activity, independent of the impacts to the public lands that may result.

If the operations do not fall within an accepted Notice or an approved Plan, fails to maintain an acceptable financial guarantee, or if the operations are not in compliance with applicable state and Federal laws (see section 5.2.6 for more information), the BLM will initiate enforcement action under 43 CFR 3809.600, *et seq*. The purpose of the enforcement action is to get the operator to file or modify the Notice or Plan of Operations to cover the operations, provide the required financial guarantee, or to bring the operations into compliance with applicable laws (see Section 9.2 Enforcement Actions).

5.1.2 Activities that are Reasonably Incident

Under the Surface Resources Act of 1955,[133] mining claims may not be used "for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto." Any activity that is not reasonably incident as defined in 43 CFR 3715.0-5 is by definition UUD within the meaning of 43 CFR 3809.5.

This means that all activities conducted under a Notice or Plan must be reasonably incident to prospecting, mining, or processing operations and uses. The BLM cannot accept any Notice or approve any Plan that proposes activities not related to mineral exploration or development, even if the activity itself will not harm the public lands.

5.1.3 Levels of Protection Required by Law

In some special management areas, operators must attain a certain level of resource protection or reclamation as required by specific laws.[134] Such areas include the California Desert Conservation Area Plan, as amended (CDCA), Wild and Scenic Rivers,[135] BLM-administered Wilderness Areas,[136] and BLM-administered National Monuments and National Conservation Areas. Such special management areas have separate statutory authority requiring operations to achieve certain levels of resource protection or certain standards of reclamation. An operation that does not meet these performance standards, in addition to those at 43 CFR 3809.420, is causing UUD.

[132] 43 CFR 3809.415(a).
[133] 30 U.S.C. 612.
[134] 43 CFR 3809.415(c).
[135] BLM Manual 8351, and 43 CFR 8351 and 36 CFR 297.
[136] BLM Manual 8560 and 43 CFR 6300.

5.2 General Performance Standards

The general performance standards for Notices and Plans of Operations are broad in nature, apply across a variety of environmental media (e.g., air, water, wildlife, vegetation, etc.), and to more than one type of operation or mine facility.

5.2.1 Technology and Practices

The operator must use equipment, devices, and practices that will meet the performance standards of the surface management regulations.[137]

This general standard gives the BLM some say in "how" the operator meets the performance standards. Specifically, in reviewing the Notice or Plan, the BLM looks to see if the equipment, devices, or practices that the operator is proposing to use are technically feasible to meet the performance standards, will perform the activity in a timely fashion, or will perform with minor or minimal secondary impacts. The intent is for the standard to screen out proposals on a broad scale that are not feasible, while not dictating the exact equipment or practice to be used by the operator.

For example, in recontouring a road constructed across an extremely steep slope, an excavator or backhoe would be considered appropriate equipment to meet the performance standard for road reclamation. A bulldozer cannot operate on side slopes or push uphill when the grade is steeper than about 50 percent and as such would generally not be appropriate equipment for such steep slopes.

5.2.2 Sequence of Operations

The operator must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining, and reclamation sequence,[138] This performance standard is designed to prevent unnecessary impacts from operations that are conducted out of sequence with the reasonable and customary mineral exploration, development, mining, and reclamation cycle. (See also 43 CFR 3715.0-5, which defines "reasonably incident," in part as, "using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and *stage of development*" (emphasis added).)

This standard is to be applied on a broad scale. For example, an operation that proposes stripping soil from an area for mining purposes prior to even attempting to identify the presence of a mineral deposit using standard industry practices would not meet this performance standard. Another example would be the construction of a large network of access roads without proposing any associated exploration activity. By contrast, this standard for determining UUD and "reasonably incident" should not be applied on such a small scale that the BLM is verifying exploration results on an individual drill hole basis or reviewing "ore" grades at every step in mine development.

[137] 43 CFR 3809.420(a)(1).
[138] 43 CFR 3809.420(a)(2).

5.2.3 Land Use Plans

Consistent with the mining laws, 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.[139] The NEPA analysis should document this compliance, usually within the "Proposed Action and Alternatives" section of an EA[140] or an EIS.[141]

This means that the BLM can use its land use plans to address, on a regional or area basis, the operating requirements to be followed to protect environmental and cultural resources anticipated to be found on public lands in the planning area. Part of the land use planning process identifies actions to take or avoid when operating in a particular part of the planning area. As part of developing land use plans, the BLM has to consider the potential impact on the mineral exploration and development as well as potential environmental benefit of any planning-level management prescriptions for locatable mineral activities.

Land use plans can be used to set reclamation objectives or identify the location of applicable measures needed to meet the performance standards. For example, a land use plan may be used to identify the location-specific measures that need to be in a fisheries rehabilitation plan submitted under 43 CFR 3809.401(b)(3)(v), in order to meet the fisheries rehabilitation requirement under 43 CFR 3809.420(b)(3)(ii)(E). Another example is for the land use plan to describe the species, seed mix, or treatments applicable to reclaiming surface disturbance in certain portions of the planning area. Providing such management prescriptions in the land use plan can assist both the operators and the BLM in processing Notices and Plans, and ensure reclamation consistency and performance.

Land use planning for locatable minerals activity can provide the operator with guidance on what is expected in the Notice or Plan submittal. It also provides the BLM reviewer some criteria for evaluating the consistency of the particular Notice or Plan of Operations with the land use plan and assist in preventing UUD.

5.2.4 Mitigation Measures

This performance standard[142] requires that the operator implement the mitigation measures specified by the BLM in order to protect public lands. "Mitigation," as defined by the CEQ at 40 CFR 1508.20, may include one or more of the following:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

[139] 43 CFR 3809.420(a)(3).
[140] BLM NEPA Handbook H-1790-1, Sec. 8.3.4.3.
[141] BLM NEPA Handbook H-1790-1, Sec. 8.2.7.
[142] 43 CFR 3809.420(a)(4).

- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

- Compensating for the impact by replacing, or providing substitute, resources or environments.[143]

In the context of Notices and Plans of Operations, the BLM has limited discretion to impose "mitigation" measures as defined under the CEQ regulations. In part, this is because the CEQ regulations do not apply to Notices because Notices are not subject to NEPA review. More importantly however, the BLM's authority to regulate mining operations under the Mining Law is limited to preventing UUD; consequently, the "mitigation" specified in the ROD and plan approval is more like a plan modification, rather than what is typically considered "mitigation" of direct, indirect, or cumulative impacts identified in the NEPA document. "Mitigation" measures required to prevent UUD include any required plan modifications that a state or other Federal agency informs the BLM are necessary to comply with applicable law. The BLM can work with the operator to develop further mitigation measures for impacts that do not rise to the level of UUD, and can, if the operator concurs, incorporate these measures as conditions of the BLM's approval of the Plan. However, without operator consent, the BLM cannot require "mitigation" or plan modification beyond what is necessary to prevent UUD.

Another aspect of mitigation is compensating for the impact by replacing or providing substitute resources or environments. Reclamation of surface disturbance is the major form of mitigation for most Notices or Plans. In certain circumstances requiring the operator to provide substitute resources or habitat may be appropriate mitigation. For example, providing an alternate water source for wildlife or replacement of critical winter range may be an appropriate mitigation strategy for a large project or where such resources are scarce.

Offsite mitigation on non-public lands may be used to reduce impacts on public lands. However, there must be an enforceable commitment from the operator to implement such mitigation or it cannot be relied upon to prevent UUD on the public lands. Before incorporating offsite mitigation into a Plan approval or Notice acceptance, contact the Solicitor's Office to verify that the commitment is enforceable.

5.2.5 Concurrent Reclamation

The operator must initiate reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that the operator will not disturb further. Early initiation of reclamation will stabilize soil, control runoff, and otherwise prevent UUD. This concurrent reclamation standard[144] means that the operator must reclaim parts of the operations even as activity is continuing in other portions of the project area. The intent is that operators not defer

[143] 40 CFR 1508.20.
[144] 43 CFR 3809.420(a)(5).

all the reclamation until the closure phase of the project. Waiting on some yet-to-occur technological breakthrough or change in economic factors, such as metal prices, does not justify withholding areas from concurrent reclamation.

Concurrent reclamation prevents open or unreclaimed areas from continuing to cause impacts even though mineral activities may no longer be occurring at that specific locale. Unreclaimed surface disturbance can continue to cause or exacerbate conditions such as loss of wildlife habitat, erosion, dust emissions, and noxious weed infestations. These conditions can lead to UUD on the public lands and increase reclamation costs for the mine operator.

When reviewing a Plan or Notice, the BLM must ensure that the Plan or Notice provides for ongoing reclamation. For example, the Plan or Notice may include provisions for direct hauling and application of stripped topsoil to previous disturbances, placement of waste rock at final grade with revegetation, backfilling of sequential mine pits, decommissioning and reclaiming heaps and dumps that have reached capacity, and other measure as applicable. It is generally economically and technically feasible to conduct concurrent reclamation when the mine facility (rock dump or heap) has reached its capacity or is no longer producing economically viable leachate. For more information about reclamation, see Section 5.3.3.

5.2.6 Pertinent Federal and State Laws

The operator must conduct all operations in a manner that complies with all pertinent Federal and state laws, including local requirements.[145] Failure to meet other Federal and state requirements means the operator has also failed to meet a BLM performance standard and is causing UUD.

A key consideration to administering this performance standard is that the BLM does not determine whether the operator has complied with the laws or regulations that are the responsibilities of other agencies, nor does the BLM enforce those requirements. Rather, the BLM relies on those other agencies to determine compliance with the laws or regulations they administer prior to the BLM determining whether or not the operator has met a particular BLM performance standard and is causing UUD.

If a violation of another Federal or State agency's rules or regulations is taken by that agency, a noncompliance order should be issued in conjunction with that agency's enforcement action.

5.3 Specific Performance Standards

The following are specific performance standards for a variety of environmental media or for certain types of the most common mine facilities. See the BLM's *Solid Minerals Reclamation Handbook*, H-3042-1, for a more complete discussion on the technical components of reclamation.

[145] 43 CFR 3809.420(a)(6).

5.3.1 Access Routes

The performance standard[146] for access routes addresses right of access and requirements for design, consultation, commercial hauling on existing roads, support facilities, roads within or to operating mines, and minimization of surface disturbance.

5.3.1.1 Design Requirements Generally

Access routes may only be the minimum width needed for operations and should follow natural contours, where practicable, to minimize cut and fill. The minimum width is determined by the type of equipment that will be utilized on the road, which in turn is tied to the particular stage in exploration or mine development. Designed roads are different than ways or "two tracks" used for customary access. These customary routes across public lands are generally usable for early-phase operations such as exploration. These routes may need upgrades to be useful when crossing drainages or relocation to avoid on-the-ground impacts.

The importance of using, upgrading, or constructing all forms of roads on or as close to the contour as possible cannot be overemphasized. Grades that cut across contour at greater than 12 percent are difficult to maintain and protect from erosion without extensive erosion control measures (e.g., water bars, cutouts).

Constructing roads in flatter terrain is generally preferred since the steeper the side-slope, the greater the cut and fill involved and the greater the surface disturbance. Roads constructed across steep slopes (greater than 33 percent) can be extremely difficult to reclaim. Even where the route were somewhat longer, if the terrain is flatter, it may be less expensive to construct and reclaim, and have less environmental impact, than a more direct route.

5.3.1.2 Consultation on Access Routes

When 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. Although all Notices and Plans require the inclusion of access routes, this requirement places special emphasis on construction of roads in area where cuts greater than 3 feet are required.

Due to the potential for impacts from road cuts of greater than 3 feet, the BLM may require the operator to use an alternate access route. However, if the road cuts are actually part of the exploration activity (the road serves as an exploration trench as well), then cuts greater than 3 feet are acceptable. Roads with cuts greater than 3 feet are also acceptable if there is no other feasible access route. Reclamation of road cuts will usually require the use of an excavator to pull side cast material back up into the cut slope.

[146] 43 CFR 3809.420(b)(1).

5.3.1.3 Right of Access

Mining claimants (or their authorized designees) are entitled to non-exclusive access to their claims. Access to mining operations must be managed in a way to balance this right and the requirement to prevent UUD. Any access to an operation must be reasonably incident as defined by the Use and Occupancy regulations found at 43 CFR 3715.

Non-exclusive access, while guaranteed to mining claimants or their designee by the Mining Law, is not unfettered. In special status areas, where the operations would present a risk to the resources that support the special status area designation, the BLM can condition access placement, design, and periods of use where needed to limit impacts. After considering the effects on other resources, the BLM may limit access to constructed roadways or decide in some circumstances that access by means other than a motor vehicle (such as via aircraft or pack animal) is sufficient for the operator to complete their desired activity.

5.3.1.4 Access and Support Facilities

The location of access routes, service roads or airstrips, or other forms of access needed for the operation must be included as part of the Notice or Plan of Operations and must be counted a part of the disturbance acreage.

A separate right-of-way authorization is not required for activities conducted under the Mining Law or facilities incident to those activities (e.g., pipelines, power lines, phone lines, conveyors, etc.). Where facilities are installed and maintained by a utility company to serve the operator, the operator remains responsible for their removal and reclamation upon cessation of operations unless the approved reclamation plan allows for their retention.

Operators are generally not allowed to exclude others from the public lands. However, the Notice or Plan may include provisions for restricting public use for safety purposes. On most mine sites, and especially those with large amounts of heavy equipment traffic or use of chemicals, the BLM may require the operator to secure the area from general public access. The operator must also obtain concurrence to exclude public access under the 43 CFR 3715 regulations.

If an access road or utility line serves only mining operations on patented mining claims or non-public lands, a right-of-way under 43 CFR 2800 is the appropriate authorization.

5.3.1.5 Minimize Access Roads

The operator can be required to use existing roads to minimize the amount of disturbance. When reviewing a plan that proposes to construct a new access road, the BLM may require the operator to share access roads with adjacent operators and other public land users where sharing will minimize surface disturbance and not jeopardize public or operator safety.

If new road construction is determined necessary, the operator may be required to follow a transportation or utility corridor designated during the BLM's planning process.

5.3.1.6 Commercial Hauling on Existing Roads

When commercial hauling is involved for exploration or mining purposes and the use of an existing public or BLM road is required, the operator may be required to make appropriate arrangements for the use of the road with the county or state and to enter into a maintenance agreement with BLM. Heavy traffic on roads in the BLM-road network may require the operator to maintain the road in whole or in part depending upon the proportion of maintenance needs caused by the operator's activities.

5.3.1.7 Roads Within or Associated with Operating Mines

During mining, it is not unusual for a haul road to require a 100-foot running width. Roads within operating mines must meet the requirements of the MSHA regulations at 30 CFR 56/57 Subpart H. Additional state-mandated safety provisions may also apply to these roads. Together, these standards will guide any final road design. BLM road standards will not be applied to haul roads.

5.3.2 Mining Wastes

During exploration, mining, or reclamation, the operator must manage all tailings, rock dumps, deleterious material or substances, and other waste produced from the operations to prevent impacts that would violate applicable Federal or state laws.[147] Proper disposal of mining wastes means that all such material must be identified in advance, placed in locations to minimize the potential for environmental impact, and reclaimed in a manner that maximizes the long-term stability while eliminating or minimizing the formation and release of deleterious leachate. Appropriate management practices for these waste materials are discussed under other sections of the performance standards, and at length in the BLM's *Solid Minerals Reclamation Handbook,* H-3042-1. There are a number of technical reference materials available on the management of mine waste.

5.3.3 Performance of Reclamation

All operators are required to reclaim disturbed areas in accordance with the performance standards[148] and their approved reclamation plans. "Reclamation" is defined at 43 CFR 3809.5 as:

> [t]aking 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:

[147] 43 CFR 3809.420(b)(2).
[148] 43 CFR 3809.420(b)(3).

- Isolation, control, or removal of acid-forming, toxic, or deleterious substances;
- Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;
- Rehabilitation of fisheries or wildlife habitat;
- Placement of growth medium and establishment of self-sustaining revegetation;
- Removal or stabilization of buildings, structures, or other support facilities;
- Plugging of drill holes and closure of underground workings; and
- Providing for post-mining monitoring, maintenance, or treatment.

5.3.3.1 Timing of Reclamation

Reclamation is required at the earliest feasible time and must address impacts to Federal lands that are both directly and indirectly attributable to the project. The "earliest feasible time" provision means that reclamation must be accomplished as soon as feasible without interfering with planned future operations. Plans for such anticipated future operations must either be under actual review or in active development. Areas may not be withheld from reclamation because future development may be possible given some yet-to-occur technical or economic change.

The only exception to the "earliest feasible time" provision is that areas with evidence of mineralization may be left unreclaimed to support the claimant's contention of a "discovery of a valuable mineral deposit" as required under the Mining Law. However, this does not mean such discovery areas are exempt from reclamation. Reclamation of the discovery area must be included in the reclamation plan and covered by the reclamation financial guarantee. Management of disturbance areas left unreclaimed to preserve evidence of mineralization must be addressed by the Interim Management Plans, when applicable (see Section 4.3.2.5 Interim Management Plan).

5.3.3.2 Reclamation Elements

The following are the basic elements of a reclamation plan. The BLM will verify that the reclamation plan contains information about each of these aspects of reclamation, as applicable.

5.3.3.2.1 Saving Topsoil

Topsoil, or growth medium, must be salvaged in advance of construction of mine facilities and placed in a location where it will be preserved for future use. It is often desirable to salvage soil in two lifts, separating the topsoil from the subsoil. A soil survey and salvage plan prepared in advance of construction is recommended to ensure efficient soil salvage and guarantee the needed quantities are obtained for reclamation. Sometimes reclamation plans will call for

hauling salvaged soil from a new construction area and placing it directly on a previously disturbed area, thus avoiding stockpiling and double-handling.

During exploration road construction, the soil is stockpiled as part of the sidecast. Pulling up the sidecast during reclamation recontouring may be sufficient to replace the soil profile and support revegetation. Soil stockpiled in the sidecast may need to be stabilized with interim seeding or other erosion controls.

5.3.3.2.2 Erosion, Landslides, and Runoff

The reclamation plan must also address erosion control through various means including, reshaping the disturbed area, conveyance of runoff water, and establishment of vegetation.

Reshaped or regraded disturbance must achieve a stable configuration. The BLM should ask the operator to provide an engineering evaluation when slope stability is uncertain or a slope failure would result in significant environmental or safety impacts.

Regraded waste rock dumps and heap leach piles must be reduced to a slope considerably less than the angle of repose in order to form a base that will support growth medium without slippage or excessive erosion and to support vegetation. If a barrier-type reclamation cover is to be used that involves placement of a synthetic liner, the operator should determine the allowable steepness of the reclaimed slope through a geotechnical analysis to ensure the slope configuration will be stable.

Post-reclamation runoff or run-on control structures must be incorporated by the operator into the overall reclamation plan and built to accommodate flows from the design storm event. Inadequate consideration of the runoff area(s), control designs, or improper runoff management procedures, can cause cascading downgradient reclamation failures that may seriously affect the overall reclamation success.

Rock faces left in pit highwalls and where road cuts are left for post-reclamation access, cannot have slopes steeper than vertical (overhanging).

5.3.3.2.3 Isolate, Remove, or Control Toxic Materials

The reclamation plan must address how the operator will deal with potentially toxic materials. Such material may be isolated from mobilizing agents such as air and water, removed to an alternate location where isolation or treatment can be achieved, or controlled through a variety of treatment or mitigating measures.

Isolation includes measures such as covering or burying to prevent materials from becoming windborne or to limit contact with precipitation. Isolation also includes prevention of run-on waters from entering the toxic material, mobilizing contaminants, and causing a release to the environment. Diversion of run-on waters is especially important for reclaimed heaps or waste rock in order to avoid creating large additional volumes of contaminated leachate that then require special handling or treatment.

It may also be necessary to have certain materials removed from the site for treatment and disposal. Lab wastes and sludge from process ponds are two examples of materials that may not be suitable for onsite disposal. Certain tests[149] are available to determine if the material requires special handling or disposal.

Sometimes control of toxic materials may be done with onsite treatment. Examples include the treatment of leach pad waters with hydrogen peroxide, the removal of metals from acid rock drainage (ARD) with lime precipitation, or the encapsulation of certain sludges in concrete or synthetic materials. Treatment using active, passive, or semi-passive treatment systems can all be part of reclamation.

5.3.3.2.4 Reshaping, Soil Placement, and Revegetation

Part of reclamation is regrading and reshaping, including pit backfilling, and the closure of surface openings to underground mines. Where the stability of the final proposed design is open to question, the operator will be required to provide an engineering analysis which clearly shows a stable slope design.

Topsoil application must achieve the desired soil thickness. Soil compacts during placement, or is unevenly distributed, and a 12-inch soil lift ends up being 8-10 inches when checked after revegetation. Soil also needs to be checked for fertility and viability. Soil left in stockpiles for only a few years may lose the majority of the necessary microorganisms to support the nutrient cycle and should to be tested and possibly treated prior to use.

Revegetation by itself is a complicated science. It becomes even more complicated when combined with mine waste management goals of limiting infiltration and reconstructing the soil profile. To the extent practical, native plant species should be used to facilitate future multiple use objectives and promote healthy landscapes (Integrated Vegetation Management Handbook, H1740-2).

Several approaches can be used to address the revegetation standard. One option is to establish a reference area on a similar slope and aspect to test the revegetation performance goal. The reference-area approach works well where the vegetation to be planted is the same species or type as present in the reference area.

Another approach is to use a simple plant density or diversity criteria. These criteria can be established during the Plan review and approval process (generally not needed for a Notice).

A third option is to simply use professional judgment when examining the vegetation to make sure it is self-sustaining while looking for signs of plant stress or weed infestations. This approach is probably the most appropriate for Notice-level projects or where the area to be reclaimed has favorable soil and moisture characteristics, making revegetation success likely.

[149] EPA-1312 Leach Method, Synthetic Precipitation Leach Procedure, Toxicity Characteristic Leaching Procedure, and Meteoric Water Mobility Procedure.

Usually at least two to three growing seasons are needed before a final evaluation can be made regarding vegetation reestablishment. Weed control and supplemental infill seeding may be required for even a longer period on difficult sites.

5.3.3.2.5 Mine Pit Backfilling

Backfilling of an open pit may be appropriate in certain circumstances. Any pit backfilling, whether proposed by the operator or required by the BLM, needs to be thoroughly evaluated. While there is no set formula for how to consider the feasibility of pit backfilling, the BLM must weigh the costs, impacts, and difficulties of pit backfilling with the anticipated environmental benefits in order to determine the appropriate amount of pit backfilling to meet the performance standards. Generally speaking, backfilling for only aesthetic benefits is hard to justify. The BLM must be cautious when requiring backfilling to the extent that the backfilling may foreclose the financial viability of the operation.

The following are some factors relative to pit backfilling as a performance standard to consider when assessing operating and reclamation plans:

- Economic - The relatively high cost of backfilling may reduce the proposed mine life or preclude mining the deposit altogether. Even where economically feasible for the operation under review, backfilling may reduce or preclude the viability of any remaining subeconomic mineralization left at the end of mine life. Backfilling could cause future mining of the underlying resource to remain uneconomic even if commodity prices were to later increase.

- Engineering - Certain engineering limitations may affect the technical feasibility of pit backfilling. Due to swell, not all material extracted from a pit can be put back in the pit. This may constitute as much as one-third of the mined rock. Nor can unconsolidated rock necessarily be placed back in the pit in the same configuration as the original consolidated bedrock existed before it was mined. .

- Water Quality - Covering reactive sulfide material in the pit floor or wall by backfilling can help prevent the formation of ARD. Conversely, placement of reactive mine waste near or below the water table may result in less effective source control of acid-forming materials and degrade groundwater or adjacent surface water.

- Runoff Control - Even partial backfilling can be used to create a surface that promotes runoff flow out of the pit area. This limits the accumulation of stagnant water and prevents infiltration of water into underlying mineralized zones where it could impact the groundwater system.

- Pit Lake Control - The amount and placement of backfill relative to the static water level can determine whether, and to what extent, a pit lake forms. The BLM must evaluate whether a pit lake is desirable on a case-by-case basis. In addition, sub-aqueous placement of reactive mine waste is one approach to controlling sulfide oxidation. Pit

lakes can serve as enhancements to wildlife habitat in certain situations where acceptable water quality can be maintained.

- Revegetation - Pit backfill can create a workable surface for placement of cover soil and establishment of vegetation in areas that otherwise would not be vegetated. Disposing of mine waste as pit backfill minimizes the overall mine disturbance area, especially where it can be done concurrently with mining operations.

- Safety - Pit backfilling can eliminate or reduce physical hazards to the public, livestock, and wildlife posed by pit highwalls or pit lakes. Conversely, backfilling operations may increase risks to employees where highwalls are subject to rock falls or slope failure.

- Aesthetics - Backfilling can improve post-mining aesthetics by recreating, in whole or part, the original topography and eliminating the visual effects of highwall benches.

- Potential Environmental Impacts - Backfilling operations will have their own set of potential impacts to air quality, noise levels, wildlife, and aesthetics due to equipment operation. If backfilling does not begin until the end of mine life, such impacts may be similar in duration to that of the mining operation. Reclamation of mine waste units to be used as a backfill sources may need to be delayed until the end of operations, thereby limiting concurrent reclamation.

5.3.3.2.6 Fisheries, Wildlife, and Plant Habitat

The operator is required to rehabilitate or repair damage caused to fisheries or wildlife habitat.[150] This may require reconstruction of certain landforms or planting of specific vegetation types during reclamation.

The requirement to rehabilitate fisheries and wildlife habitat does not always mean the exact same habitat that was present pre-disturbance must be reestablished upon completion of mining activities. The general intent is for this standard to be applied on a broad basis when large-scale landscape alteration is involved; however certain types of mining, such as placer mining, should always include measures to rehabilitate fisheries and wildlife habitat given its potential effect on instream and riparian habitats.

This standard allows for a change in fisheries or wildlife habitat type without requiring a restoration of the *original* habitat provided that the overall effect on fisheries or wildlife is in accordance with BLM policy (e.g., Aquatic Resource Management Policy 6720) and 43 CFR 3809.420. For example, construction of a tailings impoundment that resulted in the development of riparian habitats could be replaced with non-riparian habitats reclamation, but should be consistent with surrounding upland vegetative communities. Conversely, fisheries habitats altered by placer mining operations should be rehabilitated to provide a stable channel form with adequate vegetation to reduce erosion, dissipate stream energy, and promote the recovery of

[150] 43 CFR 3809.420(b)(3)(ii)(e).

instream habitats similar to levels which were present prior to mining and consistent with BLM policy.

5.3.3.2.7 Notification of Reclamation Completion

The operator must notify the BLM when reclamation in part or all of the project area has been completed so that the BLM may inspect the area.[151] After the BLM receives notification from the operator, the BLM will verify reclamation has or is being conducted according to the reclamation schedule in the Notice or Plan of Operations and will take corrective action early if the reclamation work is not adequate.

5.3.4 Air Quality

All operators must comply[152] with applicable Federal and state air quality standards, including the Clean Air Act.[153] The BLM does not make direct determinations that a particular Notice or Plan of Operations will or will not comply with air quality standards, or even whether an air quality permit is required for the operation. Such legal conclusions are the responsibility of the respective permitting authority.

The BLM may require operators to demonstrate they have the required air quality permits for their operations by providing copies of the permits or certifications from the permitting authorities.

Although the BLM does not permit air emissions, the BLM must analyze the potential impacts to air quality in the NEPA document prepared for a Plan of Operations. In addition, the BLM should conduct the Plan review and environmental analysis in conjunction with the state or Federal regulatory authority that is responsible for permitting under the Clean Air Act.

5.3.5 Water Quality

All operators must comply[154] with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended.[155]

Meeting the performance standards for water quality is similar to the process discussed above for air quality. Most states have groundwater protection requirements as well as delegated authority to enforce the Clean Water Act and issue National Pollutant Discharge Elimination System (NPDES) permits. The BLM must analyze potential impacts to water quality in the environmental analysis document prepared for the Plan of Operations. The BLM can independently require mitigation measures affecting water quality under its FLPMA authority and consistent with applicable land use plans. Where state regulations are absent or incomplete,

[151] 43 CFR 3809.420(b)(3)(iii).
[152] 43 CFR 3809.420(b)(4).
[153] 42 U.S.C. 1857 *et seq.*
[154] 43 CFR 3809.420(b)(5).
[155] 30 U.S.C. 1151 *et seq.*

and measures are needed to address potential impacts to groundwater, measures must be developed during the Notice review or Plan approval.

The best approach to ensure that operators meet water quality standards is to include the corresponding state or Federal water quality permitting agency in the review and/or approval process for the Notice or Plan of Operations. This approach allows the BLM to evaluate potential pollution sources and controls in the mine plan simultaneously with treatment options and effluent limits in order to verify that the applicable agency has determined that the operator is meeting the water quality standards. Alternatively, certification from the state or Federal water quality permitting authority can serve as evidence that the proposed operation is expected to comply with applicable water quality standards.

5.3.6 Solid Waste

All operators must comply with applicable Federal and state standards for the disposal and treatment of solid wastes,[156] including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA).[157]

Mining waste (waste from the extraction and beneficiation of ore) is exempt from regulation under RCRA[158] as a hazardous waste (Bevill-exempt); although, it is still subject to regulation under the state and Federal mining and reclamation requirements. There are also some wastes that are not exempt from RCRA regulation that do occur at mining operations. These include laboratory wastes, wastes from water treatment plants, or certain smelter wastes. To classify a particular waste stream for purposes of evaluating the Plan or Notice, the BLM requires that the operator follow the testing procedures and legal determinations found in 40 CFR 264.

A variety of garbage or refuse is generated by even a small mining operation. Examples include trash from day-to-day activity, office waste, broken equipment or parts, shipping containers, reagent containers, and used oil or lubricants.

Used or inoperable equipment, parts, or reagent containers must be removed by the operator and not stored or disposed of onsite. It may be acceptable for certain inert wastes such as wood, cardboard, or paper to be disposed of by onsite burial in a pit or waste rock dump. However, such disposal must be included in the Notice or Plan and has to be covered by the appropriate state or county permits.

The operator must periodically remove petroleum waste products, such as used oil, hydraulic fluids, old fuel, etc., from the site and send the waste to the appropriate recycling center or disposal facility. The operator is not to dispose of used petroleum products by applying them on disturbance areas for control of dust. Generally, used tires are not to be disposed of onsite.

[156] 43 CFR 3809.420(b)(6).
[157] 42 U.S.C. 6901 *et seq.*
[158] 42 U.S.C. 6921(b)(3)(A)(ii).

5.3.7 Fisheries, Wildlife and Plant Habitat

The operator must prevent adverse impacts to Federal threatened or endangered species and their habitat that may be affected by operations in the proposed Plan or Notice.[159] This performance standard does not give the BLM authority to create an independent process for determining whether species or habitat will be "adversely impacted" by mining operations; rather, the BLM will rely on the regulatory requirements under the Endangered Species Act (ESA) to determine if the operator is meeting this performance standard.

If the BLM determines that the operation may affect a listed or proposed species or designated or proposed critical habitat, consistent with BLM Manual 6840, the BLM should prepare a Biological Assessment and initiate consultation or conferencing with the U.S. Fish and Wildlife and/or the National Marine Fisheries Service under Section 7 of the ESA. The operator may request "applicant" status, in which case they would be afforded the opportunity to be involved in the ESA conference or consultation process if the action that requires approval or authorization by the BLM may affect federally threatened, endangered, or proposed species. See the BLM Manual 6840 "Special Status Species", Section .1.F.8 for a more complete discussion of applicants pursuant to Section 7(a)(2) of the ESA. The BLM's approval of the Plan must include a requirement that the operator must follow any reasonable and prudent measures and associated terms and conditions that are issued in the incidental take statement that accompanies the Biological Opinion issued by the Services.

Consultation is not required for Notice-level operations. However, if threatened or endangered species or their critical habitat is present in the project area, a Plan of Operations may be required instead of a Notice, unless the BLM allows for other action under the applicable land use plan or recovery plan.[160] Consequently, when processing a Notice, the BLM should inform the operator of threatened or endangered species or habitat in the project area, and inform the operator about the requirements under Section 7 of the ESA.

5.3.8 Cultural and Paleontological Resources

5.3.8.1 Disturbance of Resources

Operators must not disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building, or object on Federal lands.[161] This standard refers to cultural and paleontological resources identified prior to the initiation of surface-disturbing activities. It should not be misinterpreted to mean that cultural and paleontological resources can never be disturbed.

To comply with the standard for cultural resource protection, the operator is not to disturb such resources prior to the BLM completing the required consultation under Section 106 of the NHPA. As a result of consultation under Section 106, the operator may be required to follow certain site-specific mitigating measures.

[159] 43 CFR 3809.420(b)(7).
[160] 43 CFR 3809.11(c)(6).
[161] 43 CFR 3809.420(b)(8).

Operators are not to disturb any scientifically important paleontological remains until the BLM completes an investigation and recovery of the resource. Scientifically important paleontological remains may be vertebrate or invertebrate, and include any one or more of the following:

- Uniquely well-preserved specimens of educational or research value.
- Specimens that fill in evolutionary gaps in the paleontological record.
- Fossils of previously unknown life forms.
- Fossil remains of all vertebrate species.

5.3.8.2 Pre-Disturbance Inventory

As noted in 43 CFR 3809.401(c)(1), the operator must provide the inventory of cultural and paleontological resources needed to process a Plan of Operations. The BLM is responsible for providing the necessary inventory in advance of activities conducted under a Notice. An on-the-ground inventory is not mandated for all projects. The BLM specialists will provide input as to the level of inventory required in a particular project area prior to surface disturbance.

5.3.8.3 Resources Discovered After Operations Begin

If, after the commencement of surface-disturbing activities, the BLM or the operator discover resources that were not noted in the earlier surveys, the operator must immediately cease surface disturbing activities near the find and notify the BLM District/Field Manager of any potential cultural and/or paleontological resources on Federal lands that might be altered or destroyed by continued operations.

The operator must leave such discovery intact until receiving written notice to proceed from the District/Field Office. The District/Field Manager will evaluate the discoveries brought to his or her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the District/Field Office of such discovery, unless alternative arrangements are negotiated with the operator. If the resources discovered are objects subject to the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), then operations can be suspended for 30 days.[162]

Discoveries of cultural resources eligible for listing on the National Register, remains under NAGPRA, or paleontological resources of significant scientific value, may be cause for the BLM to negotiate with the operator for additional time to conduct protection or recovery activities.

5.3.8.4 Financial Responsibility

The BLM has the responsibility and must bear the cost of investigations and salvage of cultural and paleontological resources discovered after a Plan of Operations has been approved, or where

[162] 43 CFR 10.4(d)(2).

a Plan is not involved.[163] This particular standard does not require the BLM to fund or complete within a certain time limit the cultural resource inventories required in advance of surface disturbance before the Plan of Operations is approved.

5.3.9 Protection of Survey Monuments

The performance standard on protection of survey monuments[164] consists of the following two requirements:

- Operators must not damage survey monuments (including witness corners, reference monuments, bearing trees, and line trees) without receiving prior authorization from the BLM. The BLM may authorize the removal or alteration of survey monuments if removal or alteration is determined necessary to conduct operations. Such authorization will be made to the operator in writing and prescribe the requirements for the restoration or reestablishment of such monuments.

- If in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged, the operator must immediately report the matter to the District/Field Office. Operators must restore or reestablish any survey monuments or corners that they remove or damage, even accidentally, in accordance with the written directions provided by the District/Field Manager.

5.3.9.1 Restore or Reestablish Survey Monuments

Where the proposed activity may disturb Public Land Survey System (PLSS)/Cadastral Survey corners (or has already done so), the operator is responsible for the cost of restoring or reestablishing the corners as necessary. The State Office Cadastral Survey Section, through in-house personnel, contract personnel, and contributed service agreements, or a registered professional land surveyor, can provide the necessary work.

The following performance standards and guidelines are to be provided, as applicable, to the operator by the District/Field Manager when making a determination requiring the restoration or reestablishment of survey monuments:

- The PLSS/Cadastral corner monument(s) must be the base for locating reference monuments.

- The section corner, quarter corner, or subdivision corner will be referenced prior to any monument disturbance. The BLM Geographic Coordinate Data Base (GCDB) will be utilized to assist in identifying corner monument locations.

- The establishment of "reference monuments" should be in accordance with the Manual of Surveying Instructions 2009. Referencing variations to the Manual are acceptable if

[163] 43 CFR 3809.420(b)(8)(iii).
[164] 43 CFR 3809.420(b)(9).

survey grade Global Positioning System (GPS) technology and standards are utilized, and the utmost regard to the fixed location of the corner monument is observed, as well as taking all steps necessary to provide for an efficient and accurate corner restoration process.

- Once referenced, a copy of the corner monument description(s) as well as a map at an appropriate scale showing and describing the reference monuments and their bearings and distance relationships to the corner monument, is to be submitted to the District/Field Office for acceptance and placed in the case file.

- The corner monument may be disturbed once referenced. If disturbance is simply monument burial, the monument may be left in place. If it is destruction or damage, the corner monument is to be removed and retained until restoration can take place.

- Once operations are complete, the removed corner monument(s) is to be restored back in the original location(s) from the established reference monuments in accordance with the current Manual of Surveying Instructions, its circulars and amendments.

- In the event a corner monument cannot be restored back to its original location or when it is impracticable to occupy its location (e.g., under water, rock cliff, swamp/marsh land, etc.), the restoration of a corner monument is not required and may be waived in writing by the authorized officer. The corner monument (stone/wood post/brass cap) is to be delivered to the District/Field Office for return to the State Office, Cadastral Survey Section.

- Prior to reclamation acceptance, the monument(s) restoration or reestablishment verification will be reviewed and approved in writing by the BLM District/Field Office and State Office, Cadastral Survey Section.

- Restoration or reestablishment of survey monuments is a component of reclamation and is subject to the financial guarantee requirements to ensure its performance. Restoration or reestablishment costs are to be included in the reclamation cost estimate.

5.3.10 Fire Prevention

Operators must comply with all applicable Federal and state fire laws and regulations, and will take all reasonable measures to prevent and suppress fires in the project area.[165] Operators working under a Plan of Operations may be required to incorporate certain fire control measures into their operations. Such measures could include maintaining fire suppression equipment, construction of firebreaks around the operations, and removal of slash piles that constitute a fire hazard. Mining operations that exercise standard care in fire prevention probably do not require special restriction as to operating hours.

Operators working under a Notice may be required to comply with all fire restrictions that apply to other public land users. This includes restrictions on off-road travel, operating hours, open

[165] 43 CFR 3809,420(b)(10).

flames, spark arrester requirements for equipment, and requirements to carry fire suppression equipment.

Operators working under either a Notice or Plan may be held financially responsible for fires caused by their activities.

5.3.11 Acid-Forming, Toxic, or Deleterious Materials Management

The operator must incorporate identification, handling, and placement of potentially acid-forming, toxic, or other deleterious materials into the operation procedures, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate.[166]

The Plan or Notice must state how the operator will identify, handle, treat, and reclaim all acid forming, toxic, or other deleterious material during all phases of the operation. Such measures must be integrated into the mine plan and not left for later consideration. Successful performance of this standard includes taking reasonable measures to identify such materials both in advance of, and concurrent with, mining.

Determining whether rock or overburden materials require special handling is based on a variety of tests (acid-base accounting, humidity cells, leachate extraction tests, whole rock analysis, etc.). While standard protocols are available for most tests, a final determination as to the acid generating character of the material requires evaluating the test results against site-specific environmental and mineralogical conditions under a specific mine plan. There are no established testing criteria to determine whether acid generation will or will not be an issue without also considering the site-specifics of the particular mine plan. For example, rock with a net acid generating potential greater than 20 could present no problem in a dry underground mine, but might require extensive special handling at an open pit mine in a wetter environment. Consult the BLM's Reclamation Handbook for an overview of the ARD issue and a list of references on ARD evaluation.

5.3.11.1 Source Control

The operator 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.

As a performance standard the operator must make a good faith effort to use all reasonably applicable technology to keep mine waste from generating leachate that could cause environmental impacts. The primary environmental controls that must be used are methods that will stop or minimize the formation of deleterious leachate.

[166] 43 CFR 3809.420(b)(11).

For potentially acid forming materials this standard could require that such materials be either:

- Mixed with acid-neutralizing materials or additives.
- Treated to stop or slow the acid generating reactions.
- Placed away from potential contact with surface or ground waters.
- Covered to limit or prevent the infiltration of precipitation.
- Some combination of the above.

Operators generating other mine wastes that could generate alkaline or metal-bearing leachate are required to apply similar source control measures to meet this performance standard.

5.3.11.2 Migration of Mine Drainage

To the extent that the operator cannot prevent the formation of acid, toxic, or other deleterious drainage, they must minimize migration of leachate. The standard recognizes that it is not always possible to totally prevent the formation of acid, toxic, or other deleterious drainage. When this occurs, measures must be taken to keep reaction products from migrating out of the mine waste and into the environment. Some environmental control measures that the operator might need to use to meet this performance standard include:

- Diverting run-on water or penetration of meteoric water to keep it from entering and mobilizing reaction products.
- Installation of capillary breaks to prevent upward migration of reaction products.
- Diverting or drawing down groundwater to keep it from migrating through the mine waste.
- Some combination of the above.

5.3.11.3 Capture and Treatment

The operator must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. The performance standard recognizes that when it is not possible to prevent the formation or migration of leachate or effluent, the operator must capture and treat it to meet the applicable water quality standard. While complete capture of seepage is not always possible, the treated discharge, when mixed with the un-captured leachate, must meet the applicable effluent limit at the point of compliance.

Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control; and the operator may rely on them only after all reasonable source and migration control methods have been employed. While capture and treatment can be highly

effective at limiting environmental impacts, in order to meet this performance standard, the operator must first apply source and migration control measures to the mining and reclamation plans in order to minimize treatment needs. Operating plans that propose to "treat water if necessary" must include source control measures to satisfy this performance standard.

Water treatment systems can include active, passive, or semi-passive approaches. In addition to requiring approval during the Plan of Operations review process, water treatment systems must comply with any separate authorizations from the state or Federal permitting authority and require an NPDES permit where discharging to surface water. Water treatment systems must be operated and maintained in compliance with all state or other Federal standards.

All treatment systems generate some waste product, whether it is sludge, liquid concentrate, or solid waste residue. Measures for removal, stabilization, control, and reclamation of waste products from water treatment systems must be integrated in the operating and reclamation plans. Disposal and reclamation of waste product must achieve long-term stability in the post-reclamation environment and in conformance with applicable state and Federal environmental standards.

The operator is responsible for any costs associated with water treatment or facility maintenance after project closure. To make sure the operator meets all responsibilities to cover all costs associated with water treatment or facility maintenance after mining has ceased, the District/Field Office may consider establishing a long-term trust fund under 43 CFR 3809.552(c). See Section 6.3 Types of Financial Guarantees, for further discussion on trust funds.

5.3.12 Leaching Operations and Impoundments

This performance standard applies to process waters in leach pads, vats, ponds, or tanks and the associated solution circuit for all types of solution mining.[167] The standard applies to tailings impoundments, holding ponds, reagent mixing ponds, or other process solution and wastewater containment structures.

5.3.12.1 Design and Operating Requirements

The operator must design, construct, and operate all leach pads, tailings impoundments, ponds, and solutions-holding facilities according to standard engineering practices so as to achieve and maintain stability and facilitate reclamation.

One method to ensure this standard is met is for the operator to have the facility designed by a licensed professional engineer, with construction oversight and verification by an engineering firm using standard quality assurance procedures. A stability analysis should be performed as part of the design evaluation using acceptable engineering standards for structures in that particular seismic region.

[167] 43 CFR 3809.420(b)(12).

In order to facilitate reclamation, ore heaps and tailing impoundments will be designed so that the transition from operation to reclamation can be easily accommodated. For example, an ore heap proposed to be regraded on the leach pad liner at a 3H:1V slope does not facilitate reclamation if it is loaded at a 2H:1V slope up to the margin of the leach pad. The extra material either has to be off-loaded, an expensive and time-consuming process, or the liner has to be extended along the perimeter at closure.

5.3.12.2 Liners and Leak Prevention

The operator must have a low-permeability liner or containment system designed and constructed that will minimize the release of leaching solutions to the environment. The operator must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs. While a large volume of technical material (see BLM *Solid Minerals Reclamation Handbook*, H-3042-1) has been written on how to design, build, and operate leaching facilities or tailings impoundments, this performance standard emphasizes some basic requirements.

The operator must construct such facilities with a low permeability liner or containment system. The standard is met when the release of leaching solutions to the environment has been minimized using the best available technology.

The operator must monitor for the release of leaching solutions. Such monitoring can be accomplished by placing monitoring devices beneath or between the heap, pond, or tailing impoundment liner system or by adjacent monitoring wells or lysimeters. Environmental impacts caused by the leakage or seepage of process or waste solutions must be remediated in order to satisfy this performance standard.

5.3.12.3 Containment Requirements

The operator 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. The containment must include allowances for snowmelt events and draindown from heaps during power outages in the design.

The 100-year, 24-hour storm event is a site-specific standard. Obtaining precipitation data for the project area, or extrapolating the design event based on existing data, is a critical step in establishing the design criteria at the project locale in order to meet this performance standard.

The facility layout must route upgradient run-on waters around or under the process or wastewater facility so the precipitation does not enter the containment system during the design storm event. Ideally, the only water entering the system would be from direct precipitation. Modeling of precipitation, evaporation, water loss, and the addition of make-up water should be conducted to determine the amount of storage available throughout the anticipated life of the mine facility.

Once all additions and losses are accounted for, predictions can be made comparing the remaining freeboard[168] with the design storm event and a determination made whether the operation would meet this performance standard. Land application disposal of process solutions will not be relied upon to satisfy the 100-year, 24-hour storm event containment requirements in this performance standard.

Vats, tanks, pipes, or other parts of the process circuit may break or leak. These components can contain high concentrations of leaching solutions or process reagents that if released could create significant impacts. The operator must construct a secondary containment system around vats, tanks, or recovery circuits that can retain the anticipated maximum amount of solution from a leak or failure, thereby preventing the release of toxic solutions to the environment. Secondary containment can be achieved by incorporating berms or lined areas around these facilities. Generally, secondary containment areas are designed to contain 110 percent of the maximum volume of solution that would be released from a leak or failure.

5.3.12.4 Solution Access

The operator must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide, metals, acidity, or other constituents in solution. All fencing and signing to exclude the public must supported by the materials required by 43 CFR 3715.3-2 and be approved under 43 CFR 3715.3-4.

This may be accomplished by fencing, netting, or enclosure to meet this performance standard. It should be noted that hazing methods, such as using loud music to scare aware water fowl, have not proven totally effective at preventing waterfowl from coming in contact with leaching solutions.

What constitutes “lethal levels of cyanide or other solutions” under the regulations is difficult to determine. This performance standard was initially developed in response to migratory bird deaths from open ponds containing cyanide. Few bird deaths have been observed where cyanide solutions contain less than about 20 parts per million of free cyanide. While this should not be considered a definitive standard, it may be useful to identify the issue for further evaluation. Other constituents in solutions may also pose a threat to the public, livestock, or wildlife.

Careful characterization of exposed solutions is needed in order to determine the extent which the operator is required to exclude access.

5.3.12.5 Solution Detoxification

In order for reclamation to be considered complete, operators must have detoxified leaching solutions and spent ore heaps to the applicable regulatory criteria and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Often there is a state standard that determines the detoxification requirement. The detoxification criterion should be established during the Plan of Operations approval process. If

[168] The distance between normal water level and the top of a structure, such as a dam, that impounds or restrains the water.

no standards have been developed in advance for the project, then detoxification must reduce cyanide content to levels where discharge would be in compliance with the applicable water quality standards.

Acceptable practices to detoxify solutions and materials include natural degradation, freshwater rinsing, chemical treatment, biological degradation, or equally successful alternatives methods. While active treatment of cyanide using reagents such as hydrogen peroxide or hypochlorite are effective, consideration should be given to the potentially deleterious by-products when compared to natural degradation. Upon completion of reclamation, all materials and discharges must meet applicable effluent standards.

5.3.12.6 Temporary or Seasonal Closure

In cases of temporary or seasonal closure, the operator must provide adequate maintenance, monitoring, security, and financial guarantee. The BLM may require the operator to detoxify process solutions, particularly in locations accessible to the public, livestock, or wildlife.

To meet this standard, the operator must maintain a presence onsite as long as toxic solution levels are present. The operator must maintain liners, fences, and netting in good repair, continue monitoring of the leak detection systems, maintain site security to prevent public access, and keep in place the financial guarantee amount needed to complete any remaining reclamation obligations, including detoxification of process solutions.

If the operator does not plan to continue site maintenance, monitoring, and security, then the process solutions must be detoxified before the temporary or seasonal closure (see Section 4.3.2.5 Interim Management Plans and Chapter 7 Cessations and Abandonment).

5.3.13 Maintenance and Public Safety

During all mine operations, the operator is responsible for maintaining the structures, equipment, and other facilities in a safe and orderly manner.[169] Hazardous sites or conditions resulting from operations have to be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.

The proposed Plan or Notice must contain specific measures that may be needed to maintain public safety, including controlling site access, fencing, and signing of hazardous solutions, and placement of fences, barriers or berms along the top of pit highwalls. Fencing, signing, or placing access restrictions around mine openings may also be needed to protect public safety. The operator must obtain concurrence for these access restrictions under the 43 CFR 3715 regulations in addition to obtaining acceptance or approval of their placement under the 43 CFR 3809 regulations.

All site facilities and visitors must comply with safety requirements of the Mine Safety and Health Administration (MSHA) and the corresponding state safety agency and applicable BLM safety guidance (see BLM Handbook *Safety and Health Management,* H-1112-1, and *Safety and Health for Field Operations,* H1112-2).

[169] 43 CFR 3809.420(b)(12).

Chapter 6 Financial Guarantees

This chapter covers operator and BLM responsibilities for establishment, maintenance, termination, and forfeiture of financial guarantees under 43 CFR 3809.500 through 3809.599. The regulations at 43 CFR 3809 use the term "financial guarantee" in reference to the contracted document and any financial instrument used to guarantee that the operator will perform reclamation required by the regulations.[170] The surface management regulations that were in effect before January 20, 2001, used the term "bond" to describe such legal and financial instruments.

This handbook does not cover the adjudicative responsibilities and procedures for processing, accepting, rejecting, obligating, and maintaining financial guarantees. See BLM Handbook H-3809-2, *Surface Management Bond Processing,* for guidance on the adjudication process.

6.1 Financial Guarantee Requirements

The financial guarantee requirements differ depending on the level of activity, type of authorization, and time the authorization occurred. Figure 6.1-1, *Financial Guarantee Process*, flowcharts the main steps in posting a financial guarantee. The financial guarantee requirements also apply to all operations authorized by the Mining Law on public lands where the mineral interest is reserved to the United States.[171]

6.1.1 Pre-January 20, 2001, Notices

For Notices that were filed with the BLM before January 20, 2001, and had not been modified under 43 CFR 3809.330 or 3809.331, or extended under 43 CFR 3809.333, the operator was not required to provide BLM with a financial guarantee for that operation.

6.1.1.1 Extended Notices

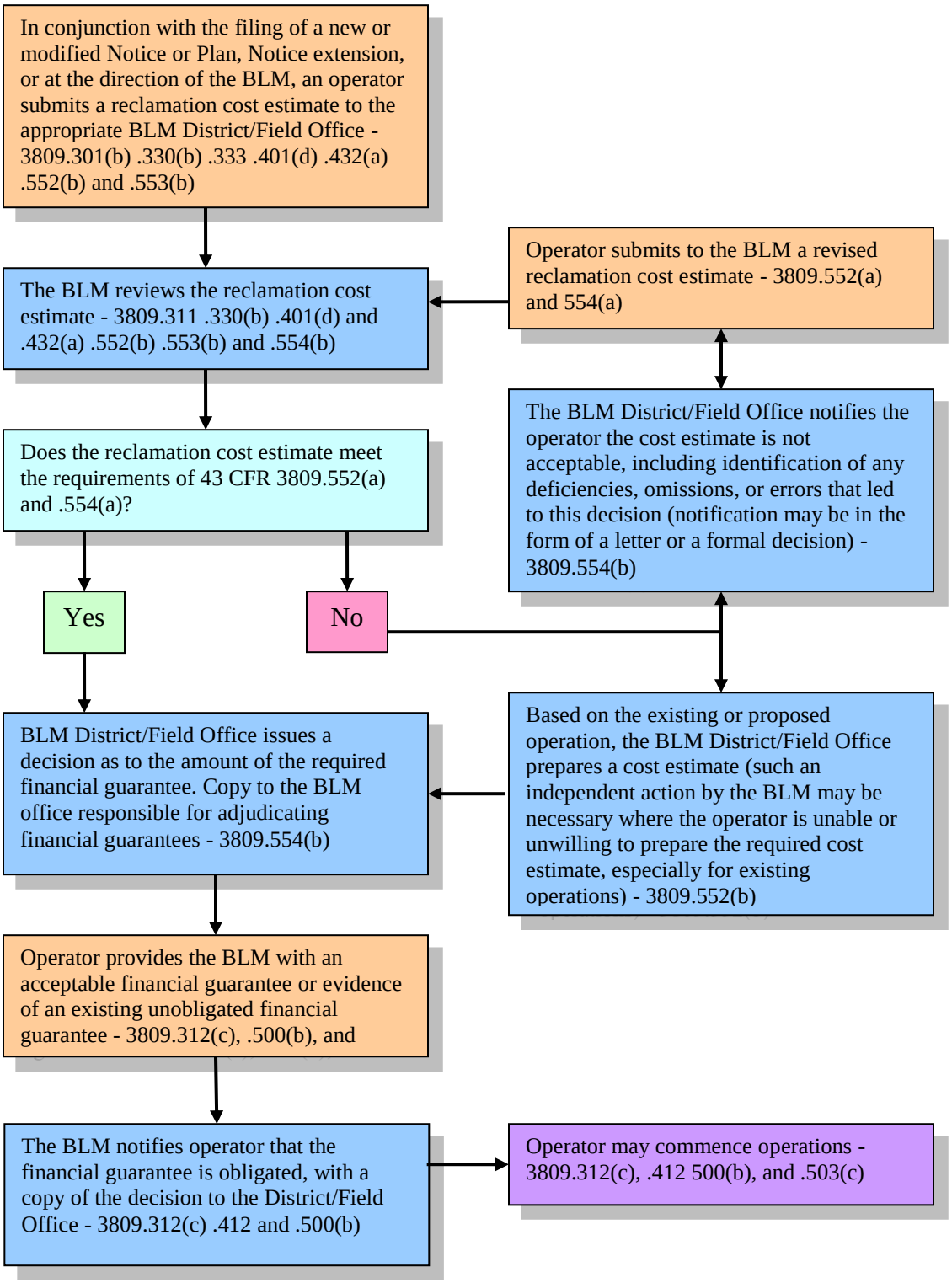
Notices that were filed with the BLM before January 20, 2001, may have been extended under 43 CFR 3809.333; as part of that extension request, the operator must have provided an acceptable reclamation cost estimate (RCE) that met the requirements of 43 CFR 3809.552(a) and 3809.554(a). The operator must have provided the BLM with an acceptable financial guarantee for the entire Notice that met the requirements of the current regulations.

6.1.1.2 Expired Notices

If an operator chose not to extend a pre-January 20, 2001, Notice under 43 CFR 3809.333, no financial guarantee was required, but the operation must have been reclaimed. An operator's reclamation obligations continue beyond the expiration or any termination of the Notice until all reclamation requirements are satisfied.

[170] A financial guarantee consists of BLM Form 3809-1, Surface Management Surety Bond, or BLM Form 3809-2, Surface Management Personal Bond and the financial instrument that secures the personal bond.
[171] 43 CFR 3809.2.

Figure 6.1-1 - Financial Guarantee Process



6.1.1.3 Modified Notices

For Notices that were filed with the BLM before January 20, 2001, and have been modified under 43 CFR 3809.330 or 3809.331, the operator must have provided the BLM with an acceptable financial guarantee for the entire operation before continuing operations under the modified Notice. Any proposed modification must be accompanied by an estimate of the cost to fully reclaim the operation as required by 43 CFR 3809.552. The RCE and financial guarantee required for the operation under a modified Notice must have been for the entire Notice, not just the area of change.

6.1.2 Pre-January 20, 2001 Plans of Operations

For Plans of Operations approved prior to January 20, 2001, the operator must have provided the BLM with an acceptable financial guarantee that met the requirements of the regulations by November 20, 2001. A new financial guarantee was not required if a financial guarantee already existed that satisfied the regulations.[172]

6.1.3 Casual Use

Operators of activities that are considered by the BLM to be casual use are not required to provide the BLM with a financial guarantee. Casual use is defined at 43 CFR 3809.5 as activities ordinarily resulting in no or negligible disturbance of the public lands or resources.

6.1.4 New Notices

For Notices filed or modified with the BLM after January 20, 2001, the operator must provide an acceptable RCE that meets the requirements of 43 CFR 3809.552(a) and 3809.554(a). An acceptable RCE must be provided to the BLM for the Notice to be considered complete under 43 CFR 3809.301(b). Prior to commencing operations, the operator must provide the BLM with an acceptable financial guarantee. The financial guarantee must meet the requirements of the regulations as specified by 43 CFR 3809.551 through 3809.573.

6.1.5 New Plans of Operations

For all Plans of Operations filed or modified with the BLM after January 20, 2001, the operator must provide an acceptable RCE that meets the requirements of 43 CFR 3809.552(a) and 3809.554(a). The RCE should be submitted to the BLM at a time specified by the BLM. The operator must provide the BLM an acceptable financial guarantee prior to commencing operations. The financial guarantee must meet the requirements of the regulations as specified by 43 CFR 3809.551 through 3809.573.

[172] 43 CFR 3809.551 through 3809.573.

6.1.6 Compliance and Enforcement

Any decision concerning the need, amount, acceptability, and/or forfeiture of a financial guarantee is part of the BLM's compliance and enforcement program, and not an authorization to conduct operations. All decisions concerning the need, amount, acceptability, and forfeiture of a financial guarantee are subject to appeal under the provisions of 43 CFR 3809.800 through 3809.809.

6.2 Reclamation Cost Estimates

6.2.1 Operator's Estimate

6.2.1.1 New or Modified Operation

When submitting a new Notice or Plan of Operations,[173] the operator must provide the BLM with an RCE that meets the requirements of 43 CFR 3809.552(a) and 3809.554(a), and must be acceptable to the 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 District/Field Office with an estimate of the reclamation costs for all components of the existing and proposed operation that will be affected by the modification.

The operator should include detailed documentation on how the cost estimates were calculated, including cut and fill volumes, push distances, haul distances, and the source of the equipment costs, as part of the RCE. Although not required, the BLM should encourage the operators to submit the RCE both in hardcopy and in a standardized electronic format that could be easily updated with current costs by the BLM for future reviews.

6.2.1.2 Cost Estimate for Part of an Operation

Where the District/Field Manager authorizes an operator to provide the BLM with a financial guarantee under 43 CFR 3809.553 that covers only the current or proposed phase of the operations ("phased financial guarantee" or "phased bonding"), the operator must prepare an RCE for the phase of the operations to be covered by the financial guarantee. The RCE for a phased financial guarantee must conform to the same standards as the RCE for a financial guarantee for the entire operation. In addition to providing the cost estimate for the proposed phase, the operator must also prepare a separate RCE for all operations proposed in the Plan of Operations on public lands before surface disturbance can occur.

6.2.1.3 Long-Term Funding Mechanism

When a trust fund or other funding mechanism is required under 43 CFR 3809.552(c), the operator must provide the District/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

[173] 43 CFR 3809.301(b)(4) and 3809.401(d)

project when the cost obligations will occur. For recurring 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 by the long-term financial guarantee under 43 CFR 3809.552(c) should be documented separately from the RCE.

6.2.1.4 Assumptions and Conditions

The RCE must be based on the following assumptions and conditions:[174]

- The estimate must cover all relevant operation, maintenance, and administrative costs for all reclamation required under the filed Notice or approved Plan of Operations.[175] The cost estimate may however provide more reclamation details than is specified in the Notice or Plan.

- Costs must be estimated as if the BLM were hiring a third party contractor to perform all required reclamation.

- Costs must include the use of offsite equipment as if the project area was vacated, and the estimate must include all associated mobilization and demobilization costs.

- 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.

- 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.

- Labor costs must be based on federally mandated labor rates, as required by the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) and the Federal Acquisition Regulations (FAR), 48 CFR 22.403-1) for contracts over $2,000. If the reclamation is solely for the dismantling, demolition, or removal of improvements and no other actions, such as ripping or reseeding of the disturbance, are involved, then contracting is under the Service Contract Act (48 CFR 22.1002) and Davis-Bacon wage rates do not apply. If construction, alteration, or repair of the improvements is contemplated, even if such work is under a separate contract, then the Davis-Bacon wages apply.[176]

6.2.1.5 Maximum Reclamation Cost

The RCE 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

[174] 43 CFR 3809.552(a) and 3809.554(a).
[175] 43 CFR 3809.301(b)(4), 3809.401(d), 3809.552(a) and for extended Notices 43 CFR 3809.1-3(d).
[176] www.access.gpo.gov\davisbacon.

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.

6.2.1.6 Operating and Maintenance Costs

Reclamation operating and maintenance costs reflect the direct current costs of reclamation based on the filed Notice or approved Plan of Operations. Where applicable, reclamation costs should be estimated for the following closure tasks: interim operation and maintenance, hazardous materials treatment, water treatment, demolition, removal and disposal, earthwork, drill hole plugging, revegetation, mitigation, and post-reclamation operation, maintenance, and monitoring requirements.

6.2.1.6.1 Interim Operation and Maintenance

If an operator abruptly ceases and abandons operations, the BLM may contract with a third party to maintain the area of operation in compliance with applicable safety and environmental requirements. The RCE must include the cost of providing immediate site operation and maintenance, where appropriate.

Interim operation and maintenance costs may vary significantly depending on the individual site needs, and may include labor, equipment, and materials for pumping of fluids to prevent overflow of process ponds, costs for support equipment and electricity to operate the pumps, and site security. There is no set time period to use in estimating the costs for the care and maintenance of a site prior to the start of reclamation; much depends on the BLM's ability to obtain access to the financial guarantee, especially in bankruptcy cases. It is a good rule-of-thumb to allow for a minimum of 6 months of interim operation and maintenance by a contractor. Large operations or project areas with limited seasonal access may warrant a longer time period.

6.2.1.6.2 Hazardous Materials

The RCE must 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 materials are properly stored and labeled.

If upon site inspection, the BLM determines that the operator is using, producing, or storing material onsite that could be hazardous, e.g., unlabeled barrels, and if the BLM is unsuccessful in enforcing the operator's obligation under the Plan or Notice to properly manage those materials (operator has failed to comply with a BLM noncompliance order, see Section 9.2 Enforcement Actions), the BLM must update the RCE to reflect the potentially 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 not properly stored and identified.

6.2.1.6.3 Water Treatment

The RCE must identify all necessary construction and maintenance water treatment costs needed to ensure that mine discharge or drainage will meet relevant standards. 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).

6.2.1.6.4 Mine Facilities

The RCE must include the costs of demolition, removal, and disposal of all mine facilities, equipment, and materials from the project area. No salvage value for structures, equipment, or materials is allowed in the cost estimate.

The RCE must exclude disposal costs for those facilities that have been approved in writing by the BLM for post-reclamation BLM use.

The RCE may also exclude the removal and disposal costs for operable mobile equipment, e.g., trucks, dozers, etc., from the cost estimate. However, if the BLM determines during routine site inspections that the mobile equipment is inoperable and the operator refuses to repair or will not remove the inoperable equipment from the project area (operator has failed to comply with a BLM noncompliance order, see Section 9.2 Enforcement Actions), the BLM must update the RCE to include the cost of removing and disposing of that inoperable equipment. In such circumstances, an updated RCE should not replace vigorous enforcement of the performance standards. Rather the RCE should be updated as part of the overall enforcement process.

6.2.1.6.5 Earthwork

The RCE must include the costs of all required earthwork. The RCE must address the cost of hauling, placement, regrading, and backfilling to reclaim mine features, including roads that have not been specifically identified and approved to remain open.

6.2.1.6.6 Drill Holes

The RCE must include the cost of plugging, capping, and isolation of drill holes, including exploration, production, and monitoring holes, and water monitoring and piezometer wells, where applicable. In determining the plugging costs, it must be considered whether drill holes encounter water, water under artesian pressure, or are dry. Proposed plugging must meet all applicable Federal and state requirements.

Where the operator is proposing drilling, the RCE must include, at a minimum, the estimated cost of plugging the maximum number of drill holes that may be open at one time. In determining the number of drill holes that may be open at any one time, there can never be less than 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 does not specifically require the drill holes be plugged before the drill rig has been moved from the drill pad, the RCE must include the plugging cost for all drill holes identified in the Notice or Plan of

Operations, or the plugging cost for all drill holes authorized in a particular phase of an operation where the financial guarantee is being phased under 43 CFR 3809.553(a).

For all drill holes, and water, monitoring, and piezometer wells authorized to be left open for an interim period, the estimated plugging cost must be included in the RCE.

6.2.1.6.7 Revegetation

The RCE 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 in the Notice or Plan. The RCE must also include the cost for hauling and placement of growth medium, if not addressed under earthwork and the cost of watering seed beds and seedlings, if necessary, to establish growth.

6.2.1.6.8 Mitigation

The RCE should include costs of reclamation work for mitigation, which may include avoiding, minimizing, rectifying and reducing, or eliminating the operation's impacts, or compensating for the impacts, that are required in the Plan of Operations. The RCE should also include the cost of any deferred compensatory mitigation the BLM is requiring the operator to perform. For example, where the approved Plan requires the operator to develop new wetlands to compensate for wetlands lost; until that wetland development is completed the cost estimate must include the cost of that mitigation.

6.2.1.6.9 Post-Reclamation Costs

The RCE must include the costs of meeting any long-term construction, operation, maintenance, or replacement of any treatment facilities and infrastructure that are not ensured by a trust fund established by 43 CFR 3809.552(c).

6.2.1.7 Identified Costs

In calculating the cost to perform these interim operations, reclamation, closure, mitigation, and monitoring tasks discussed above, the operator's estimate must identify the relevant operating and maintenance 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.

- Mobilization and demobilization costs.

6.2.1.8 Data and References

Data and reference sources that may be useful in preparing and reviewing the RCE are applicable parts of the Office of Surface Mining *Handbook for Calculation of Reclamation Bond Amounts;*[177] BLM's *Solid Minerals Reclamation Handbook* H-3042-1; *Caterpillar Performance Handbook;*[178] products and services by CostMine (use for operator costs only-does not consider third party contract estimates);[179] *R.S. Means Site Work & Landscaping Cost Data* and *R.S. Means Heavy Construction Cost Data;* [180] and Equipment Watch's *Cost Reference Guide* and *Rental Rate Blue Book for Construction Equipment.*[181] The user of these and other reference materials must be cognizant of how to apply the data to the RCE. For example, the RCE must reflect the BLM's cost to have a third-party contractor perform the work; owner/operator cost data does not reflect the BLM's contracting cost.

6.2.1.9 Administrative Costs

The RCE must include all costs as if the BLM were hiring a third-party contractor to perform all required reclamation.[182] These costs include the BLM's direct and indirect contracting costs, which are, in part, based on the FAR (48 CFR parts 1-53), plus standard costs associated with government and industry contracting practices. The responsible BLM specialist will coordinate with the State Office procurement analyst concerning current labor wages, contracting requirements, and advice on various types of contracts, contract language, and administration.

This handbook contains suggested percentages for some of these administrative costs. Unless otherwise noted, these percentages are rules-of-thumb and not 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.

Administrative costs that the RCE should include, as appropriate, are engineering, design and construction plan, cost contingency, prime contractor's profit, contractor's liability insurance

[177] Office of Surface Mining, Department of the Interior (http://www.wrcc.osmre.gov/).
[178] Caterpillar Inc., Peoria, IL 61629 (www.cat.com).
[179] MineInfo USA, CostMine, 1120 N. Mullan Rd. Suite 100, Spokane Valley, WA 99206 (http://costs.infomine.com/).
[180] RSMeans, 63 Smiths Lane, Kingston, MA 02364-9988 (http://www.rsmeans.com/index.asp).
[181] Penton Media, Inc., EquipmentWatch, 1735 Technology Drive, Suite 410, San Jose, CA 95110-1333 (http://www.equipmentwatch.com/).
[182] 43 CFR 3809.552(a) and 3809.554(a).

premium, contractor's performance and payment bonds, BLM contract administration, and BLM indirect costs.

6.2.1.9.1 Engineering, Design and Construction Plan

An engineering, design, and construction plan provides the details needed for contracting the reclamation construction work. The RCE should reflect the costs to prepare such plan. Should the operator fail to reclaim, the BLM or its contractor may need to undertake a number of tasks including:

- Prepare maps and plans to show the extent of required reclamation.
- Survey of topsoil and growth medium stockpiles to determine amount of material available.
- Sample and analyze waste rock, tails, heap material, surface and ground water, etc.
- Sample and analyze topsoil and waste piles to determine whether special handling or treatment is necessary.
- Evaluate structures to determine requirements for demolition and removal.
- Evaluate storm water facilities and process solutions or water impoundments to determine if treatment, clean out, or other improvements are necessary.
- Prepare an environmental analysis or site studies before reclamation may commence.

Not all operations will require a line item for an engineering, design, and construction plan in the RCE. Specifically, notice-level and some other small or uncomplicated operations may not require the BLM to develop detailed engineering information.

The actual cost of developing the engineering, design, and construction plan will depend to a great extent on the specifics, including reclamation complexities, of the proposed operation. The amount or percentage to apply should be based on available data within the state. Absent specific local or state data, the BLM should estimate the cost for an engineering, design, and construction plan, where necessary, as 4 to 8 percent of the estimated reclamation operation and maintenance costs, depending on the size of the operation. See Illustration 6.2-1 for specific guidance of what percentage to apply.

6.2.1.9.2 Contingency

A contingency allowance is for cost overruns that regularly occur in reclamation contracting but cannot be ascertained when an operation plan 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 RCE.

Development of the engineering, design, and construction plan reduces the amount of operational unforeseen circumstances and costs. However, contingency costs are not intended to account for changes in the scope of the operation, or unforeseeable or unanticipated events such as earthquakes, labor strikes, or floods. An operator is not required to provide a financial guarantee to address unanticipated events or worst-case scenarios.

Where the proposed operation involves a relatively small, uncomplicated reclamation effort, and development of an engineering, design, and construction plan is not anticipated, there may not be a need to include a contingency line item in the RCE. Contingency costs would generally not be required for Notice-level operations.

Federal and state agencies that routinely prepare construction cost estimates apply contingencies, ranging from 3 to 45 percent of the operation and maintenance costs. The amount or percentage required should be based on available reclamation or construction contract information within the state. Absent specific local or state data, the BLM should calculate the contingency cost, where applicable, as 4 to 10 percent of the estimated reclamation operation and maintenance costs, depending on the size of the operation.[183] See Illustration 6.2-1 for specific guidance on what percentage to apply.

6.2.1.9.3 Contractor Profit

Government contracts generally include a line item for prime contractor's profit over and above the estimated reclamation operating and maintenance costs. The operator's RCE must account for prime contractor's profit.

The RCE must use state or local contract information to determine the amount or percentage of prime contractor's profit. Where state law specifies an amount or percentage, BLM must use that figure. Absent specific local or state data, the RCE should estimate contractor profit as 10 percent of the estimated reclamation operation and maintenance costs.

The line item for prime contractor's profit should not be added where operating and maintenance costs already include the contractor's profit. In such cases, the operator's reclamation operating and maintenance estimate must document or itemize the inclusion of the prime contractor's profit.

6.2.1.9.4 Liability Insurance

The RCE should include the cost of obtaining contractor's liability insurance. The RCE may contain a separate line item for liability insurance premium, or it can itemize the insurance premium in the reclamation operating and maintenance estimate. 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 RCE.

[183] Include a contingency allowance for all operations with estimated reclamation operation and maintenance costs over $100,000.

6.2.1.9.5 Performance and Payment Bonds

Federal construction contracts exceeding $100,000[184] require payment of premiums for both a performance bond and a payment bond, as required by the Miller Act, must be included in the cost estimate. A set amount equal to 3 percent of the estimated contract cost should be used to calculate the payment of premiums for both a performance bond and a payment bond.

6.2.1.9.6 Contract Administration

Contract administration costs include the BLM's labor and operations costs for the District/Field and State Offices to administer the contract. These costs must be included in the RCE. The amount required to cover the BLM's contract administration costs will depend to a great extent on the specifics, including reclamation complexities, of the proposed operation. Absent available state or local data, estimate the BLM's contract administration and inspection cost for reclamation contracts using 6 to 10 percent of the estimated operation and maintenance costs, depending on the size and complexity of the proposed operation. Generally the larger the amount of the financial guarantee, the lower the percentage needed for contract administration.

6.2.1.9.7 Indirect Costs

Certain BLM indirect costs must be included in the amount of the required financial guarantee. The indirect costs to be covered are calculated as a fixed 21 percent of the estimated BLM contract administration cost.[185] If the BLM is required to administer a reclamation contract under a forfeited financial guarantee, the funds made available by this 21 percent will remain within the state where the reclamation work will be done. These funds are 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 National Operations Center, contract officers, or inspectors.

6.2.1.9.8 Federal-State Agreements

If a Federal-State Agreement made through 43 CFR 3809.200 provides for joint administration or deferral of the administration of financial guarantees to the state, the RCE may reflect the state's administrative costs for contracting the required reclamation under certain situations. The Federal-State Agreement must specify that the amount of the financial guarantee must be calculated based on the completion of both Federal and state reclamation requirements as required by 43 CFR 3809.203(d), must be redeemable by the Secretary, and the BLM must concur in the approval, release, or forfeiture of a financial guarantee for public lands. See Section 6.6 Joint Federal-State Financial Guarantees and Section 12.2 New Agreements for further discussion on joint or deferred bonding.

6.2.1.10 Reclamation Cost Estimating Tools

Summary sheets, checklists, and cost models are available to assist the operator in developing and District/Field Office in reviewing the cost estimate. Individual BLM State Offices or

[184] 40 U.S.C. 3131 to 3134.
[185] 21% of 6-10% equals 1.26-2.1% of the estimated operation and maintenance costs.

District/Field Offices may develop their own tools to support the reclamation cost estimating process. When practicable, BLM personnel will use a cost model such as "Sherpa for Reclamation Bonds" to check the reclamation cost estimate and a cost service such as InfoMine USA's CostMine, Mining Cost Service will be used as the source of cost information. The results of the calculations and engineering analysis for an RCE will become a part of the administrative record for that RCE.

Figure 6.2-1, Reclamation Cost Estimate Summary Sheet, is provided as an additional aid to the District/Field Office and operator to assist in documenting the RCE. The user should enter those values in the cost estimate that are appropriate for the operations. Complete details of the reclamation costs should be included in worksheets that support the Reclamation Cost Estimation Summary Sheet.

Figure 6.2-2, Operator Reclamation Cost Estimate Checklist, is a listing of common operational components. The checklist, in addition to the Reclamation Cost Estimate Summary Sheet, should be used by the District/Field Office and operator as a guide to ensure all operational components are addressed in the RCE.

Standardized reclamation cost estimating processes, that include standardized unit costs, schedules, spreadsheets, and models, are useful tools that provide a simplified, efficient, defensible, and consistent means of estimating reclamation costs for both Notices and Plans of Operations. Where appropriate, BLM State and District/Field Offices are encouraged to develop processes based on standardized unit costs to facilitate the review and approval of the operator's RCE.

A process that uses standardized costs may be developed, based on local and/or regional costs, to reclaim typical activities (roads, drill pads, drill-hole abandonment, trenches, pits, structure removal, site stabilization, re-vegetation etc.) for specific kinds of terrain (topography). Figure 6.2-3, Reclamation Cost Model for Notice-Level Exploration, presents an example of a spreadsheet used to calculate the reclamation costs for Notice operations. Note, this sample spreadsheet and the description of the inputs and parameters are provided as an example of the kind of standardized costing tool that a State or District/Field Office may develop. It is not recommended a District/Field Office use this spreadsheet without first evaluating the cost inputs and calculations used in the model.

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 (FAR) (48 CFR parts 1-53). For example, under Federal contracting (48 CFR 22.103-2, 48 CFR 52.222-2 and 48 CFR 52.222-4) contractors must perform all contract work, so far as practicable, without using overtime. As such, the RCE must not be based on the assumption that the reclamation contractor will conduct the work using the same employees over a double shift.

Figure 6.2-1 - Reclamation Cost Estimate Summary Sheet
(1 of 2)

Earthwork/Recontouring	Labor	Equipment	Material	Total
Roads				
Drill Site(s)				
Drill Hole Abandonment				
Pits/Adits/Trenches				
Process Ponds				
Heaps				
Dumps (Waste & Landfill)				
Tailings				
Structure & Building Areas				
Storage & Equipment Areas				
Drainage Control				
Mobilization/Demobilization				
Miscellaneous				
Revegetation/Stabilization	Labor	Equipment	Material	Total
Roads				
Drill Site(s)				
Pits/Adits/Trenches				
Process Ponds				
Heaps				
Dumps (Waste & Landfill)				
Tailings				
Structure & Building Areas				
Storage & Equipment Areas				
Drainage Control				
Monitoring				
Miscellaneous				
Detoxification/Water Treatment/Waste Disposal	Labor	Equipment	Material	Total
Process Ponds/Sludge				
Heaps				
Dumps (Waste & Landfill)				
Tailings				
Surplus Water Disposal				
Fluid Management				
Monitoring				
Miscellaneous				
Structure, Equipment & Facility Removal				
Hazardous Materials				
Mitigation				
Operation & Maintenance TOTAL				
Administrative Costs				Total
ED&C Plan				
Contingency				
Contractor Profit				
Liability Insurance				
Performance & Payment Bond				
BLM Contract Administration				
BLM Indirect Cost				
Administrative TOTAL				
GRAND TOTAL				

Figure 6.2-1 - Reclamation Cost Estimate Summary Sheet (2 of 2)

This summary sheet was developed to aid the operator in developing and the BLM review of the reclamation cost estimation.

1. Wage rate estimates may include base pay, payroll loading, overhead and profit. To avoid double counting of any of the identified administrative costs, the operator must itemize the components of the labor cost estimates or provide the BLM with a signed statement, under penalty of perjury as provided in 18 U.S.C. 1001, that identifies what specific administrative costs are included in the quoted hourly rate.

2. Where costs are included in one of the summary sheet's *Miscellaneous* categories, each item should be documented on accompanying worksheets.

3. *Fluid Management* may only be used when mineral processing activities are involved. Costs provided under this category represent the costs of maintaining proper fluid management to prevent overflow of solution ponds during premature cessation or abandonment of the operations. These are direct costs, including power, supplies, equipment, labor, and maintenance, to manage the fluids while third-party contracts are developed and executed.

4. Handling of hazardous materials includes the cost of decontaminating, neutralizing, disposing, treating, and/or isolating all hazardous materials used, produced, or stored on the site.

5. The cost of any deferred compensatory mitigation the BLM is requiring the operator to perform must be included in the RCE. Mitigation may include measures to avoid, minimize, rectify and reduce or eliminate the impact, or compensate for the impact.

6. Engineering, design and construction (ED&C) plans provide details on the reclamation needed to contract for the required work. To estimate the cost to develop an ED&C plan, use 4-8 percent of the operation and maintenance (O&M) cost. Calculate the ED&C cost as a percentage of the O&M cost as follows: up to and including $1 million, use 8 percent; over $1 million to $25 million, use 6 percent; and over $25 million, use 4 percent. Inclusion of a line item for the development of an ED&C plan may not be necessary for small operations, such as notice-level exploration. With small, uncomplicated reclamation efforts contracting may be able to proceed without developing an ED&C plan.

7. A contingency cost is included in the reclamation cost estimation to cover unforeseen cost elements. Calculate the contingency cost as a percentage of the O&M cost as follows: up to and including $500,000, use 10 percent; over $500,000 to $5 million, use 8 percent; over $5 million to $50 million, use 6 percent; and greater than $50 million, use 4 percent. Inclusion of a contingency cost may not be necessary for small, uncomplicated reclamation.

8. For construction contracts, use 10 percent of estimated O&M cost for the contractor's profit; exclude those O&M costs from the calculation where contractor profit is already covered in the itemized unit costs.

9. Insurance premiums are calculated at 1.5 percent of the total labor costs. Enter the premium amount if liability insurance is not included in the itemized unit costs.

10. Federal construction contracts exceeding $100,000 require both a performance and a payment bond (Miller Act, 40 USC 270 et *seq.*). Each bond premium is figured at 1.5 percent of the estimated contract cost.

11. To estimate the contract administration cost, use 6 to 10 percent of the O&M cost. Calculate the contract administration cost as a percentage of the O&M cost as follows: up to and including $1 million, use 10 percent; over $1 million to $25 million, use 8 percent; and greater than $25 million use 6 percent.

12. The BLM's indirect cost rate is a fixed 21 percent of the BLM's contract administration costs (this calculates out be 1.26 to 2.1 of the O&M cost).

Figure 6.2-2 - Operator Reclamation Cost Estimate Checklist (1 of 2)

The categories included in this checklist should be used to aid the operator in developing the Reclamation Cost Estimate (RCE) and the BLM's review of the RCE. Documentation supporting the calculations should be included. Resources that may be helpful for calculating the reclamation liability include contractors estimates, quotes from equipment rental agencies, rental rate bluebooks for heavy equipment, heavy equipment cost data manuals, and heavy equipment performance handbooks.

1 Access roads and drill pads
   a. Mobilization and demobilization.
   b. Recontouring or regrading to approximate the original topography as closely as possible.
   c. Removing culverts.
   d. Ripping or scarifying the surface.
   e. Water diversion construction.
   f. Restoring or stabilizing drainage areas or streambeds.
   g. Revegetation.

2 Drill hole and well abandonment
   a. Mobilization and demobilization.
   b. The cost of plugging, capping, and segregation of the hole from the ground water system is to be considered. Specifically, care needs to be taken in determining plugging costs based upon whether the hole encounters water, water under artesian pressure, or is dry.
   c. The plugging cost for all holes that will be drilled before an inspection can verify proper plugging, in addition to any drill holes that are to be left open, must be covered.
   d. Plugging costs must be based on the cost as if the site were abandoned.
   e. Drill holes that will be "mined through" within 6 months of drilling completion by the proposed operation do not have to be covered by a financial guarantee, if the location is already covered by a financial assurance for reclamation of the mining activity.
   f. Water wells, monitoring wells, and piezometers are abandoned in accordance with state regulations and are part of the RCE and financial guarantee process

3 Trenches, pits, and adits
   a. Mobilization and demobilization.
   b. Recontouring or regrading to approximate the original topography as closely as possible.
   c. Revegetation.
   d. Securing portals from public entry.

4 Waste rock dumps, overburden, and interburden storage areas
   a. Encapsulating, mixing, or other engineered placement method in controlling acid rock drainage migration.
   b. Recontouring and regrading to approximate the surrounding topography as closely as possible to enhance stability, reduce susceptibility to erosion, and facilitate efforts to establish vegetation.
   c. Diverting run-on.
   d. Covering with rock, clay, topsoil, other growth medium or other cover material.
   e. Revegetation.

5 Dams for tailings ponds
   a. Covering with rock, clay, topsoil, other growth medium or other cover material.
   b. Revegetation.
   c. Rendering the dam incapable of storing any mobile fluid in a quantity that could pose a threat to the stability of the dam, or to the public safety.
   d. Containment basins and water treatment facilities for leakage or outflow of effluent.

6 Impoundment for tailings
   a. Regrading to promote run-off and reduce infiltration.
   b. Covering with waste rock, clay, topsoil, other growth medium or other cover material.

Figure 6.2-2 - Operator Reclamation Cost Estimate Checklist (2 of 2)

c. Revegetation.
d. Diverting run-off.
e. Containment basins and water treatment facilities for leakage or outflow of effluent.

7 Heaps from leaching
a. Cost of maintaining proper fluid management to prevent overflow of solution ponds through premature cessation or abandonment of the operation, including the cost of a Process Fluid Inventory.
b. Rinsing, detoxification, and neutralization procedures as approved in the plan of operations.
c. Containment and treatment of outflows of residual chemicals or fluids from the heaps, including any disposal of surplus or drain down water. Include all engineering, development, and reclamation costs.
d. Diverting run-off.
e. Regrading to enhance structural stability, promote run-off, reduce infiltration, and control erosion.
f. Covering with waste rock, clay, topsoil, other growth medium or other cover material.
g. Stabilization and revegetation.

8 Solution ponds, settling ponds, and other non-tailings impoundments
a. Backfilling and grading as approved in the plan of operations.
b. Restoring the pre-disturbance surface water regime, if appropriate.
c. Properly dispose of process pond sludge.

9 Building foundations, facilities, structures and other equipment
a. Demolishing costs to the level of the foundation and burying costs of the demolished items on site, in conformance with applicable solid waste and HazMat disposal requirements. Concrete foundations for most structures will need to be broken up before on site burial.
b. Salvaging and sale costs. No provision for salvage value or credit is permitted.
c. Offsite disposal costs of No. 1 above, in conformance with applicable solid waste disposal and HazMat requirements.
d. Costs of continued use in a manner that is consistent with the proposed post mining land use.

10 Open pit mines
a. Providing for the public safety.
b. Stabilizing pit walls or rock faces where required for public safety.
c. Constructing and maintaining berms, fences, or other means of restricting public access.
d. Backfilling, if required or being considered as a requirement.
e. Costs of creating and maintaining a lake for recreational, wildlife enhancement, or other beneficial use.
f. Revegetation.
g. Treatment or mitigation of discharge waters.

11 Underground mines
a. Sealing shafts, adits, portals, and tunnels to prevent access.
b. Constructing and maintaining berms, fences, or other means of restricting access.
c. Treatment or mitigation of discharge waters.

12 Revegetation
a. Application of topsoil or other growth medium.
b. Seed bed preparation.
c. Selection of appropriate species of seeds or plants (consult BLM staff specialist).
d. Soil amendments such as fertilizers, mulches, or other compounds to assist in plant growth.
e. Planting or seeding (equipment, personnel, and cost of seeds/plants).
f. Watering as necessary to establish seedling and planting growth.

13 Site Maintenance and Site Monitoring
a. Any site monitoring costs as required by the BLM.
b. Monitoring well costs for acid rock drainage, heaps, leach fields, bioreactors, and tailings pond.

Figure 6.2-3 - Reclamation Cost Model for Notice-Level Exploration
-Example-
(1 of 2)

Linear Feet of Road at a Side Slope of:			**Cost/Linear Foot**	**Road Reclamation**
<30%	10000	Recontouring Cost <30%	$1.50	$15,000
>30%	5000	Recontouring Cost >30%	$2.40	$12,000
		Revegetation Cost	$0.20	$2,930
Acres of Non-Road Disturbance including,	Acres		Cost/Acre	Pad, Sump & Trench Reclamation
Pads, Sumps & Trenches	1.1	Recontouring Cost	$2,600.00	$2,860
		Revegetation Cost	$600.00	$660
		Mobilization Cost	$750.00	$750
Drill Holes Open:	#/Feet		Cost/Foot	Drill Hole Plugging
Feet of Open Holes - Wet	1400	Plugging Cost - Wet	$12.00	$16,800
Feet of Open Holes - Dry	600	Plugging Cost - Dry	$4.70	$2,820
		Mobilization Cost - Wet	$1,350.00	$1,350
		Mobilization Cost - Dry	$600.00	$0
				Total Reclamation Cost
				$55,170
				Total Labor
				$16,787
		Insurance	1.5% of Labor Cost	$252
		Bond	3% of Contract Cost	$0
		Contractor Profit	10% of Rec. Cost	$5,517
		Contract Admin.	10% of Rec. Cost	$5,517
		Indirect Cost Rate	21% of Contract Admin.	$1,159
				Total Administration Cost
				$12,444
				Financial Guarantee Amount
				$67,615

Figure 6.2-3 - Reclamation Cost Model for Notice-Level Exploration
-Example-
(2 of 2)

Operation Inputs - Where applicable to the proposed operation, linear feet of road (with side slope greater than 30 percent and less than 30 percent) and acres of non-road disturbance that will need to be reclaimed, and number of feet of open drill hole to be plugged (anticipated to intercept groundwater and not expected to intercept groundwater) need to be entered into the spreadsheet. In this sample spreadsheet, these five data fields concerning the Notice-level operation are shaded dark gray.

Cost Inputs and Assumptions - The cost inputs include mobilization and demobilization costs, labor, equipment, and material costs for earthwork, revegetation, and hole plugging, and administrative costs. This spreadsheet (Excel) was developed in 2001 and the cost inputs were last updated to reflect 2002 costs. The operating and maintenance costs are shaded light gray in the spreadsheet.

For road reclamation with a side slope greater than 30 percent, the cost figures used in the model are based on the use of an excavator as the primary equipment involved in recontouring. Where the side slope is less than 30 percent, it is assumed a dozer will be the primary equipment used to recontour. The cost information for road reclamation assumes an average road running width of 14 feet. Pad, sump, trench, and other non-road disturbances assume the use of a dozer as the primary heavy equipment for recontouring those features.

The revegetation cost for disturbed areas assumes use of a seed mix that will result in a diverse plant community that includes grasses, forbs, shrubs and/or trees. Such a seed mix may exceed state or local revegetation standards, and/or may not be appropriate for all sites. The application of the seed mix assumes two passes over the disturbed area. The first pass is to rip the surface and spread the seed, and a second pass is to drag the area.

Since drill holes are often plugged immediately after testing, the model is set up to cover the maximum number of feet of drill hole that will be open between inspections. For drill hole plugging, a critical variable is whether the drill hole intercepts groundwater. Plugging a wet drill hole, one that intercepts groundwater, it is assumed drilling equipment will be required to properly plug the hole. The cost estimates for plugging wet holes assumes filling the wet horizon with concrete grout, filling the dry horizon with bentonite, and capping the hole with a 10-foot concrete plug. For plugging dry holes, those that do not intercept groundwater, it is assumed no specialized equipment will be necessary. The assumption used in estimating the cost for plugging dry holes is each hole will be filled with bentonite. The user should verify that these plugging parameters are consistent with the state requirements.

All mobilization/demobilization costs are based on the site being 150 miles from the equipment vendor. The user of the model should be aware that these mobilization costs might vary significantly depending on the actual distance from the site to the source of the required equipment. The model uses an average mobilization/demobilization cost of $750 for reclaiming surface disturbances, including roads, pads, sumps and trenches. It should be noted that the model provides for the mobilization of one piece of earthmoving equipment. If the reclamation effort will necessitate multiple pieces of earthmoving equipment, e.g., backhoe and bulldozer, the user of the model should include the average mobilization/demobilization cost for each additional piece of equipment. Keep in mind this type of model is set up for fairly simple, straightforward operations. The need for multiple pieces of equipment may indicate a more complex operation, and the user may want to consider using an alternative calculation method.

The model calculates the mobilization/demobilization cost for plugging separately. Mobilization cost for plugging open drill holes, that are anticipated to intercept groundwater, is estimated to be $1,350. Average mobilization cost for plugging open dry drill holes, those that are not expected to intercept groundwater, is $600. The model is set to only use the wet hole mobilization cost should the user add values to both wet and dry drill holes entries.

Note the Total Administrative Cost is calculated using percentages of various costs. See Section 6.2.1.9 for a discussion on how these administrative costs are determined. For this example the administrative costs represents 22.6 percent of the Total Reclamation Cost.

A standardized reclamation cost estimating process should only be used where the operation is similar to the types of activity and terrain profile used in establishing the standard cost inputs. The BLM may not require the operator to use standardized inputs, schedules, spreadsheets, and models in developing the reclamation cost estimates. A detailed engineering cost analysis is an acceptable alternative.

Where a BLM State or District/Field Office develops a standardized reclamation cost process for estimating the amount of the required financial guarantee for Notices or Plans, the standardized inputs, schedules, spreadsheets, and models must be reviewed annually to ensure the cost inputs remain current.

6.2.2 Review of Reclamation Cost Estimates

The BLM District/Field Office must review the operator's estimate of the cost to reclaim the operations to determine whether the estimate meets the requirements of 43 CFR 3809.552(a), 3809.552(c), and 3809.554(a).

The RCE for all Notices and Plans of Operations will be reviewed and evaluated based on the reclamation plan prepared in accordance with the reclamation standards according to 43 CFR 3809.420. The amount of the financial guarantee must be adequate to cover the cost of all reclamation performance standards and all reclamation and closure requirements identified in the filed Notice or approved Plan of Operations. See Section 5.4 Performance Standards for Notices and Plans of Operations for guidance on performance standards.

For Notice or Plan modifications, the District/Field Office's review of the RCE should focus on how the modification affects the existing cost estimate on file for the entire operation.

It is not BLM's responsibility to calculate the reclamation cost for the operator. The BLM, at the District/Field Manager's discretion, may assist the operator in identifying costs to be included in the estimate, and in developing the cost estimate. At the District/Field Manager's discretion, the BLM may independently estimate the reclamation costs for an operation. Should the operator fail to include all costs to administer a reclamation contract, the BLM will provide this administrative cost information.

If the BLM determines the operation, as proposed, will cause UUD, the District/Field Manager will <u>not</u> make a determination as to the amount of the required financial guarantee because the operation, as proposed, may not be authorized.

It is the BLM's responsibility to conduct a periodic review of the RCE for ongoing operations. As required by 43 CFR 3809.552(b) and 3809.553(b), the BLM must ensure the amount of the required financial guarantee, including trust funds required under 43 CFR 3809.552(c), 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 RCE does not reflect authorized operations, or additional information is needed, the BLM's review will consist of an evaluation and update of the operator's RCE on file. Where additional information is necessary to complete

the review or a revised RCE is required, the District/Field Manager will direct the operator to provide that information. BLM may find it helpful to request an updated RCE from the operator to facilitate its review if the RCE on file is not in a readily update-able format such as an electronic, standardized spreadsheet to which current unit costs may be readily applied. The BLM periodic review does not necessarily require new data from the operator. Using the latest RCE on file, the BLM is to determine if it is adequate given current labor rates, uncontrollable costs such as fuel, etc.

If the BLM determines that the financial guarantee should be increased, the District/Field Office must issue a decision requiring the operator to submit the required adjustment amount. If the RCE does not require an adjustment and a decision is not issued, the authorized officer will add a statement to the case file certifying that the review has been completed and the cost estimate(s) and financial guarantee(s) are adequate to meet the requirements of the regulations. The decision or certification to the case file is the supporting documentation that is required in order to enter AC 022 - *Recl Cost Det* in the Legacy Rehost 2000 (LR2000) System (see Chapter 13 Records Management).

6.2.3 Acceptance of Reclamation Cost Estimates

The District/Field Manager must notify the operator as to the acceptability of the operator's RCE.[186]

6.2.3.1 Unacceptable Review Results

If the District/Field Manager finds that the operator has incorrectly calculated reclamation operating and maintenance costs, did not include the required administrative costs, or that the estimate is based on out-of-date cost data that does not reflect the actual cost of reclamation, the District/Field Office will request, in writing, the additional cost information needed from the operator.

Where the responsible BLM District/Field Office has not been successful in having the operator correct deficiencies in the cost estimate, the District/Field Manager will issue a written decision to the operator as described below.

Where the RCE for a new Notice is not acceptable to the Field Office, the Notice will not be considered complete as required under 43 CFR 3809.301.

6.2.3.1.1 Proposed Notice or Plan

When an estimate for a proposed Notice or Plan of Operations is not acceptable, the District/Field Manager must notify the operator that the operator's RCE is not acceptable, identify the deficiencies or errors that led to that conclusion, and request that an acceptable RCE be prepared. Appendix A, Template 6.2-1 Unacceptable Reclamation Cost Estimate, presents an example of such a notification.

[186] 43 CFR 3809.554(b).

6.2.3.1.2 Existing Notice or Plan

For ongoing operations, where the District/Field Office lacks the information necessary to determine the adequacy of the existing cost estimate, the District/Field Manager must notify the operator of the deficiencies or errors and include a due date when the information or revised RCE must be submitted. The notification is similar to the example template for proposed operations, (Appendix A, Template 6.2-1 Unacceptable Reclamation Cost Estimate) except there must be a due date. 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 (see Appendix A, Template 9.2-1 Noncompliance Order).

For Notices to be extended under 43 CFR 3809.333, where the District/Field Office lacks the information necessary to determine the adequacy of the existing RCE, the District/Field Manager must notify the operator that within 30 days from receipt of the notification all requested information must be provided to the BLM office. The Notice will be conditionally extended pending District/Field Office receipt of the required information. Failure to provide the required information within the 30-day period will result in the Notice expiring.

6.2.3.2 Acceptable Review Results

When the District/Field Office receives an acceptable RCE or the District/Field Office independently estimates the amount of the reclamation costs, the District/Field Manager must provide the operator with a written decision (see Appendix A, Template 3.2-3 Determination of Required Financial Guarantee Amount), as to the amount of the required financial guarantee. The decision must state 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), the types of financial instruments that are acceptable to the BLM, and that any adversely affected party may appeal the decision on the amount of the required financial guarantee under 43 CFR 3809.800 through 3809.809. A copy of this decision must be provided to the BLM office responsible for adjudication of the financial guarantee.

6.2.3.2.1 Existing Notice or Plan

Following the periodic review for an ongoing operation, the District/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 District/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 (see Appendix A, Template 6.2-2 Financial Guarantee Increase – Ongoing Operations). The requirement to ensure the financial guarantee is adequate to cover all operator obligations applies to financial guarantees under 43 CFR 3809552(a), 43 CFR 3809.552(c), and 43 CFR 3809.553.

6.2.3.2.2 Extended Notice

For a Notice extension under 43 CFR 3809.333, where the amount of the required financial guarantee has increased, the decision must also state that (1) the Notice is conditionally extended subject to meeting the financial guarantee requirements, (2) failure to provide an acceptable financial guarantee within 60 days will result in the Notice expiring immediately upon conclusion of the timeframe, and (3) upon expiration of the Notice, all activities, other than reclamation, are unauthorized and must cease. The Notice will expire should the operator fail to provide the required financial guarantee within the timeframe (see Section 3.5 Expired Notice).

6.2.3.2.3 New or Modified Notice or Plan

For a new or modified Notice or Plan, the District/Field Manager's decision must also state that an operator may not begin operations in any areas not covered by the existing financial guarantee without first providing the BLM with an acceptable financial guarantee that meets the requirements of 43 CFR 3809.551 thru 3809.572. No activity greater than casual use on lands not covered by the existing financial guarantee is authorized until the BLM has accepted and obligated the operator's financial guarantee. Appendix A, Template 3.2-3, Determination of Required Financial Guarantee Amount, presents an example of such a decision.

6.2.3.2.4 Expenditure Limits

Specific line items contained in an approved RCE are not to be considered as limits of expenditures in that respective category or task should financial guarantee forfeiture be necessary. The line items listed are solely for the purpose of arriving at a total financial guarantee amount. The total amount of the financial guarantee may be used if the BLM deems it necessary to implement the approved reclamation plan, and does not represent a reclamation cost constraint. Care should be taken to ensure that the decision on the amount of the required financial guarantee and the financial guarantee instrument correctly reflects this policy.

6.2.3.3 Decrease in Required Financial Guarantee Amount

Where the existing amount of the financial guarantee exceeds the District/Field Manager's determination as to the amount of the required financial guarantee, the operator may request the BLM to decrease the amount required to cover all reclamation costs. Any request by the

operator for a reduction in the amount of the financial guarantee must be made in writing to the BLM office responsible for adjudicating the financial guarantee.

6.2.4 Periodic Reviews

The BLM must provide a periodic review of reclamation cost estimates for all ongoing operations.[187] The periodic review by the District/Field Office ensures that the current RCE and the amount of the required financial guarantee continue to meet the requirements of 43 CFR

[187] 43 CFR 3809.552(b).

3809.552(a), 3809.552(c), and 3809.554(a). The periodic review is subject to the same requirements as the original review of the RCE. See Section 6.2.2 Review of Reclamation Cost Estimates for the District/Field Office's review requirements. Where a financial guarantee is deemed to be inadequate, the authorized officer must take action to rectify the situation.

6.2.4.1 Review Periods

Inflation can, over time, become a significant factor in the amount of the required 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 District/Field Office must review, on a periodic basis, the cost estimates for all ongoing operations. The maximum time period the BLM may allow to elapse between reviews is specified below.

6.2.4.1.1 Notices

Reclamation cost estimates for Notice operations must be reviewed at time of extension under 43 CFR 3809.333, i.e. every 2 years.

6.2.4.1.2 Plans of Operations

Reclamation cost estimates for Plans of Operations, including any funding mechanism established under 43 CFR 3809.552(c), must be reviewed at least every 3 years.

6.2.4.1.3 State Requirements

Where the BLM has an agreement under 43 CFR 3809.200 with the state that requires a review more frequently than every 2 years for Notices and/or every 3 years for Plans of Operations, reviews must be conducted in conformance with that agreement.

6.2.4.1.4 Modifications

Where the Notice or Plan of Operations is modified, a review must be conducted at the time of modification. The RCE review will focus on how the modification affects the existing cost estimate on file. The review need not be for all aspects of the operation. However, unless the cost estimate for the entire operation is reviewed, the review for the Notice or Plan modification

does not substitute for the required 2-year review for a Notice or 3-year review for a Plan of Operations.

6.2.4.1.5 Phased, Partial or Incremental Coverage

Where the financial guarantee is for a part of the operations, as provided under 43 CFR 3809.553, the BLM must review the RCE at least annually. The District/Field Office review must cover the RCE for each increment of the operations.

6.2.4.1.6 Trust Funds

At least every 3 years, or according to the schedule set forth in the documents establishing the trust fund if more frequent, the District/Field Office must conduct a thorough review of the cost estimates and other assumptions used in determining the amount of funds needed in the long-term funding mechanism. As part of the review, the District/Field Office must adjust, as necessary, the cost estimates and other assumptions used in determining the amount of funds needed in the long-term funding mechanism (see Section 6.3.4.3 Cost Estimate and Section 6.3.4.7 Monitoring the Fund).

The District/Field Office must also monitor the growth of all trust funds. At least once a year, the responsible District/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. Based on this annual review, the funding level in the trust fund must be increased when the growth of the available funds is not keeping pace with the amount needed to address all anticipated post-reclamation obligations.

6.2.4.2 Monitoring

The BLM has the authority under 43 CFR 3809.552(b) and 3809.553(b) to review the RCE more frequently than the above schedule at the discretion of the District/Field Manager. The manager should perform these reviews whenever becoming aware of significant changes to the site conditions and should monitor the adequacy of the RCE through the inspection program.

6.2.4.3 Review Results

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 District/Field Manager must issue a decision as to the amount of the required financial guarantee, with a copy to the BLM office responsible for adjudicating financial guarantees, as to the amount of the change in the required financial guarantee. A written decision (see Appendix A, Template 3.2-3 Determination of Required Financial Guarantee Amount) will be issued any time there is a change in the amount of the required financial guarantee as a result of the review or the review was conducted at the request of the operator. This requirement applies to financial guarantees under 43 CFR 3809.552(a), 3809.552(c), and 3809.554(a).

6.2.4.3.1 Increasing the Financial Guarantee

Where necessary, the amount of the required financial guarantee, including any long-term funding mechanism that may have been established, must be adjusted to cover all estimated reclamation costs, including adjustments necessary to account for the effect of inflation on the operation, maintenance, and administration costs. The District/Field Manager must provide the operator with a written decision as to the amount that the required financial guarantee will be increased (see Appendix A, Template 6.2-2 Financial Guarantee Increase – Ongoing Operations). The decision must state that the operator has 60 days from receipt of the decision to increase the financial guarantee amount and that failure to provide an acceptable financial

guarantee in the new amount within the specified timeframe will result in enforcement action(s) under 43 CFR 3809.601. See Section 6.2.3.2 Acceptable Review Results for specific guidance on what must be included in that decision. A copy of the decision must be transmitted to the BLM office responsible for adjudicating financial guarantees.[188]

6.2.4.3.2 Decreasing the Financial Guarantee

Where it is determined the amount of the existing financial guarantee exceeds the amount required to cover all reclamation costs, the operator may request the BLM reduce the amount of the required financial guarantee. Any request by the operator for a reduction in the amount of the existing financial guarantee must be made to the BLM office responsible for adjudicating the financial guarantee. See BLM Handbook H-3809-2, *Surface Management Bond Processing*, for further guidance pertaining to the reduction and release of financial guarantees.

6.2.4.3.3 No Change in the Financial Guarantee

If the RCE does not require an adjustment in the required financial guarantee amount, i.e., a decision is not issued, the authorized officer will add a statement to the case file certifying that the cost estimate(s) and financial guarantee(s) have been reviewed in conformance with review periods described below, and the estimate(s) and guarantee(s) continue to meet the requirements of the regulations.

6.3 Types of Financial Guarantees

The regulations allow for individual, blanket, and state-approved financial guarantees.[189]

6.3.1 Individual Financial Guarantees

The operator may provide an individual financial guarantee that covers the reclamation costs for a single Notice or Plan of Operations. The specific requirements of an individual financial guarantee are provided under 43 CFR 3809.552 through 3809.556.

6.3.1.1 Single Notice or Plan of Operations

An operator must post a financial guarantee in the amount sufficient to allow the BLM to contract with a third party to reclaim the operations, including all BLM costs to administer the reclamation contract, according to the reclamation plan for that operation.[190] In addition, the amount of the financial guarantee must cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while contracts are developed and executed. The individual financial guarantee must be obligated by the BLM before operations may commence (see BLM Handbook H-3809-2, *Surface Management Bond Processing*).

[188] Note: The adjudication office will automatically obligate bond monies for a required increase, if an uncommitted balance exists under the bond(s) already providing for reclamation coverage of the operation(s).
[189] 43 CFR 3809.551.
[190] 43 CFR 3809.552(a).

6.3.1.2 Phased Partial or Incremental Financial Guarantees

Under the provisions at 43 CFR 3809.553, the District/Field Manager may allow an operator to provide a financial guarantee that covers a part of the operations if the operations do not go beyond what is specifically covered by the phased financial guarantee and the phased financial guarantee covers all reclamation and operational costs for the proposed operations within the incremental area of operations as required by 43 CFR 3809.552(a) and 3809.554(a). However, in addition to the RCE for a particular phase of an operation, the RCE for the entire proposed operations must still be established by the District/Field Office.

6.3.1.3 Acceptable Financial Instruments

The operator may use any of the instruments listed under 43 CFR 3809.555 for an individual financial guarantee, provided that the BLM determines that the instrument is acceptable and meets the laws and regulations within the state where the operations are proposed. Financial instruments that an operator may submit for adjudication include:

- Surety bonds that meet the requirements of Treasury Department Circular 570.[191]

- Cash, or other guaranteed remittance, in an amount equal to the required dollar amount of the financial guarantee, to be deposited and maintained in a Federal depository account of the United States Treasury by the BLM.

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

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

- Any of the following securities having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through the BLM:

    • Negotiable United States Government securities or bonds.

    • State and Municipal securities or bonds having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

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

[191] http://www.fms.treas.gov/c570/c570.html.

- 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. Before accepting any insurance policy as a financial guarantee for a mining operation under 43 CFR 3809, you must consult with the Solicitor's Office.

6.3.1.3.1 Securities

If the operator chooses to use debt securities listed above in satisfaction of financial guarantee requirements, the operator must provide the BLM office responsible for adjudicating financial guarantees, before beginning 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 including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account. Specific requirements concerning the use of securities are found at 43 CFR 3809.556, also see BLM Handbook H-3809-2, *Surface Management Bond Processing*.

6.3.1.4 Acceptance of Individual Financial Guarantees

The BLM office responsible for adjudicating financial guarantees must provide the operator/bond principal with a written decision as to the acceptance and obligation of the financial guarantee. See BLM Handbook H-3809-2, *Surface Management Bond Processing*, for further guidance pertaining to the acceptance and obligation of financial guarantees.

6.3.2 Blanket Financial Guarantees

The operator may provide a blanket financial guarantee to cover the reclamation costs for more than one Notice and/or Plan of Operations. A blanket financial guarantee must cover the total cost of reclamation for all operations covered by the blanket financial guarantee. Coverage from a blanket financial guarantee may be statewide or nationwide.

6.3.2.1 Reclamation Costs for Multiple Operations

The operator must prepare separate reclamation cost estimates for each of the Notices and Plans of Operations to be covered by the blanket financial guarantee. The reclamation cost estimates must cover all reclamation and operational costs as required by 43 CFR 3809.552(a) and 3809.554(a) for each operation, and, as required by 43 CFR 3809.554(b), the reclamation cost estimates must be acceptable to the District/Field Manager.

6.3.2.2 Acceptance of Blanket Financial Guarantees

When Notices and/or Plans of Operations are to be covered by a statewide or nationwide financial guarantee, an operator must submit the financial guarantee to the BLM office responsible for adjudicating statewide or nationwide financial guarantees. The amount of the blanket financial guarantee submitted by the operator may be in excess of the total reclamation

cost for all Notices and/or Plans of Operations to be covered by the blanket financial guarantee to allow for future operations or increased reclamation cost estimates on existing operations. The BLM office responsible for adjudicating financial guarantees will, however, only obligate an amount from the bond equal to the required financial guarantee amount for a particular operation. The amount of financial guarantee must cover, at a minimum, the total reclamation cost for all Notices and/or Plans of Operations to be covered by the blanket financial guarantee.

The BLM will accept a blanket financial guarantee, if it is determined that its terms and conditions satisfy the regulations using the same analysis described above. Any decision by the BLM concerning the acceptability of a blanket financial guarantee must be provided to the operator in writing. See BLM Handbook H-3809-2, *Surface Management Bond Processing*, for further guidance pertaining to the acceptance and obligation of blanket financial guarantees.

6.3.3 State Approved Financial Guarantees

The operator may provide evidence of an existing state-approved financial guarantee that meets the requirements of the regulations and covers the reclamation costs for the Notice or Plan of Operations. The specific regulatory requirements for using a state-approved financial guarantee are provided under 43 CFR 3809.570 through 3809.573.

6.3.3.1 Acceptable State Approved Financial Guarantees

To be acceptable to the BLM, the state-approved financial guarantee must be redeemable by the Secretary, acting by and through the BLM. The financial guarantee must be held or approved by a state agency for the same operations covered by the Notice(s) and/or Plan(s) of Operations, and the amount of the state-approved financial guarantee must be sufficient to meet the requirements of 43 CFR 3809.552(a) and 3809.554(a).

Subject to certain requirements,[192] to be acceptable to the BLM, the state-approved financial guarantee may only include the following forms:

- The financial instruments listed under 43 CFR 3809.555.
- Participation in a state bond pool.
- Existing corporate guarantees applied by the BLM to an approved Plan of Operations on public lands as of January 20, 2001, and under certain restrictions.

6.3.3.1.1 State Bond Pool

Participation in a state bond pool is acceptable if the state agrees that, upon the BLM's request, the state will use part of the pool to meet reclamation obligations on public lands, and the BLM State Director determines that the state bond pool provides the equivalent level of protection as

[192] 43 CFR 3809.570 and 3809.574.

that required by the regulations.[193] In determining if a state bond pool provides the equivalent level of protection required by regulation, the State Director must consider available financial assets in the pool, in addition to any financial obligation the state has should the bond pool become insolvent. A determination by the State Director that the bond pool provides the equivalent level of protection does not necessarily require the pool have sufficient funds available to cover all operations participating in the state bond pool.

The State Director's determination that the state bond pool will provide sufficient financial assurance should be coordinated with the appropriate Federal and state agencies, and any decision must be documented and made available to the public. The form of public disclosure will be at the discretion of the State Director and suitable to the situation considering the public interest.

6.3.3.1.2 Corporate Guarantee

Only a corporate guarantee that was accepted by the BLM and applied to an approved Plan of Operations on public lands under an approved BLM and state agreement on January 20, 2001, subject to the restrictions on corporate guarantees in 43 CFR 3809.574, may continue in effect. The financial guarantee coverage provided by the corporate guarantee:

- Only continues for that portion of the operation that it applied to as of January 20, 2001.
- May not be applied to new operations, or modified or expanded portions of existing operations after January 20, 2001.
- May not be transferred to another portion of the same operation, another operation within the corporate organization, or another operator.
- May not increase existing corporate guarantees after January 20, 2001, or apply any new corporate guarantees after January 20, 2001.

The State Director has a responsibility to ensure the viability of financial guarantee coverage provided by the corporate guarantee and to reduce the risk associated with corporate guarantees. 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.

The State Director is also directed to conduct periodic reviews of financial guarantees, including any corporate guarantees, under 43 CFR 3809.552(b) to ensure adequate financial coverage. This review is to include the adequacy of the guarantee. If the BLM State Director determines it is in the public interest to do so, the State Director may terminate a corporate guarantee and require an acceptable replacement financial guarantee after due notice and a reasonable time to obtain a replacement is given the operator. A State Director decision to terminate the use of corporate guarantees is subject to appeal under the provisions of 43 CFR 3809.800 through 3809.809.

[193] 43 CFR 3809.571(b).

6.3.3.2 Unacceptable State Approved Financial Guarantees

If the BLM determines that the existing state-approved financial guarantee does not meet the requirements of the regulations, the BLM will issue a decision notifying the operator to provide the BLM with an acceptable financial instrument.[194]

The State Director will issue the decision to the operator and the state within 30 calendar days of the BLM's receipt of the evidence of state-approved financial guarantee. The decision will contain a complete explanation of the reasons for the rejection and require an acceptable financial guarantee at least equal to the amount of the rejected financial instrument before commencing or continuing operations. The BLM office responsible for adjudicating financial guarantees will send the decision by certified mail, return receipt requested, or delivery process, including registered mail or courier service. Decisions as to the unacceptability of a state-approved financial guarantee are subject to appeal under the provisions of 43 CFR 3809.800 through 3809.809.

6.3.3.3 State Demand against the Financial Guarantee

When the state makes a demand against an operator's state-approved financial guarantee, thereby reducing the available balance, the operator must notify the BLM office responsible for adjudicating financial guarantees, and replace or augment the financial guarantee if the available balance is insufficient to cover the remaining reclamation and operational costs required by 43 CFR 3809.552(a) and 3809.554(a).[195] Where the BLM has an agreement under 43 CFR 3809.200 with the state that addresses state-approved financial guarantees, the BLM should also receive notice from the state when the state makes a demand against a state-approved financial guarantee that applies to public lands.
As required by regulation, the operator notification must be in writing to the BLM office responsible for adjudicating financial guarantees within 15 calendar days of the state's action. The notification must provide the BLM with information concerning the demand, the resulting reclamation, and a revised RCE. Within 30 calendar days, the operator must provide the BLM office responsible for adjudicating financial guarantees with an acceptable financial guarantee to ensure all reclamation and operational liabilities are covered.

See BLM Handbook H-3809-2, *Surface Management Bond Processing*, for further guidance pertaining to the BLM's responsibilities when state-approved financial guarantees are accepted.

6.3.4 Trust Funds or Other Funding Mechanisms

The regulations at 43 CFR 3809.552(c) allow the BLM to require an operator to establish a trust fund or other funding mechanism available to the BLM to ensure the continuation of any long-term, post-mining treatment or maintenance requirements. The BLM District/Field Manager responsibilities include determining the need for a long-term funding mechanism, identifying the specific long-term corrective actions, verifying the operator's cost estimate to carry out those corrective actions, establishing the amount of funds needed in the long-term funding mechanism,

[194] 43 CFR 3809.572.
[195] 43 CFR 3809.573.

and, once established, monitoring the terms, conditions, and performance of the long-term funding mechanism. The District/Field Manager is the BLM official who establishes the agreement with the operator covering the funding mechanism.

When the District/Field Manager identifies a need through the process outlined below, the operator must establish an acceptable trust fund or other funding mechanism that meets the requirements of the regulations.[196] The fund 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.

6.3.4.1 Requiring a Trust Fund

The purpose of a trust fund or other long-term funding mechanism is to guarantee the continuation of post-mining treatment to achieve water quality objectives and for other long-term, post-mining maintenance requirements. The District/Field Manager decides whether a trust fund is needed on a case-by-case basis. In determining whether a trust fund or other funding mechanism will be required, the manager should consider the following factors:

- The anticipated post-reclamation obligations as identified in an environmental document and/or plan approval for the operation.
- The reasonable degree of certainty that the obligations will occur based on accepted scientific evidence and/or models.
- The operator's financial responsibility for those obligations.
- The feasibility, practicality, and/or desirability of requiring a financial guarantee for those anticipated long-term post-reclamation obligations using an individual financial guarantee,[197] blanket financial guarantee[198] or state-approved financial guarantee.[199]

The determination that a trust fund is needed and/or the amount needed in the fund may occur during review of the proposed operation or later. Identification of the need for such a fund after the operation has been approved does not necessarily require the District/Field Manager to revisit the original decision authorizing the operation. As part of ongoing monitoring and inspection activities, the manager may identify the need for such a funding mechanism after the operation has been reviewed and approved. For example, as part of a requested release of a financial guarantee under 43 CFR 3809.590, the District/Field Manager may condition final release of the individual, blanket or state-approved financial guarantee for a portion of the project area on the operator establishing a trust fund to pay for ongoing treatment of effluent discharged from that area.[200]

[196] 43 CFR 3809.552(c).
[197] 43 CFR 3809.552(a).
[198] 43 CFR 3809.560(a).
[199] 43 CFR 3809.570.
[200] 43 CFR 3809.591(c)(2).

Any decision concerning the need, amount, acceptability, and/or forfeiture of a financial guarantee, including a trust fund or other funding mechanism, is part of the BLM's compliance and enforcement program, and not an authorization to conduct operations. All decisions concerning the need, amount, acceptability, and forfeiture of a trust fund are subject to appeal under the provisions of 43 CFR 3809.800 through 3809.809.

6.3.4.1.1 Water Quality Issues

If the environmental document and/or plan approval for an operation identifies potential discharge of acid rock drainage, a pit lake that may not meet water quality standards or similar issues that would require long-term water treatment, the District/Field Manager must require a financial guarantee to address those obligations. The establishment of a trust fund or other funding mechanism may be the most practical means to guarantee the future long-term costs of those obligations.

6.3.4.1.2 Other Post-Reclamation Obligations

The BLM's use of the provisions at 43 CFR 3809.552(c) is not limited to long-term water treatment. If BLM has identified other post-reclamation obligations and the District/Field Manager determines that the financial responsibility for those obligations rests with the operator, the use of a trust fund or other funding mechanism may also be appropriate. For example, if the Plan approval requires the construction and maintenance of a permanent safety fence to limit public access to a highwall after mine closure, the most practical way to guarantee the funding of the maintenance and replacement costs for that fence may be through a trust fund or similar funding mechanism.

6.3.4.1.3 Unanticipated Events

District/Field Managers should not use 43 CFR 3809.552(c) to require an operator to establish a fund to address unanticipated events before or after reclamation, such as accidents, failures, or spills, or for worst-case scenarios. If an event occurs that creates a new reclamation obligation, the BLM will require the operator to adjust the financial guarantee upward accordingly to cover the new obligation. Moreover, these events have a low probability of occurrence and are best addressed by a thorough review of the Plan of Operations, the development of mitigation measures, and an active inspection program.

6.3.4.2 Reclamation Plan

Any post-reclamation obligations covered by the long-term funding mechanism must be described in the approved Plan of Operations. If the District/Field Manager determines the operator is responsible for post-reclamation obligations not described in the original reclamation plan, the manager will direct the operator to submit a modification to the Plan of Operations covering those obligations. The manager must review and approve the Plan of Operations to ensure all reclamation and closure obligations and corrective actions are adequately addressed.

6.3.4.3 Cost Estimate

When a trust fund or other funding mechanism is required to guarantee post-reclamation obligations, the operator must provide the District/Field Office with a cost estimate for the monitoring, construction, operation, maintenance, replacement, or other activities for those required facilities, treatment, or other post-reclamation needs documented in the Plan of Operations. The operator's estimate must also project when the cost obligations will occur and for reoccurring costs, such as maintenance of a water treatment facility, the frequency, timing, and duration of the obligation must be estimated for each cost component.

6.3.4.3.1 Coverage

The operator's cost estimate must cover all anticipated costs, including the BLM's administration costs, as if the BLM were hiring a contractor to perform the work if the operator has vacated the project area and fails to comply with these obligations (see Section 6.2 Reclamation Cost Estimates). In addition to the operational, maintenance, and administrative costs, the operator must estimate any other costs associated with maintaining the long-term funding mechanism, including trust management or administration fees and any taxes that may come due. The amount of the estimated trust management fees must reflect the BLM's cost to obtain those services. The long-term funding mechanism must be sufficiently funded to cover all trust management fees, any applicable taxes, and any other costs that may be identified or become applicable should the operator not be available to pay these costs.

6.3.4.3.2 Review

The BLM will review cost estimates for the post-reclamation obligations in the same manner and detail that is used in estimating financial guarantees for reclamation obligations. The cost estimates for the post-reclamation obligations must be acceptable to the District/Field Manager.

6.3.4.3.3 Present Value Determination

To establish the amount of funds that need to be invested, the future operational, maintenance, and administrative costs need to be stated as a present value for the year the account will be established and start growing in value. A standard present value analysis needs to be performed. Appendix B - Present Value Determination provides guidance to aid in estimating the amount of funds that need to be deposited to meet the estimated future costs.

6.3.4.4 Trust Fund Agreement

Once the District/Field Manager determines that a trust fund is necessary and has reviewed the cost estimate, the District/Field Manager directs the operator to prepare the documents needed to establish the trust fund or other funding mechanism to ensure the funds are available to the BLM to meet all identified post-reclamation obligations should the operator fail to perform the required monitoring, construction, operation, maintenance, replacement, or other activities. The agreement establishing the fund must provide that its purpose is to assure that post-reclamation obligations identified in the Plan of Operations are satisfied; that the funding mechanism is under

BLM's control, including approval of any disbursement of funds from the trust fund, approval of the types of investments used, and the fund management entity; and that the fund is isolated from the effects of any potential operator bankruptcy. Any such agreement must be enforceable by the BLM as a regulatory obligation under 43 CFR 3809.

Within the limits of the allowable financial instruments established by the BLM for the trust fund, the agreement will specify that the operator/grantor is responsible for advising the trustee on any required investment decisions. As it is the operator's responsibility to ensure the trust fund is performing as established, the operator has a vested interest in identifying the appropriate financial instruments.

6.3.4.4.1 Release of Funds

In setting up the funding mechanism, the agreement must address the BLM's authority to release funds to reduce the operator's bond liability when the operator performs the post-reclamation obligations identified in the reclamation plan. Where the operator performs the construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure required in the reclamation plan for the approved Plan of Operations, funds held in the funding mechanism for those specific tasks may be released to the operator. Any release of funds to the operator based on work performed must be supported by written documentation of costs being presented to the BLM, and the District/Field Manager's approval of such costs as reasonable.

However, no such release will be allowed if the remaining funds would be insufficient to fully cover unsatisfied post-reclamation obligations.

The agreement must also define how the District/Field Manager would decide when the fund is no longer needed or that the amount in the fund may be reduced, and include provisions allowing for the return of funds to the operator.

6.3.4.4.2 Release of Liability

Creation of a trust fund or other funding mechanism to guarantee certain long-term post-mining responsibilities are performed does not relieve or release the operator from his or her responsibilities to perform those treatment or maintenance obligations identified in the BLM decision document approving the operation. As required by 43 CFR 3809.424(b), the operator's reclamation and closure obligations continue until satisfied.

In addition, any release or termination of the trust fund does not release or waive any claim the BLM, or other persons, may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended,[201] or under any other applicable statutes or regulations.[202]

[201] 42 U.S.C. 9601 *et seq*.
[202] 43 CFR 3809.592(b).

6.3.4.4.3 Solicitor Review

The responsible District/Field Manager or State Director should submit the draft trust fund agreement to the Field or Regional Solicitor's office for a legal review to ensure the government's and public's interests are protected before any decision accepting the agreement is made.

6.3.4.4.4 Establish the Agreement

The District/Field Manager must be the official signing the trust fund agreement for the BLM.

6.3.4.5 Acceptable Financial Instruments for Trust Funds

The regulations at 43 CFR 3809.555 define what are acceptable financial instruments for individual financial guarantees under 43 CFR 3809.552(a), but does not govern funding mechanisms under 43 CFR 3809.552(c). The State Director may limit the allowable financial instrument for a trust fund or other financial mechanism established under 43 CFR 3809.552(c) to those listed under 43 CFR 3809.555, or may choose to allow other financial instruments to be used.

If the State Director allows the use of other financial instruments not listed under 43 CFR 3809.555, he or she must document and make available to the public the decision and criteria used for accepting financial instruments not listed under 43 CFR 3809.555. Examples of financial instruments that may be deemed appropriate by the State Director for a long-term funding mechanism are stocks (equities) and fix income instruments (debt securities or bonds). Allowable equity market instruments might include stock funds or stock index funds, but not individual stocks. Individual corporate and government bonds are provided for under 43 CFR 38009.555(e); however, a bond fund or bond index funds may also be an appropriate instrument for a trust fund. Under no circumstance may the long-term funding mechanism include direct investment in the operator's or the parent company's stocks or bonds, or assets of the operator, parent company, or affiliates. In addition, the asset mix of the funding mechanism may not include real property, equipment, or other assets not easily convertible into cash.

In establishing the agreement, the District/Field Manager must determine the extent, if any, the financial instruments not listed under 43 CFR 3809.555 will be allowed for each trust fund being established. However, the use of stock market instruments may not exceed 70 percent of the trust fund's asset mix.

A critical consideration in how much stock market exposure is acceptable is the anticipated or projected time period before funds will be needed to address post-closure obligations. For example, with a relatively short time horizon before the funds are expected to be needed, the market fluctuations associated with the stock market may be a concern and the District/Field Manager may choose to limit the use of stock market instruments to less than that 70 percent threshold.[203]

[203] The logic is similar to the advice given for retirement planning. Generally financial advisors suggest a high percentage of fix income instruments in a retirement fund the closer an individual gets to retirement.

6.3.4.6 Funding the Trust

The District/Field Manager may require the trust fund or other funding mechanism be fully funded to meet all future obligations when the operation is authorized. If so required, the amount needed in the fund must equal the present value of all future costs to be covered by the fund. The manager may also allow the fund to be established with the operator depositing, over a period of time, the funds needed to address the post-reclamation obligations. Where the activity that creates the long-term liability is allowed to proceed before the long-term funding mechanism is fully funded, the agreement must specify the funds or securities that must be deposited on an annual basis to ensure the fund will be fully funded within the timeframe established in the agreement. In addition, the operator will be required to guarantee the funding of these phased payments through establishment of a surety bond or other financial instrument. The long-term funding mechanism must, however, be fully funded by the time the post-mining effects of the mining activity are expected to occur.

6.3.4.7 Monitoring the Fund

Although the establishment of a trust fund or other funding mechanism under 43 CFR 3809 may only be required to ensure the continuation of post-mining treatment, maintenance, and other requirements that are anticipated, those obligations are in the future and may change significantly over the course of developing and reclaiming the operation. Any decision concerning the need for the fund and/or the amount of money in the fund must reflect the best available information and management practices at that time. When conditions change, the District/Field Manager has a responsibility to promptly take corrective actions, including reviewing the decision to establish the fund, adjusting the amount of money required in the fund, and revising the assumptions concerning growth of the fund.

6.3.4.7.1 Periodic Reviews

As part of the periodic review of the RCE required by 43 CFR 3809.552(b) (see Section 6.2.4 Periodic Reviews), the District/Field Manager must ensure the adequacy of any funding mechanism established under 43 CFR 3809.552(c). Monitoring the operation, specifically the extent, nature, and cost to address anticipated post-reclamation obligations, is a critical aspect of any long-term funding mechanism. The District/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.

Mine inspections, performed by the District/Field Office, should identify any deviations from the mine plan, which formed the basis of the trust amount. When identified, the trust fund cost estimate must be updated.

The District/Field Office must also monitor the growth of the fund. At least once a year the responsible District/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. Based on this annual review, the funding level in the trust fund must be increased when the growth of the available funds is not keeping pace with the amount needed to address all anticipated post-reclamation obligations.

6.3.4.7.2 Insufficient Funds

Where a deficiency is identified in the adequacy of the fund to meet future obligations, the District/Field Manager must take the necessary actions, including issuing a decision revising the amount required in the fund (see Appendix A, Template 6.2-2 Financial Guarantee Increase – Ongoing Operations). Should the operator fail or refuse to make additional payments to cover the deficiency, the District/Field Manager will take enforcement actions under 43 CFR 3809.601 and 3809.602 to ensure adequate funds are available to guarantee those future obligations will be performed.

6.3.4.7.3 Unneeded Funds

If the review of the cost estimate and fund performance demonstrates that all or a part of the fund may be released and the operator requests such a release, the District/Field Manager, following the procedures set forth in the trust fund agreement, must take the necessary steps to have all funds in excess of those needed to address all post-reclamation obligations released to the operator.

6.3.4.8 Non-Public Lands

Where the trust fund is to cover post-reclamation obligations on non-public lands, the state agency with jurisdiction over mine reclamation and monitoring may be a party to the Trust Fund Agreement.

6.4 Financial Guarantee Replacement or Reduction

6.4.1 Duration of Coverage

The operator must maintain an acceptable financial guarantee until the operator, or a new operator, replaces it with another financial guarantee that the BLM has determined to be acceptable, or until District/Field Manager releases the requirement to maintain the financial guarantee after the operator has completed reclamation of the operation, according to the requirements of the reclamation plan and the requirements of 43 CFR 3809.320 for a Notice or 43 CFR 3809.420 for a Plan of Operations.[204]

6.4.2 Replacement Financial Guarantee

The operator or a new operator may request the BLM to accept a replacement financial instrument at any time after the approval of an initial instrument. The BLM office responsible for adjudicating financial guarantees has 30 calendar days to review the offered replacement instrument for adequacy. The criteria and requirements for determining the adequacy of the replacement financial guarantee are the same as for a new financial guarantee (see BLM Handbook H-3809-2, *Surface Management Bond Processing*).

[204] 43 CFR 3809.582.

Within 30 calendar days, the BLM must notify the operator of its decision regarding the replacement financial instrument by certified mail, return receipt requested, registered mail, or courier. Any decision to reject a request for a replacement financial guarantee must contain a complete explanation of the reasons for the rejection as well as language regarding appeals.[205]

If for some reason a surety bond is no longer in effect, the surety or other responsible third party, such as a state bond pool, is not released from an obligation that accrued while the surety bond or other coverage was in effect unless the operator submits, and the BLM accepts, an adequate replacement guarantee that covers the obligations under the previous surety bond.[206] A surety cannot unilaterally terminate liability for obligations that accrued while the bond was in effect. See BLM Handbook H-3809-2, *Surface Management Bond Processing*, for further guidance pertaining to coverage of financial guarantees.

6.4.3 Reduction of Financial Guarantee

When the operator has completed all or any portion of the reclamation of the operations in accordance with the Notice or approved Plan of Operations, the operator may notify the District/Field Office that the reclamation has occurred and request a reduction in the amount of the required financial guarantee and/or BLM approval of the adequacy of the reclamation.[207] Based on the operator request, the BLM District/Field Office will promptly inspect the reclaimed portion of the operation.[208] The District/Field Manager will notify the operator, in writing, as to the date and time of the inspection and encourage the operator to accompany the BLM inspector.

Based on the inspector's findings and the provisions of 43 CFR 3809.591, the District/Field Manager will provide the operator with a written determination as to the adequacy of the reclamation, and a restatement of the RCE and amount of the required financial guarantee (see Appendix A, Template 6.4-1 Required Financial Guarantee Amount - Reduction).

Where the amount of the existing financial guarantee exceeds the amount of the cost estimate to reclaim the operation, the operator may request the BLM release or reduce the amount of the obligated financial guarantee. Any request by the operator for a reduction in the amount of the existing financial guarantee must be made in writing to the BLM office responsible for adjudicating the financial guarantee. See BLM Handbook H-3809-2, *Surface Management Bond Processing*, for guidance pertaining to the reduction/release of financial guarantees. The District/Field Manager will not authorize a reduction in the RCE in situations where the BLM has not conducted a periodic review as required under 43 CFR 3809.552(b) or 3809.553(b). See review requirements in Section 6.2.4 Periodic Reviews. 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.

[205] 43 CFR 3809.581(a).
[206] 43 CFR 3809.581(b).
[207] 43 CFR 3809.590(a).
[208] 43 CFR 3809.590(b).

6.4.3.1 Reduction Limits

The regulations at 43 CFR 3809.591 prescribe specific limits to the amount of the financial guarantee that may be reduced when an operator has completed a portion of its reclamation obligations and requests a release or reduction in the required financial guarantee. The release process is illustrated in Figure 4.2-6 Plan of Operations—Closure and Required Financial Guarantee Release Process.

The BLM may release up to 60 percent of the required financial guarantee for a portion of the project area when the District/Field Manager determines that the operator has 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.[209] However, in no case may the amount of the required financial guarantee that is retained be less than 100 percent of the remaining reclamation costs required by 43 CFR 3809.552(a) and 3809.554(a).

The BLM may release the remainder of the required financial guarantee amount for the same portion of the project area when:[210]

- The District/Field Manager determines that the operator has successfully completed reclamation, including revegetating the area disturbed by operations, and

- Any effluent discharged from the area has met applicable Federal and state effluent and water quality standards for 1 year without needing additional treatment, or the operator has established a funding mechanism under 43 CFR 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 for 1 year with or without treatment. See Section 6.3.4 Trust Funds or Other Funding Mechanisms for discussion of funding mechanisms under 43 CFR 3809.552(c).

Final release of the requirement for a financial guarantee for a portion of the operation does not need to comply with the public notification requirements of 43 CFR 3809.590(c), as long as a financial guarantee exists for a portion of the operation. The BLM inspection of the reclamation and subsequent District/Field Manager's decision concerning reclamation adequacy and reduction of the required financial guarantee amount will follow the procedures specified under 43 CFR 3809.590(b). The operator will be notified, in writing, of any decision concerning reclamation adequacy and reduction of the amount of the required financial guarantee.

6.4.3.2 Corporate Guarantees

When an operator requests a reduction in his or her financial guarantee according to 43 CFR 3809.590(a) and the financial guarantee includes the use of a corporate guarantee, the reduction in the financial guarantee will be made proportionally from the accepted financial guarantee instrument(s) and the proportion of the financial guarantee that was covered by a corporate

[209] 43 CFR 3809.591(b).
[210] 43 CFR 3809.951(c).

guarantee on January 20, 2001. For example, if the financial guarantee coverage is to be reduced by $100,000 and the financial guarantee coverage, on January 20, 2001, was 65 percent corporate guarantee and 35 percent acceptable financial instrument(s), then the corporate guarantee would be reduced by $65,000 and the financial instrument(s) would be reduced by $35,000.

To ensure corporate guarantee coverage is not being transferred to a modified or expanded portion of an existing operation, any District/Field Manager decision, (see Determination of Required Financial Guarantee Amount, Appendix A, Template 3.2-3), that revises the amount of the required financial guarantee, whether it is a net increase or net reduction, must document the gross reduction, if any, due to completion of reclamation obligations. Where practical, the District/Field Manager should issue separate decisions for operations covered by corporate guarantees when both a reduction and an increase is occurring in the reclamation obligations.

6.4.3.3 Final Reduction

The final reduction or release of the requirement to maintain a financial guarantee for a Plan of Operations requires public notification and comment period.[211] For Plans of Operations, the BLM will post in the local BLM office and/or publish notice of final financial guarantee release in a local newspaper of general circulation, and accept comments for 30 calendar days. The notification will identify the operation, describe the requested action, and indicate where comments may be submitted.

The District/Field Manager may not make a decision that would result in the final release of the financial guarantee for 30 calendar days following notification of the public of the proposed final release. Following the 30-day period, the District/Field Manager must issue a written decision concerning the adequacy of the reclamation and reduction or final release of the financial guarantee requirement. The District/Field Manager is not required to respond to public comments on the reclamation or reduction of the financial guarantee requirement; however, substantive concerns should be addressed in the decision. This decision must be provided, in writing, to the operator and to any commenting parties, with a copy to the BLM office responsible for adjudicating financial guarantees.

This public notification provision does not apply to an interim financial guarantee reduction or final financial guarantee requirement release on a portion of the Plan of Operations, unless that financial guarantee requirement is for the last portion of an operation to be released. Also this notification provision does not apply to reduction of financial guarantee requirements for Notice-level operations.

6.4.3.4 Enforcement Actions

Any existing enforcement actions, including noncompliance orders, for an operation must be resolved before any release or reduction of the financial guarantee requirements may be authorized for that operation.

[211] 43 CFR 3809.590(c).

6.4.3.5 Trust Funds

This section, Section 6.4.3 Reduction of Financial Guarantee, applies to the operator's individual, blanket, and/or state-approved reclamation financial guarantee, but not to any funding mechanism established under 43 CFR 3809.552(c) to pay for long-term treatment of effluent or site maintenance. Calculation of the reclamation financial guarantee percentages discussed does not include any funds held in a trust fund or other post-mining funding mechanism.

6.4.4 Release of Responsibility

6.4.4.1 Claimant and Operator Responsibility

Termination of the period of liability under the financial guarantee does not release the mining claimant or operator from responsibility for reclamation of the operations should reclamation fail to meet the standards of the regulations or the reclamation responsibilities as specified in the filed Notice or approved Plan of Operations.[212]

6.4.4.2 Financial Guarantee Period of Liability

The time between the BLM's acceptance of a satisfactory financial guarantee for a specified obligation until the BLM's release of the bond is called the financial guarantee's period of liability. Only the period of liability or obligation under the financial guarantee is terminated or released; the bond itself is not terminated or canceled. Additionally, under 43 CFR 3809.116(a), the operator and claimant retain reclamation responsibility for any obligations that accrue while they hold their interests. The United States, acting through the BLM, cannot terminate the period of liability of a bond until all obligations of the terms of a Plan of Operations or a Notice-level disturbance have been fulfilled, payment of the bond proceeds (penal sum) is received by the BLM, or until a satisfactory replacement bond has been accepted by the BLM.

When the BLM Surface Management Specialists determine to the extent they are able, that all obligations under the bond (the terms and conditions of all operations) have been met, the period of liability may be terminated by adjudication. That means an exact date is set after which no new liability may accrue under the bond. This does not mean that the bond principal may deny liability for a cause of action accruing before the termination of the period of liability.

Before January 20, 2001, the BLM did not unconditionally release a surety from past liability. However, under 43 CFR 3809.581(b), the BLM will release a surety from an obligation that accrued while the surety bond was in effect when the BLM has accepted a replacement bond that covers all obligations under the previous surety bond.

6.4.4.3 Third Party Responsibility

Unless otherwise legally obligated, once all reclamation responsibilities, as specified in the filed Notice or approved Plan of Operations, and required by regulation, have been completed to the

[212] 43 CFR 3809.592(a).

District/Field Manager's satisfaction, third party institutions, such as banks, sureties, insurance companies, or state bond pools, are released from any future financial obligation. However, if the bank, surety, insurance company, or other entity assumes or directs operational control of the reclamation, or any other aspect of the operation, release of the financial guarantee requirement does not release the third party institution from responsibility for reclamation of the operations should reclamation fail to meet the standards of the 43 CFR 3809 regulations or the reclamation responsibilities as specified in the filed Notice or approved Plan.

6.4.4.4 CERCLA Liability

Any release of the financial guarantee does not release or waive any claim the BLM, or other persons, may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended,[213] or under any other applicable statutes or regulations.[214]

6.4.5 Change of Operator

The operator remains responsible for obligations or conditions created while the operator conducted operations unless a transferee accepts responsibility under 43 CFR 3809.116 and the BLM accepts an adequate replacement financial guarantee.[215] The original operator's financial guarantee must remain in effect until the District/Field Manager determines that the operator is no longer responsible for all or part of the operation.

In the event the original operator wants to have his or her financial guarantee released, the new operator must provide documentation[216] to the District/Field Office that he or she accepts responsibility for all obligations and conditions created by the original operator. In addition, the new operator must provide the BLM office responsible for adjudicating financial guarantees with an acceptable replacement financial guarantee for all obligations and conditions created by the original operator. The BLM may release the original financial guarantee on an incremental basis. Any change of operator must be reported to the appropriate BLM District/Field Office within 30 days as required by 43 CFR 3809.301(d) and 3809.401(b)(1).

If the new operator intends to conduct operations under the existing Notice or Plan of Operations, the new operator must provide the BLM District/Field Office with a written statement to this effect, including an acceptable RCE. If the new operator intends to modify the existing Notice or Plan of Operations, he or she must process the request under the requirements of 43 CFR 3809.330 or 3809.430. A new operator must provide the BLM with an acceptable financial guarantee covering proposed operations before the District/Field Manager may allow the new operator to conduct operations.

[213] 42 U.S.C. 9601 *et seq.*
[214] 43 CFR 3809.592(b).
[215] 43 CFR 3809.593.
[216] BLM Form 3809-5, Notification of Change of Operator and Assumption of Past Liability.

6.4.6 Change in Land Ownership

When there is a change in the land status out of public ownership, the District/Field Manager must determine if retention of all or part of the financial guarantee is still warranted.

6.4.6.1 Patented Lands

Unless the BLM has an agreement with the state to hold the financial guarantee for both public and private lands, when a mining claim or mill site is patented under the Mining Law, or the

entire property is transferred out of public ownership, the BLM will release the portion of the financial guarantee that applies to operations within the boundaries of the patented land.[217]

When a patent is issued that covers a portion of an operation, the BLM District/Field Office should request the operator submit a revised RCE for the operation that remains on public lands. The District/Field Manager must issue a written decision concerning the new amount of the required financial guarantee. The BLM office responsible for adjudicating financial guarantees will release a portion of the required financial guarantee based on the District/Field Manager's decision.[218] The remainder of the required financial guarantee will be released based on successful reclamation of the unpatented lands as required by 43 CFR 3809.590 and 3809.591.

6.4.6.2 California Desert Conservation Area (CDCA)

When the BLM patents mining claims within the boundaries of the CDCA that contain the patenting restriction in 43 U.S.C. 1781(f), the California State Office must not release the financial guarantee as a result of the patenting of the mining claim.[219] Under that patent restriction, mining operations on CDCA lands remain subject to financial guarantee requirements.

6.4.6.3 Joint Financial Guarantee

Where the BLM and state have an agreement under 43 CFR 3809.201 that provides for financial guarantees to be held jointly by either the BLM or state, the financial guarantee release provision for lands that have been transferred out of public ownership does not apply.

6.4.6.4 Split Estate

Where the transfer of ownership of the surface estate creates a split estate, the District/Field Manager must determine if the surface management regulations still apply as provided for under 43 CFR 3809.31(e). If the regulations do not apply, the BLM office responsible for adjudicating financial guarantees will release the portion of the financial guarantee that applies to operations within the boundaries of the patented land.

[217] 43 CFR 3809.594(a).
[218] 43 CFR 3809.594(b).
[219] 43 CFR 3809.594(a).

6.5 Forfeiture of Financial Guarantee

6.5.1 Initiating Forfeiture

The District/Field Manager may initiate forfeiture of all or part of an operator's financial guarantee for any project area or portion of a project area if any of the following applies:[220]

- The operator or mining claimant is unable or unwilling to conduct reclamation as provided for and as scheduled in the reclamation plan included in the Notice or approved Plan of Operations; or in accordance with the 3809 regulations.

- The operator fails to meet the terms of the Notice or approved Plan of Operations.

- The operator defaults on any of the conditions under which the operator obtained the financial guarantee.

If necessary, the BLM will initiate forfeiture procedures of the financial guarantee according to 43 CFR 3809.595 through 3809.599. When the District/Field Manager decides to require the forfeiture of all or part of the financial guarantee,[221] the District/Field Office notify the Regional Solicitors and will serve the notice of default and forfeiture upon the operator or mining claimant by certified mail-return receipt requested, and the surety on the financial guarantee, if any. The state agency holding the financial guarantee, if any, will inform all parties including the operator of the following (see Appendix A, Template 6.5-1, Forfeiture of Financial Guarantee):

- The District/Field Manager's decision to require the forfeiture of all or part of the financial guarantee.

- The reasons for the forfeiture.

- The amount that the operator will forfeit based on the estimated total cost of implementing the reclamation plan requirements for the project area or portion of the project area affected, including BLM's administrative costs.

- How the operator may avoid forfeiture[222] including:

    - Providing a written agreement under which the operator or another person will perform reclamation operations in accordance with a compliance schedule which meets the conditions of the Notice or approved Plan of Operations and the reclamation plan, and a demonstration that such other person has the ability to satisfy the conditions, and

    - Obtaining written permission from the District/Field Manager for a surety to complete the reclamation, or the portion of the reclamation applicable to the bonded

[220] 43 CFR 3809.595.
[221] 43 CFR 3809.596.
[222] 43 CFR 3809.596(d).

phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in the Notice or approved Plan of Operations.

- That the District/Field Manager's decision to initiate forfeiture of financial guarantee is subject to appeal under 43 CFR 3809.800 but remains in full force and effect pending the outcome of the appeal unless the State Director or Interior Board of Land Appeals (IBLA) grants a stay.

6.5.2 Collecting the Forfeited Guarantee

If the operator fails to meet the requirements of the District/Field Manager's forfeiture decision provided under 43 CFR 3809.596, or the IBLA does not grant a stay under 43 CFR 4.21, the BLM will take the following actions.[223]

The BLM office responsible for adjudicating financial guarantees will immediately collect the forfeited amount as provided by applicable laws for the collection of defaulted financial guarantees, other debts, or state bond pools. The BLM office responsible for adjudicating financial guarantees will expeditiously secure all funds intended as financial guarantees to ensure proper reclamation. The BLM office responsible for adjudicating financial guarantees should consult the appropriate Solicitor's Office who will work with the Department of Justice to ensure the Government's interests are protected.

Financial guarantees that are forfeited will be deposited into a 5320 account "Repair of Damaged Lands - Public Lands" by the BLM office responsible for adjudicating financial guarantees. Before using funds from this account, the District/Field Manager must contact the State Budget Lead to obtain an individual project code for tracking purposes.

The District/Field Office will use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof. All costs, including contracting costs and BLM employee salaries, associated with the reclamation of the operation will be covered by the deposited funds. Where the BLM has obtained funds to meet certain reclamation obligations, the District/Field Office must promptly complete reclamation as required by the filed Notice or approved Plan and 3809 regulations. The District/Field Office's ability to promptly complete all required reclamation may be affected by factors outside the BLM's control, such as weather, road and ground conditions, or litigation. The BLM will return any unused funds as required by 43 CFR 3809.599.

Through purchase, bankruptcy sale, relocating of mining claims, or paying the maintenance fee on existing mining claims, new parties may enter into the process. Their activities on the site may complicate the orderly progression of acquiring the financial guarantee and implementing reclamation measures. The District/Field Manager should consider temporarily segregating the site from activities under the mining laws to allow for unencumbered site reclamation. See BLM Handbook 1601-1, *Land Use Planning Handbook,* for the procedures and requirements in segregating lands from mineral entry.

[223] 43 CFR 3809.597.

6.5.3 Insufficient Forfeited Funds

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operator(s) and mining claimant(s) are liable for the remaining costs as set forth in 43 CFR 3715 and 43 CFR 3809.116.[224] In such situations, the BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee. If agency funds are used to reclaim the disturbance, the BLM must promptly initiate legal procedures to recover from all responsible parties all costs of reclamation in excess of the amount forfeited.

Recovery should be sought through legal action for any reclamation costs not covered by the financial guarantee (see BLM Manual 1370, *Receipts and Disbursements*, BLM Manual 1371, *Billings*, and BLM Manual 1372, *Collections*). In addition to conferring with the State or District/Field Office Collections Specialist, the BLM should consult with the appropriate Solicitor's Office who can work with Department of Justice (DOJ) to recover BLM funds used to complete reclamation. See Section 13.6.2 Debt Collection on proper documentation of any collection effort. Before the case file may be closed, the site must be successfully reclaimed and funds recovered from the responsible party or the collection action terminated (see BLM Manual 1375, *Delinquent Accounts*).

Reclamation actions taken by the BLM, for operations authorized under the surface management regulations, requiring the expenditure of funds over the financial guarantee amount should use Mining Law Administration funds (1990). If no 1990 funds are available, and the unreclaimed disturbance is a threat to public health, safety, or the environment, then it may be appropriate for the BLM to invoke its CERCLA authority and use abandoned mine land or hazardous materials program funding to complete the work (see BLM Handbook H-1703-1, *BLM CERCLA Response Handbook*).

6.5.4 Excess Forfeited Funds

If the amount of financial guarantee forfeited is more than the amount necessary to complete reclamation, the BLM must return the unused funds within a reasonable amount of time to the party from whom the funds were collected.[225]

6.5.5 Bankruptcy

Bankruptcies create unique issues when dealing with financial guarantee forfeitures. Bankruptcy proceedings are bound by strict filing time limits. If the BLM misses the deadline for filing a claim, the BLM is left without further legal recourse. The BLM must advise the Solicitor's Office immediately of any bankruptcy filing so that the Solicitor and the U. S. Attorney's Office may file the necessary documents to establish the BLM's claim in the Bankruptcy Court.

When faced with a bankruptcy, the BLM office responsible for adjudicating financial guarantees should refer to BLM Handbook H-3809-2, *Surface Management Bond Processing*, Chapter XIV,

[224] 43 CFR 3809.598.
[225] 43 CFR 3809.599.

Bankruptcy, for further guidance on steps necessary to protect the public's interest. See also, Section 7.3 Forfeiture of Financial Guarantee upon Abandonment.

6.6 Joint Federal-State Financial Guarantees

6.6.1 Joint Program and Deferral Agreements

States may enter into agreements with the BLM under 43 CFR 3809.200(a) to allow for joint Federal and state administration and enforcement of mining operations, including financial guarantees. Alternatively, the Federal-State Agreement may provide for deferral of the BLM's surface management responsibilities to the state, rather than administering the operation jointly. See Section 12.2 New Agreements, for the requirements of a Federal-State Agreement.

If the Federal-State Agreement covers financial guarantees, an operator may use a single financial instrument to meet both Federal and state financial guarantee requirements. Either the BLM or the state may hold the financial guarantee under such an agreement; however, if the Federal-State Agreement specifically provides that the BLM will defer to state regulation as to financial guarantees, the instrument must specify both that the Secretary has the authority to redeem the bond, and that the state is required to obtain BLM concurrence before approving, releasing, or initiating forfeiture of a financial guarantee.[226]

Where there is to be a single financial guarantee and the operation involves both public and non-public lands, the financial guarantee must cover all operations whether they are on public or non-public lands. Where the financial guarantee covers both public and non-public lands, the BLM and state should concur on the approved amount, release, and forfeiture of the financial guarantee. This concurrence may be addressed programmatically through the Federal-State Agreement or on a case-by-case basis.

The BLM and state must concur on the amount of the financial guarantee that must be calculated based on completion of all applicable Federal and state reclamation requirements for the entire operation. To be held as a single financial guarantee, any financial instrument(s) used for the financial guarantee must be acceptable to the BLM under 43 CFR 3809.555 or 3809.571.

Under either a joint or deferral agreement, where the state holds a financial guarantee, the amount of the financial guarantee may reflect the state's administrative costs instead of the BLM's for contracting the required reclamation. In such cases, the state must also agree to administer all reclamation contracts under the state cost structure should financial guarantee forfeiture be necessary.

6.6.2 Long-Term Funding Mechanisms

The BLM may enter into a Federal-State Agreement under 43 CFR 3809.200(b) that provides for post-reclamation obligations under 43 CFR 3809.552(c). See Section 6.3.4 Trust Funds or Other Funding Mechanisms for guidance on establishing a long-term funding mechanism.

[226] 43 CFR 3809.203(d).

Where the post-mining treatment or maintenance requirements involve both public and non-public lands, the trust fund must be for all required long-term, post-mining construction, operation, maintenance, or replacement of any treatment facilities and infrastructure for the entire operation. In addition, the state may be a party to the Trust Fund Agreement where the post-mining treatment or maintenance requirements involve both public and non-public lands.

Where the agreement provides that administration of a trust fund is to be handled by the state, the amount in the fund may reflect the state's administrative costs for contracting the required post-mining construction, operation, maintenance, or replacement of any treatment facilities and infrastructure if the operator defaults. In such cases, the state must also agree to administer all contracts under the state cost structure should the operator fail to perform the post-mining tasks as required in the approved Plan of Operations.

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Chapter 7 Cessations and Abandonment

This chapter describes operator and BLM responsibilities when an operator suspends activities under a Notice or Plan, and the criteria the BLM uses to determine when the operation is abandoned. This chapter also discusses special considerations for dealing with operators who have declared bankruptcy.

7.1 Cessation and Abandonment of Activity Conducted under a Notice

Notices expire after 2 years unless extended under 43 CFR 3809.333 or nullified due to noncompliance. Once a Notice expires, the only surface-disturbing activity that the operator may engage in is reclamation.[227] Unlike Plans of Operations, operators are not required to submit an interim management plan with their Notices.

7.1.1 Requirements for Periods of Non-Operation

If the operator stops conducting operations under a Notice for any period of time, the operator must:[228]

- Maintain the public lands within the project area, including structures, in a safe and clean condition. If the cessation of operations is not addressed in the Notice, then the operator must promptly notify the BLM about the stoppage of operations or the BLM may determine the operations to be abandoned under 43 CFR 3809.336 (see Section 7.1.2).

- Prevent UUD during the period of non-operation. Under 43 CFR 3809.334(b), the BLM will notify the operator, in writing, if it determines the period of non-operation is likely to cause UUD and will tell the operator what steps must be taken to prevent UUD. If the BLM determines that the period of non-operation is likely to cause UUD and there has been an extended period of non-operation, the written notice from the BLM may require the operator to remove structures, equipment, and other facilities and reclaim the site.

- Maintain an adequate financial guarantee for surface disturbance under the Notice until the required reclamation is complete. If surface disturbance under the Notice has not begun, or only partially occurred and then stopped, the BLM will not release any portion of the financial guarantee until the operator modifies the Notice, including a revised RCE, to reflect the lower level of surface disturbance.

While the regulations do not define an "extended period of non-operation," the BLM may make such a determination after considering the sensitivity of the resource values in the project area and any other relevant factors. As general guidance, if there is no or minimal activity on-the-ground during the 2-year Notice lifespan, it would then be reasonable for the BLM to issue an order under 43 CFR 3809.334(b)(2) requiring the operator to remove all structures and

[227] 43 CFR 3809.332.
[228] 43 CFR 3809.334.

equipment and to reclaim the area. It may also be appropriate to take action under 43 CFR 3715.5-1 and 3715.5-2.

7.1.2 Determination of Abandonment

At any time the BLM may inspect the operation and determine that it has been abandoned.[229] In reaching such a determination, the BLM will apply the criteria listed under 43 CFR 3809.336(a).

The BLM may determine the operation has been abandoned where any of the following conditions apply:

- Inoperable or non-mining related equipment is left in the project area.
- The operator has removed mining equipment from the area.
- The project area has not been maintained.
- Workers have been discharged.
- The financial guarantee has not been maintained.
- There is no sign of activity in the project area over time (e.g., 1 year).

Liquidation or removal of project assets during the bankruptcy process would also constitute evidence of abandonment. In order to support a determination that an operation has been abandoned, the applicable conditions must be documented in inspection reports.

7.1.2.1 Issuing an Abandoned Decision

Once the BLM determines the operation are abandoned, the authorized officer will issue a decision stating that the operation has been determined to be abandoned, nullifying the Notice, identifying any remaining reclamation obligations, and advising the operator that the BLM will initiate forfeiture of the financial guarantee as provided for under 43 CFR 3809.595 through 3809.597 unless reclamation is completed by a set date. See Appendix A, Template 3.5-1, Reclamation Required for an example of what should be covered in the decision to the operator. Such a decision may be appealed as specified under 43 CFR 3809.800 through 3809.809.

When preparing to take action under this provision,[230] the BLM office should consult with the Solicitor's Office to determine whether to also, or in lieu of, take action under 43 CFR 3715.5-1 and 3715.5-2. Action under the 3715 regulations is particularly appropriate where there is only occupancy and no ongoing surface disturbance.

[229] 43 CFR 3809.336.
[230] 43 CFR 3809.336(b).

7.2 Activity Conducted under a Plan of Operations

The Plan of Operations must contain an interim management plan to manage the project area when the operator stops conducting operations (i.e., activities associated with exploration and development of a locatable mineral deposit) for a period of temporary and/or seasonal closure. Plans of Operations do not automatically expire when an operator is not engaged in active exploration, development, or reclamation. Unless the BLM initiates an enforcement action and suspends or revokes a Plan of Operations, the Plan remains in effect until the operator has completed mining operations and final reclamation.[231]

However, the Plan operator is expected to follow the schedule of operations contained in the approved Plan, or request a modification if the schedule needs to be adjusted (a change in the schedule of operations would likely be a minor modification under 43 CFR 3809.432(b)).

7.2.1 Requirements if Activity Stops

Section 3809.424 describes what the operator must do during planned periods of temporary closure as described in the approved Plan of Operations.

- Follow the approved interim management plan submitted under 43 CFR 3809.401(b)(5). If the operator needs or wants to do something different than provided by the approved interim management plan, the interim management plan must be modified.

- Modify the Plan, if necessary. If the interim management plan does not cover the circumstances or procedures that the operator will follow during the period temporary closure, under 43 CFR 3809.431(a) the operator must submit a Plan modification specifically detailing the changes in the interim management plan to the BLM within 30 calendar days of the non-conforming closure date. The BLM will process the Plan modification in either the same manner as the initial Plan approval, or as a minor modification, whichever is appropriate under 43 CFR 3809.432. Examples where an interim management plan may need to be modified could include:

    - The period of non-operation is longer than anticipated or seasonally different than anticipated.

    - Equipment to be stored onsite is not listed in initial interim management plan.

    - There is a change in monitoring frequency.

    - There are adverse effects to the environment or public safety under the existing interim management plan that requires it be modified to correct the situation.

- Take all necessary actions to prevent UUD during the period of non-operations. The operator is responsible for preventing UUD during the period of non-operation.

[231] See 43 CFR 3809.423.

- Maintain an adequate financial guarantee for the Plan of Operations during the period of non-operation. The financial guarantee must be adequate to complete any remaining reclamation work.

If the period of non-operation is likely to cause UUD, then the BLM must require the operator to take corrective actions to prevent UUD, including requiring the operator to remove all structures, equipment, and other facilities and reclaim the project area.[232]

7.2.2 Determination of Abandonment

At any time the BLM may inspect the operation and determine whether it has been abandoned by applying the criteria listed under 43 CFR 3809.336(a).[233] See Section 7.1.2 above.

The BLM may determine that the operation has been abandoned where any of the following conditions apply:

- Inoperable or non-mining related equipment is left in the project area.
- The operator has removed mining equipment from the area.
- The project area has not been maintained.
- Workers have been discharged.
- The financial guarantee has not been maintained.
- There is no sign of activity over an extended timeframe (e.g., 5 years).

Disposal of project assets through bankruptcy proceedings would also indicate that the operation has been abandoned. In order to support a determination that an operation has been abandoned, the BLM must document the applicable conditions in inspection reports before issuing the decision of abandonment (see Section 9.1.5 Documentation of Inspections).

If an operator has been operating under the interim management plan in its approved Plan of Operations for 5 consecutive years, then the BLM will review the operation and document in the case file whether or not to initiate enforcement actions under 43 CFR 3809.600 to declare the Plan of Operations abandoned, terminate the Plan of Operations, and direct final reclamation and closure.

7.2.2.1 Issuing an Abandoned Decision

Once the BLM finds that the operation meets the criteria for abandonment, the authorized officer will issue a decision to the operator stating that the operation has been determined to be

[232] 43 CFR 3809.424(a)(2).
[233] 43 CFR 3809.424(a)(4).

abandoned, that the Plan of Operations is terminated, and that the operator must complete reclamation according to the approved reclamation plan. The decision must also advise the operator that the BLM will initiate forfeiture of the financial guarantee as provided for under 43 CFR 3809.595 through 3809.597 unless reclamation is completed by a set date. See Appendix A, Template 3.5-1 Reclamation Required for an example of what should be covered in the decision to the operator. Such a decision may be appealed as specified under 43 CFR 3809.800 through 3809.809.

When preparing to take action under this provision, the BLM office should consult with the Solicitor's Office to determine whether to also take action under 43 CFR 3715.5-1 and 3715.5-2.

7.3 Forfeiture of Financial Guarantee upon Abandonment

If the BLM determines that the operator has abandoned the operation and the operator fails to complete reclamation by the date specified in the abandoned operations decision, the District/Field Manager will initiate forfeiture of the financial guarantee as provided under 43 CFR 3809.595. Under 43 CFR 3809.596, the BLM will notify the operator and/or mining claimant that the BLM intends to collect and use a specified amount of the forfeited financial guarantee unless the operator or mining claimant provides the written agreements specified in 43 CFR 3809.596(d). (See Section 6.5 Forfeiture of Financial Guarantee and also BLM Handbook H-3809-2, *Surface Management Bond Processing*).

7.4 Operator Responsibilities

Abandonment of an operation does not relieve the operator of its reclamation and closure responsibilities.[234] Nor is the amount of the financial assurance the limit of the operator's reclamation liability.[235]

The operator's reclamation obligations are satisfied when (1) reclamation has been completed in accordance with the filed Notice or approved Plan of Operations and the performance standards or (2) the BLM receives documentation that a transferee accepts responsibility for previously accrued reclamation obligations and BLM accepts a replacement financial guarantee adequate to cover those obligations. Under CERCLA or any other applicable statutes or regulations, the responsibilities and liabilities of the responsible party may continue even after reclamation is complete.[236]

7.5 Bankrupt Operations

Bankruptcy is the legal process where individuals or corporations seek protection from creditors for debts owed. Under Federal bankruptcy procedures, an operator may restructure its debt and continue to do business ("Chapter 11"), or be required to liquidate assets ("Chapter 7").

[234] 43 CFR 3809.116.
[235] 43 CFR 3809.598.
[236] 43 CFR 3809.592.(b).

If the BLM District/Field Office suspects an operator may have filed for bankruptcy, it should check with the BLM Bankruptcy Coordinator in the State Office to determine if the operator has filed for bankruptcy protection. The bankruptcy coordinator will then notify other states and work with the Office of the Solicitor.

Once the BLM becomes aware that an operator has filed for bankruptcy protection, the BLM District/Field Office will immediately review the financial guarantee amount to determine if the on-the-ground reclamation liability will be covered by the financial guarantees in place. If a shortfall in the financial guarantee is identified, the BLM must request assistance from the Office of the Solicitor and the DOJ to submit claims to the bankruptcy court to protect any financial guarantees held by the BLM and for any unfunded or underfunded reclamation liability.

During the bankruptcy proceedings, the BLM must be involved in discussions with the operator and the surety company, if applicable, to determine how the reclamation obligations will be satisfied if the operations become abandoned or are forced to dissolve. In these situations, the surety company, if applicable, would have the option of performing the required work in lieu of the operator, or the BLM may oversee performance of the reclamation using the forfeited financial guarantee.

Therefore, operations in bankruptcy need to be closely monitored. See BLM Handbook 3809-2, *Surface Management Bond Processing,* Chapter XIV.

7.5.1 Maintaining Compliance during Bankruptcy

An operator does not violate any provision of the 43 CFR 3809 regulations and is not in noncompliance simply by filing for bankruptcy protection. However, an operator in bankruptcy may be forced to cut back expenditures which may make it difficult to meet the operating and reclamation commitments in their Notice or Plan. Therefore, the BLM can and will exercise its authority to inspect the operations and take enforcement actions to ensure compliance with environmental regulations as appropriate, including issuing a noncompliance order for failure to reclaim. If the BLM determines that operations are in noncompliance and the operator is unwilling or unable to perform the reclamation specified in the Notice or Plan, the BLM should work with the Solicitor's Office to initiate forfeiture of the financial assurance or seek payment from the surety company.

In addition, if the operator files for bankruptcy under Chapter 7 or is otherwise forced to dissolve as part of the bankruptcy proceeding, the BLM should immediately initiate procedures for determining whether the project is abandoned and issue a decision so that reclamation may begin as soon as possible.

The BLM guidance requires financial assurances to be isolated from liquidation of the bankruptcy estate so that the financial assurance amount should be available in full to fund the reclamation plan.

7.5.2 Use of Onsite Equipment to Reclaim Bankrupt Operations

If the operator files for bankruptcy under Chapter 7 or the Court otherwise orders liquidation of the operator's assets, the Court may appoint a trustee to sell the operator's assets. Often this may

involve selling equipment or structures that are needed to perform reclamation, in particular disposal of equipment or structures that were previously presumed available when the RCE was calculated. Examples of equipment disposed of during bankruptcy that may impede reclamation work include pumps for circulating leach pad solutions, liners, fences around process ponds, culverts in roads, water treatment plants, powerlines, generators, and pumps or casing from monitoring wells.

The BLM will work with the Solicitor's Office and the DOJ to attempt to work with the Trustee or the Court to delay disposal of items required for reclamation until after the reclamation work is completed. In general, this will require filing a petition with the Bankruptcy Court in order to retain equipment onsite that is required for environmental compliance until reclamation is complete.

Prior to bankruptcy, several approaches may be taken to prevent such a situation from occurring. The RCE may be increased to cover the replacement cost of equipment required for reclamation, the personal property could be titled to the BLM or the state so that it is available, or the real property could be transferred with use and access rights reserved to the BLM or state.

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Chapter 8 Special Situations and Land Use Planning

This chapter provides guidance on authorizing surface-disturbing activities under certain special situations, including lands that have been withdrawn or segregated from mineral entry, minerals that may be common variety minerals, split estate lands, cumulative effects of casual use activities, and suction dredging. This chapter also provides guidance on land use planning decisions and how those decisions may affect proposed operations and post-mining land uses.

8.1 Withdrawn and Segregated Lands

8.1.1 Validity Determination

The regulations at 43 CFR 3809.100 have special provisions that apply to proposed operations on segregated or withdrawn lands.

8.1.1.1 Withdrawn Lands

For mining claims located on lands that are withdrawn from appropriation under the mining laws subject to valid existing rights, the BLM must conduct a validity examination and determine the mining claim(s) subject to the Notice or Plan were valid as of the date of the withdrawal, and as of the date of the exam, before approving a Plan or determining a Notice to be complete.[237] A Notice or Plan submitted before the withdrawal is not exempt from the validity determination requirement if the BLM has not accepted or approved it at the time of the withdrawal.

The BLM will issue its findings with regard to valid existing rights in a mineral report (see BLM Handbook H-3890-3, *Validity Mineral Report*). The BLM may recover costs from the operator associated with the validity examination and mineral report.[238]

8.1.1.2 Segregated Lands

BLM managers have discretion to determine the validity of mining claims within a segregated area before approving a Plan of Operations or acknowledging an exploration Notice. This also means that BLM managers have discretion to approve a proposed Plan of Operations or acknowledge an exploration Notice on segregated lands without first determining the validity of the underlying mining claims.

8.1.1.2.1 New Plans and Notices

Before making a decision to require a validity determination under 43 CFR 3809.100(a), the BLM manager may consider certain factors including but are not limited to the purpose of the segregation. When considering new or pending exploration Notices or proposed Plans of Operations on segregated lands, BLM managers should ask the operator who is proposing the exploration or mining activities for data or other evidence showing that a physical exposure of a

[237] 43 CFR 3809.100(a).
[238] 43 CFR 3800.5(b).

locatable mineral deposit existed as of the segregation date. For purposes of deciding whether to conduct a validity determination on segregated lands, BLM managers need not determine whether the exposure evidences a valuable mineral deposit. That is a question left for a mineral examination.

In assessing whether the operator has exposed a locatable mineral deposit, BLM managers will accept the use of a variety of industry standard methods, including, but not limited to, assays, physical tests, chemical analysis, on-site concentration and processing, x-ray fluorescence, neutron activation, or gamma ray logging methods. BLM managers should consult with a Certified Mineral Examiner or a Certified Review Mineral Examiner who is experienced with the type of deposit at issue and applicable analysis methods.

If the operator cannot show an exposure of a locatable mineral deposit that was disclosed before the segregation date, the BLM manager should not accept the Notice or approve the Plan without conducting a discretionary validity determination under 43 CFR 3809.100(a) regardless of the purpose of the segregation. If the operator can show an exposure of a locatable mineral deposit that was disclosed before the segregation date, the BLM manager may exercise discretion under 43 CFR 3809.100(a) on a case-by-case basis before deciding whether to acknowledge a Notice for exploration activities or approve a Plan of Operations without first conducting a mineral examination if the purpose of the segregation supports such a decision.

8.1.1.2.2 Notice or Plan Modifications

BLM processes modifications to a Notice or Plan in the same manner as a new Notice or Plan. Consequently, BLM may apply the same considerations discussed above before acknowledging the modified Notice or approving a Plan modification on segregated lands. If, at the time of the modification, the lands on which the proposed operations or exploration have been withdrawn from the operation of the 1872 Mining Law, BLM is required to conduct a validity examination before accepting the Notice or approving the Plan of Operations.

8.1.1.3 Determination of Invalidity

If the validity determination and mineral report conclude that the mining claim was invalid at the time of the withdrawal or at the time of the validity examination, the District/Field Manager may not approve the Plan of Operations or accept the Notice, or allow any other activities on the mining claim, except as necessary for reclamation and for the operator to defend any pending contest proceeding (see Section 8.1.2 Allowable Operations). The State Office will also promptly initiate contest proceedings (see BLM Handbook H-3870-1, *Adverse Claims, Protest, Contest, and Appeals*).

8.1.2 Allowable Operations

If the BLM has not completed the validity report, if the BLM has determined that the claim is not valid, or if there is a pending contest proceeding for the mining claim, certain activities may still

be allowable.[239] The District/Field Manager may approve a Plan of Operations or allow notice-level operations for the disputed mining claim if the operations are limited to taking samples to confirm or corroborate mineral exposures that were physically accessible on the mining claim before the segregation or withdrawal date, whichever is earlier.[240] The District/Field Manager may also approve a Plan of Operations or allow notice-level operations for the operator to perform the minimum necessary annual assessment work if required by 43 CFR 3836.

8.1.3 Time Limits Suspended

While the BLM conducts the mineral examination and prepares the validity report, the BLM may suspend the time limits, specified under 43 CFR 3809.111 and 3809.411, for responding to a Notice or acting on a Plan of Operations.[241]

8.1.4 Cease Operations

If a final Departmental decision declares a mining claim on withdrawn lands to be null and void, the operator must cease all operations, except required reclamation.[242]

8.1.5 Prior Authorizations

Accepted Notices or approved Plans of Operations that were in place prior to the withdrawal or segregation date are not subject to the mandatory valid existing rights determination procedures at 43 CFR 3809.100(a). These operations may continue as accepted or approved and do not require a validity examination unless or until there is a material change in the activity. A Notice may be extended under 3809.333 without a material change, and thereby not trigger the validity examination procedures that a Notice modification filed under 3809.330 would require.

The BLM still retains the discretion to assess the validity of any mining claim on any lands that the BLM administers when it would be in the public interest and may choose to do so when there are ongoing operations in withdrawn or segregated lands.[243] In that case, the BLM would be responsible for the cost of the validity examination and report.

8.2 Common Variety Minerals

8.2.1 Proposed Operations

The Common Varieties Act of 1955, 30 U.S.C. 611, removed "common varieties of sand, stone, gravel, pumice, pumicite, or cinders" from location under the Mining Law, and made these materials subject to sale under the Materials Act of 1947.[244] Consequently, when a Plan of Operations or Notice is submitted to the BLM to remove suspected common variety minerals, as

[239] 43 CFR 3809.100(b).
[240] 43 CFR. 3809.100(b)(1)(i), (2).
[241] 43 CFR 3809.100(c).
[242] 43 CFR 3809.100(d).
[243] 43 CFR 4.451-1.
[244] 30 U.S.C. 601.

defined in 43 CFR 3830.12, from a mining claim located on or after July 23, 1955, the BLM must prepare a mineral examination report to verify that the minerals are not common variety before authorizing the proposed operations or accepting the Notice. [245] The common variety determination process is described in BLM Manual 3891, *Validity Examinations*. The operator is responsible for the costs associated with the validity examination and report.[246]

First, after receiving the Notice or proposed Plan, the District/Field Manager will send a written notification to the mining claimant or operator stating that the BLM will conduct a common variety determination on the claims. The notification advises the operator that the BLM may authorize operations to remove suspected common variety minerals under the 3809 regulations as provided for under 43 CFR 3809.101(b) until the common variety report has been prepared (see Section 8.3.2 Interim Authorization below). The notification must also explain the procedures for establishing an escrow account and purchasing the material from the BLM under the Materials Act of 1947 and 43 CFR 3600 regulations if the operator wishes to mine while the mineral examination is being prepared. The District/Field Manager may authorize operations under the Mineral Materials Disposal Regulations (see BLM Handbook H-3600-1, *Mineral Material Disposal*).

The District/Field Office must promptly initiate the examination of the subject mineral deposit to determine if the mineral is locatable or salable. The examination and report for the common variety determination is to follow the guidance provided under Manual 3891, *Validity Examinations,* Handbook 3890-1, *Validity Mineral Reports,* and must be prepared by a certified mineral examiner.

8.2.2 Interim Authorization

If, after receiving the written notice from the BLM, the operator wishes to remove suspected common variety minerals while the examination is being conducted, the BLM may provide interim authorization under 43 CFR 3809.101(b) in three circumstances.

First, the District/Field Manager may approve a Plan of Operations or allow Notice-level operations that are limited to taking samples necessary to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim.[247] The manager may also approve a Plan of Operations or allow Notice operations for the operator to perform the minimum necessary annual assessment work if required under 43 CFR 3836. Third, the District/Field Manager may authorize the operator to remove the possible common variety minerals if the operator establishes an escrow account in a form acceptable to the BLM (see Section 8.2.3 for the requirements for operating with an escrow account). The District/Field Manager has the discretion as to which of these options to afford the operator. The BLM is not obligated to provide the operator with the option of producing possible common variety minerals with an escrow account established.

[245] 43 CFR 3809.101(a).
[246] 43 CFR 3800.5.
[247] 43 CFR 3809.100(b)(1)(i), (b)(2).

8.2.3 Operating with an Escrow Account

Where the BLM and the operator agree that operations to remove potential common variety minerals will occur and that the operator will establish an escrow account, the BLM must still approve the Plan of Operations, and the operator must provide the State Office with an acceptable financial guarantee that covers all required reclamation. The BLM District/Field Office should work with the Solicitor's Office to establish an acceptable escrow account before operations begin.[248] The escrow account may be set up as a suspense account with the BLM (see BLM Manual 1370, *Receipts and Disbursements*) or the operator may establish an escrow account though a financial institution with the BLM as the beneficiary (see BLM Handbook 9235-1, *Mineral Material Trespass Prevention and Abatement*, Chapter V, Section Mineral Material Trespass Categories and Illustration 1, Illustration of an Escrow Agreement). Any escrow account must be accompanied by an escrow agreement. This agreement must be reviewed by the Regional Solicitor's Office.

8.2.3.1 Appraised Value

Under 43 CFR 3809.101(b)(3), the operator must make regular payments to the escrow account for the appraised value of possible common variety minerals removed under a payment schedule approved by District/Field Manager (see BLM Handbook H-3630-1, *Mineral Material Appraisal Handbook*).

8.2.3.2 Disbursement

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 43 CFR 3600.

8.2.4 Determination of Uncommon Variety

If the mineral report concludes that the material is an uncommon variety and thus locatable under the Mining Law, [249] the report must include the analysis under McClarty v. Secretary of Interior[250] (see BLM Manual 3891, *Validity Examinations*). There must be a comparison of the mineral deposit in question with other deposits of such minerals generally, including:

- The mineral deposit in question must have a unique property.
- The unique property must give the deposit a distinct and special value.
- If the special value is for uses to which ordinary varieties of the mineral are used, the deposit must have some distinct and special value for such use.

[248] 43 CFR 3809.101(b)(3).
[249] 43 CFR 3809.101(c).
[250] 408 F. 2d. 907, 908 (9th Cir. 1969).

- The distinct and special value must be reflected by the higher price which the material commands in the marketplace or by reduced cost or overhead so that the profit to the claimant would be substantially more.

8.2.5 Determination of Common Variety

If the material is determined to be a common variety mineral not subject to the Mining Law or the 43 CFR 3809 regulations, the operator may either relinquish the mining claims or the BLM will initiate contest proceedings. Upon relinquishment or final Departmental determination that the mining claim(s) is null and void, the BLM will terminate the Plan of Operations or Notice, and the operator will be required to promptly close and reclaim the operations unless the District/Field Office offers the material for sale under 43 CFR 3600 and 3610.

If the BLM determines that the materials are common variety minerals, the BLM may sell them under 43 CFR 3601.14.[251] Prior to initiating such an action, the BLM must independently evaluate whether the mineral materials operation would endanger or materially interfere with the right of the claimant to develop valuable mineral on the claim(s) and attempt to obtain a written waiver from the mining claimant. Offices should consult with the Solicitor's Office where such a waiver is not obtained. See BLM Handbook 3600-1, *Mineral Materials Disposal Handbook*, Chapter X - *Special Situations,* for guidance on the disposal of mineral materials from lands encumbered with unpatented mining claims.

8.3 Split Estate Lands

In certain cases, the BLM's surface management regulations at 43 CFR 3809 apply to operations authorized under the Mining Law on split estate lands, i.e., public lands where the surface estate has transferred out of Federal ownership with the mineral interest reserved to the United States.[252] This section addresses under what situations the surface management regulations apply to these split estate lands.

8.3.1 Stock Raising Homestead Act (SRHA) Lands

If the proposed operation is to be located on lands patented under the Stock Raising Homestead Act (SRHA) and the operator has surface-owner consent, the operator does not need to obtain BLM authorization under the surface management regulations, but must still provide the BLM with a copy of the agreement. [253]

Where the operator does not have the written consent of the surface owner, or if the surface owner initially consents and later terminates or nullifies the consent, the operator must submit a Plan of Operations to the BLM (see Section 4.3 Plan of Operations - Filing and Content). Consistent with statute, the regulations at 43 CFR 3809.31(d) do not authorize any activity on SRHA lands without surface owner consent or an approved Plan of Operation.[254] Any activity

[251] 43 CFR 3809.101(d).
[252] 43 CFR 3809.2 and 3809.31.
[253] 43 CFR 3809.31(d).
[254] 43 U.S.C. 299(f).

conducted on SRHA lands prior to a discovery must be in conformance with the regulations at 43 CFR 3814.

If the surface-owner consent is nullified in Federal or state court or the consent is terminated or revoked as provided for in the agreement the operator has with the surface owner, the BLM will require the operator to submit a Plan of Operations. Whether ongoing operation will be allowed to continue while the Plan is being processed will depend on the conditions of the surface-owner consent being nullified or terminated.

If a Plan is submitted during the 90-day period that begins once a Notice of Intent to Locate (NOITL) is filed,[255] the effects of that period extends automatically until the Plan is approved or denied. Plans not diligently prosecuted by the operator may lead to unnecessary extended periods of segregation. To avoid this occurrence, the BLM may disapprove a Plan if the operator refuses to provide the required information within the specified timeframe or when there is no expectation of a meaningful response from the operator to the BLM's information requests (see Section 4.4.3.3 Plan of Operations Disapproved or Approval Withheld).

8.3.2 Other Split Estate Lands

For split estate lands other than SRHA lands, if the proposed operations are located on lands conveyed by the United States that contain minerals reserved to the United States and those minerals are locatable under the Mining Law, then the operator must file a Plan of Operations or Notice for all proposed operations.[256] The 3809 regulations[257] apply to those activities within lands being explored, mined, or used for placement of facilities that are reasonably incident to exploration, development, or mining. The regulations also apply to the access roads and facilities across split estate lands to and from the project area.

8.3.3 Non-Federal Minerals

Where the mineral estate is private and the surface is managed by the BLM, the 3809 regulations do not apply because the non-Federal minerals are not subject to the Mining Law.[258] Because the BLM still has an obligation under 43 U.S.C. 1732(b) to prevent UUD, the owner or operator must obtain a special use lease, permit, or easement under 43 CFR 2920 before using the public lands to develop the private mineral estate, and may be required to provide a financial guarantee before commencing surface-disturbing activities. As with the 3809 authorization, the BLM will review each proposed authorization under the 2920 regulations to ensure compliance with the UUD requirement as required by Section 302 of FLPMA.[259] The proponent is required to submit certain information concerning the proposed action.[260] This information requirement is similar to those required under 43 CFR 3809.301 and 3809.401. Appropriate NEPA analysis must be conducted on any special use lease, permit, or easement before it is granted. Consultation with the Solicitor's Office is recommended.

[255] 43 CFR 3838.14(c).
[256] 43 CFR 3809.31(e).
[257] 43 CFR 3809.31(c) does not apply, per scope 43 CFR 3715.0-1(b).
[258] 43 CFR 3809.2-Scope of the regulations.
[259] 43 U.S.C. 1701.
[260] 43 CFR 2920.2-4.

8.3.4 Mining Claims under a Notice or Plan of Operations

The BLM will exercise its regulatory jurisdiction on split estate lands for the area of operations within the boundaries of the mining claim(s) directly involved in exploration and mining activities and for the necessary access, including roads, pipelines, and power and phone lines, to those mining claim(s) and exploration activities outside claim boundaries and associated access. The operator filing and District/Field Office review and approval requirements must conform to the requirements found under 43 CFR 3809.401 through 3809.412 for proposed Plans of Operations and 43 CFR 3809.301 through 3809.313 for Notices.

On split estate lands, any NEPA analysis must cover the entire mining operation and associated facilities regardless of land ownership. The BLM remains responsible for compliance with NEPA. However, mitigation may only be required to prevent UUD of public lands (not private surface estate).

The BLM must comply with ESA requirements when reviewing a Notice or a Plan of Operations for mining claims on split estate lands. Approval of a Plan of Operations is a Federal action; therefore, it is subject to the applicable consultation requirements of Section 7 of the ESA and Section 106 NHPA, and any other consultation requirements.

The required reclamation financial guarantee must meet the requirements of 43 CFR 3809.551 and, where appropriate, must cover any special reclamation requirements found in the agreement between the operator and the surface owner. The required financial guarantee must cover the approved area of operations and all access roads and facilities across split estate and public lands that are necessary for the operation. In addition, for SRHA lands the financial guarantee must also cover the loss of tangible surface owner improvements.

For operations on split estate lands authorized under the surface management regulations, the BLM District/Field Office will carry out its inspection and enforcement responsibilities as required by 43 CFR 3809.600 through 3809.605

8.3.5 Surface Owner Agreement

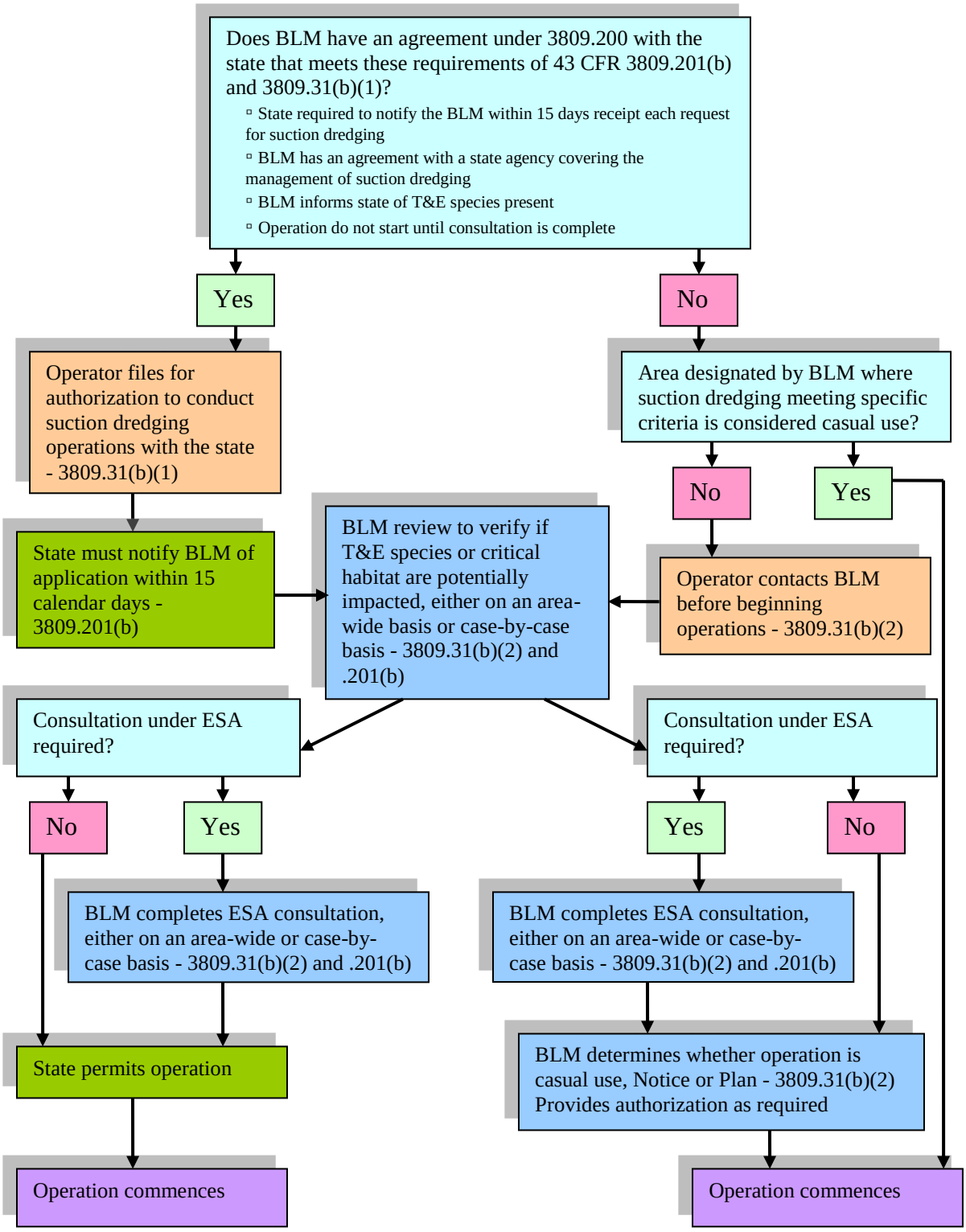
In reviewing the proposed Plan of Operations for operations proposed on SRHA and non-SRHA lands, the District/Field Office should attempt to accommodate the provisions of any agreement that may exist between the operator and the surface owner, as long as the agreement does not cause UUD of public lands resources and is not likely to jeopardize proposed or listed threatened or endangered species or their designated critical habitat.

8.4 Suction Dredging

The use of a suction dredge may be allowed or authorized under the surface management regulations or may be authorized under state regulation if the BLM and the state enter into an agreement under 43 CFR 3809.200.[261] See Figure 8.4-1 Suction Dredging for a visual description of the various ways suction dredging activity on public land may be regulated.

[261] 43 CFR 3809.31(b), 3809.200 and 3809.201.

Figure 8.4-1 - Suction Dredging



8.4.1 State Authorization

The BLM will not require a Notice or Plan of Operations if the following two criteria are met:

- The state requires a permit for suction dredging activities, and
- The BLM State Office has a Memorandum of Understanding (MOU) with the appropriate state agency under 43 CFR 3809.200 addressing the permitting of suction dredging mining activity.[262]

If these two criteria are met, the operator does not need to contact the BLM District/Field Office to undertake suction dredging activities unless otherwise provided in the MOU between BLM and the state.

Rather, the MOU between BLM and the state will require the state to notify the BLM of each application to conduct suction dredging activities within 15 calendar days of receipt of the application. How the state will inform the District/Field Office of these pending applications varies depending on the specific MOU with the state.

Under the MOU, the state must withhold authorization until ESA consultation is completed. If the BLM identifies a conflict with threatened or endangered species or proposed or critical habitat then the District/Field Office must notify the state in writing of the conflict. See Section 12.2.4 Suction Dredging for an explanation of how equipment and location limitations may be addressed in an agreement with the state.

Even if the operator does not need approval under the BLM's surface management regulations because there is an MOU with the state, if the operator proposes to occupy or use a site for activities "reasonably incident" to mining, as defined in 43 CFR 3715.0-5, the operator must seek separate authorization from the BLM for its occupancy.[263]

8.4.2 BLM Authorization

For all uses of a suction dredge not covered by authorization under state regulations, the operator must contact the BLM before beginning such use to determine whether the operator must submit a Notice or a Plan of Operations to the BLM, or whether the activities constitute casual use.[264]

8.4.2.1 Casual Use

The determination of whether the proposed suction dredging activity is casual use is dependent upon the environmental impact of the proposed activity and not the mechanized equipment being used. If the impact of the proposed suction dredging activity is greater than negligible disturbance then a Notice or Plan of Operations is required.

[262] 43 CFR 3809.31(b)(1).
[263] 43 CFR 3809.31(c).
[264] 43 CFR 3809.31(b)(2).

8.4.2.1.1 Designated Areas

The BLM may establish, through the land use planning process, that certain types of suction dredging activity in designated areas constitute casual use. Where the BLM has made such a designation and the proposed activity meets the established criteria, the operator does not need to contact the District/Field Office before commencing activities. For example, where the BLM determines that the use of suction dredges with an intake up to a certain diameter (e.g., up to 4 inches) in a designated section of a river is considered casual use; the operator does not need to notify the District/Field Office prior to beginning his or her activity. The BLM will notify the public via publication in the *Federal Register* of the boundaries of such specific areas and any operating limitations, as well as through posting in each local BLM office having jurisdiction over those lands.

8.4.2.2 Notice or Plan of Operations

Where the District/Field Manager determines that the operator must file a Notice or Plan of Operations, the filing and review procedures must comply with 43 CFR 3809.301 through 3809.313 for a Notice or 43 CFR 3809.401 through 3809.412 for a Plan of Operations.

8.4.3 Threatened or Endangered Species

If the 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, the operator must not begin operations until the BLM meets the requirements of the ESA consultation. These requirements apply whether the operations are conducted under the BLM's surface management regulations or under state authority pursuant to an MOU. The BLM may meet these consultation requirements on a case-by-case basis for each proposed operation or may complete a programmatic consultation to meet ESA requirements for specific types of activities within a designated area. If proposed activities are not consistent with type of activity or location covered in the programmatic, then additional consultation will be required.

8.5 Powersite Withdrawals

This section describes how the 3809 regulations apply to mining operations within powersite withdrawals.[265]

The Mining Claims Rights Restoration Act of 1955[266] (MCRRA), reopened all public lands belonging to the United States that had previously been withdrawn or reserved under the Federal Power Act for power development or powersites to mineral entry.

[265] P. L. 84-359, 30 USC 621-625, 43 CFR part 3730.
[266] Act of August 11, 1955, P. L. 84-359; 30 U.S.C. 621 *et seq*.

However, the MCRRA did not reopen lands that were:

- Included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress.

- Under examination and survey by a prospective licensee of the Federal Energy and Regulatory Commission provided the prospective licensee holds preliminary permit that has not been cancelled or renewed more than once.[267]

Under Section 2(b) of the Mining Claims Rights Restoration Act, the locator of a placer mining claim on reopened powersite lands must not conduct mining operations for a period of 60 days after filing a notice of location with the proper BLM State Office. Note that there are no restrictions on operators of lode claims.

During that time, the State Office will request a report regarding the need for a hearing from the appropriate land management agency (i.e., Forest Service Regional Office or proper BLM District/Field Office). This analysis and report must be submitted to the State Office within 50 days of the date of recording with the BLM so that the BLM may take the appropriate course of action under the statute.

If the former powersite lands are managed by the BLM, the District/Field Office will examine the proposed operations, using the surface management regulations as a guideline and applying reasonable mitigation measures to the claim(s) or mill site(s) and prepare a report documenting whether there are conflicts. If the application of the surface management regulations will not resolve all apparent conflicts, the District/Field Office may request a public hearing under the provisions of the Act. No referral for a hearing will be permitted until the above surface management analysis has been completed and written up as a supporting report to the BLM Deputy State Director in charge of mining claim or mining law adjudication. Based upon the recommendations of the District/Field Office report, the BLM State Office will either:

- Notify the mining claimant that no public hearing is required, or

- Notify the mining claimant that the surface management agency has requested the Secretary to hold a public hearing and that no activities greater than casual use is permitted until after the public hearing is held by an Administrative Law Judge (ALJ) and a final decision is issued by the Office of Hearings and Appeals.

The decision issued by the Administrative Law Judge is restricted to an order that provides for one of the three options below:

- An Order prohibiting placer operations is recorded by the Government in the County or Borough's Recording Office. This recording is not mandatory to make the Order valid, but is done to protect the Government's interest in the lands adjudicated and ruled upon.

[267] 43 CFR 3730.0-1.

- Permission to engage in placer mining on the condition that the mining claimant must follow an approved Plan of Operations and restore the surface to the condition it was in immediately prior to placer operations.

- Non-conditional permission generally allowing the operator to engage in placer mining, subject to all applicable laws and regulations.

When placer mining is permitted, the Administrative Law Judge will furnish the mining claimant a certified copy of the Order for recording in the proper BLM State Office and the County or Borough's Recording Office. The Order is not valid until a certified copy is recorded. The recording is at the expense of the mining claimant. The BLM applies its surface management regulations to activities on the placer claim(s).

Each decision by an Administrative Law Judge is subject to the right of appeal to the Interior IBLA under 43 CFR part 4, and no Order may issue until the Administrative Law Judge's decision, or a decision from IBLA upon appeal, is final.

Mining operations conducted on placer mining claims in violation of the requirements of the Mining Claims Rights Restoration Act are in noncompliance and may be cited under 43 CFR 3809. The District/Field Manager must take appropriate actions to suspend the operation until the procedures concerning the use and occupation of placer mining claims are in compliance.

8.6 Timber Resources

Mining claimants have limited rights to cut and use the timber on their mining claims. The Surface Resources Act of 1955, 30 U.S.C. 612(c), permits mining claimants to clear the land in the ordinary working of a mining claim and use the timber on a mining claim or site for construction and improvements. Other than these limited, authorized uses, the timber on public lands is the property of the United States and must be protected from unauthorized cutting or damage.

The BLM may manage any timber not used for mining purposes and may direct the stockpiling of timber for sale. No cutting of merchantable timber is permitted by the mining claimant or operator without the written permission of the District/Field Manager. The term "timber" is defined as standing trees, downed trees, or logs which are capable of being measured in board feet (43 CFR 5400.0-5). This permission, or refusal to permit cutting, is to be addressed in the BLM's response to the Notice or Plan of Operations.

The cutting of timber is not a causal use activity. Timber resources cut, damaged, or destroyed in violation of an accepted notice or an approved Plan of Operations or without proper authorization is by definition UUD under 43 CFR 3809.605 and subject to the penalties described in 43 CFR 3809.700.

8.7 Land Use Plans

8.7.1 Performance Standard

Consistent with the Mining Laws, operations and post-mining land use must comply with the applicable BLM land use, activity, and coastal zone management plans, as appropriate.[268] See Section 5.2.3 Complying with Land Use Plans.

The land use plan can be used to establish the objectives for post-mining land uses. The future land uses will help define performance standards, including reclamation and mitigation requirements for a particular operation (see BLM Handbook H-1601-1, *Land Use Planning Handbook*). Preparation of a land use plan is not a prerequisite to processing a Notice or approving a Plan of Operations. Notices and Plans are to be processed according to the timeframes in the regulations, and are not to be delayed pending completion of a land use plan. The Plan of Operations or Notice must comply with the land use plan in effect when the DR or ROD is signed or the Notice is accepted.

In addition, land use plans must recognize the rights granted by the Mining Law to enter, explore, and develop mineral resources on the public lands. A land use plan cannot change the law's authorization to use public lands that are open to location under the Mining Law. Areas may only be removed from operation of the Mining Law by congressional withdrawal or in accordance with the withdrawal provisions of Section 204 of FLPMA. Restrictions in a particular land use plan have no force and effect on the right of entry until one of the two procedures stated above has occurred. Further, in areas open to mineral entry, or closed subject to valid existing rights, the land use plan cannot be used to preclude mining or restrict certain types of mining activities. For example, land use plans cannot be used to "zone" areas where open pit mining is not allowed, ban cyanide use, prohibit placer mining, or generally place limits on the type or size of an operation.

8.7.2 Opening Lands to Mineral Entry

For public lands that are sold or exchanged under 43 U.S.C. 682(b) (Small Tracts Act), 43 U.S.C. 869 (Recreation and Public Purpose Act), or 43 U.S.C. 1713 (FLPMA sales), the minerals reserved to the United States are segregated from operation of the mining laws unless a land use planning decision explicitly restores the lands to mineral entry.[269] The provisions of the surface management regulations, including 43 CFR 3809.31, do not automatically make these lands open to mineral entry under the mining laws. Thus, as land use plans are updated, the District/Field Manager should review the occurrence of such lands in the planning area and consider whether or not to open the lands to mineral entry. In addition, the BLM must use the land use planning process to consider opening any split estate lands in the planning area that were closed as the result of a sale.[270] Therefore, the opening of these lands to mineral entry is part of the planning process.

[268] 43 CFR 3809.420(a)(3).
[269] 43 CFR 3809.2.
[270] As of January 20, 2001, the regulatory barrier keeping the minerals beneath lands conveyed in exchange for sale closed to mineral entry until the Secretary promulgates regulations, has been removed. This did not automatically

8.7.3 Post-Mining Uses

In developing or amending a land use plan, the BLM should consider alternative uses of public lands after mining has ceased (see BLM Handbook H-1601-1, *Land Use Planning Handbook*). In the past, the assumption has been that disturbed lands will be returned to pre-mining uses after mine closure. Reclamation requirements found in filed Notices and approved Plans generally reflect this assumption. Reclamation plans generally require regrading and reshaping to conform to adjacent landforms, and removing buildings, structures, facilities, and other infrastructures, such as roads and power lines.

Pre-mining uses, however, may not always be the most beneficial uses of the public lands after mining has ceased. The BLM land use decisions should consider post-mining uses of the public lands that help sustain the economic and social wellbeing of the communities directly impacted by mineral development. The BLM decisions concerning reclamation, post-mining uses, and even land disposal should also consider sustainable development of the communities after mine closure.

For example, community economic growth may be sustained after mine closure by using the existing infrastructure (roads, power lines, water supply, etc.) to bring in a new industrial use to replace the mining activity. However, such opportunities can only occur where the land use plan has considered and allowed for such alternative post-mining uses. Post-mining land uses must avoid disturbing engineered containment cells where subsequent infiltration of groundwater, surface water, or effluent leakage can contaminate the environment. Such areas must be properly located on BLM maps and geodatabases and marked for protection. In particular excavation or even erosion must be avoided.

8.7.4 Casual Use Areas of Concern

Where the cumulative effects of activities that ordinarily would be considered casual use have resulted in, or are reasonably expected to result in, more than negligible disturbance, the activity is not considered casual use. The State Director may designate specific areas, through the land use planning process, where the individual or group must contact the BLM District/Field Office before beginning such activities. See Section 2.2 Cumulative Effects for a discussion on making such a designation.

8.7.5 Suction Dredging Use Areas

The BLM may establish, through the land use planning process, that certain types of suction dredging activity in designated areas constitute casual use. Where the BLM has made such a

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restore such lands to mineral entry--but created the ability to open them after addressing the issue in the respective land use plan. The intent of 43 CFR 3809.2(a) is further explained in the preamble at *Federal Register* page 70006 (11/21/2000); and states: *"...although these rules remove the regulatory bars in the former land resource management rules which prevented public lands with reserved minerals from being restored to mineral entry under the mining laws, they allow such restoration to occur on an area-specific basis only after subsequent land-use planning decisions occur, and BLM notifies the public."*

designation and the proposed activity meets the established criteria, then the operator does not need to contact the BLM District/Field Office before commencing activities. See Section 8.4.2.1 Casual Use for a discussion on making such a designation.

8.8 Pre-Existing Disturbances and Facilities

Pre-existing disturbance includes any surface disturbance resulting from mining-related activities that has been abandoned and left unreclaimed by the operator who caused the surface disturbance. Pre-existing facilities includes any structure or material that qualifies as an "occupancy" as defined in 43 CFR 3715 that has been abandoned and left unreclaimed by the operator who placed the structure or materials on public lands.

Operators wishing to conduct mining operations under the Mining Law are not authorized to use or occupy pre-existing facilities or to affect pre-existing disturbances without BLM authorization. The BLM is not obligated to and will not authorize an operator to use or occupy pre-existing facilities or to affect pre-existing disturbances unless the operator agrees to comply with reclamation requirements of both 43 CFR 3715 and 43 CFR 3809 with regard to those facilities and disturbances as follows:

- Pre-existing disturbances - Under 43 CFR 3809, an operator is responsible for reclaiming all portions of pre-existing disturbances that his or her operation will affect.

- Pre-existing facilities - The decision on which reclamation provisions apply to pre-existing facilities that will be used or occupied will be made on a case-by-case basis by the District/Field Office.

The authorization (Notice or Plan of Operations) must clearly describe the operator's obligations for pre-existing disturbances and pre-existing facilities.[271]

8.8.1 Proposed Operations

As part of the BLM's review and acceptance of a complete Notice or approval of a Plan of Operations, the BLM must ensure the Notice or Plan of Operations identifies the operator's reclamation obligations for any pre-existing disturbances that will be affected and pre-existing facilities that will be used or occupied. Notices or Plans of Operations that do not adequately address, to the BLM's satisfaction, the operator's reclamation obligations for pre-existing disturbances and pre-existing facilities will not be considered complete under 43 CFR 3809.301 and 3809.401, respectively. The required financial guarantee must reflect all operator obligations as called for in the accepted Notice or approved Plan of Operations, including the cost of completing reclamation obligations associated with the use or occupation of pre-existing facilities and affecting pre-existing disturbances.

8.8.2 Existing Operations

If the mining claimant or operator has an existing Notice or Plan of Operations that does not expressly address the operator's reclamation obligations for pre-existing disturbances that the

[271] James R. McColl Decision, 159 IBLA 167 (May 29, 2003).

current operator has affected or will affect or for pre-existing facilities that are or will be used or occupied, then the BLM must clarify such obligations as it becomes aware of the operator's violation of these regulations. For Notices, this clarification is included as a modification of the Notice under 43 CFR 3809.331 or Notice extension under 43 CFR 3809.333, whichever occurs first. For Plans of Operations, this clarification is added as a modification of the Plan of Operations under 43 CFR 3809.431 or included as part of the review of the reclamation cost estimate and financial guarantee as required under 43 CFR 3809.552(b), whichever occurs first. Regardless of the BLM's actions to require modifications of the Notice or Plan, the operator and the claimant remain liable.

8.8.3 Operator Liability

The extent of reclamation required under 43 CFR 3715 and/or 43 CFR 3809 does not in any way limit liabilities under any other environmental laws. For example, an operator who conducts operations involving pre-existing disturbances and pre-existing facilities may be liable for remedial action or other response under the CERCLA in the event of a release of a hazardous substance (as defined by CERCLA) into the environment, and may also be subject to the requirements of other environmental laws.

8.8.4 Previous Operator

In situations where the BLM has located the previous operator and that operator has agreed to complete the reclamation of pre-existing disturbances and pre-existing facilities for which he or she is responsible, including any response and remedial action necessary to address the release of hazardous substances, the current operator has no right to deny access to a previous operator who wishes to complete his or her reclamation obligations. Should the current operator's operations interfere with activities necessary to fulfill the previous operator's reclamation obligations, the current operator must either (1) allow the previous operator to complete his or her obligations or (2) modify his or her Notice, Plan, or occupancy concurrence to assume full responsibility for the reclamation of those portions of the pre-existing disturbances and pre-existing facilities.

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Chapter 9 Inspection and Enforcement

This chapter covers inspection requirements under 43 CFR 3809.600, enforcement requirements under 43 CFR 3809.601 through 3809.604, prohibited acts under 43 CFR 3809.605, and penalties under 43 CFR 3809.700 through 3809.701.

9.1 Conducting Inspections

9.1.1 Authority

The responsibilities for the inspection of operations are specifically addressed at 43 CFR 3809.600. However, BLM inspections are not necessarily limited to the specific requirements of the surface management regulations, but are conducted relative to all applicable regulations and laws governing mineral operations conducted under the authority of the Mining Law. Inspections should address both 43 CFR 3715 and 43 CFR 3809 requirements, when applicable.

9.1.1.1 Facilities and Permits

An inspection may include any physical aspects of the operation, including all structures, equipment, and workings located on the public lands. An inspection may also include an examination of any pertinent files the operator may have pertaining to the permitting of the operation and the storage of chemicals and supplies. Permits, approvals, and authorizations subject to verification include any such documents issued or required by local, state, or Federal authorities that are, or may be, required for lawful operation.

9.1.1.2 Access

The operator must allow the BLM to inspect all aspects of operations on public lands and, as a condition of operating on public lands, must allow the BLM inspector reasonable access through their private lands in the project area in order to inspect public lands. Any attempt by an operator to restrict or impede an inspection is prohibited and subject to enforcement actions by the BLM under 43 CFR 3715 and/or 43 CFR 3809.

As noted in 43 CFR 3809.600(a), the regulations at 43 CFR 3715.7 contain a special provision governing the inspection of the inside of structures used solely for residential purposes. The provision[272] states:

- The BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

- This limitation applies only to structures used solely as a residence. If a structure is used also as an assay lab or other such component of an operation, that area may be inspected by the BLM. However, if an operator or claimant objects to an inspection of his/her private residence, consult BLM Law Enforcement before continuing.

[272] 43 CFR 3715.5-7 (b).

The BLM has the right and responsibility to inspect all mining operations on public lands; however, an inspector should not insist on obtaining entry to a site or structure when the claimant or operator objects to the inspections. In these cases, the inspector must contact his/her supervisor. The supervisor will work with BLM Law Enforcement and, if necessary, the Solicitor's Office to gain entry to those sites or facilities.

9.1.2 Frequency and Timing

At least four times each year, the responsible District/Field Office will inspect an operation if the operator uses cyanide or other leachates or where there is significant potential for acidic or deleterious drainage.[273] Active Plans that do not involve leachates will be inspected at least two times per year. Active Notices will be inspected at least once a year. These inspection frequencies are minimums; District/Field Offices may and will conduct inspections on a more frequent basis where it is deemed necessary. An active inspection program by BLM District/Field Offices is critical for ensuring compliance with the surface management regulations.

9.1.2.1 Acid Drainage and Chemicals

For operations where there is a significant potential for acidic or deleterious drainage, the regulations require an inspection at least four times a year. Special care should be taken to ensure that operations that pose a potential to generate acid drainage are adequately inspected.

In addition, special attention must be given to operations that use large amounts of chemicals, fuels, and explosives. Failure to follow the approved Plan and maintain compliance with performance standards at these operations has a potential to result in UUD. The inspector may spend extra time on the ground and review the approved Plan on file in addition to monitoring data in advance of the inspection.

9.1.2.2 Irregular Schedule

The BLM has the authority to inspect operations at any time. District/Field Offices are encouraged to maintain a frequent, recurring, but irregular schedule of inspections for all active Plans and Notices. Areas known to host large concentrations of casual use activity should be inspected as if they were an active operation under a Plan or Notice.

9.1.2.3 Operator Notification

The District/Field Office is not required to notify the operator of the inspection or have the operator present during an inspection. When criminal activity is suspected, Law Enforcement personnel may require that the operator not be present or be informed of the inspection.

[273] 43 CFR 3809.600(b).

9.1.2.4 Frequency of Occupancy Related Inspections

Occupancies will be inspected on a regular basis to ensure they meet the requirements of 43 CFR 3715. Failure to comply with 43 CFR 3715 constitutes UUD which is a prohibited act under 43 CFR 3809.605(a) and (f).

9.1.3 Inspection Activities

The BLM may inspect any physical aspects of the operation, including all structures, equipment, and workings located on the public lands. As part of the inspection, the BLM may also examine any pertinent files the operator may have pertaining to the permitting of the operation and the storage of chemicals and supplies. Permits, approvals, and authorizations subject to verification include any such documents issued or required by local, state, or Federal authorities that are, or may be, required for lawful operation.

Before the inspection:

- Review the last inspection report for the operation. Note any items identified for follow-up during the last inspection. Check the case file for ongoing or unresolved compliance problems.

- Review monitoring reports, if any, provided by the operator since the last inspection.

- Determine additional resource specialists whose expertise may be needed during the inspection and solicit their participation.

- Review the Plan or Notice on file and identify areas or aspects of the operation where you want to focus the inspection to determine compliance. Pay particular attention to any conditions of approval placed upon the operation.

- Schedule the inspection with the operator if you need the operator's assistance or participation during the inspection. Consider scheduling the inspection when the operator or other agencies' personnel, such as the state regulators, can be present.

- Ensure that all field and safety equipment is available and in working order. This includes hard hat, steel-toed boots, camera, sample bottles or bags, global positioning system (GPS) unit, field test instruments, inspection forms, etc.

During the inspection:

- Compare the on-the-ground operation with the Notice or Plan on file and note any discrepancies.

- Discuss with the operator or the operator's designated representative the status of the operation and any difficulties they may be experiencing in implementing the Plan or Notice.

- Use photos to document site conditions, especially where there are compliance issues.

- Where appropriate and feasible, take field measurements and/or lab samples of water, soil, waste rock, etc., as needed to verify the operator's monitoring plan or to make compliance determinations. Carefully mark and maintain the chain of custody for any sample that will be used in compliance determinations. Locate the samples or measurements with GPS. Typical modern non-survey GPS accuracies are within 3 meters if the receiver has Wide Area Augmentation System (WAAS) or within 15 meters if it does not.

- Take detailed notes during the inspection in order to support preparation of the inspection report. For Notices or some Plans, it may be possible to directly document inspection results on a pre-printed inspection form while onsite.

- Prior to leaving the site, hold a close-out discussion with the operator, or their designated representative, on the results of the inspection. If using a pre-printed inspection form, leave a copy with the operator. Be sure to document any field resolution of compliance issues or other agreements made with the operator in the inspection report.

- If at any time during the inspection you encounter suspected criminal activity or other dangerous conditions, such as the release of hazardous materials, leave the site immediately and report the situation to your supervisor and BLM Law Enforcement and/or hazardous materials staff.

After the inspection:

- Deliver any samples collected during the inspection to the appropriate analytical lab.

- If not prepared while onsite based on the field notes, prepare a written inspection report that documents site conditions. Attach any photos and test results to the inspection report.

- Brief management on any compliance problems noted during the inspection. Prepare any follow-up enforcement orders that may be warranted based on the results of the inspection.

- Place a copy of the inspection report in the case file and send a copy to the operator and appropriate state agency.

- Enter the inspection into the LR2000 system within 5 working days.

9.1.4 Safety

Safety must be foremost in the mind of the inspector and his/her supervisor. When conducting an inspection, the inspector is ultimately responsible for making safe choices. If there is a doubt

in the inspector's mind about the safety of structure, excavation, or storage facility, the inspector must not enter. In these situations supervisors will not take any action to force or compel the employee to conduct an inspection until adequate steps have been taken to mitigate the hazard to a degree that an inspection can be performed. If such a situation exists, there may be a violation of either 43 CFR 3715 or 43 CFR 3809 or both, and further inspection may not be necessary for the enforcement process to proceed. In short, the regulations governing use and occupancy and surface management of mining claims are in place to protect BLM personnel as well as the general population from immediate threats to health and safety.

9.1.4.1 Safety Equipment

Proper field gear must be provided each inspector. At a minimum, this equipment must include a hard hat, safety glasses with appropriate UV/glare protection, steel-toed shoes, adequate supplies of water, and a first aid kit. When conducting inspections, the BLM employee must wear the safety equipment applicable to the type of operation and stage of activity.

9.1.4.2 Inspector Safety Training

Any BLM employee engaged in inspecting active mining operations must be given any safety training routinely provided other field personnel. We recommend for surface operations, BLM employees performing inspections receive training equivalent to that required by the MSHA regulations found at 30 CFR part 48B.

9.1.4.3 Underground Operations

Inspections of underground operations for surface compliance issues are not routine. When it is necessary to inspect underground operations, the BLM employee must comply with the procedures and guidance, including training requirements, found in the BLM's underground entry policy.

It is the responsibility of the operator to make sure that underground portions of its operations can safely be inspected, consistent with the MSHA regulations. At a minimum, the operation should be registered with the MSHA, and be subject to routine inspections by that agency. All mine operations, regardless of size, are required to notify MSHA of their existence. MSHA inspection frequency may vary from district to district, so anyone entering an underground mining operation should inquire as to when the last MSHA inspection was conducted. Nevertheless, appropriate caution should be exercised when entering any underground mine, regardless of MSHA inspection frequency. Do not enter any portion of an underground mine that has been closed by the operator.

9.1.4.4 Safety Procedures around Suspected Criminal Activities

During the inspection of a mining operation, BLM inspectors may find evidence of criminal activities such as illegal drugs, illegal drug labs, illegal weapons, explosive caches, and fraudulent activities. In such cases, the inspector must terminate the inspection immediately and

notify, through his/her supervisor, BLM Law Enforcement. The inspector should not attempt to collect evidence or in any way disturb a possible crime scene.

9.1.4.5 Safety Procedures around Hazardous Materials

A BLM inspector may discover an unauthorized waste dump or spill that indicates the presence of potential hazardous substances (e.g., containers of unknown substances, pools of unidentifiable liquids, piles of unknown solid materials, unusual odors, or any materials out of place or not associated with an authorized activity), any type of Hazardous Materials release, or suspected violations of either the RCRA or the CERCLA. In such cases, the BLM inspector must take the following precautions:

- Treat each site as if it contains hazardous materials.
- Do not handle, move, or open any containers, breathe vapors, or make contact with any materials.
- Move a safe distance upwind from the site.
- Contact the appropriate site personnel for the operator (Hazardous Materials or Environmental Coordinator). In addition, notify the appropriate BLM and state officials.

The Occupational Safety and Health Act (OSHA) hazardous waste operations and emergency response regulations are contained in 29 CFR 1910.120, and are referred to as the HAZWOPER regulations. The HAZWOPER regulations identify requirements for first responders, who are described as "...individuals who are likely to witness or discover a hazardous substance release, and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release."

Any BLM employee working in the field may witness or discover a hazardous substance release while conducting his/her job responsibilities. In order to ensure that field personnel are familiar with the potential hazards associated with such a release:

- A minimum of 2 hours of First Responder Training must be completed by all new field personnel; this training should be provided by a Hazardous Materials Coordinator in the State or District/Field Office who has completed the necessary hazardous materials awareness training offered by the National Training Center (NTC).
- Additional training materials such as films and presentations are available through the NTC and should be reviewed on a periodic basis.
- District/Field Managers are responsible to ensure that field personnel meet this health and safety requirement.

9.1.5 Documentation of Inspections

The findings and results of each inspection must be documented. At the end of each inspection, and before the inspection can be entered in LR2000, an inspector must complete an inspection report. Checklists and inspection report forms can be used but they must always be accompanied by sufficient narrative to completely describe the situation found during the inspection. The report must be prepared using sufficient narrative and photographs to completely document the nature of any violations found during the inspection. See Chapter 13 Records Management of this handbook for further guidance concerning documenting requirements.

Since the state and Federal regulatory requirements vary by state, the individual BLM State Offices may develop a standard inspection report format to be used in their state as statewide program guidance. Each State Office's report format must contain the following:

- The date the report was written.
- The date of the inspection.
- The name(s) of anyone present during the inspection and affiliation (BLM employees, state or Federal regulators, operator's employees, law enforcement).
- Geographic coordinates (UTM – NAD83) for a location, or township, range, and section descriptions sufficient to locate the operation on the ground.
- A discussion of the site including any and all elements of occupancy, descriptions of chemical, explosive, and fuel storage, and the extent of all surface disturbances.
- A description of any suspected compliance violations, including site conditions, citation of regulatory provision violated, and any follow-up action to be taken.

Portable GPS units should be used for mapping whenever possible. Photos to document site conditions are especially valuable and must be appropriately labeled with a suitable caption, the date, and the name of the photographer.

Proper documentation is not limited to an inspection report. It is critical that any identified noncompliance be documented in a noncompliance order (see Section 9.2.3.1 Noncompliance Order). A noncompliance order is the BLM's primary means of documenting noncompliance and directing the operator as to the steps needed to remedy the situation.

9.2 Enforcement Actions

9.2.1 Prohibited Acts

The regulations at 43 CFR 3809.601 through 3809.604 address the BLM's authority to take enforcement actions when operators engage in one of the prohibited acts under 43 CFR

3809.605, or otherwise do not meet the requirements of these regulations. Prohibited acts include, but are not limited to, the following:

- Causing any UUD.
- Conducting operations, other than casual use, without an accepted Notice or approved Plan.
- Conducting operations outside the scope of the accepted Notice or approved Plan.
- Conducting operations without an acceptable financial guarantee.
- Failing to meet all regulatory requirements when not conducting operations.
- Failing to comply with all applicable performance standards.
- Failing to comply with any enforcement action.
- Abandoning any operation prior to complying with all reclamation and closure requirements.

9.2.2 Regulatory Overlap of Enforcement Actions

Paragraph 43 CFR 3809.601 specifies what types of enforcement action the BLM may take for operations that do not meet the requirements of these regulations. However, where there is a violation under 43 CFR 3809, there may also be a violation under 43 CFR 3715.

In general, the 43 CFR 3809 regulations should be used in instances dealing with "Unnecessary or Undue Degradation" under FLPMA Section 302(b), 43 U.S.C. 1732(b), specifically violations of Notices, Plans, and the provisions governing financial guarantees. The Use and Occupancy Regulations at 43 CFR 3715 also incorporate the UUD standard, but should be used to deal with occupancies or activities that are not "Reasonably Incident to Mining" under the Surface Resources Act, 30 U.S.C. 612. There is, however, considerable overlap between the two sets of regulations. For example, violations involving the lack of permits and/or violations that is or could cause environmental damage can be enforced with either set of regulations. That is because failure to comply with applicable permits and regulations is by definition "unnecessary or undue degradation" under the 43 CFR 3809 regulations, as well as being a prohibited act under 43 CFR 3715.6. In addition, an operator is by definition causing UUD if use and occupancy is not "reasonably incident" under 43 CFR 3715 (see 43 CFR 3809.5). Despite the overlap, when issuing an enforcement order, the BLM will issue the order under either 43 CFR 3809 or 43 CFR 3715. If enforcement under both regulations is appropriate, the BLM must issue two separate enforcement orders because the appeal requirements under the two regulations differ.

Enforcement actions issued by the BLM against operators for failure to obtain local, state, or other Federal permits, or for violating those permit conditions, must be based on a finding from

the applicable permitting authority that the operator is either operating without a required permit or is in violation of its permit conditions. The BLM does not independently determine if a permit from another agency is required for the operation or that a local, state, or other Federal agency's permit conditions have been violated. Rather, the BLM relies on those agencies to first determine whether their own laws or regulations have been violated. If another agency notifies the BLM that they have determined an operation on public lands is in violation of their local, state, or Federal requirements related to environmental protection or protection of cultural resources, then it may be appropriate for the BLM to issue an enforcement order against the operator citing noncompliance with 43 CFR 3809.420 or, if occupancy is involved, 43 CFR 3715.6.

9.2.3 Types of Enforcement Orders

Enforcement actions under 43 CFR 3809.601 are taken when there is a clear violation of one or more of the prohibited acts listed under 43 CFR 3809.605. The BLM may issue three types of enforcement orders: - noncompliance orders, suspension orders, and immediate temporary suspension orders. To assist with the proper implementation of enforcement orders, Figure 9.2-1, Inspection and Enforcement Order Procedures, shows when enforcement actions are to be taken.

9.2.3.1 Noncompliance Order

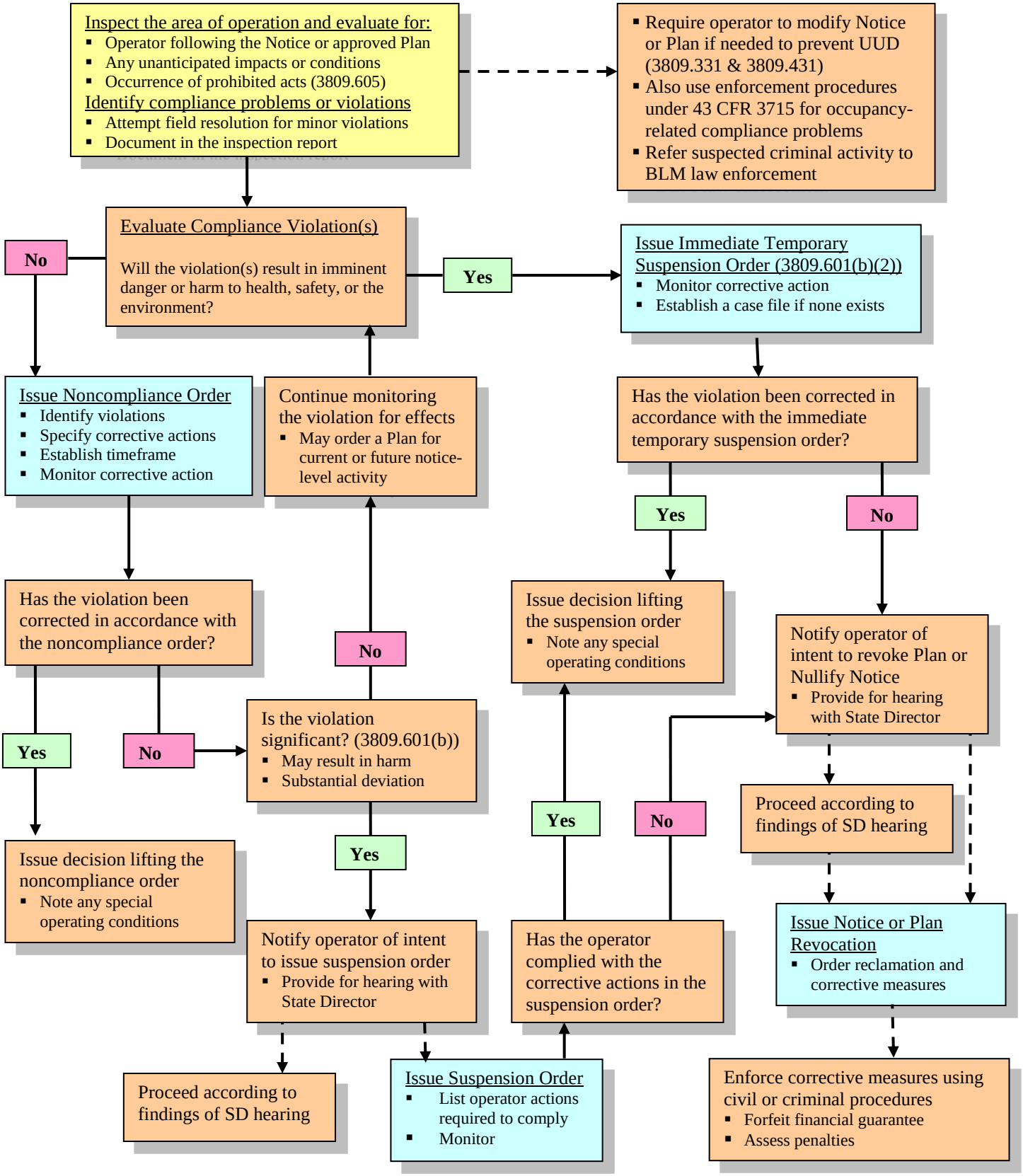
A noncompliance order[274] will be issued for failing to comply with the provisions of a Notice or Plan, or any violation of 43 CFR 3809.[275] Appendix A, Template 9.2-1, Noncompliance Order, presents a template for a noncompliance order. A noncompliance order must include all of the following:

- Describe the violation.
- Identify the corrective action.
- Provide the timeframe in which the corrective action must occur.

A noncompliance order must be issued by itself and not in conjunction with a suspension order or an immediate temporary suspension order. Generally a noncompliance order is issued for infractions of the regulations that do not involve immediate danger or harm to health, safety, or the environment. A noncompliance order should never be issued for violations that are significant to a degree that health, safety, or the environment are at immediate risk. In these instances, an enforcement action under 43 CFR 3715 or 43 CFR 3809.601(b)(2) must be taken.

[274] Note that the term "notice of noncompliance" (NON) is not used in 43 CFR 3809.601. The correct title of this enforcement action is a "noncompliance order." A NON is a term used in 43 CFR 3715 and carries differing penalties and appeals authorities. The two terms are not interchangeable.
[275] 43 CFR 3809.601.

Figure 9.2-1 - Inspection and Enforcement Order



9.2.3.2 Suspension Order

Suspension of all or part of an operation may be ordered for failure to comply with a noncompliance order[276] for a significant violation. Before issuing the suspension order, the District/Field Manager must:

- Determine that the operator has failed to timely comply with a noncompliance order for a significant violation.
- Notify the operator of the BLM's intention to issue a suspension order.
- Provide the operator an opportunity for an informal hearing before the State Director to object to the suspension.

9.2.3.2.1 Determination of Significant Violation

A "significant" violation under 43 CFR 3809.601(b) 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. Examples of significant violations include, but are not limited to:

- The disturbance of surface areas not covered in an accepted Notice or approved Plan of Operations.
- The unauthorized storage or use of chemicals or fuels.
- Operating without an acceptable financial guarantee.

If you are unsure whether a violation can be considered "significant," contact the Solicitor's Office for further guidance.

9.2.3.2.2 Operator Notification to Issue Suspension Order

Before issuing a suspension order, the District/Field Manager must notify the operator of the Bureau's intent to issue a suspension order (See Appendix A, Template 9.2-2 Notification of Intent to Issue a Suspension Order). This notification must be in writing and take the form of a letter, rather than a formal decision. The notification will not contain any appeals language as it merely informs the operator of an impending action and the availability of an informal hearing at the operator's request. The notification must reference the original noncompliance order and must remind the operator of its responsibilities under the original order.

The notification must not in any way alter the terms of the noncompliance order. In those instances where the conditions of the noncompliance order must be amended, an amendment to the noncompliance order must be written before the notification may be sent.

[276] 43 CFR 3809.601(a).

The notification must also inform the operator that it has an opportunity for an informal hearing before the BLM State Director to object to the suspension.
Following issuance of the Notification of Intent to Issue a Suspension Order (Appendix A, Template 9.2-2), if the operator still fails to comply with the noncompliance order, the authorized officer may issue a suspension order (See Appendix A, Template 9.2-3 Suspension Order).

When writing a suspension order, remember that the objective is to stop the action or activities that are in violation of the regulations and not necessarily the entire operation. In addition, suspension orders must not be issued for violations that are minor in nature and probably will not rise to a level that is significant.

9.2.3.2.3 Informal Hearing

An informal hearing with the State Director must be offered to an operator before a suspension order is issued unless an immediate temporary suspension order is issued. A request for an informal hearing with the State Director must be made with the office of the State Director within 15 days of the District/Field Manager's decision.

The informal hearing should be arranged as soon as possible but no later than 10 working days after the operator requests an informal hearing. The informal hearing may be conducted via teleconference if agreed upon by all parties.

The informal hearing as well as all conversations held with the District/Field Office or the affected party must be documented in the case file. No court reporter is used or other transcript of the informal hearing is made.

9.2.3.3 Immediate Temporary Suspension

The District/Field Manager may order an immediate, temporary suspension of all or any part of an operation without issuing a noncompliance order, notifying the operator in advance, or providing the operator an opportunity for an informal hearing if:

- The operator does not comply with any provision of their Notice, Plan of Operations, or the surface management regulations; and

- An immediate, temporary suspension is necessary to protect health, safety, or the environment from imminent danger or harm.

Note that 43 CFR 3809.601(b)(2) requires both conditions to be met before issuing an immediate, temporary suspension (Appendix A, Template 9.2-4, Immediate Temporary Suspension Order).

The exception to meeting both conditions occurs where operations are being conducted without proper authorization. Where an operator is conducting plan-level operations without an

approved Plan of Operations or Notice-level operations without submitting a complete Notice, the BLM may presume that an immediate suspension is necessary.

9.2.3.3.1 Use and Occupancy

The language used in 43 CFR 3809.601(2) is similar to the language found in 43 CFR 3715.7-1(a)(ii) for issuing an immediate, temporary suspension. However, because an Immediate Temporary Suspension under 43 CFR 3715 cannot be stayed by appeal, it is the most powerful order available to the BLM and should be used in all instances involving chemical releases or ongoing activities that are causing environmental damage at a mine site. In instances where a direct threat to health, safety, or the environment results from actions taken by an operator, an immediate temporary suspension order under 43 CFR 3715.7-1 must be considered. An immediate temporary suspension order under 43 CFR 3715 cannot be stayed by an appeal to IBLA and does not require State Director review. An order under 43 CFR 3715 also provides for civil as well as criminal penalties for those who do not comply and offers the most direct, positive means for dealing with a serious threat. In instances where violations of the Clean Water Act, Safe Drinking Water Act, RCRA, or CERCLA are involved, an order issued under 43 CFR 3715 should be written.

9.2.4 Preparation of Enforcement Orders

All enforcement orders must be in writing, issued as formal decisions, and include the pertinent appeals language. In addition, any enforcement order must clearly require abatement of the violation under the appropriate subpart.[277] This is necessary to ensure that, should subsequent criminal violations ensue, the administrative record will not be vague and that knowing and willful misconduct is established and documented. Documenting the BLM's notice of the violation is extremely important. If subsequent criminal violations ensue, such documentation in the administrative record will support a charge of knowing and willful misconduct, which will generally cause the amount of damages to be increased. In addition, such documentation in the case file is important to defend against any administrative appeal of the enforcement order.

Any enforcement order under 43 CFR 3809.601(a) or (b) must specify:[278]

- How the operator is failing or has failed to comply with the regulatory requirements of 43 CFR 3809. This must be a detailed list of the regulations that the operator is violating, including the subsection if applicable.

- The portion of the operation, if any, that the operator must cease or suspend. Note that a noncompliance order does not require an operator to cease any particular action but provides a list of actions that the operator must take to avoid further actions that would or could involve the suspension of all or part of their operations.

- The actions the operator must take to correct the noncompliance and the time, not to exceed 30 calendar days, within which the operator must start corrective action.

[277] 43 CFR 3715 or 43 CFR 3809.
[278] 43 CFR 3809.601(c).

- The time within which the operator must complete corrective action. Note that the timeframe for actions to take place begins with the "effective date" of the order. The effective date is specified as the date of receipt of the order (date received for certified mail - return receipt requested) or the date of personal service for orders delivered by hand.

- A reference to specific and pertinent details from the case file that establish the facts on which the action is predicated. These facts should lead concisely and logically to the conclusions drawn concerning the violations.

- A reference to 43 CFR 3809.604 that specifies the civil actions that the BLM may request for violations of the order, that the BLM may revoke an approved Plan of Operations or nullify a Notice as allowed by 43 CFR 3809.602, and the criminal penalties at 43 CFR 3809.700.

9.2.5 Serving an Enforcement Order

Under 43 CFR 3809.603(a), the BLM will serve a noncompliance order, a notification of intent to issue a suspension order, a suspension order, or another enforcement order on the person to whom it is directed or his or her designated agent.

The BLM will send the notification or order by certified mail - return receipt requested, by hand to the operator or his or her designated agent, or consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Criminal Procedure (see Appendix F – Arrest Warrant or Summons upon Complaint).[279] The BLM may also serve the notification or order by leaving a copy at the operator's residence or usual place of abode with another adult residing at that location and by mailing a copy to the operator's last known address. If the operator is an organization or corporation, the BLM will deliver a copy of the notification or order to an officer, a managing or general agent, or another agent appointed or legally authorized to receive service of process. A copy of the notification or order must also be mailed to the organization's last known address within the district or to its principal place of business elsewhere in the United States. Service is complete when the written notification or order is offered or certified mail is received, and is not incomplete because of refusal to accept.

The BLM may also deliver a copy of the written notification or order at the operator's 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, the BLM may offer a copy of the written notification 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, the BLM will send an information copy by certified mail - return receipt requested to the operator or the operator's designated agent.

[279] Federal Criminal Code and Rules, Rules of Criminal Procedure, Preliminary Proceedings, Rule 4 – Arrest Warrant or Summons on a Complaint.

When delivery is made by hand, the serving official must place a declaration in the case filing stating that hand-delivery was made, giving the date and time of the delivery, the name of the person who received service, and the name of the serving official. Note that the regulations specify that when serving a notification or order by personal service, an information copy will also be sent by certified mail - return receipt requested.

The mining claimant or operator may designate an agent for service of notifications and orders. The mining claimant or operator must provide the designation in writing to the local BLM District/Field Office having jurisdiction over the lands involved.

The BLM authorized officer's personal dealings with operators and claimants must be courteous and professional, as with any member of the public. Professional detachment must be exercised in all matters involving the enforcement process. While the BLM agent must strive for cordial relations, the BLM's ultimate responsibility is to regulate the activities of those wishing to engage in mineral exploration and mining on the public lands.

Safety of all BLM employees is paramount. When dealing with potentially dangerous situations, where law enforcement assistance may be warranted, arrangements should be made in advance.

9.2.6 Duration of Order

All enforcement orders remain in effect until the BLM determines that the violation is abated or, if the violation is not abated, the enforcement order is terminated by IBLA or the court. Under 43 CFR 3809.601(b)(3), the BLM will issue a decision terminating a suspension order when it is determined that the operator has corrected the violation (Appendix A, Template 9.2-5 Suspension Order Terminated).

9.2.7 Failure to Comply

The BLM may take a variety of actions where an operator fails or refuses to comply with an enforcement order. Actions may include one or more of the following: initiating a civil action against the operator or claimant in Federal District Court, requiring the operator to submit a Plan of Operations for existing and future operations that would otherwise only require a Notice, or revoking the operator's Plan or Operations or nullifying the operator's Notice.

9.2.7.1 Initiating a Civil Action

Under 43 CFR 3809.604, if an operator does not comply with a BLM order issued under 43 CFR 3809.601 or 3809.602, DOI may request the US Attorney's Office to institute a civil action in Federal District Court for an injunction or order to enforce its order, prevent the operator 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 43 CFR 3809.601 and 3809.602, and the penalties described in 43 CFR 3809.700.

If the BLM has determined that the operator has not complied or the BLM has reason to believe that the operator will not comply with an enforcement order even before the time period for

complying has expired, the BLM will contact the Solicitor's Office to discuss whether to request assistance from the US Attorney's Office, and supporting documents will be placed in the case file.

9.2.7.2 Loss of Operator Notice Eligibility

In addition to the other remedies available if the operator fails to timely comply with a noncompliance order issued under 43 CFR 3809.601(a), or has a history of noncompliance, the BLM may order the operator to submit a Plan of Operations under 43 CFR 3809.401 for all current and future notice-level operations[280] (see Appendix A, Template 9.2-6 Order Requiring Plans). If, for example, an operator or claimant fails to comply with an order and remains in noncompliance for a period longer than 6 months, a decision requiring the submission of a Plan of Operations (see Appendix A, Template 9.2-3 Suspension Order) and/or a decision to revoke or nullify the authorization (see Appendix A, Template 9.2-8 Nullification of Notice/Revocation of Plan) may be issued.

9.2.7.3 Revoke the Plan or Nullify the Notice

In addition to the other remedies available, as provided for under 43 CFR 3809.602(a), the BLM may revoke a Plan of Operations or nullify a Notice upon finding that:

- A violation exists of any provision of the Notice, Plan of Operations, or the 43 CFR 3809 regulations, and the operator has failed to correct the violation within the time specified in the enforcement order issued under 43 CFR 3809.601, or

- A pattern of violations exists at the operations.

A decision to revoke or nullify the authorization to operate is at the District/Field Manager's discretion. Whether the manager's decision is the result of an operator's failure to correct a significant violation or a pattern of violations, the need to take such action must be clearly documented in the case file. When looking at a pattern of violations, violations from other concurrent or previous operations conducted by the operator may be considered. Before revoking a Plan or nullifying a Notice, the District/Field Manager must notify the operator of its intention to take the action (see Appendix A, Template 9.2-7 Notification of Intent to Nullify Notice/Revoke Plan); and provide the operator an opportunity for an informal hearing before the State Director.[281]

The informal hearing before the State Director follows the same procedures as the informal hearing for a notice to issue a suspension order under 43 CFR 3809.601(b), see Section 9.2.3.2.3 Informal Hearing.

If, after the informal hearing, the Field Manager believes that it is still necessary to revoke the plan or nullify the notice, the Field Manager will issue a formal written decision to the operator (see Appendix A, Template 9.2-8 Nullification of Notice/Revocation of Plan of Operations). A

[280] 43 CFR 3809.604(b).
[281] 43 CFR 3809.602(b).

decision to revoke a Plan or nullify a Notice constitutes an appealable decision and must include standard appeals language.

If the BLM revokes a Plan of Operations or nullifies a Notice, the operator must not conduct operations on the public lands in the project area, except for reclamation or other measures specified by BLM.[282] If the operator continues to conduct operations after receiving the decision, and the decision is not stayed by the IBLA, the BLM must contact the Solicitor's Office to determine whether to request assistance from the US Attorney's Office to enforce the order.

9.3 Criminal Penalties

In certain circumstances, the BLM may seek criminal penalties in addition to the other enforcement remedies in section 9.2. The criminal penalties established by statute for individuals and organizations who knowingly and willfully violate 43 CFR 3809 are found at 43 CFR 3809.700.

9.3.1 Individuals

If an operator or claimant knowingly and willfully violates the regulatory requirements, he/she may be subject to arrest and trial under Section 303(a) of FLPMA.[283] If the operator or claimant is convicted, he/she 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.

9.3.2 Organizations

If an organization or corporation knowingly and willfully violates the regulatory requirements, 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.

[282] 43 CFR 3809.602(c).
[283] 43 U.S.C. 1733(a).

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Chapter 10 Decisions and Appeals

This chapter provides guidance on what must be included in a surface management decision and how to process appeals of those decisions. It discusses the roles and responsibilities of the District/Field Office, State Office, Solicitor's Office, and the IBLA in the appeals process.

10.1 Decisions

10.1.1 Decision Content

A well-drafted decision will contain the following:

- A complete statement of the material facts, i.e., those facts necessary to decide the issues.
- Reference to relevant documents in the case file used in deciding the case, (e.g., inspections, records of telephone conversations, environmental analysis, consultation results, etc.).
- The issue(s) on which the decision hinges.
- Statement of relevant law (statutes, regulations) to the facts to resolve the issues.
- Appeals provisions.

10.1.2 Appeals Language

All formal decisions must contain the appropriate appeals language. The appeals language for District/Field Manager decisions is different from that needed to describe the process to appeal the results of a State Director Review (SDR). The following two sections contain the appropriate appeal language for each of these decisions. BLM Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals, may be included with the decision, but the decision will still contain the relevant appeals language.

10.1.2.1 District/Field Office Decisions - Appeals Language

All decisions issued by the District/Field Office in administering the surface management program under 43 CFR 3809 must, at a minimum, contain the following appeals information (see Appendix A, Template 10.1-1, Field Office Decision – Appeal Language):

> If you are adversely affected by this decision, you may request that the (*enter appropriate State*) BLM State Director review this decision. If you request State Director Review, the request must be received in the (*enter appropriate state*) BLM State Office at (*insert State Office mailing address*), no later than 30 calendar days after you receive or have been notified of this decision. The request for State Director Review must be filed in accordance with the provisions in 43 CFR 3809.805. This decision will remain in effect while the State Director Review is pending, unless you request and obtain a stay from the State Director. If you request a stay, you have the burden

> of proof to demonstrate that a stay should be granted using the standards and procedures for obtaining a stay from the Interior Board of Land Appeals (IBLA).[284]
>
> If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the IBLA. You may contact the (*enter appropriate state*) BLM State Office to determine when the BLM received the request for State Director Review. You have 30 days from the end of the 21-day period in which to file your Notice of Appeal with this office at (*insert address of Field Office issuing the decision*) which we will forward to IBLA.
>
> Under 43 CFR 3809.801(a)(1), if you wish to bypass a State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR part 4. Your Notice of Appeal must be filed in this office at (*insert address of Field Office issuing the decision*) within 30 days from receipt of this decision. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 which contains information on taking appeals to the IBLA. This decision will remain in effect while the IBLA's decision is pending, unless you request and obtain a stay under 43 CFR 4.21. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted under the criteria in 43 CFR 4.21.

Failure to include the proper appeals language in a District/Field Office decision does not limit the appeal rights of the recipient.[285] However, not including the language may result in extending the period during which an adversely affected party may request SDR or file an appeal with IBLA.

10.1.2.2 State Director Decisions - Appeals Language

All decisions issued by the State Director in administering the surface management program must, at a minimum, include the following appeals information in the decision (see Appendix A, Template 10.1-2, State Director Decision – Appeal Language):

> This decision may be appealed to the Interior Board of Land Appeals (IBLA) in accordance with the regulations contained in 43 CFR part 4 and the enclosed Form 1842-1. If an appeal is taken, your Notice of Appeal must be filed in this office (*insert State Office address*) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. This decision will remain in effect while the IBLA's decision is pending, unless you request and obtain a stay under 43 CFR 4.21. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted under the criteria in 43 CFR 4.21.

Failure to include the appeals provisions in the State Director decision does not limit the appeal rights of the recipient but may result in extending the timeframe in which an appeal can be filed with IBLA.

10.1.2.3 Request for Stay

All decisions under 43 CFR 3809 are effective immediately unless the operator or other adversely affected party requests and is granted a stay of the decision.[286] The office issuing the decision must include language in the decision on how to request a stay, including the standards

[284] 43 CFR 4.21(b).
[285] 43 CFR 4.410.
[286] 43 CFR 3809.803.

for obtaining a stay. The provided language must include the following information (see Appendix A, Template 10.1-3, Request for a Stay):

> If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision, to the IBLA, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.
>
> Standards for Obtaining a Stay
>
> Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:
> 1. The relative harm to parties if the stay is granted or denied.
> 2. The likelihood of the appellant's success on the merits.
> 3. The likelihood of immediate and irreparable harm if the stay is not granted.
> 4. Whether the public interest favors granting the stay.

10.1.3 Issuing the Decision

Decisions must be sent via certified mail - return receipt requested, in order to ensure receipt by the intended party and to establish a timeframe for the filing of appeals. Where there is a high level of public interest or the BLM is aware of parties other than the operator who may claim to be "adversely affected" by the decision, it may be appropriate to announce the decision through the media and via public mailings of applicable decision documents. In some cases, it is advisable to deliver copies via certified mail of the decision to those individuals or groups, other than the operator, who have been active in the review and analysis process for a particular decision and who are potential appellants. This ensures these parties are aware of the final decision and establishes a timeline for the filing of appeals.

10.2 Administrative Review Process

An operator or other adversely affected party may request administrative review of a BLM decision. The party adversely affected by a decision under Part 3809 may either request a SDR[287] or appeal directly to the IBLA[288] (see Figure 10.2-1, *Administrative Review Process*).

10.2.1 Decisions Subject to Administrative Review

There are a variety of decisions issued in connection with the surface management program by either the District/Field Office or the State Office that are subject to administrative review by adversely affected parties.

[287] 43 CFR 3809.800(a).
[288] 43 CFR 3809.800(b) and 43 CFR 4.410.

Examples of decisions subject to the administrative review procedures in 43 CFR 3809.800 include:

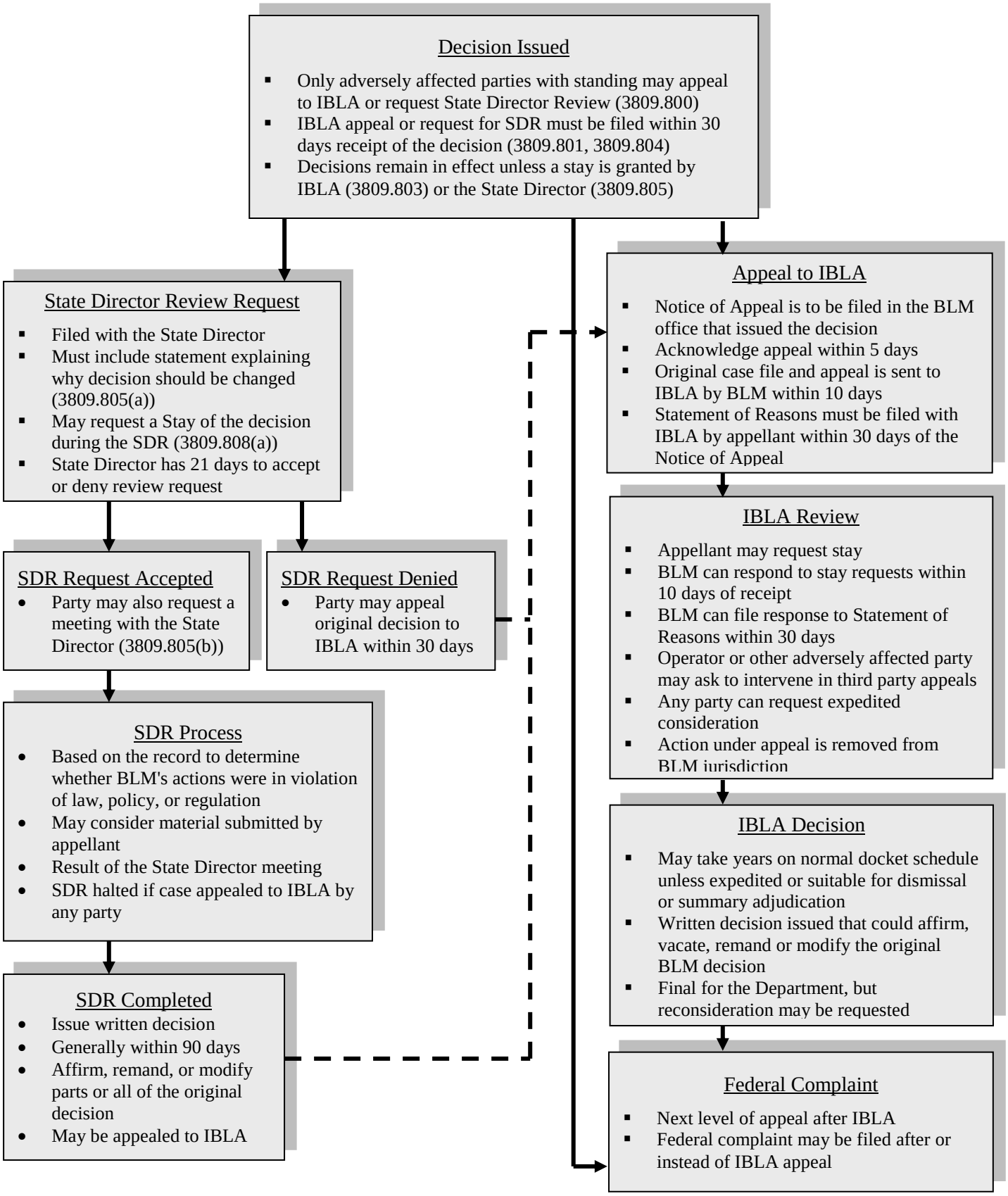
- Establishment of the financial guarantee amount that must be posted for a Notice operation.
- Establishment of the financial guarantee amount that must be posted for a Plan of Operations.
- Acceptance, rejection, or forfeiture of a financial guarantee instrument.
- Approval of a Plan of Operations.
- Denial or withholding approval of a Plan of Operations.
- Rejection of a Notice or Plan of Operations.
- A decision that a Notice has expired.
- A decision requiring submission of a modification to a Notice or Plan.
- Issuance of an enforcement order.
- A decision determining that a Notice or Plan has been abandoned.
- A decision revoking a Plan or nullifying a Notice.
- Concurrence on use and occupancy associated with a Notice or Plan (must appeal direct to IBLA, no SDR process available[289]).
- The State Director's decision on a SDR request.

10.2.2 Decisions Not Subject to Administrative Review

Not all actions taken by the BLM in administering the surface management program are subject to administrative review because the actions do not involve a decision by the BLM. Certain actions are considered intermediate steps in a larger process which itself is subject to review. For example, communications with the operator about the proposed actions are not final decisions, and hence should not to be issued in the form of a decision nor should the communication include the standard appeals provision.

[289] Note that there is no SDR because this is a 3715 decision and 43 CFR 3715 does not provide for SDRs.

Figure 10.2-1 – Administrative Review Process



Examples of non-reviewable actions:

- Notification that a Notice is complete or incomplete and/or requests for additional information.
- Notification of additional review time for a Notice.
- Notification that a Plan of Operations is complete or incomplete and/or requests for additional information.
- Advice to the operator of consultation or coordination requirements.
- Advice to the operator of environmental information needs or deficiencies.
- Notification of Intent to issue a suspension order, or to nullify a Notice or to revoke a Plan of Operations.

10.2.3 Standing to Seek Administrative Review

IBLA appeals or SDR requests may be filed by any individuals or entities that are adversely affected by the decision. Individual or entities may be "adversely affected" if they are the named recipient(s) of the BLM decision, or if they participated in the decision-making process. For decisions involving NEPA documentation, this can occur by providing comments or input to the BLM prior to the action, such as commenting on a draft EIS.

If you believe the party appealing to the IBLA or requesting SDR is not "adversely affected" within the meaning of the regulations, and the BLM should argue for dismissal based on lack of standing, you should raise the issue with the Solicitor's Office during preparation of the case file and answer.

10.2.4 Where and When to File a Request for Administrative Review

A request for a SDR must be filed with the office of the State Director within 30 days of receipt of the District/Field Manager's decision. Appeals to IBLA of the District/Field Manager's decisions must be filed with the Field Office that issued the decision within 30 days of receipt of the decision. An appeal to IBLA of a State Director decision, including a decision as the result of a SDR, must be filed with the State Office within 30 days of receipt of the decision.

Because decisions issued to operators are served by certified mail - return receipt requested, determining whether an appeal or SDR request was filed within the 30-day period is relatively straight forward. For parties other than the operator, the appeal period begins from the date the party might reasonably be expected to be aware of the decision. Unless the decision is sent to the party via certified mail, the appeal period is determined based on the timing of public notice mechanisms such as a press release, mass mailing, *Federal Register* notice, etc. For deliberation concerning the timeliness of an administrative review filing use the procedures defined at 43 CFR 4.401(a).

10.2.5 Full Force and Effect

Under 43 CFR 3809.803, the BLM's decisions under the surface management regulations are in full force and effect upon issuance unless a request for a stay is filed and granted by the reviewing entity. Requests for a stay must be filed directly with IBLA and accompany the initial Notice of Appeal or with State Director and accompany a SDR request and address the four criteria in Section 10.1.2 Appeals Language.[290]

10.3 State Director Review Procedures

10.3.1 SDR Request

A request for SDR must be made in writing and include the serial number of the Notice or Plan of Operations, a written statement explaining why the BLM should change its original decision, and any documents that support the written statement. The request must also contain contact information for the requester, including a telephone or fax number. The requester may also request a meeting with the State Director.

If a timely filed SDR request is missing some of the information required by the regulations, the BLM will contact the affected party to obtain the missing information. If the missing information is not received in a reasonable amount of time (not to exceed 60 days), the State Director will proceed with the SDR process based on the information submitted and the case file.

10.3.2 Decision to Review

Within 21 days of receipt of the request, the State Director will notify the party seeking the SDR whether he/she will review the original BLM decision.[291] This notification is sent by certified mail - return receipt requested. If the State Director declines to review the original BLM decision, the adversely affected party has 30 days from receipt of the State Director's notification to file an appeal of the District/Field Office's decision with the IBLA. The State Director's decision whether to review the District/Field Office decision is not subject to administrative review.

If the adversely affected party files an appeal to IBLA while the State Director is reviewing the District/Field Manager's decision, then the State Director must stop his/her review and forward the original decision and case file to IBLA. If the State Director is not aware that the affected party filed an appeal with IBLA, then the State Director decision will be voided by a subsequent IBLA action. The adversely affected party may choose to file with IBLA at any time while the original decision is being reviewed by the State Director.

10.3.3 Purpose of SDR

The primary purpose of the review by the State Director is to ensure the original decision is not flawed or in error by violating any applicable law, regulation, or policy. Based on this review,

[290] 43 CFR 4.21.

the State Director may affirm the original decision or remand the original decision back to the office that issued the decision.

To facilitate the review, the State Director may request the case file from the appropriate office that issued the challenged decision. If requested, the District/Field Office will provide the original case file to the State Office within 10 business days after receiving the request for the case file. A copy of the case file will be retained in the District/Field Office.

A determination by the State Director to affirm the original decision will be issued as a new decision by the State Director. Once the State Director issues a decision to affirm the District/Field Office's decision, the State Director's decision replaces the original BLM decision which is no longer in effect. The only decision that can then be appealed to IBLA is the State Director's decision. The adversely affected party must file their Notice of Appeal with the State Director within 30 calendar days of the appellant's receipt of this decision. Because the SDR decision that affirms the original decision will be the basis of any subsequent IBLA or judicial appeal, the State Director must consult with the Solicitor's Office before issuing the SDR decision.

A decision to reject the original decision and remand the case back to the District/Field Office may be made when the case file does not support the decision of the District/Field Manager. The State Director's decision will provide clear guidance to the District/Field Office on how to address remanded items. A determination by the State Director to remand the original decision back to the issuing office must be issued by the State Director; however, the State Director's decision is not subject to administrative review as it does not represent the agency's final decision. As such, the State Director's decision to remand the original decision should not include appeal language.

The State Director must complete the review and issue a decision within 90 days or sooner, if possible, from the date of the original decision. The SDR decision will be sent certified mail - receipt requested.

10.3.4 State Director Meeting

The party requesting SDR may request a meeting with the State Director as part of the review process. The State Director must determine whether or not he/she can accommodate the meeting request. In general, BLM policy is for the State Director to accommodate meeting requests as part of the SDR process. However, if the request involves an issue that is not under the State Director's jurisdiction, then the meeting could be denied.

If the meeting is determined appropriate, then it should be held as early in the process as possible. The meeting is an opportunity for the party requesting the SDR to discuss the problems in a non-adversarial setting. The State Director will determine who should be present during the meeting. This meeting and all conversations held with the District/Field Office or the affected party must be documented in the case file. The results of the meeting are to be documented and used in conjunction with the case file review to formulate the State Director's decision.

10.4 IBLA Appeals

10.4.1 IBLA Background

10.4.1.1 Summary Disposition Cases

All incoming IBLA appeals are screened by a Docket Attorney to determine whether or not they are suitable for summary disposition. Cases suitable for summary disposition are those subject to dismissal for lack of jurisdiction (e.g., untimely appeal) or where the facts preclude any chance of affording appellant any relief on the appeal. These cases are generally decided by orders that are not published in the volumes of IBLA decisions and therefore cannot be cited. The summary disposition process expedites the resolution of appeals where no genuine issue requires legal research, opinion drafting, or deliberation.

10.4.1.2 Types of filings before the IBLA

Although the most common filings before the IBLA are the Notice of Appeal, Statement of Reasons, and Answer, there are many other types of filings. Either the BLM or the appellant may file requests for extensions of time, expedited consideration, consolidation, or hearing. In addition to these filings, the appellant may also file a request to stay the BLM's decision, and other parties may file requests for intervention.

The time for filing any document other than the Notice of Appeal itself may be extended by the IBLA.[292]

The BLM's decision is not effective if the IBLA grants a stay. The decision is pending until the appeal is decided.

If the item(s) under appeal is (are) a pressing matter, the BLM may request an expedited review. This is considered an extraordinary procedure and should only be requested when absolute necessary (e.g., immediate action is necessary to protect health, safety, or the environment from imminent danger or harm).

The IBLA may consolidate separate pending appeals if the appeals involve identical or closely factual context and legal issues. Intervention is the recognition that a party with an interest adverse to the appellant may potentially be adversely affected by the decision on appeal. Generally, IBLA appeals are decided on the briefs alone, without oral argument or a hearing. However, at the request of one of the parties or on its own motion, the IBLA can refer the matter to an administrative law judge for a hearing if there are significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.[293]

[292] 43 CFR 4.401(a) and 4.422(d).
[293] 43 CFR 4.415.

10.4.2 IBLA Appeals

10.4.2.1 Filings by the Appellant

10.4.2.1.2 Notice of Appeal and Statement of Reasons

A decision of the District/Field Manager may be appealed directly to IBLA or after the SDR decision is issued. In either case, the appeal must be filed in the office where the decision under appeal was issued within 30 calendar days of receipt of the decision.

No extension of time to file a Notice of Appeal can be granted.[294] Under 43 CFR 4.401(a), any delay in filing a Notice of Appeal will be waived if it is filed within 10 days after the due date, and it is determined that the appeal document was transmitted or probably transmitted before the due date. If the BLM receives the Notice of Appeal within the 10-day period, but determines that it was not transmitted before the due date, the Field or State Office will forward the Notice of Appeal along with any supporting documentation to the IBLA for dismissal.

If the BLM receives the Notice of Appeal after the 10-day period, District/Field Office Surface Management Specialist or the State Office Program Lead will return it to the appellant with a cover letter explaining that the case was closed because no timely appeal was filed. The letter should have photocopies of documents in the case file that show the appeal was received after the grace period, including the return receipt card showing the date that the appellant received the decision, the envelope showing the postmark of when the appeal was mailed, and the date stamp showing when the appeal was received by the BLM. The letter is not a formal decision and should not include appeals language. If the appellant objects to the closing of the case and rejecting the appeal as untimely, then the case file will be forwarded to the IBLA which will determine whether a timely appeal was in fact filed.

The Notice of Appeal should contain the following information: the name of the affected party and address and the BLM serial number of the Notice or Plan of Operations that is the subject of the appeal. An appeal not containing all the information required by 43 CFR 3809.802 is still forwarded to IBLA within 10 business days.

The Notice of Appeal may contain the Statement of Reasons for filing the appeal or the Statement of Reasons may be filed separately. If the appellant does not file a Statement of Reasons with its Notice of Appeal, then the appellant must file the Statement of Reasons with the IBLA within 30 days after the Notice of Appeal was filed. See 43 CFR 4.412 and 4.413 for further guidance on the appeals requirements.

10.4.2.1.2 Requests for Stay

The appellant may also file a request for a stay under 43 CFR 4.21. The request for stay must be filed with the IBLA along with a copy of the Notice of Appeal, and with the BLM office that issued the decision. The appellant has the burden to demonstrate that the four factors listed in 43 CFR 4.21 justify the issuance of a stay.

[294] 43 CFR 4.411(c).

10.4.2.2 BLM's initial review of the appeal

When a new appeal is filed with the BLM, the District/Field or State Office must review the documents filed to ascertain what will be filed in response and the due dates. It is sometimes difficult to tell whether the document filed by the appellant is a Notice of Appeal and/or a Statement of Reasons and/or a Request for a Stay. If you have any doubt, contact the Solicitor's Office to review the appellant's filing.

If the appellant only files a Notice of Appeal, then the BLM's only responsibility is to prepare the case file and transmit it along with the Notice of Appeal to IBLA within 10 working days. The BLM then waits for the appellant to file its Statement of Reasons or the time for filing a Statement of Reasons expires. The BLM has 30 days from receipt of the Statement of Reasons, or the date when the Statement of Reasons was due (if no Statement of Reasons is filed), to file its answer.

If the appellant files a Notice of Appeal and a Statement of Reasons together, the BLM must transmit the case file to IBLA within 10 days as well as file its answer with IBLA within 30 days of receipt. The answer must be served on all parties within 15 days of serving the IBLA, and is usually served at the same time.

If the appellant files both a Notice of Appeal and request for stay, the BLM must transmit the case file to IBLA as well as any response to the stay request within 10 working days. Because of this short timeframe for responding, it is very important that you contact the Solicitor's Office immediately when you receive any appeal that contains a request for a stay so that you can determine whether a response is required. The BLM's response to the stay request (if any, see below for further discussion) may also include a request to extend the time for filing the BLM's answer until 30 days after the IBLA makes a decision on the stay request or 30 days after the appellant files its Statement of Reasons, if not included with the Notice of Appeal and request for stay.

10.4.2.3 Preparing and transmitting the case file to IBLA

The Notice of Appeal is placed in the original case file. The original case file and index, but not any confidential, privileged, or protected information (see Section 13.3.2 Confidential or Proprietary Information) is forwarded to IBLA within 10 business days of receipt of the appeal and is sent by certified mail - return receipt requested. A copy of the case file must be maintained in the District/Field Office. In order to transmit the case file to IBLA, Standard Form 1842-2 is completed by the forwarding office.

The contents of the case file for IBLA cases must conform to the attached guidance from the Solicitor's Office on preparing administrative records for judicial litigation. If the appeal is related to a decision on a Plan of Operations or plan modification, an electronic copy of the relevant NEPA document(s) must be included in the case file submitted to IBLA.

Confidential information, including Privacy Act information, proprietary information, and attorney-client privileged communications, must be handled in accordance with the special

procedures found at 43 CFR 4.31 and discussed in further detail in Section 13.3.2 Confidential or Proprietary Information.

If the case file is very large and/or would take significant resources to copy before sending to the IBLA, contact the Solicitor's Office immediately before undertaking any copying or scanning. The Solicitor's Office can contact the IBLA Docket Attorney to determine whether the entire case file must be sent, and/or whether parts of the case file may be provided in electronic format. As of the date of this handbook, the IBLA is not accepting the case file in electronic format, but this may change in the future.

The BLM may contact the IBLA Docket Attorney to discuss procedural matters only (such as questions about the format of the administrative record); however, no communication regarding the merits of the appeal can be made directly to anyone at the IBLA who has jurisdiction over the merits of the case by the BLM unless all parties to the case are present. This is the rule of fundamental fairness. Violation of the rule constitutes *ex parte* communication. If the communication regarding the merits of the case is made in writing then a copy is served on all the parties to the case to ensure the BLM is not engaging in *ex parte* communication. If the BLM orally communicates with someone at the IBLA who has jurisdiction to decide the merits of the case, then all parties to the appeal must be present. See Section 13.7.3 Avoiding Ex parte Contact with IBLA for discussion of *ex parte* contact in relationship the administrative record.

10.4.2.4 BLM's Answer

The BLM's answer is due 30 days after the BLM receives the Statement of Reasons. The Field Office Surface Management Specialist and State Program Lead are to work closely with the Solicitor's Office to prepare the BLM's the case file and the BLM's answer as documented by the case file. In some cases, the BLM and the Solicitor's Office may also determine that the appeal has identified a legitimate error in the BLM's decision, and the BLM may ask the Solicitor's Office to request the IBLA to remand the decision back to the BLM rather than file an answer.

10.4.2.5 BLM's Response to a Request for Stay

The decision under appeal is in full force and effect unless the adversely affected party seeks a stay from the IBLA and the IBLA grants the stay. If the appeal consists of both a Notice of Appeal and Request for Stay, the BLM must transmit both the case file along with any response to the stay request to the IBLA within 10 working days. Depending on the circumstances, the BLM's response to the stay request may also include a request to extend the time for filing the

BLM's answer until 30 days after the IBLA makes a decision on the stay request or 30 days after the appellant files its statement of reasons, whichever is later.

If the appellant files a request for a stay under 43 CFR 4.21, the BLM should contact the Solicitor's Office immediately to determine how to respond. In some cases, the BLM may determine that it is not necessary to oppose the stay request, in which case the Solicitor's Office will file a short brief with the IBLA stating that it takes no position on the stay request. If the

BLM and the Solicitor's Office determine that a response is required, the response will address why the appeal does not warrant a stay under the four criteria listed in 43 CFR 4.21.

If the IBLA grants a stay, the IBLA's order will specify what portion of the BLM decision under appeal is stayed. Any portions of the BLM decision not appealed remains in full force and effect. The Field Office must continue regular inspections of the project while the decision is under appeal.

10.4.3 Intervenors

In some cases, a party other than the appellant will file a request to intervene in the appeal. For example, if the appeal was brought by an environmental group, the operator may seek to intervene or vice versa. The IBLA will look at whether the party seeking to intervene could have independently brought the appeal it seeks to participate in, and whether the interests of the party seeking to intervene could be adversely affected by the outcome of the appeal.

Although the intervenors may provide the BLM with advance or draft copies of the filings they intend to file with the IBLA, the BLM must not share drafts or other information not available in the case file with intervenors, even if the intervenors have become a party to the case on the same side as BLM.

10.5 Litigation in Federal Court

10.5.1 Judicial Challenges

A BLM decision under 43 CFR 3809 may be challenged in Federal court in two ways. First, a party may seek judicial review of a decision made by the IBLA or during SDR.

Second, a party may challenge a BLM decision in Federal court without going to IBLA or seeking SDR first. Under 43 CFR 3809.803, all decisions made under the surface management regulations are effective immediately. Consequently, decisions made under the surface management regulations are exempt from the requirement to exhaust administrative remedies in 43 CFR 4.21(c), and anyone with standing may immediately challenge a BLM decision in Federal court.

Judicial challenges of BLM decisions under 43 CFR 3809 are "record review" cases under the Administrative Procedures Act. This means that the court may look only to the administrative record to determine whether the BLM's actions were arbitrary, capricious, or in violation of law.

10.5.2 Legal Representation

The Department of Justice (DOJ) or the local United States Attorney's Office represents the BLM in Federal court. The Solicitor's Office will assist the DOJ attorney or Assistant United States Attorney (AUSA) in case preparation and will act as the liaison with the BLM.

The BLM District/Field and State Offices will provide background information, case file history, chronology of events leading to the court case, etc., as requested by the Solicitor's Office to help

prepare litigation reports and briefs. In general, the BLM will work through the Solicitor's Office rather than contacting or being contacted by the AUSA/DOJ attorney directly.

10.5.3 Judicial Enforcement

In accordance with 43 CFR 3809.604, DOI may request the United States Attorney to initiate a civil action when the operator fails to comply with an order. This process is initiated by the State Director writing a memorandum to the Solicitor's Office. The memorandum must contain the case file number, background information about the case, and the reason affirmative litigation is requested. A copy of the case file will be included with this memorandum. The Solicitor's Office will review the case file and identify the legal authority(ies) for taking affirmative litigation.

The United States Attorney's Office makes the final decision regarding whether or not it will pursue the case. If the case is pursued by the United States Attorney, then the Office Surface Management State Lead and all appropriate District/Field Office personnel must be available to work with the Solicitor's Office to support this litigation effort. If the case is not pursued by the United States Attorney, then the BLM must consult with the Solicitor's Office to determine what if any additional action is necessary to administratively close the case file.

Chapter 11 Public Visits

The surface management regulations[295] provide the public with a process to visit mine sites and associated facilities on public lands. The purpose of the visit is to give the public an opportunity to view the mine site and associated facilities. The operator must, however, provide reasonable access to public lands.

Nothing in the regulations allows nor authorizes the BLM to sponsor public mine visits to non-public lands, including operations on private and state lands. In addition, nothing in the regulations allows nor authorizes the BLM to sponsor public visits to underground operations.

11.1 Public Requests

Members of the public may request BLM sponsor an annual visit to any mine on public lands. Under 43 CFR 3809.900(c), members of the public must provide their own transportation to the mine site, except in rare instances when transportation is provided by the BLM.

The requester must include names and contact information (telephone number and address) of all parties to participate in the visit with the request. In addition, a request must be made a minimum of 30 days before the proposed date for the visit to ensure the BLM District/Field Office will be able to properly coordinate with the operator.

11.2 Processing a Request for Public Visit

When the BLM receives a request from the public to visit an operation located on public lands, the District/Field Office will work with the operator to address the logistics and timing for the visit. The District/Field Office will coordinate mine visits with the operator to avoid disruption of operations and will schedule visits during normal BLM business hours. After consulting with the operator, the BLM District/Field Office may limit the size of the public group for safety reasons. The BLM will also provide the operator with a list of all participants.

The BLM will discuss with the operator whether the operator is able to provide necessary safety equipment and transportation within the project area. If the operator is unable to provide safety equipment or transportation within the project area, the BLM will do so. However, operators must make available any safety equipment they normally provide to other visitors. Under no circumstance will a member of the public be allowed to operate his/her own vehicle within the project area.

Once the operator and BLM District/Field Office have agreed on the logistics and timing for the public visit, the District/Field Manager will communicate, in writing, to the requester this information and any safety limitations, such as clothing and equipment requirements. The visitors to the mine site must wear a BLM visitor pass (see Appendix G – Visitor Pass) at all times while on the visit. The conditions and statement must be agreed upon and signed by the visitor or the individual prior to being allowed to go on the trip.

[295] 43 CFR 3809.900.

11.3 Operator Responsibilities

The operator must allow the public to visit operations on public lands and must provide access to all surface areas and surface facilities on public lands that are ordinarily made available to visitors on operator sponsored public tours. For example, if the operator normally allows the public to view a refinery facility, that facility would be available for the BLM-sponsored public visit. Where the operator does not normally sponsor any public tours, the District/Field Manager, in consultation with the operator, will determine what surface areas and surface facilities on public lands may be made available for the visit.

Operators must not exclude persons whose participation the BLM authorizes. 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. Operators are not required to provide transportation within the project area, but if they do not, the operator must provide access for BLM-sponsored transportation.

Chapter 12 Federal-State Agreements

This chapter covers the requirements for establishing an agreement with the state under 43 CFR 3809.200 through 3809.204. The procedures and timeframes for reviewing and revising agreements the BLM had with the state on January 20, 2001, are also discussed in this chapter.

12.1 Existing Agreements

Federal-State Agreements that were in place on January 20, 2001, were not cancelled by the revised regulations. The regulations do, however, require a review of all existing agreements.[296] The BLM was directed to review existing agreements by January 20, 2002, to determine if revisions were needed to meet the requirements of the regulations. The governor of the state or the delegated representative of the governor could request an extension in writing. The State Director could grant an additional year or two to review an existing agreement. If an extension was not requested and revisions were needed to meet requirements of the regulations, the existing agreement terminated on January 20, 2002. If an extension was granted but the review determined revisions were necessary and these revisions were not completed by January 20, 2004, the existing agreement terminated.

12.2 New Agreements

To prevent administrative delays and avoid duplication of effort, the BLM may enter into agreements with a state agency or agencies. Such an agreement may provide for joint management or defer to the state administration of certain surface management responsibilities.

12.2.1 Memorandum of Understanding (MOU)

An MOU is an agreement that outlines the roles, responsibilities, and commitment of each party to the agreement. Such agreements may be between two parties, e.g., the BLM and the state, or may involve multiple parties, such as an agreement between the BLM, state, and U.S. Forest Service. It needs to be noted, no funds may be transferred under an MOU.

The BLM and the state may agree to jointly regulate operations or the state may request that BLM defer to the state regulation of some or all of the aspects of the surface management program subject to the limitations specified in 43 CFR 3809.201 through 3809.203. The type of MOU being written (joint management agreement or deferral to state administration) should be determined early in the process so an appropriate schedule can be developed for the effort.

An MOU with the state should be developed at the State Office-level and signed by the State Director and the appropriate state agency administrator(s). More than one agreement may be developed between the BLM and different state agencies, or more than one agreement with a single state agency may be used to address different aspects of the surface management program.

[296] 43 CFR 3809.204.

The agreement must conform to the BLM's content and format requirements for MOUs, see BLM Manual 1786, *Memorandums of Understanding*, Illustration 2, for an example of the correct format. BLM Manual 1786 also provides guidance on development, implementation, review and recordkeeping for MOUs.

12.2.2 Joint Management Agreement

A joint management agreement[297] between the BLM and one or more state agencies, and possibly one or more Federal agencies, is intended to facilitate the management of certain surface management responsibilities. Where joint administration of the surface management program by BLM and a state is contemplated, the agencies should document this relationship in an MOU. This type of an agreement may identify a lead agency for certain actions and responsibilities, but does not let the BLM defer program administration to the state.

The BLM should consider all areas of overlapping Federal-State program responsibility when developing a joint management agreement with the state. At a minimum, BLM must consider:

- Common approaches to review Plans of Operations, including effective cooperation regarding NEPA.
- Performance standards.
- Interim management of temporary closure.
- Financial guarantees.
- Inspections.
- Enforcement actions, including referrals of violations to state enforcement agencies.

It is possible for a joint management MOU to address only a single aspect of the regulation of mining operations; however, it is the intent of the regulations to minimize delays and avoid duplication of administration and enforcement actions by working cooperatively with the responsible state agencies. Therefore, the entire program should be reviewed when developing a joint management MOU with the respective state agency or agencies.

An MOU for joint management does not require public notification or an evaluation of the state's surface management program.

12.2.3 Defer to State Administration

A deferral MOU is a commitment by the state to administer some or all aspects of the BLM's surface management responsibilities.[298] To avoid confusing a deferral agreement with a joint

[297] 43 CFR 3809.200(a).
[298] 43 CFR 3809.200(b).

management agreement, the MOU must clearly state that the purpose of the agreement is to defer the administration of some or all of the surface management program to the state. The format for this type of agreement is the same as an MOU for joint management of the program with one modification. The deferral MOU must provide for, and thoroughly describe, the auditing system that will be used to verify compliance with for those elements of the program deferred to state administration.

12.2.3.1 State's Request

A deferral must be requested in writing by the state[299] requesting to regulate operations on public lands in place of BLM administration for some or all of the requirements under 43 CFR 3809. The state must send the request to the State Director that has jurisdiction over the public lands for the state. Figure 12.2-1, Deferral Agreement Development is a flow chart of how such a request is processed.

The state request must contain the following items:

- An analysis of the state's legal authorities as compared to the BLM's authority to regulate mining activity on public land.
- Identification of the resources to be committed, i.e., position titles, position qualification requirements, computers, equipment, training, etc., needed to conduct the task(s) requested to be deferred in the agreement.
- Documentation that sufficient funding is available to administer the program.

12.2.3.2 Deferral Limitations

An agreement to defer to state administration of the surface management program is limited by the provisions listed in 43 CFR 3809.203(a) through (d). These limitations are:

- The BLM must still concur with each state decision to approve a Plan of Operations.
- The BLM retains the responsibility for compliance with NEPA.
- The BLM remains responsible for land use planning on its public lands and for implementing other Federal laws[300] relating to the public lands.
- The financial guarantee must still be redeemable by the BLM, and the BLM must concur in the approval, release, or forfeiture of a financial guarantee for public lands.

[299] 43 CFR 3809.202(a).

[300] For example, the BLM is still responsible for ensuring compliance with use and occupancy regulations under 43 CFR 3715, conducting validity exams if required under 43 CFR 3809.100, making determinations of common versus uncommon variety, and protecting cultural resources (historic as well as prehistoric) and threatened and endangered plant and animal habitat.

12.2.3.3 BLM's Review

The BLM State Director will review the request to ensure all required information[301] is present. The State Director will notify the state that the BLM has received the request and whether the request is complete. If additional information is required, the letter will identify the information needed in order for the BLM to conduct its evaluation of the state program.

Unlike a joint management MOU, an MOU for deferral of the regulation of mining operations to the state requires public notification and comment. Once a complete request has been presented, the State Director will notify the public and provide an opportunity for comment on the proposed deferral. The notification must clearly define what BLM responsibilities are proposed for deferral and what responsibilities will be retained, including those responsibilities that may not be deferred which are identified in 43 CFR 3809.203. Public notification will, at a minimum, include publication in a daily newspaper with statewide circulation. Other outreach methods, such as mailings to interest groups, may be used to ensure interested parties are aware of the deferral request. The public will be given a minimum of 30 days to comment on the request.

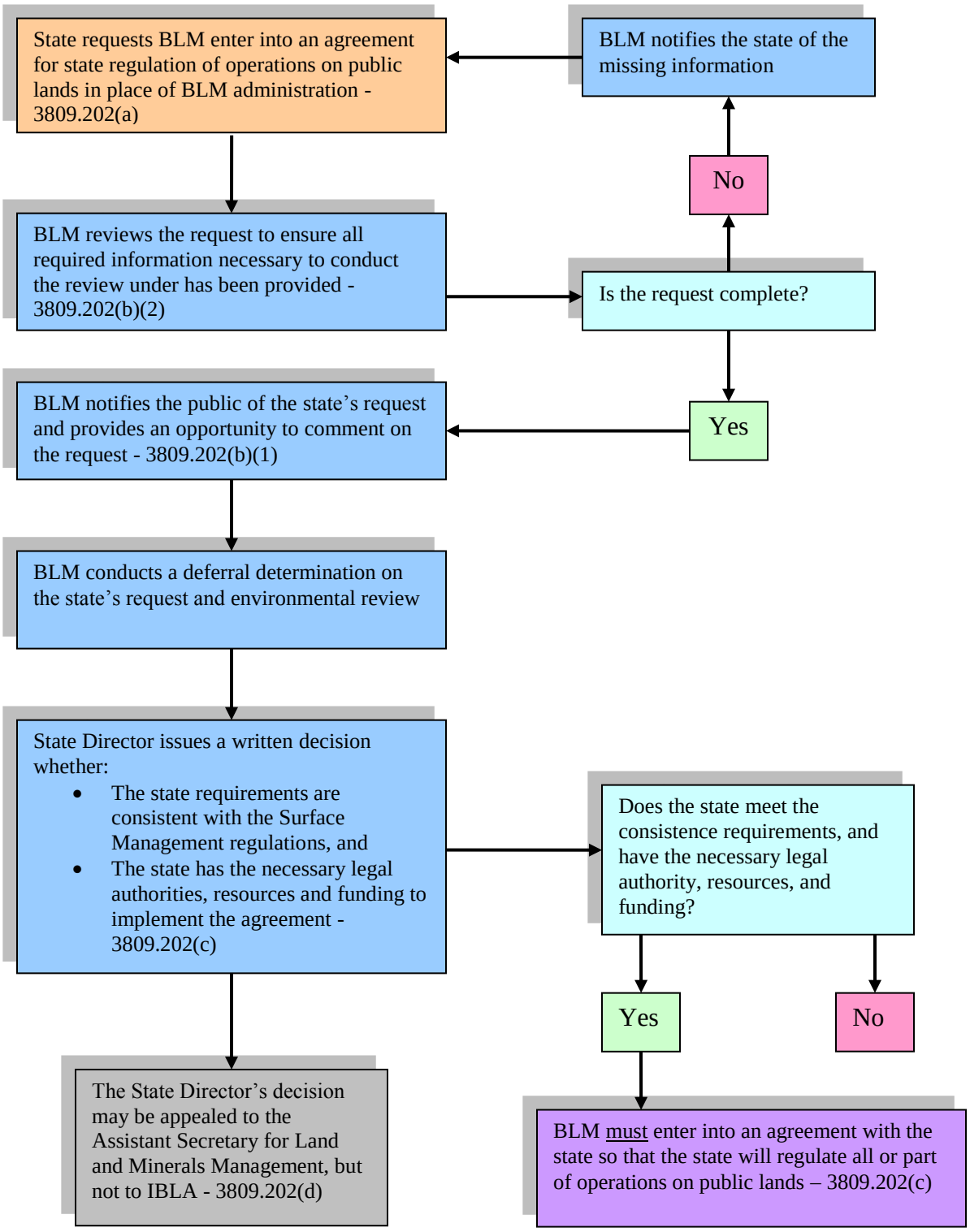
The State Director must determine whether the state has the legal authorities, resources, and funding to do the work that would be deferred to them. The BLM will determine consistency with the 3809 regulations by comparing the state standards on a provision-by-provision basis to determine whether the non-numerical and numerical state standards are "functionally equivalent" to BLM counterparts.[302] When comparing state and Federal regulations, the state timeframes do not have to be the same as corresponding Federal timeframes to be functionally equivalent. In addition to laws and regulations, the state may use guidelines, policy manuals, and permitting practices to demonstrate that the state standard is functionally equivalent to the BLM standard. A state regulatory standard that is more stringent than the Federal standard meets the functionally equivalent requirement provided it does not preempt Federal intent to allow occurrence of the activity. In reviewing the state standard to determine whether it is functionally equivalent, the BLM will request assistance from the Regional Solicitor's Office.

Once the public notification period has ended, the BLM will prepare a determination to document the State Director's evaluation of the state's request. This report must contain the following elements:

- Summary of the request, i.e., what portions of the surface management program administration were requested deferred to the state.
- Evaluation/Analysis of the Request, i.e., based on the criteria at 43 CFR 3809.202(b)(2).
- Summary of salient public comments and the BLM's responses.
- Determination Findings.

[301] 43 CFR 3809.202(b) (1).
[302] 43 CFR 3809.202(b)(2)(i).

Figure 12.2-1 – Deferral Agreement Development



The State Director will make a decision on the state's deferral request based on whether the state has the necessary legal authorities, resources, and funding to implement an agreement.[303] It is important to note that the decision to defer administration of some of or the entire program to the state is not implemented until a deferral MOU has been developed and signed. It is the deferral MOU stating how and what is deferred that allows the state to administer all or portions of the BLM's surface management program. If the state's requirements are consistent with the requirements of the surface management regulations and the state has the resources and funding, then the BLM must enter into an agreement that defers to state regulation some or all operations on public lands.

A deferral decision by the State Director is categorically excluded from NEPA review in accordance with 43 CFR 46.210(h).

12.2.3.4 Appeal of State Director's Decision

The State Director's decision concerning a state's request to defer administration of the surface management program will be the final decision of the BLM.[304] If the state or any other adversely affected party does not agree with the State Director's determination that the state has or does not have the legal authorities, resources, and/or funding to do the work, then the state or other adversely affected party may appeal to the Assistant Secretary for Lands and Minerals Management within 30 days of the decision. An appeal of the State Director's decision to defer or not to defer administration to the state is not made to Interior's Office of Hearing and Appeals (OHA).

Even though the appeal is not to OHA/IBLA, it must include all of information required in 43 CFR 3809.802. The Notice of Appeal must be made in writing and filed with the BLM State Office that made the decision. The Notice of Appeal must contain the appellant's name and address (state agency or other adversely affected party appealing the State Director's decision), case file management number (if one was assigned) or reference to state's request to defer, and a statement of reasons for the appeal. If the statement of reasons does not accompany the Notice of Appeal, the appellant must file the statement of reasons with Assistant Secretary for Land and Minerals Management within 30 days after the Notice of Appeal was filed. The decision of the Assistant Secretary will be the final decision of the Department.

12.2.3.5 State Performance

A deferral MOU requires the BLM to monitor the state's administration and enforcement of the surface management requirements to ensure all tasks deferred to the state are in compliance with the MOU. In the deferral MOU, a procedure to conduct periodic program reviews must be established. The program will be reviewed annually, at a minimum, or more often if deemed appropriate by the BLM. The program review will include procedures for notifying the state when the state is not in compliance with all or part of the MOU. The procedures must also include reasonable timeframes for the state to correct items identified as not being in compliance with the MOU.

[303] 43 CFR 3809.202(b)(2).
[304] 43 CFR 3809.202(d).

12.2.3.6 Termination

The agreement must provide procedures for either the BLM or the state to terminate the MOU. The termination of a joint management agreement may be done by either party with a 60-calendar-day notification. The BLM may terminate the deferral MOU if the state does not timely correct items identified as not in compliance with the MOU.[305] The state may terminate the deferral MOU by notifying the BLM 60 calendar days in advance.[306] The agreement must provide that each agency agrees to maintain the existing financial guarantees until such time as an agreement can be reached between the operator, BLM, and state agency to replace or release the financial guarantee.

12.2.4 Suction Dredging Agreement

An agreement may address suction dredging if the state permits this type of activity (see Section 8.4 Suction Dredging). In cases where the Federal-State Agreement addresses suction dredging, the BLM can defer administration of the activity to the state if the agreement addresses the following:[307]

- The MOU describes the type and level of activity covered by the agreement. For example, limits on the size of the intake diameter of the suction dredge or vacuum, limits on the horsepower rating of the equipment, limits on the activity beneath the existing water surface of an active stream channel or non-vegetated sand and gravel bar exposed within the active stream channel, limits on the number of days the permit may be used in a year, and the number of people that can use a permit.

- The MOU contains a list of standard operating procedures that the operator must follow and the state will enforce on suction dredging activities.

- The MOU provides that the state will notify the BLM within 15 days of receipt of a suction dredging application. The purpose of the notification is so that the BLM can review the location of the proposed activity and inform the state of any federally proposed or listed threatened or endangered species or their proposed or designated critical habitat that may be affected by the proposed activity.

- The MOU must provide that if the BLM requests it, the suction dredging application will not be approved by the state until the BLM completes consultation with the FWS under the ESA.

[305] 43 CFR 3809.203(f)(1).
[306] 43 CFR 3809.203(f)(2).
[307] 43 CFR 3809.31(b) and 3809.201(b).

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Chapter 13 Records Management

The primary objective of this chapter is to ensure the creation of a complete administrative record that documents the BLM's actions to prevent unnecessary or undue degradation of the lands in accordance with the mandate of Section 302(b) of FLPMA, 43 U.S.C. 1732(b). Specifically, the administrative record documents operator and agency actions associated with surface disturbance conducted under the surface management regulations at 43 CFR 3809 and use and occupancy conducted under the regulations at 43 CFR 3715.

In addition, the BLM maintains records about its surface management activities to facilitate budget planning, assess units of accomplishment, respond to information requests from the Washington Office, identify unnecessary or undue degradation, ensure that the approved Plan of Operations or accepted Notice is followed, support enforcement actions, and document the BLM decision-making process in the event of administrative or judicial review. The BLM uses both manual and automated record systems to maintain records.

See Office of the Solicitor's June 2006 Standardized Guidance on Compiling a Decision File and Administrative Record; BLM Manual 1220, *Records and Information Management;* and DOI Manual 380, *Records Management*, for information on what constitutes an official record and how it is to be managed.[308] Questions concerning records and records management should be directed to your State Records Administrator.

Proper documentation of a case file and subsequent records maintenance are vital to the way the BLM performs its minerals functions. Increasing demands by the public to be included in our decision-making processes have resulted in more and more requests to inspect and review our records, and more questioning of our actions to authorize the use of public lands. We need, therefore, to take our records and our recordkeeping practices very seriously. Too often, by the time the record of a BLM decision reaches a point where an appeal and/or lawsuit is filed, the case file contains extraneous material, such as handwritten notes, that were never intended to be part of the permanent record. Any unnecessary materials inadvertently or carelessly left in the file become part of the official record and may reflect poorly on an otherwise proper decision.

Generally, when an appeal of a BLM decision goes to the IBLA for review, the Board has only the case record to examine in support of the decision being appealed. The need to defend an action may also arise after the principal processors have forgotten the specifics, or been replaced by new employees unfamiliar with the specifics. Proper documentation of the official case file then becomes the only basis from which to defend the BLM's action.

13.1 Records

Records, as defined by 44 U.S.C. 3301, "…includes all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under the Federal law or in connection with the transaction of public business and preserved or appropriate

[308] Federal Records Act, 44 U.S.C. 3301

for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of data in them." This includes electronically stored data and software created or enhanced by the BLM.

13.2 Records Management Responsibilities

The District/Field Manager will ensure preparation and maintenance of a complete written record, known as the administrative record, that covers the BLM's management of all mineral activities authorized by the 3809 and 3715 regulations, other than casual use, on BLM-administered public lands.

All BLM employees, including program specialists at all levels of the organization, are responsible for collecting, creating, using, maintaining, disseminating, and disposing of BLM information in accordance with established policies and procedures. The BLM will also protect all information from degradation and will safeguard Privacy Act, proprietary/confidential, and attorney-client privilege information, or other sensitive information as required to protect the BLM's and the public's interest (see BLM Manual 1270, Records Administration).[309]

Case file maintenance is every user's responsibility. This responsibility starts with properly establishing the case file to proper closure. If there are inappropriate personal notes, duplicate copies of documents, torn case jackets, case jackets with missing bar codes, etc., the person discovering the situation should either take the necessary corrective action or bring it to the attention of someone to have the problem remedied. All Privacy Act, proprietary/confidential, and attorney-client privilege information should be maintained as required by 42 CFR part 2 (see Section 13.3.2 Privacy Act, Confidential and Proprietary Information).

In addition to the physical case file, the district/field office staff is responsible for establishing and maintaining surface management records in the LR2000 database system and the Alaska Land Information System (ALIS). The surface management case data entered in LR2000/ALIS is used by the BLM at district/field, state, and Washington office levels, and is also available to the public via a BLM web page. The system is used for case management and tracking units of accomplishment. This includes tracking of numbers of Notices and Plans of Operations, compliance inspections, enforcement actions, and trespasses resolved. Standard data entry procedures must be used to enter the required information into the LR2000/ALIS systems.

13.3 Case Files

The surface management case file is the BLM's official record of exploration and mining operations conducted on public land. This record is available for public viewing (except for proprietary data, attorney-client privileged information, or Privacy Act information[310]). The case file documents the basis for any BLM decision regarding the use of the public lands under the surface management regulations. Because a BLM decision may be appealed to IBLA, or be

[309] 43 CFR 2.51 and 2.52

[310] These files are subject to the Privacy Act and must be maintained in accordance with 43 CFR 2.48.

litigated in the Federal judicial system, an accurate and complete record is vital in documenting the BLM's decision-making process. The surface management case file should be organized as a single entity, not a collection of documents scattered over several locations within an office.

Once the operation has been accepted or approved and an acceptable financial guarantee submitted and obligated, the surface management case file serves to provide a record of inspections, amendments/modifications, noncompliance, and enforcement actions taken. Proper documentation is crucial during all phases of the operation. The case file provides a record of conditions on the site at closure of an operation following final approval of reclamation by the District/Field Manager. Such a record may be useful to future land use management actions or if a subsequent operator proposes activity in or near the project area.

13.3.1 Case File Procedures

Upon receipt of a Notice or Plan of Operations, the district/field office staff must immediately establish/serialize the case in LR2000/ALIS and place the documents into a case jacket. The Notice or Plan, and any extensions, amendments or modifications to it, will be date stamped upon receipt and recorded in the LR2000/ALIS case recordation system within 5 days. The surface management case types used in establishing/serializing a case file in the LR2000 Case Recordation System (CRS) are 380210, 380910, and 381402 for Plans of Operations and 380913 for exploration Notices. Alaska's ALIS case types differ from LR2000. Properly entering data into LR2000/ALIS as actions occur will generate a serial register page that is useful to the BLM and to its customers.

When initially received, all submitted information will be considered confidential until the case file has been established and the taxpayer identification number redacted. Any information identified in the proposal as confidential will be removed until the BLM determines whether it is truly confidential or proprietary, and then handled accordingly. See Section 13.4, Confidential or Proprietary Information, for guidance on the handling of such information.

Stamp all incoming correspondence with the date it was received by the BLM. The date of receipt by the BLM may be crucial in the event of a duplicate filing, an appeal, or a lawsuit. It is recommended that the date of receipt be stamped on the front of correspondence, if possible, as it simplifies copying the file. Make sure that dates are legible and dark enough to read when documents are copied.

13.3.2 Case File Content

13.3.2.1 Pre-Acceptance or Approval

The case file should include all of the following, if applicable:

- The original proposed Notice or Plan of Operations as received by the appropriate BLM office.

- A Master Title Plat - land status check. At certain strategic points, master title plats, survey plats, and/or historical indices must be inserted into the file; when the case file is established, master title plats are required as evidence of the land status at the time the application/proposal was received.

- An LR2000 "Geo Report" might be included to indicate other actions or encumbrances that might affect the proposed operations.

- Requests for resource clearances and the actual resource clearances (Botanical, T&E, Cultural, Wilderness, Wildlife, Range, etc.) with original signature and date of the respective specialist. Cultural resource reports and archaeological site forms and maps, which would identify the nature and location of sites, should not be included in official case files. However, memoranda based upon those documents that summarize the cultural findings and make recommendations concerning final disposition of the application should be placed in the official case file.

- If Section 7 of the ESA consultation is required, Section 106 of the NHPA compliance processes, and/or Native American consultation is required for an operation, all relevant original documents are to be contained in the case file.

- Copies of any maps, pre-operation archival photographs, and aerial photos, if available.

- Reference(s) to closed 3809 exploration/mining cases and/or copies of previous operations conducted in the same location or occupancies under subpart 3715.

- The operator's proposed reclamation cost estimate and the BLM's analysis of the operator's reclamation cost estimate.

- For Plans of Operations requiring an EIS, the case-by-case fee estimate(s) for cost recovery.

- All letters requiring the operator to provide additional information and the operator's response to those letters.

- Printouts of any emailed correspondence (including attachments) between the BLM, the operator, the Solicitor's Office, other agencies, or the public, regarding the Notice or Plan that constitutes a record. Emails between the BLM and the Solicitor's should be placed in the holding file rather than in the main portion of the case file.

- A phone conversation record or a memo to the file documenting phone conversations related to proposed operations. Remember, document the file so that someone else can pick up the case and know what you said and did, and why.

- Copies of notes or preferable a memo to the file documenting any meetings held with companies, individuals, or agencies that are associated with the proposed operations.

- For Plans of Operations, the original NEPA document with signature and date of the approving official, along with all related documents and correspondence. If the size of the NEPA document and related information justifies establishing a separate case file (using same LR2000/ALIS serial number).

- For Plans of Operations, finding of No Significant Impact (FONSI) decision if an EA was prepared, with original signature and date of the approving official.

- Where appropriate, reports for the following: groundwater and surface water hydrology, pit-water chemistry, biological assessments and opinion, baseline studies, etc.

- Where appropriate, spill prevention plans, storm-water runoff control plans, monitoring plans, etc. Also, any reports submitted as part of the monitoring plans.

- Pre-operation reports, including all photos, field notes, sampling results, etc., associated with the inspection.

- An updated LR2000/ALIS Serial Register Page with appropriate action codes and comments attached on the front left inside cover of the case file.

- All case files at the conclusion of the review/approval process should contain a statement as to how the District/Field Manager concluded the operation would not result in unnecessary or undue degradation. The statement should be included in the Decision Record for EA level reviews, the Record of Decision for EIS level review, or made part of the acceptance letter in the case of a Notice. Conversely, a decision to not approve (or to impose conditions) on a Plan, or to not accept a Notice, must be documented in the case file with specifics on how the proposed Plan or Notice would result in unnecessary or undue degradation.

13.3.2.2 Post Acceptance or Approval

Post review files must contain all inspection reports. Additional items will be filed as they are developed, including the following:

- All follow-up documentation related to the operation, once operations have commenced.

- All inspection reports, photographs, supporting documentation such as field notes and follow-up correspondence. Inspection reports and field notes must be signed and dated by the specialist.

- Non-digital photos should be affixed or taped to the appropriate paper size and labeled with the LR2000/ALIS case number. If digital photos are taken, their reproduction must not alter the image other than its size. Non-digital photos are preferred if it is anticipated that a case action may be appealed.

- All decisions and letters requiring the claimant/operator to complete a task. Green return-receipt cards should be kept in the case file with the applicable decision.

- All office meetings and telephone conversation confirmation forms or memoranda pertaining to the operation. Document conversations and meetings about important aspects of case processing with a memorandum in the case file. To be of future value, such documentation should include the names and telephones numbers of all parties involved, the role of each party, the date, meeting location, and a clear and concise accounting of what was discussed, including any agreements reached. Further, the documentation must legibly identify the preparer and be authenticated with a full signature. With few exceptions, case files are open to public review. A professional tone should be maintained at all times in documentation of telephone calls and conversations, notes to the case file, and informal transmittal memoranda.

- Appeals filed by the claimant/operator or other adversely affected parties to noncompliance/enforcement, orders, or other decisions by the BLM concerning the operations and the BLM or IBLA decision.

- A listing of MOUs or letters of agreement with other state and Federal agencies that concern the coordination of Inspection and Enforcement (I&E) activities between the BLM and these agencies.

- Reclamation cost estimate review documents and calculations.

- Reclamation cost estimate and financial guarantee acceptance/obligation decisions. The office adjudicating the financial guarantee will issue the decision concerning acceptance and obligation of the financial guarantee; however, the district/field office must place copies of those decisions in the case file. Financial guarantee documents may contain confidential or proprietary information (such as tax payer identification numbers) and must be kept in a holding file that is stored in a locked metal file cabinet or a locked room (see Section 13.3.2.1 Holding File).

- For periodic review of the reclamation cost estimate for ongoing operations where the review does not result in an adjustment, i.e., a decision is not issued, the authorized officer will add a statement to the case file certifying that the cost estimate(s) and financial guarantee(s) have been reviewed in conformance with the established review periods, and the estimate(s) and guarantee(s) continue to meet the requirements of the regulations.

- All District/Field Manager’s concurrences under 43 CFR 3715 or approvals.

- Current LR2000/ALIS Serial Register Page.

- Where an action requires public notification, insert into the case file copies of proof of publication of notices in the *Federal Register* or a newspaper, as appropriate, which pertain to the proposal being processed.

13.3.3 Case File Organization

All documents contained in the surface management case file should be filed in reverse chronological order (most recent on top) as specified by BLM Manual Section 1274.53B1 and stored in one central location in the office with other case files of the same case type. For voluminous case files, additional volumes should be added, labeled accordingly (e.g., volume 2, etc.) and filed in with the most recent document on top. Add as many volumes as necessary to hold the records created over the life of the project. Large, oversize documents, such as, baseline reports, EISs and EAs, etc., must be referenced (in reverse chronological order as received or completed) in the case file and may be stored separately but in close proximity to the case file. At a minimum, the case file must include the documents listed above (Section 13.3.2) when applicable.

Secure accounting data and current serial register pages on the left bottom of the case jacket. For multi-part case files, keep all accounting data and serial pages in Part 1. Place file serial pages on top of the accounting documents, with each document type (e.g., serial pages) being grouped together in reverse chronological order. In the event that confidential information has been stored separately, reference to that location should be placed on top of the serial register page(s). It may also be appropriate to file serial register pages on the right top of the case file as long they are kept on top of the other documents for ready reference.

As necessary, secure copies of checklists, instruction memoranda, manuals, handbooks or other guidance, and draft documents used during the processing of the application on the top left of the case jacket. Checklists are to be filed on top of the other documents for ready reference. As most of these documents are not usually stored permanently in the case file, remove them when the need for them no longer exists. If a case is appealed, IBLA may need to have access to these documents, especially if germane to the decision appealed. The documents may need to be included in the file when it is sent to IBLA for consideration. If the documents (especially voluminous documents) are in electronic format, they can be integrated into the case file, in that format, when sent to IBLA.

Secure all other documents in the case file on the right top of the case jacket in reverse chronological order by date of receipt for incoming documents and by date of creation for BLM-generated documents. Any attachments should be kept with the parent documents.

Securely fasten all documents in the case file. If a document is too thick, a photocopy of the document's cover page should be filed in its place. On the copy of the cover page, note that the original document is filed loosely in the case jacket. Establish multi-part case files when an individual file becomes too thick for one folder. If a bar-code system is available to track case files, each new case jacket should also be coded to reflect the new part. For multi-part files, the specific part should be noted, e.g., "Complete document filed in Part 4 of 7."

Do not store duplicate copies of reports, correspondence, and other documents in the official case file unless multiple copies were required by regulation, etc., to be submitted. If there is an essential reason to retain more than one copy of certain documents, they may be stored separately from the official case file or in a separate folder of a multi-part file. The case file

should not contain any drafts/pre-decisional documents that have been superseded (see Appendix D - Compiling an Administrative Record for additional guidance).

Fasten master title plats, survey plats, historical indices, and maps in the file, folded so they can be opened without having to remove documents filed on top. If the application is accompanied by many pages of maps or drawings, or the proposal necessitates inclusion of numerous master title plats and historical indices, all the maps, drawings, plats, indices, etc., should be filed in a separate case jacket to facilitate review of the file. Mark the outside of each folded master title plat or historical index with the township, range, and the date it was last updated in the bottom, right-hand corner. As a normal part of the adjudication process, include an individual Meridian/Township/Range Information Report in the file to identify any third-party rights that may be affected by the proposal.

Where photographs are included in the case file, certain procedures must be followed. Each affixed photo must be identified by number, direction of view indicated, date the photo was taken and by whom, and a description of what was photographed. The LR2000/ALIS case number must also be noted on each photograph/label. Labels with the required information may be affixed to the back of each photograph. Remember that upon appeal or litigation, the photos need to be self-explanatory to the reviewing officials. The photographs can then be placed in the official photograph storage envelope (Form 1277-3) or placed in clear photo holders. Envelopes and photo holders that might allow photos to spill from the case file while being moved are not to be used.

13.4 Privacy Act, Confidential, and Proprietary Information

13.4.1 Holding File

All Privacy Act, proprietary/confidential, and attorney-client privilege information should be kept separate from the rest of the case file. The preferred method is to establish a “holding file” for each case that is kept in a separate locked cabinet or locked room. The information should be in a file folder labeled with the serial number and Form 1273-2, Proprietary/Confidential Information, to clearly identify the confidential nature of the contents. The official case file should be noted to show where such Privacy Act, proprietary/confidential, and attorney-client privilege information is stored and who is responsible for its safekeeping.

The holding file should contain all Privacy Act, proprietary/confidential, and attorney-client privilege information associated with the case and should not contain any documents that do not need to be held secure.

13.4.2 Taxpayer Identification Numbers

As of January 20, 2001, according to 43 CFR 3809.301(b)(1) and 3809.401(b)(1), in order for a Notice or Plan of Operations to be complete, the operator(s) must provide a Taxpayer Identification Number (TIN). A TIN is a nine-digit Employer Identification Number (EIN) or Social Security Number (SSN) as defined in Section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

Taxpayer identification numbers are subject to the Privacy Act[311] and therefore must be maintained with appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records (see 43 CFR 2.45-2.79 and DOI Manual 383 *Privacy Act*). In addition, these records must be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained (5 U.S.C. 552a(e)(10)). Individuals handling taxpayer identification numbers must take care to protect the integrity, security, and confidentiality of this information at all times.

The document/page of the Notice or Plan of Operations containing a taxpayer identification number is to be copied and the taxpayer identification number on the copy redacted by blacking it out with a marker. A copy of the redacted page (the copy) is to be placed in the surface management case file and the initial copy, where the redaction was made, must be shredded. In other words, do not just make a copy, black out the part with a marker, and put that copy in the case file; two different copies are made – one with marker and one a copy of the marker one – the former shredded and the latter filed.

The operator's original taxpayer identification document submission is to be placed in a holding file that is separate from the case file. The corresponding LR2000/ALIS serial number will be prominently written on the tab of the holding file. Form 1273-2, Proprietary/Confidential Information, will be placed on the front of this holding file to clearly indicate the information in the file is confidential and not available to the public. Access to the holding file containing the taxpayer identification number must be restricted by storage in a locked metal file cabinet or a locked room.

If the operator submits the taxpayer identification number on Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, instead of in the proposed operations submission, the W-9 form will be placed in the holding file.

Taxpayer identification numbers and proprietary/confidential information may only be used by or disclosed to individuals with a need-to-know in the performance of their duties. "Need-to-know" is defined as a need by the District/Field Manager or agency employee for access to proprietary, confidential, or otherwise sensitive information or material sought in connection with the performance of official duties or contractual obligations. The determination of that need will be made by officials having responsibility for proprietary/confidential or other sensitive information or material.

If a debt collection process is initiated, the taxpayer identification number must be entered into the CBS. In these circumstances, the original non-form document may be returned to the case file, along with a note to the file as to the date when it was entered into CBS. The original non-form document with the taxpayer identification number must be returned timely to the holding file.

[311] Privacy Act of 1974 (5 U.S.C. 552a).

13.4.3 Confidential or Proprietary Information

Information marked by the operator as "confidential" or "proprietary" will initially be treated as such pursuant to 43 CFR 2.13(c)(4). This information will not be made available to the public until the BLM determines whether the information warrants special procedures.

Upon receipt, any information marked "confidential" or "proprietary" should be processed in accordance with BLM Manual 1278.32-D. Prior to its status being determined, the information will be placed in the holding file containing the taxpayer identification information created above. The results of the status determination will resolve where the identified material is stored and who can access the information.

If the BLM determines that the material is confidential, it is to be kept in the holding file. Access to the holding file with confidential or proprietary information must be restricted by storage in a locked metal file cabinet or a locked room.

Note: Financial guarantees instruments (bond) documents may be considered confidential and/or proprietary information. However, the detailed reclamation cost estimates, upon which the financial guarantee amount is calculated, are not confidential and do not need to be held separately from the case file.

If the BLM determines the material marked by the operator as "confidential" does not satisfy the definition of "confidential" or "proprietary," the material should be transferred to the surface management case file that is available to the public. The BLM will notify the operator in writing of their determination that the information is not "confidential" or "proprietary" and the reasons for the determination (BLM Manual 1278.32 D.5). This notification will also inform the operator that the material will be maintained in the operator's case file which is available to the public.

The BLM does not usually require proprietary or confidential operator information to process most Notices or Plans of Operations. Generally, information regarding the location, anticipated depth, orientation, or inclination of features such as roads, trenches, drill holes, pits, adits, shafts, or declines, etc., is not considered as confidential or proprietary. Nor is information considered as confidential or proprietary that (1) describes chemicals used, stored, or generated during mining or mineral processing, (2) characterizes the waste to be created by the operation, (3) is a general description of the mining and processing operations at the level of detail needed to prepare a NEPA document, or (4) information already provided to the public or shareholders in press releases or Securities and Exchange Commission (SEC) filings, or information provided to another Federal or state agency that is considered public under their rules.

The types of information that might qualify as confidential or proprietary includes (1) assay results and intercepts showing grade or reserves which might be of value to competitors, (2) proprietary physical or chemical processing methods (although information on the anticipated waste streams and affects from such activity could not be withheld from public disclosure), and (3) inventory data protected from disclosure under other authorities, such as the location of historic properties under NHPA regulations at 36 CFR 800.11.

13.4.4 Attorney-Client Communications

Some communications between the BLM and the Solicitor's Office, the Department of Justice, and the United States Attorney's Office are considered confidential attorney-client communications. These memoranda, emails, and other communications are still part of the administrative record or case file, but they may be withheld from disclosure to the IBLA or the courts under the under the attorney-client privilege. These communications may also be withheld under the Freedom of Information Act (FOIA).

Any documents that may be considered attorney-client communications, such as memos, records of conversations with the Solicitor's Office, or emails with the Regional Solicitor, should be placed in the holding file. In the event that an appeal or a judicial action is filed, the Solicitor's Office can review the documents in this portion of the holding file to determine if a privilege applies.

13.5 Use and Occupancy Cases

Proposed occupancies under the 43 CFR 3715 regulations associated with a Notice or Plan of Operations will be entered in LR2000 with the appropriate 3809 case type and action codes identified in the CRS Data Element Dictionary 2910. The case file should include all occupancy-related documents necessary to determine the concurrence of the proposed occupancy. These documents must be placed in the 3809 surface management case file as described above in Section 13.3 Case File. For proposed and existing occupancies that comply with the regulations, a separate 3715 case file will not be opened or maintained.

When an occupancy (mining-related) or exploration/mining operation of a locatable mineral is discovered on public land that has not been authorized under the 3809 or 3715 regulations, a 3715 case file (371511 LR2000 case type code) will be established in LR2000/ALIS. The case file will be established using the appropriate case type and action code for tracking the appropriate enforcement order issued under 43 CFR 3715.7-1, Use and Occupancy Regulations (see CRS Data Element Dictionary 2910). The initial inspection report and any subsequent correspondence will be placed in the case file in reverse chronological order. An associated 3809 case file will not be established until a Plan of Operations or Notice has been submitted by the operator. Once the Plan of Operations or Notice has been authorized or the occupancy has been resolved, the 3715 case file will be closed.

This section applies to the discovery of activities on the public lands conducted under the Mining Law. It does not apply to activities such as removal of mineral materials or timber without authorization. Before establishing a new 3715 case file, due care should be given to determining the type of unauthorized activity that is occurring. If it is not immediately known what type of unauthorized activity is occurring, a trespass case file (923000 LR2000 case type code) may be used. Once the suspected trespass is determined to be an unauthorized occupancy under the Mining Laws, a 3715 case file will be established.

13.6 Case File Closure

A case file should not be closed until the BLM has determined that reclamation has been completed according to the reclamation plan, including revegetation, and the financial guarantee (bond) period of liability is terminated. In situations where the operator fails to reclaim the operation and reclamation is completed by the BLM, the case file may need to remain open until the debt is collected or written off. All cases will include a memorandum stating the District/Field Manager's concurrence in closing the case file.

13.6.1 Retention of Records

Once a document is received by the BLM, it becomes a public record and, as such, cannot be returned, destroyed, or permanently removed from the public record. The surface management case file should be disposed of in accordance with the guidance provided in BLM Manual 1220, *Records and Information Management,* and the approved General Records Schedule (Schedule 04/22/c).

When it has been determined the case file may be closed, the district/field office staff should conduct a final review to ensure the case file is complete and to remove any extraneous files. Use of a checklist will assist in this review. Transfer of the case file to the National Archives and Records Administrations' Federal Records Center should follow the guidance provided in 36 CFR 1228.150 and in Departmental Manual 384 DM 4.5. In addition, detailed procedures are provided in the National Archives and Records Administration handbook. The district/field office staff should contact the state's Records Administrator if there are any questions concerning records retention and disposal.

13.6.2 Debt Collection

If enforcement actions or debt collection actions have been initiated, the case file should not be closed until those actions have been resolved and reclamation completed.

Where the BLM has determined that the operator has abandoned the operation (See Chapter 7 - Cessations and Abandonment) because the operator is unable or unwilling to complete the reclamation or the operator cannot be found, the BLM will take action to collect the operator's financial guarantee (See Section 6.6 Forfeiture of Financial Guarantee) and use the forfeited funds to reclaim the operation. If the financial guarantee does not cover the costs for complete reclamation or a financial guarantee was never provided for an outstanding reclamation obligation, upon reclamation of the site, the BLM should initiate a debt collection action to recoup the costs in excess of the financial guarantee that the BLM incurred in order to close the case.

At a minimum, the BLM must issue a Demand Letter for Payment and enter the debt into CBS. The letters must be mailed by certified return-receipt requested to the current address on file. If the letter is returned as undeliverable, then it may be necessary for BLM Law Enforcement to attempt personal service of the demand letter to the address of record or obtain a forwarding address from the United States Postal Service. If the district/field office is unable to obtain a

response (documented in the case file), then a memorandum to the case file must be prepared detailing the events in chronological order with recommendations to the District/Field Manager to pursue debt collection through the state office or to close the case. Once entered into CBS, the system will generate additional debt collection demand letters should the operator fail to meet reclamation obligations.

In order to close a case where the operator has filed bankruptcy, the site must be reclaimed and the case file must contain a copy of the Bankruptcy Court's order closing the bankruptcy.

13.7 Administrative Review

When a Notice of Appeal or request for SDR has been filed, it must be date stamped by the BLM and filed in the case file. The relevant potions of the case file must be transmitted to the reviewing office.

13.7.1 Transmitting the Case File

Before transmitting the case file, the BLM should review it carefully to verify that it contains only records pertaining to the decision appealed. See Appendix D - Compiling an Administrative Record for guidance on what constitutes part of the record and how to prepare an index.

Within 10 working days of receiving the appeal or SDR request, the District/Field Manager should transmit the relevant potions of the original case file to the State Director or the IBLA. A photocopy of the case file must be kept in the district/field office.

13.7.2 Transmitting Privacy Act, Proprietary/Confidential and Attorney-Client Privilege Information

Unless relevant to the appeal, all Privacy Act and proprietary/confidential information in the holding file should not be included in the files to be transferred to IBLA or the State Director. The BLM must, however, identify the documents withheld in the case file index. Should the information be pertinent to the case and/or IBLA or State Director requests the information, the BLM should place the Privacy Act and proprietary/confidential information in an envelope and clearly mark on the envelope that it is material that should not be provided to the public.

Records of communication between the BLM and the Solicitor's Office in the holding file are part of the case file, but these records may be eligible to be withheld from disclosure under the attorney-client privilege. Before transmitting the case file to IBLA, the BLM should review the holding file and identify any potentially privileged documents for review by the Solicitor's Office. In some cases, the BLM and the Solicitor's Office may decide that even though a record is covered by the attorney-client privilege, it can be disclosed and included in the case file.

If the BLM decides to withhold documents under the attorney-client privilege, the BLM must identify the documents withheld in the case file index. Any records the BLM withholds should not be sent with the case file to IBLA or the State Director, but should be returned to the holding file. The BLM should clearly mark on the envelope that it contains material that should not be provided to the public, and may attach a copy of the index to the outside of the envelope.

13.7.3 Avoiding Ex parte Contacts with IBLA

When an appeal has been filed with the IBLA, the district/field office loses jurisdiction over the case and BLM personnel must be careful not to engage in *ex parte* communication with the Board in violation of 43 CFR 4.27(b). *Ex parte* communication is any communication (oral or written, including email) regarding the merits of the appeal with the person hearing the case, without providing the opposing party with the same information.

For example, adding more information to the case file after an appeal is filed without transmitting the information to the other parties to the appeal is *ex parte* communication. It is also considered *ex parte* communication to send the IBLA any documents regarding the decision that post-dates the BLM's decision.

If the BLM finds records that were missing from the case file, the BLM should contact the Solicitor's Office before forwarding them on to the IBLA. If the Solicitor's Office determines that the records should have been part of the original case file, the records should be served to all parties concerned by certified return-receipt mail. Field personnel must be careful, also, in discussing the appeal and case file with the appellant. Once an appeal is filed, only a general discussion, such as matters concerning the actual process, should take place and the BLM should forward any correspondence directly related to the case to the Solicitor's Office.

13.8 Electronic Records Management

Electronically stored data and software created or enhanced by the BLM are considered "records." By this definition, records and data are considered synonymous, and all outputs produced from electronic systems are records regardless of the media. When manipulation occurs to a data element, layer, or theme, the resultant data also becomes a record. Collection, maintenance and disposal of all electronic records must be in conformance with the guidance found in BLM Manual 1220, *Records and Information Management,* and BLM Manual 1270, *Records Administration,* including BLM Handbook H-1270-1, *Electric Records Administration.*

13.8.1 Data Standards

The data standards necessary for establishment and serialization (case types/action codes, etc.) of case files in LR2000 can be found at www.blm.gov/lr2000 and/or obtained through Washington Office Instruction Memoranda and/or State or Washington Office LR2000 Data Stewards.

To keep the LR2000 record current, all data must be routinely entered within 5 business days of each action having taken place.

Data standards for Plan of Operations case types 380210, 380910, and 381402 are used to create a BLM-wide tracking system in LR2000 that computes timelines for specific actions related to processing Plans of Operations. It is mandatory that the action codes identified in the data standards be entered on all pending and authorized Plan of Operations cases.

In addition, data standards for Notice case type 380913 and Plan of Operations case types 380210, 380910, and 3814023 are used to generate a Bond Review Report in LR2000. The BLM State Directors are to use the Bond Review Report every fiscal year to certify to the BLM Director that RCEs have been reviewed within policy timeframes and are adequate to cover the cost of reclamation and closure requirements identified in the accepted Notice or approved Plan of Operations (see Section 13.5.3).

Surface management file types 380210, 380910, and 380913 must document any occupancy-related actions in LR2000 with the appropriate action code. The following actions codes are to be used to document a proposed or existing occupancy: AC 440 - Occupancy Proposed, AC 438 - Occupancy Concurrence, and AC 439 - Occupancy Non-Concurrence. Note 43 CFR 3715 regulations do not apply to 381402 case types (split estate lands); therefore, the aforementioned action codes should not be used.

13.8.2 Bond Review Report

The Bond Review Report generated by LR2000 documents the status of all financial guarantees recorded in LR2000, except for fund mechanisms required pursuant to 43 CFR 3809.552(c) relating to trust funds or other long term funding. Annually, the State Director must review the Bond Review Report to determine if all RCEs were reviewed within the required timeframes and all obligated financial guarantees are adequate to meet the requirements of the regulations. Within 60 days of generating the Bond Review Report, a corrective action plan will be prepared addressing any deficiencies identified in the Bond Review Report. By December 1, the State Director must certify to the BLM Director that the RCEs and financial guarantees have been reviewed and are adequate. When necessary, the State Director must also submit the corrective action plan to the BLM Director.

The State Directors must sign and date the Certifications. The Bond Review Reports, Certifications, and corrective action plan(s) must be forwarded from the State Directors to the BLM Director through the Assistant Director for Minerals and Realty Management (WO-300). The documents may be transmitted electronically or sent to the Washington Office by FedEx or UPS.

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Glossary

ACID ROCK DRAINAGE (ARD) (ACID MINE DRAINAGE): The exposure, usually as a result of mining, of sulfide-bearing minerals to air and water, forming sulfuric acid. This acid dissolves metals such as lead, zinc, copper, mercury, and cadmium, into ground and surface water. Acid rock/mine drainage can impact water quality, aquatic life and habitat. Commonly mined ore bodies that pose the risk of acid rock drainage include gold, silver, copper, iron, zinc, and lead.

ADIT: A nearly horizontal passage in an underground mine, driven from the surface, by which a mine may be entered, ventilated, or dewatered.

AQUIFER: A water-bearing bed or layer of permeable rock, sand, or gravel capable of yielding large amounts of water.

BACKFILLING: The replacement of soil and earth removed during mining.

BASELINE STUDIES: The establishment and operation of a designed surveillance system for continuous or periodic measurements and recording of existing and changing conditions that will be compared with future observations.

BENEFICIATION: The dressing or processing of ores to 1) regulate the size of a desired product, 2) remove unwanted constituents, and 3) improve the quality, purity, or assay grade of a desired product. Beneficiation includes concentration or other preparation of ore for smelting by drying, flotation, or magnetic separation.

BEST AVAILABLE TECHNOLOGY AND PRACTICES: The applying of the most advanced systems, techniques, procedures, and controls, determined on a case-by-case basis by the regulatory agency.

BIOLOGICAL ASSESSMENT: Information prepared by, or under the direction of, a Federal agency concerning listed and proposed species and designation and proposed critical habitat that may be present in the action area and may be affected by the proposed action. A biological assessment presents the BLM's determination of whether any such species or habitat is likely to be adversely affected by the action.

BULKHEAD: A partition or wall in mines for protection against gas, fire, and water.

BULK SAMPLING: As part of exploration, the removal of large amounts of mineral substances for testing.

CALIFORNIA DESERT CONSERVATION AREA (CDCA): CDCA is a 25-million acre expanse of land in southern California designated by the U.S. Congress in 1976 through FLPMA. About 10 million acres are administered by the BLM. Under 43 USC 1781(f), BLM surface management and other regulations continue to apply to the surface of patented mining claims within the CDCA that were patented after the enactment of FLPMA.

CASUAL USE: Mining activities that no or negligible disturbance to Federal lands and resources.

CLAIM: See MINING CLAIM.

CRITICAL HABITAT: (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon determination by the FWS and/or NMFS that such areas are essential for the conservation of the species. Critical habitats are designated in 50 CFR parts 17 and 226. The constituent elements of critical habitat are those physical and biological features of designated or proposed critical habitat essential to the conservation of the species, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of

offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historical geographic and ecological distributions of a species.

COMMON VARIETY MINERALS: Stone, gravel, pumice, pumicite, and cinders that, though possibly having value for trade, manufacture, the sciences, or the mechanical or ornamental arts, do not have a distinct, special value for such use beyond normal uses. On the public lands such minerals are considered saleable (as opposed to locatable) and are disposed of by sales or by special permits to local governments. Development of these minerals is not subject to the BLM's surface management regulations. See SALEABLE MINERALS, MINERAL MATERIALS, and UNCOMMON VARIETY MINERALS.

CORPORATE GUARANTEES (BONDING): The use of corporate pledge as part or all of the financial assurance for reclamation. The BLM does not accept any new corporate guarantees for bonding purposes.

CULTURAL RESOURCE: A definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. (Cf. "traditional cultural property;" see "definite location.") Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in this Manual series. They may be but are not necessarily eligible for the National Register (See "historic property" or "historic resource.")

CYANIDE LEACHING: The extraction of metal from an ore by dissolution in a cyanide solution.

DAVIS-BACON WAGES: For reclamation cost estimating purposes Davis-Bacon wage determination is applied to applicable construction contracts. Wage determinations are issued by the U.S. Department of Labor under the *Davis-Bacon and related Acts*. Information on Davis-Bacon wage rates can be found at www.access.gpo.gov\ davisbacon.

DEVELOPMENT (MINERAL): The preparation of a proven deposit for mining.

DISCOVERY: Under the Mining Law, a mining claimant has made a "discovery" on the mining claim "where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine." Castle v. Womble, 19 Pub. Lands Dec. 455, 457; Chrisman v. Miller, 197 U.S. 313, 322 (1905). Mining claims are not valid without a discovery.

DRAINAGE: The removal of excess water from land by surface or subsurface flow. See ACID ROCK DRAINAGE.

DRYWASHER: A mechanical device used to recover gold or other heavy minerals

EFFLUENT: Treated or untreated waste material discharged into the environment.

ENDANGERED SPECIES: Any species in danger of extinction throughout all or a significant portion of its range. Threatened and endangered species are designated by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under provisions of the Endangered Species Act.

ENDANGERED SPECIES ACT (ESA): A Federal act passed in 1973 to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such endangered species and threatened species.

ENVIRONMENTAL ASSESSMENT (EA): A concise public document prepared under the National Environmental Policy Act (NEPA) for any proposed major Federal action. An EA briefly discloses and analyzes the potential direct, indirect, and cumulative impacts of the BLM's proposed action to determine whether the impacts

will be significant. If there will significant impacts, the BLM will prepare an environmental impact statement (EIS); if the impacts will not be significant, the BLM will issue a finding of no significant impact (FONSI).

ENVIRONMENTAL IMPACT STATEMENT (EIS): A document prepared under the National Environmental Policy Act (NEPA) that discloses and analyzes potential direct, indirect, and cumulative impacts of a proposed major Federal action that significantly affects the human environment and its possible alternatives. The BLM prepares EISs to weigh the environmental consequences of potential decisions.

ESA CONSULTATION and CONFERENCING: The requirement of Section 7 of the Endangered Species Act that all Federal agencies consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service if a proposed action may affect a federally listed species or its critical habitat.

EXPLORATION: The work of investigating a mineral deposit to using geological surveys, geophysical surveys, geochemical surveys, boreholes, pits, and underground workings. Exploration is undertaken to gain knowledge of the size, shape, position, characteristics, and value of the deposit. For the surface management regulations, exploration may mean creating surface disturbance that is greater than casual use and 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.

FEDERAL LAND POLICY AND MANAGEMENT ACT (FLPMA): The act that (1) provided standards for the BLM in managing the public lands, including land use planning, sales, withdrawals, acquisitions, and exchanges; (2) authorized the setting up of local advisory councils representing major citizens groups interested in land use planning and management; (3) established criteria for review of proposed wilderness areas; and (4) provided guidelines for other aspects of public land management such as grazing. Section 302(b) of FLPMA amended the Mining Law to require the BLM to prevent UUD to the public lands. This provision forms the basis for the surface management regulations.

FINANCIAL GUARANTEE: The surface management regulations use the term “financial guarantee” in reference to the contracted document and any financial instrument used to guarantee the operator will perform reclamation required by the regulations and authorization.

INTERIOR BOARD OF LAND APPEALS (IBLA): The Department of the Interior, Office of Hearings and Appeals, board that acts for the Secretary of the Interior in responding to appeals of decisions on the use and disposition of public lands and resources. Because IBLA acts for and on behalf of the Secretary of the Interior, its decisions usually represent the Department’s final decision and are subject to appeal to the Federal courts.

LEACHATE: The liquid that has percolated through and dissolved minerals out of ore.

LOCATABLE MINERALS: Minerals that may be extracted under the Mining Law of 1872, as amended, consistent with surface management regulations.

LOCATION: The act of claiming a parcel of mineral land as a mining claim (or non-mineral land as a mill site), including the posting of notices, the recording thereof when required, and marking the boundaries so they can be readily traced. The word “location” can also be used as a noun to mean the mining claim or mill site acquired by the act of location itself. See MINING CLAIM.

MAGNUSON-STEVENS ACT: The Magnuson-Stevens Fishery Conservation and Management Act of 1976 is a Federal statute that is the principal Federal law governing marine fisheries in the United States.

MAXIMUM PROCESS SOLUTION INVENTORY: The maximum volume of solutions projected to be present in a leaching process circuit at any given time after considering precipitation, evaporation, runon, draindown of retained solution, addition of make-up water, normal discharge, or loss to ore wetting. Modeling is often done to assess the water balance and to determine the maximum process solution inventory under average operating conditions, during a wet year, or during a dry year. The remaining “free board” or available storage capacity is then compared to the expected solution addition from the design storm event (often the 100-year, 24-hour event) in order to determine whether the storage capacity is adequate to contain the design storm event.

METAL DETECTOR: A hand-held device that senses the presence of metal, specifically used in searching an area for coins or other metal objects. The use of a metal detector is generally considered casual use under the surface management regulations.

MILL: A processing facility in which ore is treated for the recovery of valuable minerals or valuable minerals are concentrated into a smaller bulk for shipping to a smelter or other reduction works.

MILL SITE: A parcel of non-mineral land located under the Mining Law and used and occupied in support of a mine. See LOCATION and MINING CLAIM.

MINE: An opening or excavation in the earth for extracting minerals.

MINERAL: Any solid or fluid inorganic substance that can be extracted from the earth for profit.

MINERAL ACTIVITY: Mining and mineral exploration.

MINERALIZATION: The processes taking place in the earth's crust resulting in the formation of valuable minerals or ore bodies.

MINERAL MATERIALS: Materials such as common varieties of sand, stone, gravel, pumice, pumicite, and clay, that are not obtainable under the mining or leasing laws but that can be acquired under the Mineral Materials Act of 1947, as amended. See COMMON VARIETY MINERALS.

MINING CLAIM: A parcel of land that a miner takes and holds for mining purposes, having acquired the right of possession by complying with the Mining Law and local laws and rules. There are four categories of mining claims: lode, placer, mill site, and tunnel site.

MINING CLAIMANT: A person, association, corporation, or government that claims minerals rights or title in the public lands.

MINING LAW OF 1872 (GENERAL MINING LAW OR MINING LAW): The Federal act that, with its amendments, authorizes the mining of locatable minerals on the public lands.

MINING LAWS: 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.*).

MINING LOCATION: A mining claim or mill site on the public lands.

MITIGATION: As defined in 40 CFR 1508.20, one or more of the following: (1) avoiding impacts altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of an action and its implementation; (3) rectifying impacts by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating impacts over time by preservation and maintenance operations during the life of the action; and (5) compensating for impacts by replacing or providing substitute resources or environments.

MODIFICATION: A change in a Notice or Plan of Operations that requires some level of review by the BLM because it exceeds what was described in the accepted Notice or approved Plan of Operations.

NATIONAL CONSERVATION AREA (NCA): A congressionally designated public land area that contains important resources and whose management objectives are (1) to conserve and protect these resources, (2) to maintain environmental quality, and (3) to provide for present and future users within a framework of multiple use and sustained yield.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA): The Federal law, going into effect on January 1, 1970, that established a national policy for the environment and requires Federal agencies (1) to become aware of the environmental ramifications of their proposed actions, (2) to fully disclose to the public proposed Federal actions and provide a mechanism for public input to Federal decision-making, and (3) to prepare environmental impact statements for every major Federal action that would significantly affect the quality of the human environment.

NATIONAL HISTORIC PRESERVATION ACT (NHPA): A Federal statute that established Federal program to further the efforts of private agencies and individuals in preserving the Nation's historic and cultural foundations. NHPA (1) authorized the National Register of Historic Places, (2) established the Advisory Council on Historic Preservation and a National Trust Fund to administer grants for historic preservation, and (3) authorized the development of regulations to require Federal agencies to consider the effects of federally assisted activities on properties included on or eligible for the National Register of Historic Places.

NATIONAL MONUMENTS: Congress granted the President authority to designate national monuments in the Antiquities Act of 1906, which specifies that the law's purpose is to protect "objects of historic or scientific interest." In addition to presidentially created national monuments, Congress has established national monuments by passing a law to create each individual monument with its own purpose (generally to protect natural or historic features).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): A process for controlling the amount of pollution discharged into waters by requiring polluters to obtain NPDES permits from the states involved and to comply with discharge standards. The NPDES is mandated by the Federal Water Pollution Control Act Amendments.

NATIONAL WILD AND SCENIC RIVERS SYSTEM (WSR): A system of nationally designated rivers and their immediate environments that have outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, and other similar values and are preserved in a free-flowing condition established by the National Wild and Scenic Rivers Act of 1968. The system consists of three types of streams: (1) recreation—rivers or sections of rivers that are readily accessible by road or railroad and that may have some development along their shorelines and may have undergone some impoundments or diversion in the past, (2) scenic—rivers or sections of rivers free of impoundments with shorelines or watersheds still largely undeveloped but accessible in places by roads, and (3) wild—rivers or sections of rivers free of impoundments and generally inaccessible except by trails, with watersheds or shorelines essentially primitive and waters unpolluted.

NATIONAL WILDERNESS PRESERVATION SYSTEM (NWPS): Federally owned areas designated by Congress as "wilderness areas" originally established under the National Wilderness Preservation Act of 1964.

NOTICE: The notification a mining operator must submit to the BLM of the intention to begin an operation that will disturb 5 acres or less a year within a mining claim or project area.

NOTICE-LEVEL OPERATION: Exploration that causes disturbance greater than casual use but less than 5 acres of disturbance. The operator is required to submit an acceptable Notice to the BLM.

NONCOMPLIANCE ORDER: An authorized officer's decision, sent to the mining operator and claimant, that (1) details provisions of the regulations that a mining operation has violated and (2) states corrective actions that the operator must take within a specified time.

NOXIOUS WEED: According to the Federal Noxious Weed Act (PL 93-629), a weed that causes disease on has other adverse effects on humans and their environment and is therefore detrimental to public health and the agriculture and commerce of the United States.

OFF-ROAD VEHICLE (ORV): Any vehicle capable of or designed for travel on or immediately over land, water, or other natural terrain, deriving motive power from any source other than muscle. This definition excludes (1) any nonamphibious registered motorboat; (2) any fire, emergency, or law enforcement vehicle while being used for official or emergency purposes; and (3) any vehicle whose use is expressly authorized by a permit, lease, license, agreement, or contract issued by an authorized officer or otherwise approved.

OPEN PIT MINING: A surface mining method in which overlying rock and soil are removed to expose an ore body, which is then drilled, blasted, and hauled from the pit.

OPERATIONS: 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 building of roads, transmission lines, pipelines, and other means of access across public lands for support facilities.

OPERATOR: Any person who manages, directs, or conducts mining operations at a project area, including a parent entity or an affiliate who materially participates in such management, direction, or conduct. An operator on a particular mining claim may also be the mining claimant.

OVERBURDEN: All the earth and other materials that overlie a natural mineral deposit.

PALEONTOLOGICAL RESOURCES (FOSSILS): The physical remains of plants and animals preserved in soils and sedimentary rock formations. Paleontological resources are important for understanding past environments, environmental change, and the evolution of life.

PATENT: The instrument by which the Federal Government conveys title to the public lands.

pH: A measure of acidity or hydrogen ion activity. Neutral is pH 7.0. All values below 7.0 are acidic, and all values above 7.0 are alkaline.

PIT LAKE: Water body that forms at the bottom of an open pit mine when mining extends below the water table.

PLACER: An alluvial deposit of sand and gravel containing valuable minerals such as gold.

PLACER MINING: A method of mining in which the overburden is removed to expose valuable mineral-bearing gravel deposits beneath. The gravel is then sluiced to separate the valuable minerals, usually the heavier metallic minerals.

PLAN: See PLAN OF OPERATIONS.

PLAN OF OPERATIONS: A plan for mineral exploration, development, and/or mining that an operator must submit to the BLM for approval, when more than 5 acres will be disturbed, when activity greater than exploration will occur on fewer than 5 acres, or when an operator plans to work in an area of critical environmental concern or a wilderness area. A Plan of Operations must document in detail all activities the operator plans to take, from exploration through reclamation and post-mine closure (including any post-mine economic uses) and, if necessary, long-term monitoring. Before commencing operations on an approved Plan of Operations, the operator must also provide the BLM with an acceptable financial guarantee.

PRESUMED ORE: That portion of the rock material excavated from a shallow open pit or small underground opening for evaluation and testing purposes, either onsite or off site, to determine whether it contains metals or other minerals that may be extracted efficiently and profitably. Bulk sampling of less than 1,000 tons of presumed ore may be conducted under a Notice. Any sampling of 1,000 ton or more of presumed ore requires a Plan of Operations. Also, onsite field-scale testing using chemicals such as cyanide or sulfuric acid to evaluate leachability must be done under a Plan of Operations, regardless of test sample size.

PROJECT AREA: The area of land upon which an operator conducts mining operations, including the area needed for building or maintaining of roads, transmission lines, pipelines, or other means of access.

PUBLIC LANDS: Any land and interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership,

except for (1) land located on the Outer Continental Shelf and (2) land held for the benefit of Indians, Aleuts, and Eskimos.

RECLAMATION: Measures stated in the accepted Notice or approved Plan of Operations as a condition of allowing the disturbance of public lands from mining operations. Reclamation measures must meet performance standards and achieve conditions required by the BLM at the end of operations. Components of reclamation may include 1) isolating, controlling, or removing acid-forming, toxic, or deleterious substances; 2) regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion; 3) rehabilitating fisheries or wildlife habitat; 4) placing growth media and establishing self-sustaining revegetation; 5) removing or stabilizing buildings, structures, or other support facilities; 6) plugging drill holes and closing underground workings; and 7) providing for post-mining monitoring, maintenance, or treatment.

RECORD OF DECISION: A document prepared after a final Environmental Impact Statement that states the decision that resulted from the NEPA process and provides the necessary background information for how the decision was made. The ROD is signed by the official authorized to make the decision and is an appealable BLM decision.

RIPARIAN AREA: A form of wetland transition between permanently saturated wetlands and upland areas. Riparian areas exhibit vegetation or physical characteristics that reflect the influence of permanent surface or subsurface water. 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 ephemeral streams or washes that lack vegetation and depend on free water in the soil.

ROCK CHARACTERIZATION: A program of testing and evaluating the physical, chemical, and mineralogical nature of rock to evaluate its potential to produce acid rock drainage or other deleterious leachate.

SCARIFY: To break the surface of the soil with a narrow bladed instrument.

SCOPING: Generally a term associated with NEPA, scoping is an early and open process for determining the scope of issues to be addressed in an EIS and the significant issues related to a proposed action. Scoping may involve public meetings; field interviews with representatives of agencies and interest groups; discussions with resource specialists and managers; and written comments in response to news releases, direct mailings, and articles about the proposed action and scoping meetings.

SECTION 106 COMPLIANCE: The requirement of Section 106 of the National Historic Preservation Act that any project funded, licensed, permitted, or assisted by the Federal Government be reviewed for impacts to significant historic properties and that the State Historic Preservation Officer and the Advisory Council on Historic Preservation be allowed to comment on a project.

SECTION 7 CONSULTATION: SEE ESA CONSULTATION and CONFERENCING

SEGREGATION: Any act by the Secretary or Congress such as a withdrawal or exchange that suspends the operation of some or all of the public land laws for a specified time. See WITHDRAWAL.

SERVICE CONTRACT ACT: The McNamara-O'Hara Service Contract Act requires contractors and subcontractors performing service on prime contracts in excess of $2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rate contained in a predecessor contractor's collective bargaining agreement. (Referred to on Page 110 of the Handbook.)

SIMULATED WEATHERING TEST: This test attempts to mimic natural oxidation reactions of a field setting, and may include controlling temperature, moisture, wetting and drying cycles, and the influence of bacteria.

SLUICE: A device used to physically or mechanically separate and enrich the valuable mineral content of aggregate.

SPECIAL STATUS AREAS: Areas that the BLM has determined to have resources of unique or distinct value. These lands have a variety of designations, depending on the authority under which they were designated and the resources present. Such areas include (1) lands in the CDCA designated by the CDCA Plan as "controlled" or "limited" use areas, (2) areas in or designated for potential addition to the National Wild and Scenic Rivers System (WSR), (3) areas of critical environmental concern (ACECs), (4) designated wilderness areas administered by the BLM, and (5) areas closed to off-road vehicle use.

SPLIT ESTATE: Land whose surface rights and mineral rights are owned by different entities. The 43 CFR 3809 regulations apply when surface rights are privately owned and the mineral rights are owned by the Federal Government and managed by the BLM. The 43 CFR 2920 regulations apply when surface rights are owned by the Federal government and managed by the BLM and the mineral rights are privately owned.

STOCK RAISING HOMESTEAD ACT LANDS: Split estate lands patented under the SRHA of December 29, 1916. These lands were not considered suitable for cultivation but were considered suitable for stock grazing. All minerals on these lands were retained by the United States and they remain open to location.

SUCTION DREDGE: A dredge that lifts material and pumps it through a suction pipe.

TAILINGS: The waste matter from ore after the extraction of economically recoverable metals and minerals.

TAILING IMPOUNDMENT: An area closed at its lower end by a constraining wall or dam into which mill effluents are run and from which, after solids have settled out, clear water may be returned via penstocks and piping.

THREATENED SPECIES: As described in 16 U.S.C. 1532(20), any plant or animals species likely to become endangered within the foreseeable future throughout all or a part of its range and designated as threatened by the U.S. Fish and Wildlife Service under the Endangered Species Act. See ENDANGERED SPECIES.

TRIBE (TRIBAL): Terms that refer to federally recognized Indian tribes.

TUNNEL: A nearly horizontal underground passage open to the surface at both ends.

UNCOMMON VARIETY MINERALS: Deposits of stone, gravel, pumice, pumicite, and cinder deposits that were not withdrawn from location by the Common Varieties Act of 1955 because they have distinct and special properties making them commercially valuable for use in a manufacturing, industrial, or processing operation. Such minerals continue to be locatable under the Mining Law of 1872, as amended. In determining a deposit's commercial value for making a common variety determination, the following factors may be considered: quality and quantity of the deposit, geographic location, accessibility to transportation, and proximity to market or point of use. See COMMON VARIETY MINERALS.

UNNECESSARY OR UNDUE DEGRADATION: As defined in the part 3809 regulations, unnecessary or undue degradation results from conditions, activities, or practices that (1) fail to comply with one or more of the following: the performance standards in 43 CFR 3809.420, the conditions of an approved Plan of Operations, operations described in a complete Notice, and other Federal and state laws for environmental and cultural resource protection; (2) are not reasonably incident to prospecting, mining, or processing; or (3) fail to attain a stated level of protection or reclamation required by law in such areas as the CDCA, wild and scenic rivers, BLM-administered portions of the National Wilderness Preservation System, and BLM-administered national monuments and national conservation areas.

VALID EXISTING RIGHTS: Locatable mineral development rights that existed when FLPMA was enacted on October 21, 1976. Some areas are segregated from entry and location under the Mining Law to protect certain values or allow certain uses. Mining claims that existed as of the effective date of the segregation may still be valid if they can meet the test of discovery of a valuable mineral required under the Mining Law. Determining the validity of mining claims located in segregated lands requires the BLM to conduct a validity examination and is called a "valid existing rights" determination.

VALIDITY EXAMINATION (VALIDITY DETERMINATION): An examination of a mining claim by a mineral examiner to determine if the claim has a discovery or otherwise meets the validity requirements of the Mining Law or if all requirements for a mill site have been met. All claims for which a patent application has been filed must undergo such an exam. In addition, the BLM must perform validity examinations before approving plans of operations or accepting notices in areas that are withdrawn.

WASTE ROCK (WASTE): Barren rock at a mine or material that is too low in grade to be of economic value.

WATERSHED: The total area above a given point on a stream that contributes runoff water to the streamflow at that point.

WHOLE ROCK ANALYSIS (EVALUATION): A test that is designed to provide quantitative determination of rock forming minerals, major oxides, and trace elements.

WILDERNESS AREA: A congressionally designated area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, that is protected and managed to preserve its natural conditions and that (1) generally appears to have been affected mainly by the forces of nature, with human imprints substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least 5,000 acres or is large enough to make practical its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historic value. Wilderness study areas (WSA) are not subject to the 3809 surface management regulations. Management of mineral activity within WSAs is addressed at 43 CFR 3802.

WITHDRAWAL: An action that restricts the use of Federal lands by removing them from the operation of some or all of the public land or mining laws. See SEGREGATION.

Abbreviations

2H:1V: slope (horizontal to vertical ratio)
ACEC: area of critical environmental concern
ARD: acid rock drainage
BLM: U.S. Department of the Interior, Bureau of Land Management
CBS: Collection and Billing System
CDCA: California Desert Conservation Area
CEQ: Council on Environmental Quality
CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act
CFR: Code of Federal Regulations
CRS: Case Recordation System
DNA: determination of NEPA adequacy
DOI: U.S. Department of the Interior
DOJ: U.S. Department of Justice
DR: decision record
EA: environmental assessment
ED&C: engineering, design and construction
EIS: environmental impact statement
EPA: U.S. Environmental Protection Agency
ESA: Endangered Species Act
FLPMA: Federal Land Policy and Management Act
FAR: Federal Acquisition Regulations
FONSI: Finding of No Significant Impact
FWS: U.S. Fish and Wildlife Service
GPS: global positioning system
IBLA: Interior Board of Land Appeals
Mg/l: milligrams per liter
MOU: memorandum of understanding
MSHA: Department of Labor, Mine Safety and Health Administration
NEPA: National Environmental Policy Act
NHPA: National Historic Preservation Act
NPDES: National Pollutant Discharge Elimination System
NTC: National Training Center
NV-MWMP: Nevada meteoric water mobility procedure
O&M: operation and maintenance
OHV: off highway vehicle
ORV: off-road vehicle
OSHA: Occupational Safety and Health Act
RCE: reclamation cost estimate
RCRA: Resource Conservation and Recovery Act
ROD: record of decision
SDR: State Director Review
SRHA: Stock Raising Homestead Act
T&E: threatened and endangered
TCLP: toxicity characteristic leaching procedures
UUD: unnecessary or undue degradation

Appendix A - Templates

This appendix contains templates for the most common correspondence or decisions to be issued in the surface management program. The templates are labeled according to the handbook section number where first referenced. The templates are in a consistent format and composed of example language for that particular type of correspondence or decision. Suggestions to authors on what to include or modify are written in italics. The letterhead and appeal language have been omitted from these example correspondences in the interests of space.

It is recognized that not one-size-fits-all when it comes to preparing correspondence. The templates are intended to provide a consistent starting point with the recognition that the author will need to modify the language to accommodate the particular circumstances or practices in his/her State or District/Field Office.

Template 2.2-1 - Proposed Activity does not qualify as Casual Use

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

The ABC Mining, Inc. (ABC) proposes to conduct exploration activity within the [*insert designated area*]. On [*insert date filed*] ABC contacted this office as required by the resource management plan covering the [*insert designated area*] before commencing activities.

The Bureau of Land Management (BLM) has reviewed the notification and determined that the proposed activities within the [*insert designated area*] will result in more than negligible disturbance. Such activity would normally be considered casual use; but due to the cumulative level of activity within the [*insert designated area*], ABC must submit a Notice pursuant to 43 CFR 3809.300 through 3809.336 with this office, including the required reclamation financial guarantee, prior to commencing activities. Conducting the proposed activities before filing an acceptable Notice as required by 43 CFR 3809.21 is a prohibited act under 43 CFR 3809.605(b). Failure to suspend all unauthorized activities will result in enforcement action under 43 CFR 3809.601.

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

Template 3.2-1 - Proposed Operation Requires a Plan of Operations

3809 [*office code*]
[*serial number*]

[*date]*

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc. :
Attn: Kevin Smith, General Manager : Surface Management
P.O. Box 3013 :
Frostbit Falls, Montana 59555 :

PROPOSED OPERATION REQUIRES A PLAN OF OPERATIONS

The ABC Mining, Inc. (ABC) Notice to [*proposed activity, e.g., mine*] in [*insert project area name*] was received in this office on [*insert date filed*]. The Notice has been assigned Bureau of Land Management (BLM) case file number [*insert #*].

The proposed operation does not qualify under 43 CFR 3809.21 as notice-level activity. Specifically, [*proposed activity, e.g., mining*] requires the submission of a Plan of Operation to the BLM in accordance with 43 CFR 3809.11. You are required to file a Plan of Operations in this BLM Field Office. A specific form is not required but the Plan must contain all the information required under 43 CFR 3809.401(b) in order to be considered complete.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

cc: [*State Office*]

Template 3.2-2 - Processing Notice or Plan Suspended

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

The ABC Mining, Inc. (ABC) Notice to conduct exploration trenching and drilling in [*insert project area name*] was received in this office on [*insert date filed*]. The Notice has been assigned Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in any future communication concerning this project. [*If there were previous communication with the operator regarding the Notice, e.g., an acknowledgement or completeness letter, you would have told them the receipt date and case file number then, and do not need to repeat it.*]

The BLM has reviewed the Notice and determined it contains all the information required by the surface management regulations at 43 CFR 3809.301. However, because the BLM is unable to determine if the proposed operation is adequate to prevent unnecessary or undue degradation as defined by 43 CFR 3809.5, we will not be able to continue processing your Notice. When the situation [*e.g., mutually exclusive Notices filed for the same parcel of land*] has been resolved and the BLM can make such a determination, we will notify you and begin processing your Notice again.

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

cc: [*State Office*]

Template 3.2-3 - Determination of Required Financial Guarantee Amount

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

DETERMINATION OF REQUIRED FINANACIAL GUARANTEE AMOUNT

The ABC Mining, Inc. (ABC) Notice to conduct exploration trenching and drilling in [*insert project area name*] was received in this office on [*insert date filed*]. The Notice has been assigned Bureau of Land Management (BLM) case file number [*insert #*]. Please refer to this number in any future communication concerning this project. [*If there were previous communication with the operator regarding the Notice, e.g., an acknowledgement or completeness letter, you would have told them the receipt date and case file number then, and do not need to repeat it.*]

The BLM has reviewed the Notice and determined it is complete, containing all the information required by the surface management regulations at 43 CFR 3809.301. The BLM has reviewed the proposed operation and determined it is adequate to prevent unnecessary or undue degradation as defined by 43 CFR 3809.5.

Amount of Financial Guarantee - This office has reviewed ABC's reclamation cost estimate for this project and determined that the amount of [*insert dollar amount*] is sufficient to meet all anticipated reclamation requirements. The amount of the reclamation cost estimate is based on the operator complying with all applicable operating and reclamation requirements as outlined in the Notice and the regulations at 43 CFR 3809.420.

Line items in the approved reclamation cost estimate are not to be considered as the limits of the reclamation expenditures should forfeiture of the financial guarantee be necessary. The line items listed are solely for the purpose of arriving at a total amount for the financial guarantee (see enclosure 1). This amount may be spent as the BLM deems necessary to implement the approved reclamation plan. The financial guarantee amount does not represent reclamation liability limits or constraints should the actual cost of reclamation exceed this amount.

Required Financial Guarantee -The financial guarantee in the amount of [*insert dollar amount*] must be submitted to and accepted by the [*insert name and address of the BLM office that will adjudicate and accept the financial guarantee*]. You must receive written notification from that office accepting and obligating your financial guarantee before you begin any surface-disturbing operations.

The types of instruments that are acceptable to the BLM for financial guarantees are found at 43 CFR 3809.555. Please contact [*insert adjudication office contact and phone number*] for forms and further information regarding acceptable financial guarantees.

The BLM's review of your proposed operations, determination that your Notice is complete, finding that the activity will not cause unnecessary or undue degradation, and decision concerning the amount of the required financial guarantee does not relieve you, the operator, of the responsibility to comply with all applicable Federal, state, and local laws, regulations, and permit requirements. You are responsible for preventing any unnecessary or undue degradation and for reclaiming all lands disturbed by your operations.

Template 3.2-3 - Determination of Required Financial Guarantee Amount
(continued)

This decision does not constitute certification of ownership to any entity named in the Notice, recognition of the validity of any associated mining claims, or recognition of the economic feasibility of the proposed operations.

Term of Notice - Your Notice will remain in effect for 2 years from the date of this decision, unless you notify this office beforehand that operations have ceased and reclamation is complete. If you wish to conduct operations for another 2 years after the expiration date of your Notice, you must notify this office in writing on or before the expiration date as required by 43 CFR 3809.333. You will also have to submit an updated reclamation cost estimate at that time.

Appeal of the Decision Determining the Required Financial Guarantee Amount

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

2 Enclosures
1 - Reclamation cost estimate worksheet
2 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Office*]
[Other applicable parties (state, claimant{s},etc.)]

Template 3.2-4 - Notice Not Complete

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

The ABC Mining, Inc. (ABC) Notice to conduct exploration activity at [*project location*] was received in this office on [*date*]. The Notice has been assigned Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in future correspondence concerning this operation.

Consistent with the surface management regulations at 43 CFR 3809.311(a), the BLM has reviewed the Notice to determine if it meets the content requirements at 43 CFR 3809.301(b). Based on our review, the following information is required from ABC in order for the Notice to be complete:

[*List as many completeness requirements as applicable. Consider sending the operator a copy of the regulations to assist them in understanding the Notice and bonding requirements*]

1. There is no map showing the location of the proposed surface-disturbing activity. A map showing the project location in sufficient detail for the BLM to locate the proposed activity is required.

2. The Notice mentions drill holes but gives no indication as to the number of holes, their locations, or approximate depths. This information is required.

3. There is no mention how or if the drill holes will be plugged. A description of the drill hole plugging procedures that will be followed is needed.

4. The schedule of activity is listed as *indefinite*. A specific project schedule is required in order to determine reclamation timing, costs, and whether the activity will not cause unnecessary or undue degradation. Please note that a Notice can only be accepted for work to be done in a 2-year period. Therefore, the proposed activity schedule should not exceed 2 years. If for some reason the work is not accomplished within 2 years, the Notice may be extended at its expiration date. If you want to conduct additional exploration based on your initial test results, you can request the Notice be modified under 43 CFR 3809.330 to account for the additional activity.

5. A reclamation cost estimate is required in order for your Notice to be considered complete (43 CFR 3809.301(b)(4). Please provide this estimate in accordance with the requirements at 43 CFR 3809.552.

Until a complete Notice is filed with this office, the BLM is unable to determine that your proposed operations will not result in unnecessary or undue degradation as defined under 43 CFR 3809.5. In addition, we are unable to make a determination as to the amount of the required financial guarantee.

Template 3.2-4 - Notice Not Complete
(continued)

Please submit the required information at your earliest convenience. Until we receive this information your Notice cannot be processed and the proposed exploration activity is not to take place. Conducting the proposed activities before filing an acceptable Notice as required by 43 CFR 3809.21 is a prohibited act under 43 CFR 3809.605(b). Failure to suspend all unauthorized activities will result in enforcement action under 43 CFR 3809.601.

If you have any questions on these information requests, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

Enclosure
1 - 43 CFR 3809 [*optional*]

cc: [O*ther agencies as applicable*]

Template 3.2-5 - Modification Required (New Notice)

3809 [*office code*]
[*case serial No.*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

The ABC Mining, Inc. (ABC) Notice to [*proposed activity, e.g., mine*] in [*insert project area name*] was received in this office on [*insert date filed*]. The Notice has been assigned Bureau of Land Management (BLM) case file number [*insert #*]. Please refer to this number in any future communication concerning this project.

Consistent with the surface management regulations at 43 CFR 3809.311(c), the BLM has reviewed the Notice to determine if your operation prevents undue or unnecessary degradation (UUD). Based on our review specifically, [*proposed activity that causes UUD*] does not comply with surface management regulations at 43 CFR 3809 [*insert specific citation*]. Before beginning operations you must address this issue by submitting a modified notice. The notice modification must prevent UUD and comply with 43 CFR 3809.300 through 3809.336. The BLM recommends:

[*List measure(s) that the operator may take to prevent UUD.*]

Please submit the required information at your earliest convenience. Until we receive this information your Notice cannot be processed and the proposed exploration activity is not to take place. Conducting the proposed activities before filing an acceptable Notice as required by 43 CFR 3809.21 is a prohibited act under 43 CFR 3809.605(b). Failure to suspend all unauthorized activities will result in enforcement action under 43 CFR 3809.601.

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

cc: [*State Office*]
[*Appropriate State Agencies*]
[*Surety*]

Template 3.4-1 - Notice Expired

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

NOTICE EXPIRED – RECLAMATION REQUIRED

The ABC Mining, Inc. (ABC) Notice [*enter case file number*] to conduct exploration trenching and drilling in [*insert project area name*] expired on [*insert date Notice expired*]. Due to your failure to [*enter reason for Notice expiring; failure to notify the BLM by the deadline their intent to extend the Notice, failure to provide the BLM with required information within the specified timeframe, or failure to provide the BLM with the required financial guarantee within the specified timeframe*], the Notice has expired as required by 43 CFR 3809.333.

Notice Expired - All activities after the expiration date, except reclamation, are not authorized and must cease as required by 43 CFR 3809.335. Any unauthorized activities continuing after the expiration date will be subject to enforcement actions.

If the operator files a new Notice or Plan of Operations, the requirements of the 43 CFR 3809 regulations, including, but not limited to, environmental review of Plans of Operations under the National Environmental Policy Act, and full cost bonding under 43 CFR 3809.500 for both Notice- or Plan-level operations must be met prior to resuming operations.

Reclamation Required - Unless you file a new Notice or Plan of Operations for that project area, you must immediately commence reclamation. Within 30 days of receiving this decision, you must commence the reclamation required by your Notice on file with the Bureau of Land Management (BLM). All reclamation, including required earthwork and reseeding, [*add other elements that are needed*] must be completed within 90 days of this decision. The BLM resource specialists will continue to monitor your progress in meeting your reclamation obligations, including the success of the revegetation in the disturbed area. The BLM will inform you when all reclamation standards have been met and whether your financial guarantee amount may be reduced or released.

Should you fail to commence reclamation within 30 days of issuance of this decision or fail to complete necessary reclamation within 90 days of issuance of this decision, the BLM may initiate forfeiture of all or part of your financial guarantee as provided for under 43 CFR 3809.336(b) and 43 CFR 3809.595. You may also be subject to enforcement actions under 43 CFR 3809.601.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,
[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

cc: [*State Office*]

Template 3.4-2 - Conditional Extension

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

The ABC Mining, Inc. (ABC) notification to extend your Notice [*serial number*] for 2 additional years was received in this office on [*date*]. The Bureau of Land Management (BLM) has reviewed the Notice to determine if the Notice qualifies for an extension (i.e., that it has not already expired), that the operation will not cause unnecessary or undue degradation, and that all information required for a complete Notice has been submitted, including an acceptable revised reclamation cost estimate. Based on our review, the following information is required from ABC in order for the Notice to be complete:

[*List all information that is required for the Notice to be considered complete under 43 CFR 3809.301(b):*]

Your Notice has been conditionally extended subject to ABC providing the BLM with the required information within 30 days of receiving this notification. Failure to provide the required information will result in the Notice expiring immediately upon conclusion of this timeframe. Should the Notice expire you must cease all operations, except reclamation. If you wish to continue operations, you must immediately submit a new Notice or Plan of Operations, if required by 43 CFR 3809.11. If you do not immediately submit a new Notice or Plan, you must promptly complete all reclamation according to the Notice.

If you have any questions on these information requests, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

Template 3.5-1 - Reclamation Required

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

OPERATION DETERMINED ABANDONED - RECLAMATION REQUIRED

Operation Abandoned – On [*date*], personnel from the [*field office name*] Field Office inspected your Notice operation, in [*project location, i.e., Meridian, Township, Range, Section, County, State*]; Bureau of Land Management (BLM) case file number [*serial number*]. This was the second inspection this year, the previous one occurring on [*date*]. During both inspections, no personnel or equipment was present, and there was no sign of recent activity. Nor was the reclamation complete as required by your Notice and the applicable regulations at 43 CFR 3809.420. Based on the above described site conditions, we have determined that the operation has been abandoned.

Reclamation Required – Abandoning an operation prior to completing the required reclamation is a prohibited act under 43 CFR 3809.605(h). Within 30 days of receiving this decision, you must commence the reclamation required by your Notice on file with the BLM. All reclamation, including required earthwork and reseeding, [*add other elements that are needed*] must be completed within 90 days of this decision. The BLM resource specialists will continue to monitor your progress in meeting your reclamation obligations, including the success of the revegetation in the disturbed area. The BLM will inform you when all reclamation standards have been met and whether your financial guarantee amount may be reduced.

Should you fail to commence reclamation within 30 days of issuance of this decision or fail to complete necessary reclamation within 90 days of issuance of this decision, the BLM may initiate forfeiture of all or part of your financial guarantee as provided for under 43 CFR 3809.336(b) and 43 CFR 3809.595. You may also be subject to enforcement actions under 43 CFR 3809.601.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

Contact – BLM personnel are available to assist you in resolving this matter. If you have any questions, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

cc: [*State Office*]
[*Appropriate State Agencies*]
[*Surety*]
[*Solicitor's Office*]

Template 4.3-1 - Reclamation Cost Estimate for Plan Required

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

Your Plan of Operations to conduct mining activities in [*project location, i.e., Meridian, Township, Range, Section, County, State*] was received in this office on [*date*]. The Plan of Operations has been assigned Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in future correspondence concerning this operation.

Consistent with the surface management regulations at 43 CFR 3809.411(a), the BLM has reviewed the Plan and has determined that the filed Plan of Operations meets the content requirements at 43 CFR 3809.401(b). As provided for in 43 CFR 3809.401(d), the BLM is advising you that you must submit a cost estimate covering all anticipated reclamation obligations as part of the Plan approval process.

The BLM requests that your reclamation cost estimate submission covers the equipment type, time, and rate needed to perform reclamation tasks such as mobilization, grading, topsoil placement, seeding, and structure removal for each component of the mining project. The cost estimate must be based on the assumption that the BLM will hire a third-party contractor and must include contract administration and overhead costs. The cost estimate must also include appropriate costs for contractor profit and insurance.

Please provide this information to [*Field Office name and address*] [*include due date if appropriate*]. If you have any questions on these information requests, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

cc: [*Appropriate State Agencies*]

Template 4.4-1 - Complete Plan Submitted

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

Your Plan of Operations to conduct mining activities [*project location, i.e., Meridian, Township, Range, Section, County, State*], was received in this office on [*date*]. The Plan of Operations has been assigned Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in future correspondence concerning this operation.

Consistent with the surface management regulations at 43 CFR 3809.411(a), the BLM has reviewed the Plan and has determined that the filed Plan of Operations and reclamation cost estimate meets the content requirements at 43 CFR 3809.401(b) and 43 CFR 3809.401(d). Note this notification does not constitute authorization to commence operations nor is the submission of a complete Plan necessarily adequate to meet the performance requirements of the regulations and avoid unnecessary and undue degradation.

Be advised the next step in the review process is for the BLM to solicit public comment on the Plan of Operations under 43 CFR 3809.411(c), either separate from or as a part of the environmental review process required by the National Environmental Policy Act. Soliciting public comment must occur before making an approved/not approved decision on the Plan of Operations according to 43 CFR 3809.411(d). The BLM estimates we will complete our review and make an approval decision on the Plan by [*provide estimated completion date*].

If you have any questions, please contact [*Name and address and phone number of contact-either program specialist or manager*].

Sincerely,

[*Signature*]
Field Manager

cc: [*Appropriate State Agencies*]

Template 4.4-2 - Plan Not Complete

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

Your Plan of Operations to conduct mining activities [*project location, i.e., Meridian, Township, Range, Section, County, State*], was received in this office on [*date*]. The Plan of Operations has been assigned Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in future correspondence concerning this operation.

Consistent with the surface management regulations at 43 CFR 3809.411(a), the BLM has reviewed the Plan to determine if it meets the content requirements at 43 CFR 3809.401(b). Based on our review, the following information is required in order for the Plan of Operations to be complete:

[*List the specific information that the operator for the plan of operations to be considered complete; an example of sample language follows:*]

1. Page 1, section 1.2. Required operator information includes the taxpayer identification number of the operator. If the operator is an individual, the taxpayer identification number is the individual's social security number. Please provide the appropriate taxpayer identification number. Operator social security numbers are maintained by the BLM as privacy information and are not available for public disclosure.

2. Page 9, section 3.2. Please provide a mine site layout diagram that shows the location of the pit boundaries; soil, overburden, and stockpile locations; access road route; fencing perimeter; and any other facilities proposed to be located onsite.

3. Page 9, section 3.2. The Plan references reseeding but fails to state what seed mix or application rate would be used. Please provide the seeding information.

4. Page 9, section 3.2. The regulations at 43 CFR 3809.401(b)(5) require operators to provide an interim management plan that describes how the project area would be managed during periods of temporary closure, including seasonal closure. Please address this requirement by providing information on site stabilization measure that will be employed.

5. Page 10, section 3.5. Your Plan indicated that you were trying to arrange for the transport of water from an artesian well in Wyoming for use in dust control. Please state whether an agreement has been reached regarding the use of water from this well, or alternatively what water source would be used for dust suppression on the haul road. Provide information on the amount of water and number of haul trips anticipated.

6. Page 11, section 3.9. Information on the size (width) of the haul road disturbance needs to be clarified. The text refers to a 12-foot running width for the haul road, but then says it is expected to be widened by an average of 4 feet. The text then discusses additional 1-foot ditches along the roadway with soil distributed beyond the limits of the ditches, plus mentions the blading of topsoil deposited in these areas during reclamation. Please provide additional detail on the location of disturbance associated with construction, reconstruction, and reclamation of the haul road that accounts for all areas of potential disturbance.

Template 4.4-2 - Plan not Complete (continued)

7. Page 14, section 4.0. Please provide more information on the proposed configuration of the pit area at reclamation. Identify any areas where a highwall is planned to be left after reclamation.

8. Page 14, section 4.3. The Plan states, "runoff would be controlled," yet there is not discussion as to the type and location of runoff control measures. The Plan needs to depict on a map the location and type of runoff control measure that would be used.

9. Page 15, Fencing. Please address the duration the project area will be fenced. Assuming that the fencing is intended only to be temporary, the reclamation plan should indicate that it will be removed upon successful establishment of vegetation.

10. Page 23, Blasting. The Plan states that blasting is not likely to be needed. The Plan needs to definitely state whether or not blasting would be required as part of mining. If blasting is anticipated, the Plan must specify the frequency of blasting and prevent public entry into the area in accordance with state and Federal mine safety regulations.

Please provide a response to the above information requests at your earliest convenience. You may provide replacement pages or a narrative response. Upon receipt of the required information, the BLM will determine whether or not the Plan of Operations is complete.

Once the Plan is determined complete, the BLM will solicit public comment on the Plan under 43 CFR 3809.411(c), either separate from or as a part of the environmental review process required by the National Environmental Policy Act. Soliciting public comment must occur before making decision on the Plan of Operations according to 43 CFR 3809.411(d).

In order to prepare the environmental review document and process your Plan, the BLM requires that the intended disturbance area be inventoried for cultural resources. As required by 43 CFR 3809.401(c), the operator is responsible for providing this survey information. Please provide the required cultural resource inventory as soon it is finished. If you require further information on inventory methods and qualifications please contact the Field Office Archaeologist at [*phone number*].

If you have any questions on these information requests, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

cc: [*Appropriate State Agencies*]

Template 4.4-3 - Additional Actions Required

3809 [*office code*]
[*serial number*]

[date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

Your Plan of Operations to conduct mining activities in [*project location, i.e., Meridian, Township, Range, Section, County, State*], was received in this office on [*date*]. The Plan of Operations has been assigned the Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in future correspondence concerning this operation.

Consistent with the surface management regulations at 43 CFR 3809.411(a), the BLM has reviewed the Plan to determine if it meets the content requirements at 43 CFR 3809.401(b). However, the BLM cannot approve the Plan until certain steps are completed, specifically the BLM must [*identify any action included in 43 CFR 3809.411(a)(3)*]. [*Where feasible, identify timeframes for completion of these actions.*]

If you have any questions on these information requests, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

cc: [*Appropriate State Agencies*]

Template 4.4-4 - Decision on Plan

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

PLAN OF OPERATIONS APPROVED – CONDITIONS OF APPROVAL REQUIRED

DETERMINATION OF REQUIRED FINANACIAL GUARANTEE AMOUNT

The Plan of Operations for the XYZ Mine is hereby approved subject to conditions of approval listed below. ABC Mining, Inc. (ABC) must conduct operations as described in the Plan of Operations and in accordance with the following Bureau of Land Management (BLM) conditions of approval (COA):

[*List Conditions of Approval as needed to prevent undue or unnecessary degradation (UUD). Include a rationale for the COA to justify the requirement to the operator and provides a basis for accepting a minor modification later should an alternate approach be found that meets the intent of the COA*; *an example COA follows:*]

Conditions of Approval:

1. ABC must construct the waste rock repository with an overall 3h:1v slope, with at least 15-foot wide benches constructed (not pioneered) every 100 vertical feet. Benches must be backsloped and drain toward common surface water drainage ditches built along the edges of the repository. Reclamation of the repository is to be conducted concurrent with mining operations. Final engineering-approved designs must be submitted at least 60 days in advance of repository construction to verify conformance with this requirement.

   This COA is needed to improve runoff control and minimize the exposure of waste rock to precipitation that may generate undesirable leachate.

2. ABC is not to mine limestone needed for runoff controls from the LS-1 limestone quarry. Instead, ABC is to mine limestone needed for the operation from the LS-2 site. The quarry must be reclaimed using the same procedures proposed by ABC for the LS-1 quarry.

   This COA confines the mine disturbance to a single watershed and reduces the disturbance area by eliminating the need for some 1,500 feet of haul road.

3. Underdrains constructed beneath the Goslin Flats leach pad and the waste rock repository, and seepage collection systems must be built only with coarse and durable unmineralized carbonates.

   Unmineralized limestone is required for fill in state waters as an additional precaution to buffer acidic drainage and to minimize the potential for impacts to water quality.

4. ABC must use the water balance and water barrier reclamation covers shown on Figure 2.11-4 in the Final Environmental Impact Statement (EIS). Cover soil must be placed at least 12 inches thick on all other disturbance areas.

Template 4.4-4 - Decision on Plan (continued)

These reclamation covers increase revegetation potential, reduce soil loss, and improve long-term surface stability with low infiltration rates and low maintenance requirements. There is adequate soil available for salvage to construct these reclamation covers upon mine closure.

5. ABC must design and construct all permanent drainage and diversion ditches, and water capture and treatment systems to accommodate runoff from a 6.33-inch, 24-hour storm event with 1 foot of freeboard. This is the calculated 100-year storm event for the mine site.

   The 100-year storm event design criterion is needed to ensure adequate drainage capacity, and to protect reclaimed areas and adjacent water resources.

Financial Guarantee

Based on your reclamation cost estimate, the BLM review of the cost estimate, and consideration of the above conditions of approval, the required financial guarantee amount is hereby set at [*dollar amount*] for reclamation of the XYZ Mine. You must provide a financial guarantee in this amount using one or more of the acceptable financial guarantee instruments listed under 43 CFR 3809.555. The financial guarantee must be provided to the BLM [state] State Office, Solid Minerals Adjudication, *[insert State Office mailing address]*. That office will issue you a decision as to the acceptability of your financial guarantee. You must not begin activities under the approved Plan of Operations until you receive notification from the BLM [*state*] State Office that the financial guarantee has been accepted and obligated.

Approval of a Plan of Operations by the BLM does not constitute a determination regarding the validity or ownership of any unpatented mining claim involved in the mining operation. ABC is responsible for obtaining any use rights or local, state, or Federal permits, licenses, or reviews that may be required for the operation.

[*If the Decision will include a determination of concurrence for a proposed occupancy per 43 CFR 3715.3-4, then the following paragraph will be included. If no occupancy is proposed then the following paragraph will be omitted.*]

This decision also constitutes concurrence with ABC's use and occupancy of public lands as described in the approved Plan of Operation. ABC must maintain compliance with the Use and Occupancy regulations at 43 CFR 3715.2, 3715.2-1, and 3715.5 throughout the duration of the approved Plan of Operations. Concurrence by the BLM on ABC's proposed use and occupancy is not subject to State Director Review, but may be appealed by adversely affected parties directly to the Interior Board of Land Appeals as outlined in enclosed BLM Form 1842-1.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions, please contact me at [*phone number*] or contact [*Name and address and phone number of contact-either program specialist or manager*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

cc: [*State Office*]

Template 6.2-1 - Unacceptable Reclamation Cost Estimate

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Mining, Inc.
Attn: Kevin Smith, General Manager
P.O. Box 3013
Frostbit Falls, Montana 59555

Dear Mr. Smith:

The ABC Mining, Inc. (ABC) Notice to conduct exploration activity at [*project location, i.e., Meridian, Township, Range, Section, County, State*] was received in this office on [*date*]. The Notice has been assigned the Bureau of Land Management (BLM) case file number [*serial number*]. Please refer to this number in any future correspondence concerning this operation.

Consistent with the surface management regulations at 43 CFR 3809.311(a), the BLM has reviewed the Notice to determine if it meets the content requirements at 43 CFR 3809.301(b). Based on our review, the Notice adequately describes the proposed exploration and reclamation operations; however, the reclamation cost estimate submitted with the Notice under 43 CFR 3809.301(b)(4) is missing the following cost information or cost considerations:

[*List missing or deficient content; example language follows:*]
1. The reclamation cost estimate does not include costs for mobilization and demobilization of either the excavator for road reclamation or the drill rig used for drill hole plugging. These costs need to be included in the estimate.

2. The reclamation cost estimate only lists the cost of plugging a single drill hole, while ABC's Notice proposes to drill 28 holes. ABC must include the costs for plugging all of the drill holes in the exploration project, or modify the Notice and commit to not having more than a single drill hole open at any one time.

3. Your cost estimate for road reclamation includes 2,000 feet of drill road reclamation at $1.25 per linear foot. The average side slope where the road cuts are located is on the order of 45 percent. In our experience, reclamation of roads like this costs between $2.25 and $2.75 per linear foot [i*nsert or attach references*]. Please adjust your estimate accordingly.

4. The reclamation cost estimate does not include any amount for overhead such as contractor insurance, profit, and contract administrative costs. For a project of this general size, the BLM estimates these costs total approximately 22.6 percent of the direct reclamation costs.

[*Continue to list the deficiencies in the reclamation cost estimate*]

Please submit a revised reclamation cost estimate to correct the above deficiencies. As a reminder, ABC is not to conduct surface disturbing activity under this Notice until the revised reclamation cost estimate amount has been accepted by the BLM, you provide a financial guarantee instrument to BLM for that amount, and the BLM notifies you that the financial guarantee has been accepted and obligated.

If you have any questions, or would like to discuss the reclamation cost estimate requirements, please contact [*insert program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

Template 6.2-2 - Financial Guarantee Increase – Ongoing Operations

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

DETERMINATION OF REQUIRED FINANACIAL GUARANTEE AMOUNT
ONGOING OPERATIONS

The Bureau of Land Management (BLM) [*state*] Field Office has completed a review of the reclamation cost estimate, as provided for under 43 CFR 3809.552(b), for the Frostbit Plan of Operations [*enter case file number*]. Based this office's review of your reclamation cost estimate on file, the required financial guarantee amount is hereby set at [*dollar amount*] for reclamation of the Frostbit operation.

The ABC Mining, Inc. has previously provided the BLM an acceptable financial guarantee of [*dollar amount*] for this operation. The increase of [*dollar amount*] to the amount of financial guarantee must be provided to the BLM [*state*] State Office, Solid Minerals Adjudication, [*address*]. You must provide an acceptable increase to the financial guarantee to this office within 60 days from receipt of this decision. Failure to provide an acceptable financial guarantee increase within the specified timeframe will result in enforcement action(s) under 43 CFR 3809.601 for failure to maintain an adequate financial guarantee.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions, please contact me at [*phone number*] or contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals.

cc: [*State Office*]

Template 6.4-1 - Required Financial Guarantee Amount -Reduction

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

DETERMINATION OF REQUIRED FINANCIAL GUARANTEE AMOUNT REDUCTION

The Bureau of Land Management (BLM) inspected [*insert project name*] on [*date*]. All required reclamation has been completed according to the reclamation plan and the performance standards at 43 CFR 3809.420. [*This decision can be used with either a Notice or a Plan.*]

[For a Plan of Operations insert the following: *In accordance with 43 CFR 3809.590, the BLM published a notice of final financial guarantee release for your project and accepted public comment for 30 days on the final reduction of your reclamation bond amount. The BLM received* [*quantity*] *comments on release of your financial guarantee – (continue and address any public comments in this decision, explain why the BLM will release the final financial guarantee, or alternatively, write another decision denying final release).*]

This decision reduces the estimated reclamation cost from [*present amount*] to $0.00. A copy of this decision has been provided to the adjudication staff in the BLM [*state*] State Office. You may file a request with that office at [*insert state office address*] for final release of your financial guarantee instrument [*or obligation*] for this project.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions concerning this reduction in the financial guarantee amount, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Office*]
[*Other agencies or claimant(s)*]

Template 6.5-1 - Forfeiture of Financial Guarantee

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

FORFEITURE OF FINANCIAL GUARANTEE

Pursuant to the provisions at 43 CFR 3809.595 through 3809.599, the Bureau of Land Management (BLM) is pursuing forfeiture of the financial guarantee for your operation [*serial number and legal description*]. On [*date*], a decision was issued by this office requiring [*state required action, e.g., conduct reclamation as provided for and as scheduled in the reclamation plan; meet the terms of the Notice or approved Plan of Operations; and/or meet the conditions under which the operator obtained the financial guarantee*] by [*date*]. Forfeiture of your financial guarantee is being taken because you failed to meet these conditions within the timeframe provided in the noncompliance order.

Based on the estimated total cost of achieving the reclamation plan requirements, including the BLM's administrative costs, the BLM will require the forfeiture of [*dollar amount*] from your financial guarantee. [*If the financial guarantee is provided through a surety bond include the following sentence, otherwise omit.*] Within 30 days the penal sum, [*dollar amount*], of surety bond number [*number*] must be surrendered to the BLM [*state*] State Office at the following address:

[State Office Address]
Attn: Adjudication [*Office Code*]

You may avoid this forfeiture action by completing one of the following:

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 approved Plan of Operations and reclamation plan. Where the work will be done by another person, the agreement must demonstrate they have the ability, both technically and financially, to satisfy the conditions.

Obtaining written permission from the BLM for a surety to complete the reclamation, or portion of the reclamation, applicable to the bonded phase or increment. The surety must demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in your Notice or approved Plan of Operations.

Template 6.5-1 - Forfeiture of Financial Guarantee (continued)

If you fail to meet the requirements listed above, and you do not appeal the forfeiture decision under 43 CFR 3809.800 to 3809.807, or Interior Board of Land Appeals (IBLA) does not grant a stay under 43 CFR 4.321, or the BLM's decision is affirmed, the BLM will:

Immediately collect the forfeited amount as provided by applicable laws for collection of defaulted financial guarantees, other debts, or State bond pools, and

Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof.

If the amount of forfeited funds is insufficient to pay for the full cost of reclamation, you are liable for the remaining costs as set forth in 43 CFR 3809.116.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions concerning this reduction in the financial guarantee amount, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Office*]
[*Other applicable parties (state, claimant(s),etc.)*]

Template 6.5-2 - Notice of Liability, Demand for Payment

3809 [*office code*]
AZB-08309

[*Date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
[Effective date is date of receipt]

DECISION

ABC Mining, Inc.	:	43 CFR 3809
Attn: Kevin Smith, General Manager	:	
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

NOTICE OF LIABILITY
DEMAND FOR PAYMENT AND BILL FOR RECLAMATION OF ABC MINING, INC. OCCUPANCY SITE

Pursuant to the authorities contained in [*cite appropriate authority*], and statutes applicable to the management of lands administered by the Department of the Interior (DOI), Bureau of Land Management (BLM), has completed the clean-up and reclamation of the ABC Mining, Inc. occupancy site [*Notice or Plan of Operations #*] located on BLM managed land described as T.13N., R.7E., Sec.21 SE¼ and 30 NE ¼, Gila and Salt River Base Meridian, Yavapai County, Arizona.

On October 30, 2009, ABC Mining, Inc. received from the BLM Phoenix Field Office (PFO) a [cite the enforcement order under 43 CFR 3809.601] to remove all equipment, abandoned vehicles and trash from the occupancy site (site), and reclaim all disturbed lands. Any property remaining on public lands after 90 calendar days from the effective date of the order would become property of the United States and subject to removal and disposition by BLM. ABC Mining, Inc. would be liable for the cost the BLM incurs in removing and disposing of the property and site reclamation.

ABC Mining, Inc. appealed the order to the Interior Board of Land Appeals (IBLA). On March 10, 2010, the IBLA issued decision 152 IBLA 57, denying ABC Mining, Inc.'s request for a stay and affirming the order. Based on the IBLA decision the BLM informed ABC Mining, Inc. by certified return receipt mail on April 4, 2010, that it had until June 8, 2010, to comply with the October 30, 2009, order.

ABC Mining, Inc. was notified by certified return receipt mail on June 8, 2010, that it had failed to comply with the order and that the reclamation deadline had passed. Any property remaining on BLM land was property of the United States and subject to removal and disposition at the BLM's discretion. ABC Mining, Inc. would be liable for the costs the BLM incurs in removing and disposing of the property and any costs associated with site reclamation.

A government contractor began restoration of the site on or around November 6, 2011, and completed reclamation of the [*project name*] site on December 11, 2011.

NOTICE OF LIABILITY

The BLM has evaluated the mining claim records and field office 3809 case file AZB-08309 in connection with the site and has determined that ABC Mining, Inc. is the responsible party due to its activities and occupancy of the site from the early 1990s until abandonment in the year 2011. Accordingly, this letter notifies ABC Mining, Inc. of its liability under 43 CFR *[3809.336(b) or 3809.424(a)(4), and 3809.598 when BLM completes the reclamation of a Notice or Plan of Operations*].

Template 6.5-2 (continued)
Notice of Liability, Demand for Payment

Through July 10, 2002, the BLM and DOI have incurred costs related to the site of at least $14,413.00. This statement of expenditures is preliminary and does not limit the BLM and DOI from providing revised figures to the extent additional past costs are identified.

DEMAND FOR PAYMENT

In accordance with 43 CFR 3809.598 demand is hereby made for payment of $14,413.00. Enclosed is a bill for collection in the amount of Fourteen Thousand Four Hundred and Thirteen Dollars ($14,413.00) and notice of action in the event of delinquency. Interest on costs incurred will accrue from the date of this demand for payment. [*Use the CBS system to generate this bill and any follow-up notices of delinquency should they become necessary*]

Payment is due within thirty (30) calendar days of your receipt of this demand for payment. Remittance must be made by certified check payable to the "Department of the Interior - BLM" and must reference the site name and bill number. Please send your remittance to:

Bureau of Land Management
Phoenix Field Office
12605 N. 8th Avenue
Phoenix, AZ 85027

If you fail to respond to this demand within thirty (30) calendar days, the BLM will, following our regulations and manual guidelines, continue the debt collection action against you. The debt collection action may include civil litigation and/or other actions necessary to recover the debt owed.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions, or if you wish to schedule a meeting to discuss this matter, please contact [*Name and address and phone number of contact-either program specialist or manager*]. We hope that you will take this opportunity to resolve this matter expeditiously.

[*Signature*]
Field Manager

Enclosures (2):
1 - Bill for Collection [*Attach automated bill generated by CBS*]
2 - Form 1371-22, Notice of Action in Event of Delinquency

Template 9.2-1 - Noncompliance Order

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

NONCOMPLIANCE ORDER

A compliance examination of the ABC Mining, Inc. (ABC) mining operation under Plan of Operations [*serial number*] in [*project location*], was conducted on [*date*]. [*Provide a brief description of all pertinent facts discovered through the inspection process. The purpose of this section and the following section, which deals with a review of the records, is to provide sufficient information to anyone who might read the order for them to determine the nature of the violation(s) that prompt the order.*]

A review of the Bureau of Land Management (BLM) records indicates the following facts: [*Refer to any filing made by the operator and correspondence between the operator and BLM that are pertinent to the issuance of the order.*]

Based on our inspections and records, the ABC activity is unauthorized and is in violation of [*list the laws that are being violated such as the Federal Land Policy and Management Act (FLPMA), etc*.]. Specifically, ABC is in violation of the following regulations: [*List those regulations under 43 CFR 3809 that the operator/claimant is violating. A Noncompliance order needs to be tied to a violation of one or more of the prohibited acts listed in 43 CFR 3809.605. As an example:*]

ABC has failed to stockpile the necessary soil material as required in its approved Plan of Operations. Failure to follow the approved Plan of Operations constitutes unnecessary or undue degradation and is a prohibited act under 43 CFR 3809.605 (a).

Under authority of 43 CFR 3809.601(a), ABC is ordered, within [*specify the time by which the operator must take corrective action to resolve the noncompliance, generally not to exceed 30 days]* from receipt of this order to: [*List the specific actions that the claimant/operator must take to comply with the order. These actions must be clear and concise, leaving little room for interpretation. The actions are listed with the understanding that if they are taken by the claimant/operator, the order will be lifted and the operations will be in compliance with respect to this order.*]

If ABC does not comply with this order, the BLM may take further action against you pursuant to 43 CFR 3809.601(b) and issue a Suspension Order for all or part of the ABC operation. Additionally, action could be taken under 43 CFR 3809.604 or 3809.700. [*Depending on the nature of the noncompliance, you may want to cite the specific regulations language that mention the BLM may request the United States Attorney to institute a civil action in United States District Court for an injunction to enforce this order; the collection of damages resulting from unlawful acts (see 43 CFR 3809.604); arrest and trial under section 303(a) of the FLPMA; fines up to $100,000 or the imprisonment (see 43 CFR 3809.700)*].

Template 9.2-1 - Noncompliance Order (continued)

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have any questions concerning this Noncompliance Order, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

2 Enclosures
1 - 43 CFR 3809 [*optional*]
2 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Office*]
[Regional solicitor][O*ther agencies or claimant(s)*]

Template 9.2-2 - Notification of Intent to Issue a Suspension Order

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

NOTIFICATION

ABC Mining, Inc. :
Attn: Kevin Smith, General Manager : Surface Management
P.O. Box 3013 :
Frostbit Falls, Montana 59555 :

INTENT TO ISSUE A SUSPENSION ORDER

Due to your failure to comply with the Noncompliance Order issued by the Bureau of Land Management (BLM) on [*date*], you are hereby notified that the BLM intends to issue a Suspension Order against your Plan of Operations [*serial number*]. Specifically, you have failed to comply with the Noncompliance Order by not: [*List specifically the manner in which the operator/claimant has failed to comply with the order*].

Pursuant to 43 CFR 3809.601(b)(iii) you are entitled to an informal hearing before the BLM [*state*] State Director before the BLM takes further action against you under 43 CFR 3809.601(b). To request an informal State Director hearing, you must submit the request in writing to the [*State Office address*] - Attention SD3809 Hearing, within 30 days of receiving this notification. If you do not make such a request within 30 days, you will have waived your right to an informal hearing with the State Director, and the BLM will continue enforcement actions against you.

If you choose an informal hearing with the BLM State Director, the BLM will not provide a court reporter, and will follow certain procedures, including [*Identify any procedural requirements that will govern the informal hearing. For example, the State Director may limit the time that will be allotted for the hearing.*].

Be advised that a request for a hearing with the BLM State Director does not relieve ABC from its obligation to comply with any previously issued enforcement orders including the Noncompliance Order issued to ABC on [*date*]. The BLM may pursue or continue to pursue those remedies available under 43 CFR 3809.604 and/or 43 CFR 3809.700 before your hearing with the State Director [*include those relevant to the circumstances*]. If you have any questions concerning this notification, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

cc: [*State Director*]
[*Regional Solicitor*]

Template 9.2-3 - Suspension Order

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

SUSPENSION ORDER

ABC Mining, Inc. (ABC) is hereby ordered to suspend operations under Plan of Operations [*serial number*] immediately. This Suspension Order is issued due to your failure to comply with the Bureau of Land Management (BLM) Noncompliance Order issued by this office on [*date*].

[*Provide narrative outlining the operator's failure to resolve items of noncompliance; example language follows:*]

Field inspection of the project area on March 3, 2011, shows that ABC is still engaging in mining activity without stockpiling the soil material required under their Plan of Operations, thereby resulting in unnecessary or undue degradation. ABC was issued a Noncompliance Order on October 31, 2010, with instruction on how to correct the noncompliance. ABC failed to follow the Noncompliance Order as evidenced by the inspection on January 3, 2011, and a notification that the BLM intended to issue a Suspension Order was issued to ABC on January 10, 2011. ABC was provided an informal hearing with the BLM State Director on February 13, 2011, in an attempt to resolve the noncompliance. At the State Director hearing, ABC said it would correct immediately the soil salvage problem, but has failed to comply.

[*Provide a brief description of all pertinent facts discovered through the inspection process that show that the conditions of the Noncompliance Order were not met and that the BLM is justified in issuing the Suspension Order*].

Therefore, in accordance with the authority at 43 CFR 3809.601(b), ABC is ordered to immediately cease surface disturbing activity including all excavation, waste rock placement, and leach pad construction until it complies with the October 31, 2010, Noncompliance Order and is told by the BLM that operations may proceed.

[*List specific actions that the operator must take to comply with both this order and the noncompliance order. These actions must be clear and concise, leaving little room for interpretation. The actions are listed with the understanding that if they are taken by the claimant/operator, the order will be lifted and the operations will be in compliance with respect to this order.*]

If you do not comply with this order, 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 this order to prevent you from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts (see 43 CFR 3809.604). Additionally, if you fail to adhere to the terms of this order, you may face arrest and trial under Section 303(a) of the Federal Land Policy Management Act (43 U.S.C. 1733(a)). If convicted, you will be subject to a fine of not more than $100,000 or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense (see 43 CFR 3809.700).

Template 9.2-3 - Suspension Order (continued)

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have questions concerning this order, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

2 Enclosures
1 - 43 CFR 3809 [*optional*]
2 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Director*]
[*Regional Solicitor*]
[*Other agencies and claimant(s)*]

Template 9.2-4 - Immediate Temporary Suspension Order

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

IMMEDIATE TEMPORARY SUSPENSION ORDER

ABC Mining, Inc. (ABC) is hereby ordered to immediately suspend all operations at the [*insert project name and location*]. This suspension order has been issued under 43 CFR 3809.601(b)(2) because ABC is operating without an approved Plan of Operations. [*In other cases, insert other applicable rationale for the immediate suspension order which is necessary to protect health, safety, or the environment—e.g., significantly outside the scope of the Notice or Plan.*]

Beginning operations prior to the BLM approving a Plan of Operations is a prohibited act under 43 CFR 3809.605(b); and warrants the issuance of this Immediate Suspension Order to protect health, safety, or the environment from imminent danger or harm that would result from surface disturbance.

In order to resolve this enforcement order and terminate the suspension, ABC must Provide the BLM Field Office a proposed Plan of Operations as required by 43 CFR 3809.401. The BLM Field Office must issue a decision approving the Plan of Operations before we will terminate this Suspension Order.

Failure to comply with this enforcement order may result in the BLM requesting the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce this order to prevent you from conducting operations on the public lands in violations of this subpart, and collect damages resulting from unlawful acts (see 43 CFR 3809.604). Additionally, if you fail to adhere to the terms of this order, you may face arrest and trial under Section 303(a) of the Federal Land Policy Management Act (43 U.S.C. 1733(a)). If convicted, you will be subject to a fine of not more than or the alternate 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 (see 43 CFR 3809.700*)*.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have questions concerning this order, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

2 Enclosures
1 - 43 CFR 3809 [*optional*]
2 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Director*]
[*Regional Solicitor*]

Template 9.2-5 - Suspension Order Terminated

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

TERMINATION OF SUSPENSION ORDER

The Bureau of Land Management (BLM) hereby terminates the Immediate Temporary Suspension Order it issued on [*date*], against the ABC Mining, Inc. (ABC) Plan of Operations [*serial number*] for failure to provide the required financial guarantee.

The ABC's financial guarantee instrument in the required amount of [*dollar amount*] was received by the [*state*] State Office and accepted as adequate on [*date*]. The BLM appreciates ABC resolving this matter in a timely fashion.

[*If the Immediate Temporary Suspension Order was issued for failure to file a Plan or Notice, then the suspension order would not be terminated until the Notice or Plan had been processed and bonded. If issued for activity outside the scope of a Notice or Plan, then the suspension order would not be terminated until either the disturbance was reclaimed or the Notice or Plan modified to account for the new activity.*]

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have questions concerning this order, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Director*]
[*Regional Solicitor*]
[*Other agencies, claimants*]

Template 9.2-6 - Order Requiring Plans

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

ORDER REQUIRING PLANS OF OPERATIONS

Due to ABC Mining Inc.'s (ABC) number of unresolved Noncompliance Orders and repeated compliance problems, pursuant to 43 CFR 3809.604(b), the Bureau of Land Management (BLM) now requires ABC to submit a Plan of Operations under 43 CFR 3809.401 for all current and future Notice-level operations on a nationwide basis for surface disturbing activity on lands administered by the BLM. Following the date of this order, you may not conduct activities greater than casual use without first filing a Plan of Operations and receiving approval from the applicable BLM field office.

The BLM is issuing this order for the following reasons: [*List those specific instances that clearly demonstrate that the operator/claimant failed to comply with a noncompliance order and remains in noncompliance. Not that both conditions must be met. A pattern of repeated noncompliance may be considered in determining when to issue this order. Likewise a period of compliance may be cause to terminate this order. Be sure to inform other field offices regarding the operator's status. An email containing the signed order should be forwarded via email to all state program leads for their consideration.*]

Issuance of this Order does not relieve ABC from complying with any other outstanding enforcement orders issued by the BLM. This Order will remain in effect until such time as ABC resolves any and all outstanding enforcement orders issued by the BLM.

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

If you have questions concerning this order, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

2 Enclosures
1 - 43 CFR 3809 [*optional*]
2 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: [*State Office*]
[*Regional Solicitor*]

Template 9.2-7 - Notification of Intent to Nullify Notice/Revoke Plan

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

NOTIFICATION

ABC Mining, Inc. :
Attn: Kevin Smith, General Manager : Surface Management
P.O. Box 3013 :
Frostbit Falls, Montana 59555 :

INTENT TO NULLIFY NOTICE *[or]* **INTENT TO REVOKE PLAN OF OPERATIONS**

The Bureau of Land Management (BLM) is considering [*revoking ABC's Plan of Operations or nullifying ABC's Notice*] pursuant to 43 CFR 3809.602 due to ABC's ongoing failure to correct the violations detailed in the enforcement orders issued on [*date*], and [*date of second order*].

This notification provided in accordance with 43 CFR 3809.602(b) and is based upon preliminary findings that: [*Explain under one or more of the following categories: 1) A violation exists of any provision of the Notice or Plan of Operation). 2) A violation exists of this subpart, and how the operator has failed to correct the violation within the time specified in an enforcement order issued under* 43 CFR *3809.601. 3) Describe if and how a pattern of violations exists at the operation.*]

These findings are based on the following pertinent facts: [*List specifically the facts upon which the above findings were made. Cite specific instances where an enforcement order was violated, etc.*]

Pursuant to 43 CFR 3809.602(b) you are entitled to an informal hearing before the BLM [*state*] State Director before the BLM takes further action against you under 43 CFR 3809.601(a). To request an informal State Director hearing you must submit the request in writing to the [*State Office address*] - Attention SD3809 Hearing, within 30 days of receiving this notification. If you do not make such a request within 30 days, you will have waived your right to an informal hearing with the State Director and the BLM will proceed to make its determination regarding whether to revoke your Plan of Operations [*or nullify your Notice*].

If you choose an informal hearing with the BLM State Director, the BLM will not provide a court reporter, and will follow certain procedures, including [*Identify any procedural requirements that will govern the informal hearing. For example, the State Director may limit the time that will be allotted for the hearing.*].

Within 30 calendar days from the date of your hearing, you will receive written notification from the State Director of the final determination of your case.

Template 9.2-7 - Notification of Intent to Nullify Notice/Revoke Plan
(continued)

Be advised that a request for a hearing with the BLM [*state*] State Director does not relieve ABC from its obligation to comply with any previously issued enforcement orders including the Noncompliance Order issued to ABC on [*date*], and the Suspension Order issued on [*date*]. The BLM may pursue or continue to pursue those remedies available under 43 CFR 3809.604 and/or 43 CFR 3809.700 before your hearing with the State Director [*include a description of those remedies relevant to the circumstances]*.

If you have any questions concerning this notification, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

cc: [*State Director*]
[*Regional Solicitor*]

Template 9.2-8 - Nullification of Notice/Revocation of Plan

3809 [*office code*]
[*serial number*]

[*date*]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

ABC Mining, Inc.	:	
Attn: Kevin Smith, General Manager	:	Surface Management
P.O. Box 3013	:	
Frostbit Falls, Montana 59555	:	

PLAN OF OPERATIONS REVOKED *[or]* **NULLIFICATION OF NOTICE**

As of this date, ABC Mining, Inc. (ABC) Plan of Operations [*serial number*] [*project location*] is hereby revoked due to repeated failure to comply with enforcement orders issued by the Bureau of Land Management (BLM) under the BLM's regulations at 43 CFR 3809.

The BLM has determined to revoke the ABC Plan of Operations [*or nullify a Notice*] pursuant to 43 CFR 3809.602. This determination is based on a finding that: [*Choose one or more of the following: 1) violations of the Plan of Operation (or notice); 2) failure to correct the violation within the time specified in the enforcement orders issued under* 43 CFR *3809.601; 3) pattern of violations*].

These finding are based on the following pertinent facts: *[List specifically the facts and cite to the record upon which the findings were made. Cite specific instances where enforcement orders were violated. Include results of the informal hearings with the State Director, if any.*]

Revocation of the ABC Plan of Operations does not relieve ABC from its obligation to comply with any outstanding enforcement orders or orders to reclaim [*list these here*]. In addition, 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 this order to prevent you from conducting operations on the public lands in violations of this subpart, and to collect damages resulting from unlawful acts (see 43 CFR 3809.604*)*. Additionally, if you fail to adhere to the terms of this order, you may face arrest and trial under Section 303(a) of the Federal Land Policy Management Act (43 U.S.C. 1733(a)). If convicted, you will be subject to a fine of not more than $100,000 or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense (see 43 CFR 3809.700).

Appeal of the Decision

[*See Template 10.1-1, Field Office Decision – Appeal Language and Template 10.1-3, Request for a Stay*]

Should you elect to have an informal hearing before the State Director (pursuant to 43 CFR 3809.602(b)), your period to file an appeal with the Interior Board of Land Appeals would be 30 calendar days following your receipt of the State Director's decision.

If you have any questions concerning this notification, please contact [*program specialist name and contact information*].

Sincerely,

[*Signature*]
Field Manager

1 Enclosure
1 - Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals
cc: [*State Director*]
[*Regional Solicitor*]

Template 10.1-1 - Field Office Decision – Appeal Language

Appeal of a Decision under 43 CFR 3809

If you are adversely affected by this decision, you may request that the BLM [*enter appropriate state*] State Director review this decision. If you request a State Director Review, the request must be received in the BLM [*enter appropriate State*] State Office at [*insert State Office mailing address*], no later than 30 calendar days after you receive or have been notified of this decision. The request for State Director Review must be filed in accordance with the provisions in 43 CFR 3809.805. This decision will remain in effect while the State Director Review is pending, unless a stay is granted by the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the BLM [*enter appropriate State*] State Office to determine when the BLM received the request for State Director Review. You have 30 days from the end of the 21-day period in which to file your Notice of Appeal with this office at [*insert address of field office issuing the decision*] which we will forward to IBLA.

If you wish to bypass a State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 3809.801(a)(1). Your Notice of Appeal must be filed in this office at [*insert address of field office issuing the decision*] within 30 days from receipt of this decision. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 that contains information on taking appeals to the IBLA.

This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Appeal of a Decision under 43 CFR 3715

If you are adversely affected by this decision, you may appeal to the IBLA under 43 CFR part 4. If you appeal this decision, you must file a Notice of Appeal to this office at [*insert address of field office issuing the decision*] within 30 days from receipt of this decision. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 that contains information on taking appeals to the IBLA.

This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Template 10.1-2 - State Director Decision – Appeal Language

Appeal of the Decision

This decision may be appealed to the Interior Board of Land Appeals (IBLA) in accordance with the regulations contained in 43 CFR, part 4 and the enclosed Form 1842-1. If an appeal is taken, your Notice of Appeal must be filed in this office [*insert state office address*] within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Template 10.1-3 - Request for a Stay

Request for a Stay

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by Interior Board of Land Appeals (IBLA), the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal must show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

Appendix B - Present Value Determination

This appendix contains the steps to follow in calculating the present value of future costs. To establish the amount of money that needs to be invested in a long-term funding mechanism, the future costs need to be stated as a present value for the year the account will be established and start growing in value. To do this calculation, a standard present value analysis needs to be performed.

The discount rates, interest rates, and other figures used in this document are for example purposes only. In conducting a present value analysis the user must determine the appropriate inputs given the specifics of the long-term funding mechanism being established. The inputs and assumptions applied in a present value calculation will significantly affect the results. It is imperative that defensible inputs and assumptions are used in generating these calculations. Unless the individual performing the present value calculations has the knowledge and expertise in developing and applying these inputs and assumptions, a knowledgeable source should be called upon.

Discount Rate

A critical component to a present value calculation is determining the appropriate discount rate. For this type of analysis, the appropriate discount rate should reflect the anticipated net return on investment. To estimate the anticipated net return on investment, the BLM State Director must first determine what financial instruments are appropriate and acceptable for such a funding mechanism.

The choice of the discount rate to use in the analysis is critical and can be confusing; the responsible BLM office should consult the BLM State Office economist if there are concerns about the appropriate discount rate to use.

Interest Rates - Of the acceptable financial instruments under 43 CFR 3809.555, U.S. Treasury, Municipal, and corporate bonds are the most appropriate for this type of investment. The interest rates U.S. Treasury, Municipal, or corporate bonds carry depends on several factors, including default risk, tax status, and maturity. Generally, the higher the default risk associated with the bond, the higher the interest rate; tax exempt instruments generally come with a lower interest rate; and the longer the term of the bond, the higher the interest rate. Table 1, Reported Bond Interest Rates, provides examples of the interest rates for U.S. Treasury, Municipal, and corporate bonds reported for two time periods (May 28, 2002 and May 6, 2002).

The rates in Table 1 are examples of actual market rates that are typically reported in the financial section of most large newspapers. These rates reflect the anticipated return on investment associated with each investment. They are reported market rates and, as such, the interest rates include the anticipated effect of inflation that is expected to occur over the term of the financial instrument, i.e., they are nominal rates. As with any figures provided in this document, they are examples of the type of information that is available in print and online.

A number of sources exist that provide assumptions on discount rates and future inflation rates. One such source is the U.S. Government's Office of Management and Budget (OMB). Among other functions, OMB provides guidance to Federal agencies on what discount rates to use when conducting benefit-cost and cost-effectiveness analyses. Although the analysis required in establishing the amount of a trust fund is not identical to a cost-effectiveness analysis, the OMB guidance is still useful and relevant.

Table 1
Reported Bond Interest Rates

Debt Securities	Interest Rate May 28, 2002	Interest Rate May 6, 2002
10-Year U.S. Treasury	5.12	5.05
10-Year AAA Municipal Bond	4.03	4.01
10-Year AA Municipal Bond	4.00	3.98
10-Year AAA Corporate Bond	5.62	5.62
10-Year AA Corporate Bond	5.91	5.99
30-Year U.S. Treasury	5.66	5.53
20-Year AAA Municipal Bond	4.88	4.83
20-Year AA Municipal Bond	4.89	4.85
20-Year AAA Corporate Bond	6.28	6.20
20-Year AA Corporate Bond	6.58	6.61

Annually OMB issues its guidance on discount rates in Circular A-94, Appendix C, Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses (*http://www.whitehouse.gov/omb/circulars/a094/a094.html*). Appendix C is updated annually and presents nominal and real discount rates for both public and private funded projects. For federally funded projects, the discount rate is based on the Government's current cost of borrowing, or current interest rates from U.S. Treasury notes and bonds. For example, Appendix C, revised January 2006, set the 30-year real interest rate at 3.0 percent and the 30-year nominal rate at 5.2 percent. The OMB Circular also provides discount rate guidance for privately funded projects. For these projects the recommended rate is based on an estimate of the marginal pretax rate of return on an average investment in the private sector in recent years.

Fees and Taxes - Trust account management fees and income taxes potentially reduce the return on an investment. Any funding mechanism required under 43 CFR 3809.552(c) must be self-sustaining, including an approach to allow for the payment of these costs from the fund. One way to account for these costs is to adjust the discount rate to reflect these costs.

To account for a trust account management fee that is stated as a percentage of the account balance, the rate of the applicable annual management fee should be subtracted from the anticipated return on investment for the account. For example, if the annual return on investment is projected as 5.2 percent and the management fee is 1 percent of the total annual account balance, then the discount rate should reflect that reduction in the net return, i.e., 4.2 percent (5.2 - 1.0 = 4.2).

To the extent taxes reduce the effective return on investment for funds in the trust fund, they must be accounted for. However, determining the effect of taxes on the return on investment is not as straightforward as it is for the trust account management fees. The type of financial instruments that the funds are invested in will effect what taxes are due. For example, Municipal bonds are generally exempt from Federal, state, and local taxes. U.S. Treasuries are exempt from state taxes, but not Federal taxes. Corporate bonds are subject to both Federal and state taxes.

In assessing the effect of taxes, the rate at which the tax will be applied needs to be considered. One way to address this question is to consider the different market interest rates on tax exempt and non-exempt investment instruments. At the time this guidance was being prepared the average annual return on long-term AAA Municipal bonds was about 15 percent lower than those offered for comparable maturity U.S. Treasuries. Since the security, maturity, and state and local tax status for these two instruments are relatively similar, that average 15 percent difference reflects the effect of Federal taxes on the return on investment. For example, using a 5.2 percent nominal rate and an anticipated trust account management fee of 1 percent, the return on investment in the fund is projected as 4.2 percent. That return is then reduced by 15 percent to account for Federal taxes. Fifteen percent of 4.2 percent is approximately 0.6 percent, resulting in a net return on investment for funds in the account of about 3.6 percent. **Note, this calculation is provided only as an example.** Consult with the Solicitor's Office to determine whether the mechanism may be considered to be a non-profit mechanism which would be exempt from Federal income tax.

Real Rates - Where the cost inputs used in the analysis are real or constant-dollar inputs, the discount rate must also be a real rate; the inflation expectation needs to be removed from the reported market rate. A real discount rate is the difference between the nominal interest rate and the assumed inflation rate. It is recommended where adjustments are necessary to eliminate the inflation assumptions from observed market rates, the BLM should consider using an established source such as OMB's inflation assumptions found in Circular A-94, Appendix C. For example, the inflation rate used by OMB in Appendix C (January 2006) was 2.2 percent per year. Using the example above, where the net return on investment, stated in nominal terms, is 3.6 percent, the real net return on investment would be 1.4 percent (3.6 - 2.2 = 1.4).

Determining the Present Value

Present Value Calculation - Once an appropriate discount rate that reflects the net return on investment has been determined, the present value of the future costs can be calculated. Table 2, Present Value Calculations, provides an example of how future costs can be discounted to determine their present value. For this example, the anticipated post-reclamation obligations run from year 30 through year 42, the hypothetical costs are presented as real (constant-dollar) costs (C), and the discount factor (DF) is based on OMB's (February 2006) 30-year published real interest rate (5.2 percent), less a 1 percent annual trust fund management fee, 0.6 percent for Federal taxes (marginal tax rate of 15 percent) and an inflation assumption of 2.2 percent. DF is calculated as $1/(1+i)^t$, where "i" is the discount rate (1.4 percent) and "t" is the year. The present value (PV) for each year's costs is the product of those estimated costs and the discount factor.

The present value of the estimated costs for year 30 is calculated as:

$DF=1/(1+i)^t$

$DF=1/(1+0.014)^{30}$

$DF=0.6590$

$PV=C(DF)$

$PV=\$10,000(0.6590)$

$PV=\$6,590$

Table 2
Present Value Calculations

Year	Estimated Constant-Dollar Costs	Discount Factor	Present Value Of Costs
30	10,000	0.6590	6,590
31	10,000	0.6499	6,499
32	10,000	0.6409	6,409
33	10,000	0.6320	6,320
34	10,000	0.6233	6,233
35	150,000	0.6147	92,207
36	10,000	0.6062	6,062
37	10,000	0.5979	5,979
38	10,000	0.5896	5,896
39	10,000	0.5815	5,815
40	150,000	0.5734	86,015
41	10,000	0.5655	5,655
42	10,000	0.5577	5,577
Total			245,257

In this example, the operator would need to deposit $245,357 into the trust fund at the beginning of year one, in order to meet those estimated post-reclamation obligations in years 30 through 42.

In conducting a discount analysis it is important to keep in mind the uncertainties of the inputs and the sensitivity of the analysis to certain inputs. Specifically, a slight change in the discount rate can significantly change the amount of money the operator will need to commit to the fund. To demonstrate this sensitivity, by using a higher discount rate (2.5 percent versus 1.4 percent) in the example shown in Table 2 above, the operator would need to deposit $164,802.

Period of Analysis - For trust funds or other funding mechanisms that cover post-reclamation obligations over a very long period of time, or may even need to be perpetual, determining the appropriate period of the analysis becomes problematic. Mathematically the calculations, similar to that performed in Table 2, can be made for any time period. However, the present value of the

cost of any post-reclamation obligations becomes smaller and smaller the further in the future those obligations are expected to occur. For example, the present value of a $10,000 obligation in year 30, using a 2.5 percent real discount rate, is $4,767. If that same obligation is in year 100, the present value is $846. For year 200, that $10,000 obligation has a present value of $72. At some point the calculations of the present value of obligations into the distant future are not very meaningful.

Variability in the inputs, especially in the discount rate, due to uncertainties far outweighs the added value due to extending the calculations. To demonstrate this point, instead of using a 2.5 percent discount rate, a 3.5 percent discount rate is used. For that calculation, the present value of $10,000 obligation in year 200 is $10. If the discount rate applied is 1.5 percent, the present value for that future obligation is $509.

Unfortunately, there are no economic standards or rules defining when the point is exceeded when additional present value calculations do not contribute in any meaningful way to the ultimate answer. When defining the parameters for the analysis for a particular project, it is recommended the responsible BLM office consult the BLM State Office economist concerning the appropriate time period to be analyzed.

Permanent or Perpetual Fund - Where the cost of meeting the post-reclamation obligations are projected to be reoccurring costs and those costs are expected to continue indefinitely, it may be appropriate to calculate the reoccurring costs based on permanent funding needs. In such a situation, there is an alternative to conduct a discount analysis as described above. A simpler method to estimating the amount of money that will need to be deposited is to divide the estimated average annual real cost (C) by the selected real discount rate (i). For example, if the average cost to cover the operator's post-reclamation obligations is estimated to be $10,000 per year, in constant dollars, and a 3.9 percent real discount rate is used, $256,410 (10,000/0.039) would need to be deposited into the funding mechanism to establish a permanent or perpetual fund. This amount would cover the cost of those annual obligations into perpetuity without ever touching the principal.

$$PV=C/i$$

$$PV=\$10,000/0.039$$

$$PV=\$256,410$$

The example above provides for the annual dispersal of funds to begin at the end of year one. Instead the annual payments from the fund may not start until sometime in the future, e.g., year 10. In such a case, the fund would not need to be established with the full amount but rather an amount that would grow to $256,410 by year 10. To determine the amount that would need to be deposited; the present value will need to be estimated using the discount analysis process. The present value of $256,410 in year 10 is $174,896 using a 3.9 percent discount rate.

$$DF=1/(1+i)^t$$

$DF=1/(1+0.039)^{10}$

$DF=0.6821$

$PV=C(DF)$

$PV=\$256,410(0.6821)$

$PV=\$174,896$

Phased Funding of the Account - Where the District/Field Manager determines the public's interests are adequately protected, a trust fund or other funding mechanism may be established as an escrow account with the operator depositing funds needed to ensure the post-reclamation obligations over time. If this approach is used, growth of the fund will be from the interest gained and increase in value of the assets plus the additional funds being deposited. As such, a simple present value analysis, as discussed above, cannot be used to determine the amount of money that will need to be deposited when establishing the fund. That analysis needs to be based on the point in time when all deposits have been made.

In the example provided in Table 2 above, if the District/Field Manager allows the operator to establish the trust fund by depositing the needed funds over a period of time, then $245,357 would not be the initial deposit as suggested by the above present value analysis. For example, the operator is allowed to make equal deposits over a 5-year period in establishing the fund. In effect, year one of the present value analysis would actually be year five of the operation; the year the trust fund is fully funded. Table 3 – Phased Funding Calculations presents this concept.

Table 3
Phased Funding Calculations

Year Of Operation	Year Since Fully Funded	Estimated Constant-Dollar Costs	Discount Factor	Present Value Of Costs
30	25	10,000	0.7064	7,064
31	26	10,000	0.6966	6,966
32	27	10,000	0.6870	6,870
33	28	10,000	0.6775	6,775
34	29	10,000	0.6682	6,682
35	30	150,000	0.6590	98,845
36	31	10,000	0.6499	6,499
37	32	10,000	0.6409	6,409
38	33	10,000	0.6320	6,320
39	34	10,000	0.6233	6,233
40	35	150,000	0.6147	92,207
41	36	10,000	0.6062	6,062
42	37	10,000	0.5979	5,979
Total				262,911

In this example, the operator will need to have $262,911 in the trust fund by year five of the operation to ensure adequate funds will be available to meet the estimated post-reclamation obligations.

To determine the required operator deposits for years one though five, a sinking-fund deposit analysis will need to be conducted. This analysis is used to calculate a uniform series of equal end-of-period payments to accumulate the required amount of money by a future year. The sinking-fund deposit factor is calculated as $[i/((1+i)^n-1)]$ where "i" is the discount rate and "n" are the number of years. To solve for the required annual payments (AP), the future value (FV) at the end of year five is $262,911 as calculated in Table 3, the discount rate is 1.4 percent and period of analysis is 5 years.

$$AP=FV[i/((1+i)^n-1)]$$

$$AP=\$262,911[0.014/((1+0.014)^5-1)]$$

$$AP=\$51,130$$

For this example, the operator will need to deposit $51,130 into the trust fund each year for the first 5 years of operation. The combination of these deposits and an increase in the value of the funds in the account will grow to the desired amount by year five. From year five to when the funds will be needed, the account will continue to grow based on the gain in value of the funds in the account.

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Appendix C – Example Formats

This appendix contains example formats for Notices and Plans of Operations submitted under the surface management program. The example formats are labeled according to the handbook section number where first referenced. It is recognized that not one size fits all when an operator prepares its Notice and Plan submissions. The example formats are intended to provide a consistent starting point with the recognition that the operator will need to modify the language to accommodate the particular circumstances or practices in the State or District/Field Office. These formats are provided to assist the operator in documenting the information the BLM will need to review the proposed Notice or Plan. Use of these formats is at the operator's discretion; the BLM does not require the operator use these formats.

Format 3.2-1 - Notice

– Notice –
for
Exploration Activity under the Surface Management Regulations at 43 CFR 3809

You may submit a Notice for surface disturbing activity greater than casual use instead of a Plan of Operations. To qualify for a Notice the activity must: 1) constitute exploration, 2) not involve bulk sampling of more than 1,000 tons of presumed ore, 3) must not exceed 5 acres of surface disturbance, and 4) must not occur in one of the special category lands listed in 43 CFR 3809.11(c). The regulations at 43 CFR 3809.301(b) describe the information that you, the operator, are required to provide in order for the Notice to be complete. The Notice is to be filed in the BLM field office with jurisdiction over the land involved. The Notice does not need to be on a particular form but must contain the information required by 43 CFR 3809.301(b), as outlined below. This format has been prepared to assist small or medium scale operators address the content requirements for a Notice. Use of this worksheet is voluntary.

Part 1 - Operator Information

You must identify the operator responsible for conducting the proposed activity. If the operator is a corporation or other business entity, then a corporate business entity point of contact must be identified. You must notify the BLM in writing within 30 days of any change of operator or business entity point of contact or in the mailing address of either.

Name(s):	Point of Contact (*if operator is a business entity*):
Mailing Address:	Mailing Address:
Phone Number: Fax Number:	Phone Number: Fax Number:
Email address (*optional*):	Email address (*optional*):
Taxpayer Identification Number (*for an individual this is your social security number*):	
Unpatented Mining Claims (*list the name and BLM serial number(s) of any unpatented mining claim(s) where disturbance would occur*):	
Other Federal, State, or Local Authorizations (*list any other permits or licenses you have either applied for or been issued for this project*):	

Part 2 – Description of Exploration Activity and Reclamation

You must provide a complete description of all equipment, devices, or practices you propose to use during operations with a level of detail appropriate to the type, size, and location of the activity. The type of information required is listed below. You only need to address those items applicable to your operations.

Project Area Maps (*Attach map(s) that show the location of your project in sufficient detail for BLM to find it and the location of access routes that will be used or constructed. Show all relevant project features on the maps or drawings*):	___ Exploration location ___ Access routes, new and existing construction ___ Drill site/drill hole location(s) ___ Trenching location/depth ___ Underground workings ___ Support facilities/buildings/utility service/etc. ___ Other:
Activity Description (*Address each applicable project feature, describe the equipment you intend to use and measures you will take to prevent unnecessary or undue degradation.*	___ Access route construction and use ___ Drill site construction ___ Drilling operations/drill fluids & cuttings handling ___ Trenching or surface sampling ___ Underground sampling or excavation ___ Bulk sample or waste stockpile placement ___ Support facilities construction and operation ___ Other:
Activity Description (*Describe your proposed exploration activity. Attach additional sheets/maps where needed*)	

Reclamation Plan (*provide a reclamation plan to meet the standards in 43 CFR 3809.420. Include a description of the equipment, devices and practices you will use. Address the applicable components in the right column*)	___ Drill hole plugging procedures ___ Disposal of drill cuttings or other waste material ___ Drill site/drill road regrading and reshaping plans ___ Closure of mine openings and test pits ___ Topsoil salvage, handling, and replacement ___ Vegetation reestablishment/weed control ___ Removal/stabilization of buildings & support facilities ___ Other:
Reclamation Plan (*Describe how you will complete reclamation plan of the project area. Attach additional sheets/maps where needed*)	
Schedule of Activities (*provide a schedule with the date you expect to begin operations and the date you expect to complete reclamation. Notices expire in 2 years, after which, only reclamation may be conducted unless the Notice is extended.*)	

Part 3 – Reclamation Cost Estimate

A reclamation cost estimate (RCE) is required for your Notice to be complete. The following are general RCE requirements. The BLM is available to assist you in developing your reclamation cost estimate.

Reclamation Cost Estimate Elements (*Account for each of these cost elements*)	___ The RCE must cover the Reclamation Plan at any point in the project life ___ Calculate the RCE based on the BLM's cost to contract for the reclamation ___ Include all equipment use, supplies, labor, and power in direct costs ___ Allow for a contingency cost (10% of direct costs) ___ Allow for contractor profit (10% of direct costs) ___ Include contractor liability insurance (1.5% of total labor cost) ___ For direct costs over $100,000 add 3% for payment & performance bonds ___ Add 12% of direct costs for BLM contract administration & indirect costs
Reclamation Cost Estimate (*Attach additional sheets/maps where needed*)	

The Notice is submitted this date by:

_____

(Signature of operator or agent) Date

_____

(Signature of co-operator or agent) Date

Additional Processing Information

Within 15 calendar days of receiving your Notice, the BLM will review the Notice material and notify you of one of the following:

1) Your Notice is complete and the amount of the financial guarantee that must be provided before operations may begin.
2) Your Notice is not complete, specifying what information is missing or incomplete.
3) Your Notice is complete but that BLM requires additional time for consultation, field visits, or review before it can evaluate the Notice.
4) Your Notice must be modified in order to prevent unnecessary or undue degradation.
5) Your operations do not qualify for a Notice.

Once a complete Notice is received, and the BLM determines that it will not cause unnecessary or undue degradation, the BLM will notify you that your Notice has been accepted and issue a decision on the amount of the financial guarantee. However, you must not begin surface disturbing activity until you have provided a financial guarantee in the approved amount to the BLM State Office, and received a decision from that office that the financial guarantee instrument has been accepted.

All Notices expire 2 years from the date of the letter establishing the financial guarantee amount. If you wish to conduct operations for 2 additional years after the expiration date of your Notice, you must notify the BLM in writing on or before the expiration date and meet the financial guarantee requirements. You may extend your Notice more than once.

It should be noted that acceptance of a Notice by the BLM does not constitute a determination regarding the validity or ownership of any unpatented mining claim involved in the operation. In addition, you are responsible for obtaining any use rights or local, state, or Federal permits, licenses, or reviews that may be required for your operation.

A Notice proposing use and occupancy of the public lands, such as full- or part-time residence or the construction, presence, or maintenance of temporary or permanent structures, must also obtain concurrence under the regulations at 43 CFR 3715 that the use or occupancy is reasonably incident to the prospecting or exploration activity.

Format 4.3-1 - Plan of Operations

– Plan of Operations – for Activity under the Surface Management Regulations at 43 CFR 3809

The regulations at 43 CFR 3809.401(b) requires you, the operator, to describe the proposed operations at a level of detail sufficient for the BLM to determine that your operation would prevent unnecessary or undue degradation. The Plan of Operations is to be filed in the BLM field office with jurisdiction over the land involved. The Plan of Operations does not need to be on a particular form but must address the information required by 43 CFR 3809.401(b), as outlined below. This format has been prepared to assist small or medium scale operators in addressing the content requirements for a Plan of Operations. Use of this worksheet is voluntary.

Part 1 - Operator Information

You must identify the operator responsible for conducting the proposed activity. If the operator is a corporation or other business entity, then a business entity point of contact must be identified. You must notify the BLM in writing within 30 days of any change of operator or business entity point of contact or in the mailing address of either.

Name(s):	Point of Contact (*if operator is a business entity*):
Mailing Address:	Mailing Address:
Phone Number: Fax Number:	Phone Number: Fax Number:
Email address (*optional*):	Email address (*optional*):
Taxpayer Identification Number (*for an individual this is your social security number*):	
Unpatented Mining Claims (*list the name and BLM serial number(s) of any unpatented mining claim(s) where disturbance would occur*):	
Other Federal, State, or Local Authorizations (*list any other permits or licenses you have either applied for or been issued for this project*):	

Part 2 – Description of Operations and Reclamation

You must provide a complete description of all equipment, devices, or practices you propose to use during operations. The type of information required is listed below. You only need to address those items applicable to your operations. Attach maps and additional sheets as needed.

Project Area Maps (*check project feature and show on attached maps or drawings*):	___ Exploration location ___ Drillsite/drill hole location(s) ___ Access routes, new and existing ___ Mineral process facility layout ___ Mining areas/underground workings ___ Waste rock/tailing location ___ Support facilities/building location/utility service ___ Other:
Operating Plans, including preliminary or conceptual designs and cross sections (*address applicable project feature, attach design information, and provide a narrative explaining how operations are to be conducted*)	___ Mining areas/underground workings ___ Mineral processing facilities ___ Waste rock/tailing disposal ___ Water management plans ___ Rock characterization and handling plans ___ Quality assurance plans ___ Access route construction and use ___ Pipelines, power lines or utility services ___ Other:
Operating Plan (*Describe your operating plan. Attach additional sheets/maps where needed.*)	

Reclamation Plan (*provide a reclamation plan to meet the standards in 43 CFR 3809.420. Include a description of the equipment, practices, and devices you will use. Address the applicable components in the right column.*)	___ Drill hole plugging procedures ___ Closure of mine openings and reclamation ___ Regrading and reshaping plans ___ Isolation & control of acid-forming/toxic materials ___ Topsoil salvage, handling and replacement ___ Vegetation reestablishment/weed control ___ Wildlife habitat/riparian area rehabilitation ___ Removal/stabilization of buildings & support facilities ___ Post-closure management ___ Pit backfilling feasibility where pits are to be left open (*Address economic, environmental, and safety factors.*)
Reclamation Plan (*Describe your reclamation plan. Attach additional sheets/maps where needed.*)	
Schedule of Operations (*Provide a schedule from project start-up through final closure. Identify major phases such a development, mining, processing, and reclamation. Operations with open-ended or undefined schedules cannot be accepted.*)	

Part 3 – Monitoring Plan

You must provide a plan to monitor the effects of your operation. The monitoring plan should be designed to do the following: (1) demonstrate compliance with the Plan of Operations and other environmental regulations, (2) provide early detection of potential problems, and (3) supply information that will assist with any needed corrective actions. The scope of monitoring depends on the location and complexity of the operation. Generally, exploration activity requires little or no monitoring, while certain mining activity may need comprehensive monitoring plans. Monitoring plans should avoid duplication by incorporating other state or federal monitoring requirements.

Resource Conditions to Monitor (*Indicate the conditions you propose to monitor.*)	___ Surface or groundwater quality/quantity ___ Air quality ___ Vegetation or reclamation conditions ___ Process facility containment performance ___ Stability conditions ___ Wildlife mortality ___ Noise or light levels ___ Other (include state requirements):
Monitoring Plan Elements (*For each resource or condition monitored address these elements.*)	___ Type and location of monitoring devices ___ Sampling parameters and frequency ___ Analytical methods ___ Reporting procedures ___ Adverse monitoring result thresholds & procedures ___ Other:
Monitoring Plans (*Describe your monitoring plan(s). Attach additional sheets/maps where needed.*)	

Part 4 – Interim Management Plan

All Plans of Operations must include an Interim Management Plan that describes how the project area will be managed during periods of temporary closure (including periods of seasonal closure).

Interim Management Plan Elements (*Address each of these elements.*)	___ Schedule of anticipated periods of closure ___ Provisions to notify the BLM of unplanned or extended closures ___ Measures to stabilize excavations and workings ___ Measures to isolate or control toxic materials ___ Provisions to store or remove equipment, supplies, or structures ___ Measures to maintain the project area in a safe and clean condition ___ Plans for monitoring site conditions during non-operation ___ Other:
Interim Management Plan (*Describe your Interim Management Plan. Attach additional sheets/maps where needed.*)	

Part 5 – Reclamation Cost Estimate

A reclamation cost estimate (RCE) is required to process your Plan of Operations (43 CFR 3809.401(d)). The RCE may be submitted with the Plan of Operations, or later at a time to be determined between you and the BLM. The following are general RCE requirements. The BLM is available to assist you in developing the cost estimate.

Reclamation Cost Estimate Elements (*Account for each of these cost elements.*)	___ The RCE must cover the Reclamation Plan at any point in the project life ___ Calculate the RCE based on the BLM's cost to contract for the reclamation ___ Include all equipment use, supplies, labor, and power in direct costs ___ Include fluid management of any mill process solutions in direct costs ___ Allow for a contingency cost (10% of direct costs) ___ Allow for contractor profit (10% of direct costs) ___ Include contractor liability insurance (1.5% of total labor cost) ___ For direct costs over $100,000 add 3% for payment & performance bonds ___ Add 12% of direct costs for BLM contract administration & indirect costs
Reclamation Cost Estimate (*Attach additional sheets/maps where needed.*)	

The proposed Plan of Operations is submitted this date by:

_____

(Signature of operator or agent) Date

_____

(Signature of co-operator or agent) Date

Additional Processing Information

Within 30 calendar days of receiving your proposed Plan of Operations, the BLM will review the submitted material and notify you: 1) that your Plan of Operations is complete, that is, it meets the content requirements under 43 CFR 3809.401(b); or 2) that your Plan does not contain a complete description of the proposed operations, specifying what information is missing or incomplete; or 3) that your Plan of Operations is complete, but the BLM cannot process the Plan until certain additional steps are taken which could include you providing adequate baseline data, the BLM conducting an environmental review, or the BLM consulting with various entities such as the State or Indian tribes.

Once a Plan of Operations is determined to be complete, an environmental analysis is prepared. The environmental analysis and/or complete Plan of Operations is available for public comment for not less than 30 days. The processing of a Plan of Operations that requires preparation of an environmental impact statement (EIS) is subject to the cost recovery provisions of the regulations. The BLM will notify you immediately if it is determined your Plan of Operations falls within the cost recovery requirements.

Upon completing review of your Plan of Operations, including environmental analysis, consultation, and consideration of public comments, the BLM will issue a decision that: 1) approves the Plan of Operations basically as submitted; or 2) approves the Plan of Operations subject to changes or conditions needed to prevent unnecessary or undue degradation; or 3) disapproves or withholds approval of the Plan of Operations, listing the reason for not approving the Plan. The decision to approve or deny a Plan of Operations can be appealed to the BLM State Director or directly to the Interior Board of Land Appeals (IBLA).

Even after receiving a decision approving your Plan of Operations, you must not begin surface disturbing activity until you have provided a financial guarantee in the amount of the approved reclamation cost estimate to the BLM State Office, and received a decision from that office that the financial guarantee instrument has been accepted.

It should be noted that approval of a Plan of Operations by the BLM does not constitute a determination regarding the validity or ownership of any unpatented mining claim involved in the operation. In addition, you are responsible for obtaining any use rights or local, state, or Federal permits, licenses, or reviews that may be required for your operation.

A Plan of Operations proposing use and occupancy of the public lands, such as full- or part-time residence or the construction, presence, or maintenance of temporary or permanent structures, must also obtain concurrence under the regulations at 43 CFR 3715 that the use or occupancy is reasonably incident to the prospecting, mining, or processing operations.

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Appendix D - Compiling an Administrative Record

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

Memorandum

JUN 27 2006

To: Assistant Secretaries
Directors of Bureaus and Offices

From: David L. Bernhardt
Deputy Solicitor

Subject: Standardized Guidance on Compiling a Decision File and an Administrative Record

The Office of the Solicitor has developed guidance to assist you and your employees when compiling Decision Files and administrative records. This information should be useful to Bureaus and Offices when handling electronic materials and drafts encountered in the decision-making process. In the future, this guidance will be incorporated into the Departmental Manual.

As many of you are aware, decision files and administrative records document the Department's decision-making process and record the basis and rationale for making the decision. Decision Files should be created contemporaneously with development of agency decisions, while administrative records evidence the Department's basis for defending agency decisions.

If you have any questions about the contents of this guidance, please contact Art Gary, Associate Solicitor, Division of General Law.

cc: Regional and Field Solicitors

Attachment

Department of the Interior
Standardized Guidance on Compiling a Decision File and an Administrative Record

PART A – INTRODUCTION

I. Purpose of This Guidance

The purpose of this guidance is to provide Bureaus and Offices within the Department of the Interior standardized procedures for compiling a Decision File for the records that contemporaneously document any decision and, if necessary, an administrative record ("AR") for judicial review. These procedures apply to the preparation of Decision Files and ARs of agency decisions other than formal rulemaking[1] and administrative adjudication, such as matters before the Office of Hearings and Appeals. Agency personnel should promptly consult the Office of the Solicitor when questions arise concerning the composition of a Decision File and throughout the process of preparing an AR to ensure that they are properly compiled. This guidance establishes internal Department guidelines only.[2]

II. Importance of Compiling an Accurate and Thorough Decision File and AR

Under the Administrative Procedure Act ("APA"), a court reviews an agency's action (*e.g.*, any decision) to determine if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (2)(A). In making this determination, a court evaluates the agency's complete AR. Consequently, the agency must take great care in compiling a complete AR. Courts will generally defer to agency decisions, although the degree of deference often varies. For example, if the Department made a thorough and informed decision, but documentation supporting the decision is not contained in the AR, any deference a court may have given to the agency decision could be lost or diminished.

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[1] Agency rulemaking proceedings primarily take two forms – formal and informal rulemaking. In general, formal rulemaking results when a statute specifically requires an agency to conduct a trial-like "on the record" hearing and provides interested parties an opportunity to testify and cross-examine adverse witnesses before issuing a particular rule. *See* Administrative Procedure Act ("APA"), 5 U.S.C. §§ 556-557. In contrast, informal or "notice and comment" rulemaking only requires an agency to perform certain notice-and-comment procedural requirements prior to issuing a rule. *See* APA, 5 U.S.C. § 553. For purposes of this guidance use of the term "rulemaking" will include only informal rulemaking unless otherwise specified.

[2] This document does not create any rights, substantive or procedural, that are enforceable at law by any party.

In general, an AR is a compilation of documents[3] that includes the decision-making documents, as well as relevant agency documents generated or received in the course of the decision-making process. The AR should document the process the agency used in reaching its final decision to demonstrate it followed the required procedures, as provided by statute, regulation, and any applicable agency policies, and must explain and rationally support the agency's decisions. Moreover, the AR must demonstrate that the agency considered opposing viewpoints, if any, and provide a thorough explanation as to why the preferred course of action was adopted.

For this and other reasons, it is important that all Bureaus and Offices maintain organized, accurate, and thorough Decision Files that document work on their decisions. A complete Decision File ensures that the decision-maker, typically the individual signing the decision document, has access to information sufficient to render a well-reasoned decision. An agency must also protect the public's interest in government documents, and preserve its own interests, including compliance with the Federal Records Act and related requirements. Finally, if an agency decision is challenged in court, a thorough Decision File will enable the agency to compile an AR sufficient to defend the decision.

The Decision File, and any subsequent AR presented to the court, should:

- Contain the complete "story" of the agency decision-making process, including options considered and rejected by the agency;
- Include important substantive information that was presented to, relied on, or reasonably available to the decision-maker;
- Establish that the agency complied with relevant statutory, regulatory, and agency requirements; and
- Demonstrate that the agency followed a reasoned decision-making process.

The Decision File should be compiled as documents are generated or received during the decision-making process, making it a contemporaneous record of the decision. This practice will also increase agency efficiency and performance should it become necessary to create an AR.

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[3] The general term for all agency documents is records, which are defined in 44 U.S.C. § 3301 as:
all books, papers, maps, photographs, machine readable materials [*e.g.*, e-mails, videos, etc.], or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business.
To avoid confusing "records" with "administrative record" and the Department's general records management requirements, this guidance generally refers to individual records as "documents," except where otherwise appropriate.

III. Relation of Decision File or AR Compilation to Other Agency Record Management and Disclosure Requirements

The Department has multiple responsibilities for the maintenance and disclosure of federal records. For purposes of this guidance, these responsibilities fall into three general categories that often intersect: 1) records management,[4] which includes maintaining a Decision File; 2) the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; and 3) AR compilation.

Documents contained in a Decision File and an AR are not necessarily identical to those that might be released in response to a FOIA request. Although some documents previously released to the public through FOIA may be relevant to the decision and should properly be included in a Decision File and an AR, all documents released in response to a FOIA request may not need to be included in a Decision File and an AR because they are not relevant to the decision or the decision-making process. Conversely, an agency may not be able to disclose all documents in a Decision File or an AR to the public, for example, because they may be covered by a protective order.

This guidance relates only to agency documents identified for inclusion in a Decision File and an AR. Questions concerning general records management, FOIA, and how these statutes and rules relate to an AR should be brought to the attention of the Office of the Solicitor.

PART B – CREATING A CONTEMPORANEOUS DECISION FILE

I. The Decision File

A Decision File is the contemporaneous record of the agency's decision-making process. Practically, the Decision File is a collection of documents maintained by a designated employee, generally the employee, the program manager, the project manager, or their staff who has access to relevant documents, that details the development of an agency decision. If the decision is subjected to judicial review, the Decision File will be used as the primary basis for compilation of the AR. Other terms often used by Bureaus and Offices to describe a Decision File include "case file," "action file," "agency file," "official file," or "issue file."

II. Guidelines For Use in Generating a Decision File

Bureaus and Offices have wide latitude to create and maintain Decision Files, but the following general guidelines should be followed:

- The Office of the Solicitor should be consulted throughout the process as necessary;

[4] Federal records management requirements are governed by 44 U.S.C. Chapter 29, which is administered by the National Archives and Records Administration.

- A Decision File should be created once consideration of a decision begins, which will vary based on the situation;
- All documents necessary to create a single organized source of information that records the agency decision and decision-making process should be collected;
- The Decision File should be kept in an accessible location and should be organized in a logical manner, such as chronologically or by topic, so that documents can be added to the Decision File as they are generated or received;
- All documents placed in the Decision File should be appropriately labeled and dated;
- Substantive meetings that are relevant to the decision-making process should be sufficiently documented;
- Drafts that help substantiate the agency's decision-making process should be included in the Decision File;
- Documentation of electronic information (such as that found on websites) and communications (such as emails) should be maintained in the Decision File only if relevant, substantive, and if they document the decision-making process;
- When information contained on websites is relied on, the Decision File should contain a contemporaneous copy of the website, including the address and date that it was downloaded, to ensure that the information relied on is preserved before the web site content changes;
- Contemporaneous memoranda that document relevant oral communications, confusing emails, and other matters that demonstrate the agency's decision-making process should be written or collected and placed in the Decision File; and
- Once the decision-maker has made a final decision, the Decision File should be closed.

PART C – COMPILING AN ADMINISTRATIVE RECORD

1. Sources To Consult Before Compiling an AR

The APA governs judicial review of challenged agency decisions but does not specifically describe what is to be included in an AR. Under certain circumstances, other

statutes and regulations provide specific guidance on compiling ARs. At the outset, the agency, in consultation with the Office of the Solicitor, must determine whether a statute other than the APA applies. Additionally, regulations and implementing guidance may govern how to assemble an AR. In such circumstances, this guidance should be used in conjunction with any specific statutes and regulations.

As a procedural matter, Bureaus or Offices should determine whether they will seek the logistical assistance of the Department's Document Management Unit, in the Office of the Executive Secretariat.

II. Documents That Should Initially Be Collected for an AR

During the initial search phase, a designated employee (the "AR Coordinator") should begin by examining the Decision File, if any, because most, if not all, of the documents that go into an AR should be in a properly maintained Decision File. The AR Coordinator should also direct an additional and thorough search in order to collect other relevant documents, including all primary and supporting documents, which may not be included in the Decision File. Such documents should include substantive documents:

- That were relied upon or considered by the agency, regardless of whether they support or oppose the agency's position;
- That were available to the decision-maker at the time the decision was made (i.e., considered by staff involved in the decision process as it proceeded through the agency), regardless of whether they were specifically reviewed by the decision-maker; and
- Even if the AR Coordinator believes the relevant documents are privileged.

Keep in mind that, while the APA does not specifically describe what is to be included in an AR, a court's review of a decision by an administrative agency is generally based on the reasons given by the agency and the information considered by the agency in the course of making the decision. not on the internal decision making process or on documents that reflect that process.

The AR Coordinator should maintain a written record detailing where he or she searched for documents and who was consulted in the process of compiling the AR. When questions about either the documents that should be included or the scope of any additional search arise, the AR Coordinator should consult with the Office of the Solicitor.

III. Steps To Take After Collecting Documents Related to the Challenged Decision

The AR Coordinator should contact the appropriate Office of the Solicitor reviewer after all documents have been gathered. The Office of the Solicitor will work with the Department of Justice and the AR Coordinator to determine the scope of the AR, such as

what types of documents that have been gathered are relevant to the particular issues in the litigation and should be included in the AR. In addition, the Office of the Solicitor will work with the Department of Justice to provide the AR Coordinator with any specific instructions for formatting, organizing, sorting, or providing the documents for review for assertion of privileges or for determination of relevancy.

The AR Coordinator should ensure that each document to be included in an AR is clean, legible, and complete, even if the document is believed to contain protected or privileged information. The AR Coordinator must ensure that the documents to be included in the AR have not been redacted, edited, or altered in any manner, unless such alterations are part of the original document.

IV. Documents That Should Be Included in an AR

After the documents have been collected, the AR Coordinator should begin to compile the AR. At this point, the AR Coordinator should consult with the Office of the Solicitor to determine if there is any additional guidance to be followed for the specific AR. Specific guidance may include particular issues that should be focused on or types of documents that should be flagged.

The following documents are typically included in an AR when they are relevant, without regard to whether they support or oppose the agency decision or whether the AR Coordinator believes they contain privileged information:

1) All *primary documents*. Primary documents record the agency action that is or may be challenged. They are typically signed or approved by a decision-maker, and commonly include National Environmental Policy Act ("NEPA") documents, such as Environmental Impact Statements or Environmental Assessments; Records of Decision; Endangered Species Act documents, such as a biological opinion; Resource Management Plans; and final rulemaking documents; and

2) All *relevant, supporting documents* that were followed, relied upon, or considered by the agency during the decision-making process. For purposes of this guidance, relevant documents are documents that bear a logical connection to the matter considered and that contain information related to the agency decision at issue. Documents are always relevant if they are procedurally required by statute or regulation as part of the decision-making process.

   Additionally, all supporting documents, which include those documents that affect the substance of the primary documents or the decision, are relevant because they explain the agency decision-making process, were before or available to the decision-maker at the time the decision was made, and were relied upon or considered by the agency during the decision-making process. They include documents that both support and are contrary to the agency decision.

Determinations of relevance may be complicated, affecting the content of the AR and the defense of the agency decision, and should be made in consultation with the Office of the Solicitor. The Office of the Solicitor will consult with the Department of Justice as appropriate. Examples of relevant, supporting documents include:

- Departmental, Office, and Bureau policies, guidelines, directives and manuals;
- Documents contained in previous ARs that were relied upon or considered in the decision-making process (even if not being challenged by the current litigation);
- Documents that have been released to the public, such as through a FOIA request, or are available to the public, including on the Internet;
- Communications and other information received from the public and other agencies and any responses to those communications. These communications can be unsolicited, the result of informal communications (such as between agencies), or part of a formal process such as comments received during NEPA public scoping or during rulemaking. If a consultant or contractor received or compiled public or agency comments, those comments and any reports or summaries should also be included in the AR;
- Articles, books and other publications. If a copy is made, be sure to cite the appropriate sources and follow applicable copyright laws;
- Technical information, monitoring data, sampling results, survey information, engineering reports or studies, and other factual information or data;
- Documents cited as a reference of a primary document, such as a bibliography of an Environmental Impact Statement;
- Reports and other information compiled by consultants and contractors;
- Memoranda to the file, created contemporaneously to the creation of the document, that further explain the content of relevant electronic communications and their attachments, meetings, and phone conversations;
- Electronic communications or other internal communications, such as emails and their attachments, which contain factual information, substantive analysis or discussion, or that document the decision-making process. (See section C.VI for detailed discussions of electronic communications);
- Minutes, transcripts of meetings, and other memorializations of telephone conversations and meetings, including personal memoranda or handwritten

notes that were circulated to colleagues or added to the Decision File. (See section C.VII for detailed discussions of personal memorializations); and

- Drafts of primary or relevant documents indicating substantive deliberations or discussions. (See section C.VIII for a detailed discussion of drafts).

When questions arise about which documents to include, the AR Coordinator should initially include the documents in the AR and then consult with the Office of the Solicitor. In addition, some documents, such as books and published reports, may be particularly lengthy, making them difficult to copy. When a document is particularly large, the Office of the Solicitor should be contacted for instructions on how to proceed. The Office of the Solicitor may be able to work with the Department of Justice and opposing counsel to come to a mutually acceptable agreement concerning how such documents will be produced.

V. Types of Documents That Should Not Be Included in an AR

The following types of documents, although they may be appropriate for inclusion in the Decision File, typically should not be included in the AR:

- Documents that are not relevant to the decision-making process;
- Documents that were not in the agency's possession at the time the decision was made;
- Electronic communications, including emails, which do not contain factual information, a substantive analysis or discussion, or information documenting the agency decision-making process. (See section C.VI for detailed discussions of electronic communications);
- Personal notes, journals, appointment calendars or memorializations maintained by an individual solely for personal use and not circulated to colleagues or added to the agency file. (See section C.VII for detailed discussions of personal memorializations); and
- Drafts of documents that simply agree with previous drafts or represent mere grammatical edits and do not contain significant additional substantive comments. (See section C.VIII for a detailed discussion of drafts).

When questions arise about the documents to be included, the AR Coordinator should initially include the documents in the AR and consult with the Office of the Solicitor.

VI. Electronic Communications

General Guidelines for Electronic Communications: Only electronic information and electronic communications, such as emails, that contain relevant factual information, a

substantive analysis or discussion that formed a material part of the decision-making process, or that actually document the agency decision-making process should be included in the AR. As a general rule of thumb, the great majority of email "chatter" about a decision need not be included in the AR. For example, emails should be included in the AR if they propose or discuss substantive changes to a draft primary document, or if they document substantive supervisory instructions to staff relating to the decision-making process. Such emails that are exchanged between the agency decision-maker, other agencies, stakeholders or representatives from outside parties should also generally be included if they substantively document the decision process. On the other hand, emails that merely set up a meeting or transmit an attached document, or that do not contain substantive relevant information generally do not need to be included in the AR.

The AR Coordinator should ensure that information related to the decision-making process is included in the AR in a manner that is clear and easy for a reviewer unfamiliar with the process to understand. For example, when included in the AR emails must include attachments and identifying information, such as author, recipient and date. In addition, while duplicate copies of emails should typically not be included in an AR, if a duplicate helps to explain the context of a related email, it should be included. Additionally, the AR Coordinator should ensure that the AR includes any memoranda that were inserted into the Decision File prior to the decision to clarify unclear or confusing emails. The AR Coordinator should consult with the Office of the Solicitor to determine if a particular email should be included in the AR.

Personal information: While emails that contain a commingling of personal and official information generally need not be included in the AR, such communications may need to be included in an AR without redaction if the official information substantiates the decision-making process.

Confusing chain messages: Ideally, employees should use care in drafting and sending emails to avoid later confusion in interpreting the chain of communication. Emails with numerous attachments or that contain a commingling of personal and agency information and email chains with multiple parties and topics can lead to confusion and misinterpretation of the intended communication, especially when a long period of time has passed and the reader is less familiar with the subject matter. It may be difficult for an outside party, such as a court, to determine the actual context of an email or portion of an email without relevant attachments or all the emails in a chain. When several separate responses are sent in reply to one original message, the original message should remain attached to each of the responses.

VII. Personal Memorializations

In general, documents that were created solely for an employee's personal convenience, even if they help that employee perform his or her official duties, should not be included in the AR. As a result, diaries, journals, "to-do" lists, personal notes and personal calendars that were created for the author's personal use and that were not distributed to other employees typically should not be included in the AR. However, documents that an

employee was required to create or maintain or that were distributed to or relied on by colleagues and/or the decision-maker and contain information related to the decision-making process should typically be included in an AR. If an employee takes relevant handwritten notes at a meeting and later gives copies of his or her notes to colleagues who were unable to attend the meeting, the notes should be included in an AR if there is no other documentation of the meeting.

However, in those situations where a personal memorialization is the only evidence that a relevant meeting occurred or contains substantive evidence relevant to the decision-making process, it may be necessary to include a personal memoralization in an AR. The AR Coordinator should consult with the Office of the Solicitor to determine if a personal memorialization should be included in a specific AR.

VIII. Draft Documents

Only drafts that help substantiate and evidence the decision-making process should be included in the AR. Drafts of documents that simply agree with previous drafts or represent primarily grammatical edits or were not circulated outside the author's immediate office or working group typically should not be included in an AR. For example, drafts may contain unique information such as an explanation of a substantive change in the text of an earlier draft, or substantive notes that represent suggestions or analysis tracing the decision making process.

The AR Coordinator should ensure that all drafts are labeled with identifying information, including the date and author or editor of the draft who made suggestions. When changes or suggestions are made to only one section of a large draft, the AR Coordinator may include just those sections in the AR, provided that the context is clear and that identifying information is included, such as the version of the draft reviewed, the date, and the name of the employee making the changes or suggestions.

IX. Preparing Documents for Office of the Solicitor Review

The AR Coordinator should notify the Office of the Solicitor upon completion of preliminary sorting and organizing of the documents found in the Decision File or the initial search and creation of a draft AR. The AR Coordinator should request any further instructions regarding formatting, organizing, sorting, or providing the documents prior to review. Unless requested by the Office of the Solicitor, the AR Coordinator should not simply provide the Office of the Solicitor the Decision File or all the documents collected after the initial search for documents. When the AR Coordinator provides the draft AR to the reviewing attorney, every document should be complete, regardless of whether the AR Coordinator believes it contains privileged or protected information.

X. Office of the Solicitor Review

The Office of the Solicitor will review the documents in the draft AR for relevancy and completeness and review and mark documents that contain protected or privileged information.

Completeness and Relevance: The Office of the Solicitor reviews the AR for completeness and provides advice to the AR Coordinator regarding any documents identified as questionable for relevance. While this review does not necessarily include a thorough examination of each document, the review should generally check for obvious logical deficiencies by evaluating whether the AR, as presented, adequately and accurately demonstrates the agency decision-making process. The Office of the Solicitor may review the steps taken by the AR Coordinator in compiling the AR to ensure that all primary and relevant supporting documents have been included.

Protected Information: The Office of the Solicitor will review the documents to determine if they contain specific information that the agency is prohibited from disclosing to non-federal parties, such as by court order, statute (e.g., the Privacy Act), or regulation. Disclosure of such information to any party, other than in accordance with specified procedures, could lead to lawsuits, penalties, or sanctions. The Office of the Solicitor will work with the Department of Justice to determine whether the protected information may be disclosed under seal or other protective order.

Privileged Information: The Office of the Solicitor will review the documents to ensure that any privileged information the agency wants to withhold is removed or redacted and adequately documented. Privileges attach to information under law to protect them from discovery. An agency generally cannot claim that information is privileged if the information has been lawfully released to a non-federal party in the past, perhaps in response to a FOIA request. Unlike protected information, privileged information may be disclosed at the agency's discretion. However, disclosure of privileged information forever waives the privileges in that information.

Relevant privileges that may be asserted by the Office of the Solicitor and the Department of Justice include: the attorney-client privilege, the attorney work product privilege, the confidential business information or trade secret privilege, the deliberative process privilege, and the executive and governmental privileges.

Due to the number of legal issues involved in asserting privileges, it is particularly important for the AR Coordinator and the Office of the Solicitor, in consultation with the Department of Justice, to work closely on any issues that involve privileged information.

XI. Office of the Solicitor Actions After Review

The Office of the Solicitor will recommend additions, removals, or redactions of documents from the AR as a result of the review described in section C.X. A privilege index will be created to describe the protected and privileged documents. (See section

C.XIV for a detailed discussion of the privilege index). The protected and privileged documents shall be stored separately from the non-protected and non-privileged documents. The Office of the Solicitor may keep the protected and privileged documents while the non-protected and non-privileged documents will be returned to the AR Coordinator.

XII. Organization of the AR

The AR should be organized in a logical and accessible way so that someone unfamiliar with the issue can find specific documents quickly. Documents in an AR can be compiled by chronological order, topic, or by agency in a multi-agency decision. Similarly, ARs may be divided into several topics, perhaps based on the topics of various primary documents at issue, and chronologically organized within each topic. This technique is particularly common if several agency actions are contested. Other logical organizations of ARs are permitted.

The AR Coordinator should be aware that there might also be organizational requirements created by court rules or accommodation of requests by the opposing party. The AR Coordinator should work closely with the Office of the Solicitor for instructions before determining the best method for organizing an AR.

XIII. Numbering of Documents in the AR

Each document in the AR should be assigned a unique number so that it may be uniformly referred to by the parties. All documents, including those that contain protected or privileged information, should be numbered using the same system. For ease of reference, documents may be tabbed or provisionally numbered, but the documents should never be permanently marked, numbered or altered in any way prior to completion and review of the index. Final, permanent document numbers should not be assigned until after the AR index is complete and has been reviewed by the Office of the Solicitor. In addition to assigning each document a unique number, every page of the AR should be numbered in such a way to allow the page numbers of particular documents to be identified and cited in a brief to the court, such as AR [document number], [page number]; AR [Volume number], [page number]; or AR [page number].

In some cases, Bates stamping or a similar electronic process can be used to individually number every page. Alternately, multi-paged documents with internal pagination may only need unique document numbers. Numbering typically should be done so that the documents and pages begin with the smallest numbers and end with the largest number. Please consult with the Office of the Solicitor to determine the best numbering technique.

XIV. Preparation of an AR Index and a Privilege Index

After the AR has been organized, the AR Coordinator should create both a complete AR index and a privilege index. Typically, an AR index is in chart form and includes the following categories of information: the unique document number; a brief (one- or two-

B

sentence) description of the document's nature and topic; date; identification of sender and recipient; number of pages; nature of any privilege or protection to be asserted. (See Appendix 1 for a sample AR index.)

In addition to the AR index, a separate privilege index must be generated if the agency is withholding any protected or privileged information. A privilege index (also referred to as a privilege "log") should include only those documents where a privilege or protection is being asserted. The content of a privilege index is similar to the content of an AR index, and includes an explanation of the privilege asserted. Once complete, a copy of the privilege index should be physically kept with the privileged and protected documents. (See Appendix 2 for a sample privilege index.) The AR Coordinator should not include any of the underlying privileged information in the AR index or the privilege index.

Prior to filing the AR index and privilege index with the court and releasing them to opposing parties, the AR Coordinator should consult with the Office of the Solicitor for specific requirements or instructions.

XV. Certification of AR to the Court

The AR must be certified to the court by the AR Coordinator, or in rare cases, another federal employee who is familiar with the manner in which the AR has been compiled. The certification is signed under penalty of perjury, and the AR Coordinator should work closely with the Office of the Solicitor to develop appropriate language. The certificate typically explains that the AR Coordinator was responsible for compiling the AR, has personal knowledge of its assembly, and states that the AR is full and complete. The certification also may describe the AR, such as the number of documents or the number of privileged or protected documents, or it may clarify that certain categories of documents are not included in the AR (such as transmittal memoranda, fax cover sheets, privileged and protected documents, internal working drafts, voluminous publicly available scientific reports, copyright protected books, etc.) In unique cases where the decision being challenged is not final, a clause may be inserted explaining that the agency expects to generate additional documents on the challenged issue. The certification is often sworn and notarized or in the form of a declaration with a Departmental and/or Bureau or Office seal. (See Appendix 3 for a sample certification.)

XVI. Filing the AR with the Court

Different courts have different rules for filing an AR. The Office of the Solicitor will work with the Department of Justice, the court, and the opposing party and will provide specific filing instructions to the AR Coordinator.

All-American Canal Lining Project
Administrative Record
DOCUMENT INDEX
(Volumes 1-4)

Date	Document	Vol.	Tab No.	Page No.	Filename on CD
	NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTS				
07/29/1994	Record of Decision of May 1994 for the Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) on the All-American Canal (AAC) Lining Project, attached to letter of transmittal from Regional Director, Lower Colorado Region, Bureau of Reclamation (LC Region)	1	1	1	0001
March 1994	FEIS/FEIR on the AAC Lining Project, issued by Reclamation and Imperial Irrigation District	1	2	23	0002
March 1994	Engineering Appendix to the FEIS/FEIR	1	3	321	0002-01
March 1994	Environmental Appendix to the FEIS/FEIR	2	4	455	0002-02
March 1994	Geohydrology Appendix to the FEIS/FEIR	3	5	936	0002-03
March 1994	Public Involvement Appendix to the FEIS/FEIR	3	6	1269	0002-04
March 1994	Social Appendix to the FEIS/FEIR	4	7	1481	0002-05
11/22/1999	Memorandum to Yuma Area Office Manager, Reclamation, from Regional Director, LC Region, regarding reexamination and analysis of the 1994 FEIS/FEIR and Record of Decision for the AAC Lining Project	4	8	1574	0003
05/19/2003	Letter to Director, California Department of Water Resources, from Regional Director, LC Region, regarding adequacy of the 1994 FEIS/FEIR and Record of Decision for the AAC Lining Project (Project) and Finding of Ecological Equivalency	4	9	1588	0004
	ENDANGERED SPECIES ACT DOCUMENTS				
01/25/2005	Letter to Field Supervisor, Fish and Wildlife Service (FWS), Carlsbad, California, from Regional Director, LC Region, regarding request for confirmation of Conference Opinion (1-6-96-F-12) as a Biological Opinion for Peirson's milk vetch for the AAC Lining Project	4	10	1591	0005
11/15/2004	Memorandum to Regional Director, LC Region, from Assistant Field Supervisor, FWS, Carlsbad California, regarding LC Region's request for confirmation of Conference Opinion as a Biological Opinion for Peirson's milk vetch for the AAC Lining Project	4	11	1593	0006
09/9/2004	Letter to Field Supervisor, FWS, Carlsbad, California, from Deputy Regional Director, LC Region, requesting confirmation of Conference Opinion (1-6-96-F-12) as a Biological Opinion for Peirson's milk vetch for the AAC Lining Project	4	12	1596	0007
02/08/1996	Memorandum to Environmental Compliance Group Manager, LC Region, from Ecological Services Field Supervisor, FWS, Carlsbad, California regarding the Biological and Conference Opinion for the AAC Lining Project	4	13	1612	0008
September 1993	Final Fish and Wildlife Coordination Act Report, AAC Lining Project, Imperial County, California	4	14	1636	0009

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Appendix 1

All-American Canal Lining Project
Administrative Record
DOCUMENT INDEX
(Volumes 1-4)

Date	Document	Vol.	Tab No.	Page No.	Filename on CD
	SECRETARIAL CORRESPONDENCE				
9/13/2005	Letter to Secretary of Environment and Natural Resources of Mexico from Secretary of the Interior regarding lining of the AAC	4	15	1709	0010
11/19/2004	Letter to Secretary of Environment and Natural Resources of Mexico, from Secretary of the Interior regarding lining of the AAC	4	16	1712	0011
	INTERNATIONAL BOUNDARY AND WATER COMMISSION CORRESPONDENCE				
09/20/2004	Letter to Commissioner of Reclamation from Commissioner of the U.S. Section of the International Boundary and Water Commission (USIBWC) regarding status of consultation with Mexico	4	17	1724	0012
02/24/1992	Letter to Commissioner of USIBWC from Commissioner of Reclamation responding to letter summarizing Mexican consultation over AAC Lining	4	18	1726	0013
02/22/1989	Letter to Regional Director, LC Region, from Commissioner of USIBWC regarding USIBWC's position on seepage from the AAC	4	20	1728	0014
08/12/1986	Letter to Regional Director, LC Region, from Acting Commissioner of USIBWC responding to Reclamation's request for views on recovery of AAC seepage	4	21	1730	0015

Acronyms and Abbreviations	
AAC	All-American Canal
FEIS/FEIR	Final Environmental Impact Statement/Final Environmental Impact Report
FWS	Fish & Wildlife Service
LC Region	Bureau of Reclamation's Lower Colorado Regional Office
Reclamation	Bureau of Reclamation
USIBWC	United States Section of the International Boundary & Water Commission

For Your Info.

All-American Canal Lining Project Administrative Record
DOCUMENT INDEX

Date	Document
	PRIVILEGED DOCUMENT LOG
6/24/1999	Fax to LC Regional Director from YAO Area Manager transmitting the comments of the DOI Solicitor's Office, which were requested by Reclamation on the AAC memorandum regarding Reexamination and Analysis of the 1994 FEIS/EIR and ROD for the AAC Lining Project
4/23/1999	Memorandum to DOI Solicitor's Office from YAO Area Manager requesting Solicitor's Office legal opinion regarding the Environmental Impact Statement and Record of Decision for the AAC Lining Project
4/21/1999	Email from LC Regional biologist transmitting comments on a draft memorandum that requests the legal advice of the DOI Solicitor's Office regarding AAC Lining Project
4/9/1993	Response from DOI Solicitor's Office to LC Regional Director's request for a basis of negotiation regarding the AAC Lining Project

For Your Info.

Appendix 2

Page 1 of 1

United States of America

DEPARTMENT OF THE INTERIOR
Washington, D.C.

I certify that the official records of the Department of the Interior identified below are in my legal custody and attest that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

- Administrative Record, as reflected in the attached index, supporting the [Department, Bureau, or Office]'s [Date] Record of Decision for the [Decision Being Litigiated]. The Administrative Record does not contain fax cover sheets, privileged and protected documents, or voluminous publicly available scientific reports.
- Additional documents related to Plaintiffs' claims in this litigation.
- The [Department, Bureau, or Office] is presently implementing the [Date] Record of Decision for the [Decision Being Litigated] and anticipates generating additional documents with respect to such implementation before [Relevant Action] begins.

IN TESTIMONY WHEREOF, I swear under penalty of perjury that the foregoing is true and correct. Signed this ___ day of [Month, Year].

SIGNATURE: _____

TITLE: _____

OFFICE: _____

APPROPRIATE SEAL

For Your Info.

Appendix 3

Appendix E – Surface Management Action Codes

MANDATORY AND REQUIRED ACTION CODES
371511, 380210, 380910, 380913, and 381402 Case Types
Mandatory (M) = Action code must always be entered.
Required (R) = Action code must be entered if the situation exists.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
002	Enter date Environmental Analysis is initiated.	**EA Initiated (R)** Use with 380913 only if Occupancy is involved	380210 380910 381402 380913 371511		Replaces AC 004. Populate the document number field with the first available number, for AC 002. When additional AC 002s are entered, you must populate the document number field with the next number. Paired w/AC 008. Pending entity required.
003	Enter date Environmental Impact Statement (EIS) is initiated.	**EIS Initiated (R)**	380210 380910 381402 371511		Replaces AC 004. Populate the document number field with the first available number, for AC 003. When additional AC 003s are entered, you must populate the document number field with the next number. Paired w/AC 009. Pending entity required.
006	Enter date categorical exclusion (CX) analysis is initiated.	**CX Initiated (R)** Use pursuant to 516 DM 11.9.	380210 380910 381402		Replaces AC 004. Populate the document number field with the first available number, for AC 006. When additional AC 006's are entered, you must populate the document number field with the next number. Paired w/AC 007. Pending entity required.
007	Enter date Categorical Exclusion (CX) Determination is	**CX Determined (R)**	380210 380910 381402	Enter applicable document number in action remarks.	Replaces AC 005. Populate the document number field with the number that corresponds with the

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	made.				initiating AC 006 (document). Remove pending entity from AC 006.
008	Enter date Environmental Analysis (EA)/FONSI Decision Record is signed.	**EA Approved (R)** Use with 380913 only if Occupancy is involved	380210 380910 381402 380913 371511		Replaces AC 005. Populate the document number field with number that corresponds with the initiating AC 002 (EA document). Remove pending entity from AC 002.
009	Enter date Environmental Impact Statement (EIS) is signed.	**EIS Approved (R)**	380210 380910 381402 371511	Enter EIS number in action remarks.	Replaces AC 005. Populate the document number field with number that corresponds with the initiating AC 003 (EA document). Remove pending entity from AC 003.
018	Enter date trespass is resolved or date it is determined no trespass occurred	**Trespass Resolved (R)**	371511		Use in conjunction with AC 244 **Terminated** and AC 970 **Case Closed.**
022	Enter date reclamation costs are determined by BLM.	**Recl Cost Det (M)**	380210 380910 381402 380913 371511	Enter total reclamation costs determined followed by semicolon. Following the semicolon, enter year review (YRR) period: 1YRR for phased bonding regardless of case type: 2YRR for 380913 notice level case type; and 3 YRR for 380210, 380910 and 381402 Plan of Operations case types. EX: $5000;1YRR For Reclamation Cost Estimate Review for Amendments/ Modifications: When AC 022 is entered, populate the "Action Remarks" field with the reclamation cost estimate followed by a semicolon and "PARTIAL".. EX: $5000;PARTIAL The Action Remarks field should only contain the bond amount, semicolon, and 1YRR, 2YRR, 3YRR, or	Replaces AC 477. Use date of decision requiring increase/decrease in bond amount or date of memo to the file verifying cost estimate is adequate. Use every time reclamation costs are reviewed. Use of the YRR portion of the field sets or resets the policy time review period.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
				PARTIAL. If it is necessary to conduct an entire (total) review of the reclamation cost estimate then the appropriate YRR period should be entered to reset the policy review time line.	
025	Enter date determination of NEPA adequacy (DNA) analysis is initiated.	**DNA Initiated (R)** Use with 380913 only if Occupancy is involved	380210 380910 381402 380913 371511		To be used when tiering from an existing EX, EIS or CX. Paired with AC 026.
026	Enter date determination of NEPA adequacy (DNA) is made	**DNA Concluded (R)** Use with 380913 only if Occupancy is involved	380210 380910 381402 380913 371511	Enter prior analysis (E.G. EA or EIS) used in making determination followed by a semicolon in action remarks.	
040	Enter date compliance exam/report is requested/initiated	**Compliance Exam/Rpt Rqt/Init (R)**	380210 380910 381402 380913 371511		
041	Enter date compliance inspection was done	**Compl Exam/Rpt Completed (R)**	380210 380910 381402 380913 371511		
042	Enter date case is sent to another office.	**Case Sent To (R)**	380210 380910 381402 380913 371511	Enter where case file has been sent, e.g., ASO, IBLA, etc.	
043	Enter date of issuance of a Suspension order (3809.601(b) or an Immediate temporary suspension order (3715.7-1(a).	**Suspension Order (R)**	380210 380910 381402 380913 371511	Enter SO; for Suspension Order and ITSO; for Immediate Temporary Suspension Order.	
044	Enter date of issuance	**Cessation Order (R)**	380210	Enter TCO; for temporary cessation	

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	of a Cessation order (3715.1(b)).		380910 380913 371511	order or PCO; for permanent cessation order.	
066	Enter date of petition of MMS advisory memo.	**Bankruptcy Filed (R)**	380210 380910 381402 380913 371511	Enter entity name.	This code must be removed when entity no longer appears on MMS bankruptcy list.
103	Enter date additional information is requested.	**Addtl Info Recd (R)**	380210 380910 381402 380913 371511	Enter type of information received and from whom in action or general remarks.	
104	Enter date additional information is received.	**Addtl Info Reqd (R)**	380210 380910 381402 380913 371511	Enter type of information requested and from whom, in action or general remarks.	
114	Enter date amended Notice is received.	**Amend/Corr Apln Recd (R)**	380913		Change land description and case acres as appropriate.
116	Enter date Notice amendment is approved	**Amendment Appv (R)**	380913		
106	Enter date monies requested.	**Monies Requested (R)**	380210 380910 381402 380913 371511	Enter amount requested. Enter purpose for which money requested. For amount entry format: Beginning in 1st position of action remarks enter $ (Dollar symbol) 1 to9 positions for whole figure, decimal to 2 positions for cents (00 to 99) end with semicolon, EX; $10000;	Pending action required. May include monies for cost recovery, occupancy clean-ups, reclamation costs, etc.
119	Enter date appeal is dismissed by appropriate authority.	**Appeal Dismissed (R)**	380210 380910 381402 380913 371511	Enter decision citation. If in part, note in action remarks.	Populate the document number field with the number that corresponds with the initiating AC 120 (document).
120	Enter date notice of appeal is filed.	**Appeal Filed (R)**	380210 380910 381402	Enter who will review the appeal, e.g., SD; or IBLA;	Populate the document number field with the first available number, for AC 120.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
			380913 371511		When additional AC 120's are entered, you must populate the document number field with the next number. Paired w/ AC 119, AC 361, and AC 365. Pending entity required.
122	Enter date request is made for additional time.	**Ext of Time Rqstd (R)**	380210 380910 381402 380913 371511	Enter reason followed by a semicolon and duration for the extension; EX: WEATHER; MM/DD/YY.	Pending entity required.
125	Enter date of decision totally rejecting notice.	**Apln Rej/Denied (R)**	380913	Enter reason notice was rejected in action remarks.	Alters case disposition to REJECTED. If no appeal filed, enter "970" **CASE CLOSED.**
127	Enter date action is suspended by decision, notice or other action, e.g., processing an application.	**Action Suspended (R)**	380210 380910 381402 380913 371511	If suspended in part, enter "IN PART" and identify suspended land in land description. Enter reason for suspension.	
130	Enter date notice is withdrawn.	**Apln Withdrawn (R)**	380913		Alters case disposition to **WITHDRAWN**. Enter "970" **CASE CLOSED.**
136	Enter date request for a stay is filed in conjunction with an appeal to IBLA.	**Stay Requested (R)**	380210 380910 381402 380913 371511		
137	Enter date of order issued by IBLA granting the request for stay.	**Stay Granted (R)**	380210 380910 381402 380913 371511		EX: The effect of the decision appealed from is suspended pending the outcome of the appeal in IBLA.
138	Enter date of order issued by IBLA	**Stay Denied (R)**	380210 380910		EX: The decision on appeal is in effect during the pendency of the appeal in

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	denying a stay.		381402 380913 371511		IBLA.
148	Enter date litigation is filed in court.	**Litigation Filed (R)**	380210 380910 381402 380913 371511	Enter civil action number.	Pending entity required.
188	Enter date decision vacating a prior decision in whole or in part	**Dec Vacated/Rescinded(R)**	380210 380910 381402 380913 371511	If applicable, enter decision citation and/or "in part" in action remarks.	Alters case disposition to Recorded.
203	Enter date extension of time is approved	**Ext of Time Granted (R)**	380210 380910 381402 380913 371511	Enter date by which operator needs to resolve issue resulting from AC-122.	
222	Enter date hearing is held.	**Hearing Held (R)**	380210 380910 381402 380913 371511	Enter place of hearing in action remarks.	Remove pending action from AC-223 – **HEARING ORDERED**.
223	Enter date hearing is ordered by Hearings Officer or Administrative Law Judge.	**Hearing Ordered (R)**	380210 380910 381402 380913 371511	If BLM, note in action remarks.	Optional to enter date and location of scheduled hearing in action/general remarks. Pending entity required.
234	Enter date Notice ceased by its own terms.	**Expired (R)**	380913		Use for all expired cases. Alters case disposition to Expired. Enter "970" **Case Closed**, except for Notices where reclamation is not completed.
235	Enter effective date Notice is extended	**Extended (R)**	380913	Enter date the Notice has been extended to.	Use in conjunction with AC 763 **EXPIRES.**
244	Enter date authorization terminated due to	**Terminated (R)**	380210 380910 381402		Alters case disposition to Canceled. Use in conjunction with AC 970 **CASE**

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	failure to comply with terms of authorization.		380913 371511		**CLOSED.**
247	Enter date on which the file needs to be reviewed for further action.	**Future Action Suspense**	380210 380910 381402 380913 371511		Pending action required.
260	Enter date acknowledgement or identification is made where case lands have been identified to be in whole or in part, in a BLM Wilderness Study Area.	**Lands Located in WSA (R)**	380210 371511	Enter name of WSA followed by a semicolon. EX: OYWHEE CANYON; If in part, use alpha tie /A/ to remarks.	Enter legal description of lands WSA in remarks.
261	Enter date acknowledgement or identification is made where case lands have been identified to be, in whole or in part, in a Designated Wilderness Area.	**Lands Located in DWA (R)**	380910 380913 371511	Enter name of DQ followed by a semicolon. EX: BIG ROCKS; If in part, use alpha tie /A/.	Enter legal description of lands in DWA in remarks.
263	Enter date acknowledgement or identification is made where lands have been identified to be, in whole or in part, in a designated Area of Critical Environmental Concern (ACEC).	**Lands Located in ACEC (R)**	380910 380913 371511	Enter name and/or number of "ACEC" followed by semicolon. If in part, use alpha tie/A/.	Enter legal description of lands in ACEC in remarks.
295	Enter date request for Notice extension is received.	**Extension Filed(R)**	380913 380910		
300	Enter date operator/claimant is formally requested to furnish a bond.	**Bond Required (M)**	380210 380910 381402 380913	Enter bond amount followed by a semicolon. EX: $100000;	AC 300 is used to, 1. Establish the anniversary dates for 380913 case types and 2. Generate the Bond Review Report.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
					Pending entity required.
303	Enter date when noncompliance situation is resolved	**Notice to Proceed Issued (R)**	380210 380910 381402 380913 371511		
333	Enter date amended or corrected plan of operations is requested by BLM.	**Amend/Corr NTC/Plan Rqst (R)**	380210 380910 381402	Optional to enter what is to be amended followed by a semicolon, i.e., LAND DESCRIPTION;	
342	Enter date modification to mine plan is received	**Mine Plan Mod Received (R)**	380210 380910 381402	Enter Number of acres proposed disturbance, EX: 15; AC PROP DISTURB. Enter number 1 for first modification in DocID and 2 for the second one, etc.	Pairs with AC 343 **Mine Plan Modification Approved**.
343	Enter date modification to mine plan is approved	**Mine Plan Mod Approved (R)**	380210 380910 381402	For plans with a number of plan modifications, number them consecutively. EX: PLAN MODIFICATION 1, 2, 3… Enter number 1 for first modification in DocID and 2 for the second one, etc.	Pairs Action Code “342” Mine **Plan Modification Received**.
361	Enter date decision is affirmed, affirmed in part or affirmed as modified.	**Decision Affirmed (R)**	380210 380910 381402 380913 371511	If applicable, enter decision citation and/or “IN PART” in action remarks. Optional to tie to original decision in action remarks. EX: /A/	Populate the document number field with the number that corresponds with the initiating AC 120 (document). Enter AC 970 **Case Closed** if applicable.
365	Enter date of decision remanding the case for further action.	**Dec Remanded (R)**	380210 380910 381402 380913 371511	If applicable, enter decision citation in action remarks. Optional to tie to original decision in action remarks. EX: /A/	Populate the document number field with the number that corresponds with the initiating AC 120 (document).
366	Enter date a decision is reversed or reversed	**Dec-Revrsd & Remanded (R)**	380210 380910	If applicable, enter decision citation and/or “in part” in action remarks. Tie	Pending entity required.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	in part and remanded for further actions.		381402 380913 371511	to original decision with alpha tie in actions remarks. EX: /A/	
376	Enter date bond is filed.	**Bond Filed (M)**	380210 380910 381402 380913	Enter bond amount, semicolon, BLM bond number operator or claimant in action remarks. EX: $10000;AZB0043 Freeport. If characters exceed 21 spaces, complete entry in general remarks using an alpha tie in action remarks. EX: /A/ Enter bond-holder, e.g., BLM or state in general remarks.	Populate the document number field with the first available alpha code, for AC 376. When additional AC 376's are entered you must populate the document number field with the next alpha code. AC 376 is paired with AC 410 or AC 909. In cases where a Plan is to be bonded by multiple bonds and those bonds are filed the same day, or within close proximity, there will be more than one AC 376 pending (open time line) at a time. Each AC 376 must be assigned a different alpha code which will be paired with the appropriate AC 410 or AC 909 decision.
377	Enter date document requesting partial or total bond termination is received.	**Bond Termination Rqstd (R)**	380210 380910 381402 380913	Enter BLM bond number, semicolon and "partial" or "total". EX: NV0055; PARTIAL.	Optional to add "BY PRINCIPLE" OR "BY SURETY."
378	Enter date period of liability on bond is terminated.	**Bond Period Terminated (R)**	380210 380910 381402 380913	Enter BLM bond number and semicolon. EX: AZB000679;	
387	Enter date unauthorized occupancy is discovered. This code sets disposition to Pending.	**Case Established (M)**	371511 380210 380910 381402 380913 371511	Responsible offices code (DE 1428) required under Pending Action. EX: AZ-100;	
388	Enter date closed case reopened.	**Case Reopened (R)**	380210 380910 381402 380913 371511		Returns case to pending disposition.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
389	Enter date hearing is requested pursuant to Title 43 CFR 4, subpart E.	**Hearing Requested (R)**	380210 380910 381402 380913 371511	Enter reason for hearing in Action/General remarks, if applicable.	
392	Enter date monies received.	**Monies Received (R)**	380210 380910 381402 380913	Enter amount and type of monies received. For amount entry format: Beginning in 1st position of action remarks enter $ (dollar symbol) 1 to 9 positions for whole figure, decimal to 2 positions for cents (00 to 99) end with semicolon, EX: $100000;	
399	Enter date bond is no longer required on case.	**Bond No Longer Required (R)**	380210 380910 381402 380913		
405	Enter date Notice is filed.	**Notice of Intent/Disturb (R)**	380913	Enter total, cumulative, proposed acres disturbed (by regulation, 5 acres or less) followed by a semicolon, EX: 3.5; AC PROP DISTURB.	For actual acres disturbed, use "528" **Acres Disturbed**.
410	Enter date of decision declaring bond unacceptable.	**Bond Unacceptable (R)**	380210 380910 381402 380913	Enter effective date followed by semicolon. EX: EFF MM/DD/YY;	Populate the document number field with the alpha code that corresponds with the initiating AC 376 (document). AC 376 and 410 are paired if applicable.
421	Enter date plan of operations filed.	**Plan Oper/Expl/Dev Filed (M)**	380210 380910 381402	Enter total, cumulative, proposed acres disturbed followed by semicolon. EX: 17; AC PROP DISTURBED	Begins Time Line. Paired w/AC 422. Only one AC 421 per case.
422	Enter date of decision approving plan of operation	**Plan Oper/Expl/Dev Appv (R)**	380210 380910 381402		
423	Enter date a plan was rejected	**Plan Oper/Expl/Dev Rej (R)**	380210 380910 381402	Enter reason plan was rejected in action/general remarks.	Replaces AC 125 for Plans. Sets case disposition to **REJECTED**.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
					Use in conjunction with AC 970 **CASE CLOSED**.
424	Enter date plan was withdrawn.	**Plan Oper/Expl/Dev Wdn (R)**	380210 380910 381402		
429	Enter date application acknowledged.	**Apln Acknowledged (R)**	380913		We have a 15 day window to respond if information is complete.
434	Enter date of Authorized Officer's decision revoking a plan of operations.	**Plan of Oper-Revoked (R)**	380210 380910 381402		
437	Enter date that the form notifying the BLM of an existing occupancy is received.	**Occupancy Form Filed (R)**	380210 380910 380913		This one time form had to have been used prior to 10/16/96.
438	Enter date that the Authorized Officer issues a decision that locatable mineral use and occupancy has been determined to be reasonably incident and meets the standards of 43 CFR 3715.	**Occupancy Concu (R)**	380210 380910 380913		
439	Enter date Authorized Officer issues a decision that locatable minerals use and occupancy has been determined to not meet the standards of 43 CFR 3715	**Occupancy Non-Concu (R)**	380210 380910 380913 371511		
440	Enter date that information was received in BLM office related to use	**Occupancy Proposed (R)**	380210 380910 380913	If not included as part of AC 405 or AC 421 then enter acres followed by a semicolon. EX: 2 AC PROP DISTURB;	

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	and occupancy in conjunction with filing of Plan or Notice				
441	Enter date reconsideration is requested (by appellant or BLM).	**Reconsideration Rqstd (R)**	380210 380910 381402 380913 371511		Pending entity required.
451	Enter date default in performance is determined.	**Default Determined (R)**	380210 380910 381402 380913	Enter nature of default, i.e., SURFACE DAMAGE; or PERFORMANCE; etc.	Pending action required.
452	Enter date surety/principal notified to correct default.	**Default Correction Reqd (R)**	380210 380910 381402 380913		Pending action required.
453	Enter date default in performance is corrected.	**Default Corrected (R)**	380210 380910 381402 380913		Used when operator or surety/principal corrects default. If payment made under bond to resolve default, also enter "486" **Payment by Surety /Principal**.
460	Enter date BLM Office issued decision obligating funds under accepted bond(s) to satisfy estimated reclamation costs	**Bond Amount Obligated (M)**	380210 380910 381402 380913	Enter bond amount followed by a semicolon. EX $170000; enter bond amount obligated to this project in whole dollars	Used to indicate that a bond was approved and the amount obligated. The amount here should be greater or equal to the amount determined by BLM to satisfy the estimated reclamation costs of a notice or plan of operations (AC/022).
463	Enter date of decision denying request for partial or total bond termination.	**Bond Termination Denied (R)**	380210 380910 381402 380913	Enter effective date, semicolon and BLM bond number. EX: EFF MM/DD/YY;NV0029	Bond termination can be denied for various reasons, e.g., well not properly plugged reclamation not completed, etc.
465	Enter date review of bond amount is completed.	**Bond Reviewed (R)**	380210 380910 380913 381402		
474	Enter date of issuance	**Notice of**	380210		

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	of Notice of noncompliance (3715-1(c)) or Noncompliance order (3809.601(a)).	**Noncompliance (R)**	380910 381402 380913 371511		
475	Enter date it is determined that operator/claimant cannot be found.	**Operations Abandoned (R)**	380210 380910 381402 380913 371511		
476	Enter date case established	**Notice/Plan Activity (R)**	380210 380910 381402 380913	Enter type of activity (drilling, trenching, mining, etc.)	
477	Enter date BLM notifies operator that bond needs to be increased/decreased or operator requests BLM to decrease bond.	**Bond Adjustment Required (R)**	380210 380910 381402 380913	Enter BLM bond number, semicolon and "increased to" or "decreased to" total bond amount. EX: NVWYOOO0; INCREASED TO $2000.	
486	Enter date default payment made by surety/principal.	**Pmt by Surety/Principal (R)**	380210 380910 381402 380913 371511	Enter amount. For amount entry format: Beginning in 1st position of action remarks enter # (dollar symbol) 1 to 9 positions for whole figure, end with semicolon, EX: $10000;	
487	Enter date of Memorandum requesting remand of case from IBLA.	**Remand Requested (R)**	380210 380910 381402 380913 371511		Pending action required.
491	Enter date judicial action on the case is completed.	**Litigation Completed (R)**	380210 380910 381402 380913 371511	Enter results. May need to use General Remarks, if so tie with alpha character.	Remove pending action from AC 148 **Litigation Filed**.
500	Enter date that plan of operation was filed or case established.	**Geographic Name (R)**	380210 380910 381402	Enter name (up to 20 characters) beginning in 1st position of action remarks and end with semicolon.	Use for geographic name of project and/or to list mining claim name(s).

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
			380913 371511		EX: Gold Strike;
501	Enter date plan of operation was filed or case was established.	**Reference Number (R)**	380210 380910 381402 380913 371511	Enter type of number (DE 2537) and reference number: beginning in 1st position the entry format is: 1 to 4 positions for type (DE 2537) hyphen 1 to 14 positions for number; end with semicolon. EX: DOSN-N16-81-012P;	Use for reference number and/or MC number(s). Use as a cross reference to other cases.
528	Enter date of inspection that determined number actual acres disturbed.	**Acres Disturbed (R)**	380210 380910 381402 380913 371511	Enter number of acres disturbed followed by a semicolon. EX:7;	
529	Enter date notification of reclamation completed.	**Acres Reclaimed (R)**	380210 380910 381402 380913 371511	Enter the total number of acres within the project area that have been reclaimed to the satisfaction of the BLM followed by a semicolon. EX: 150;	Use in conjunction with code "528" Acres Disturbed. Pending entity required.
541	Enter date notice of completion of reclamation is received from operator	**Reclamation Notice (R)**	380210 380910 381402 380913 371511	Enter INTERIM or FINAL followed by semicolon.	Includes on-going reclamation, site stabilization and final reclamation efforts. Requires compliance inspection. Pending entity required.
669	Enter date status of land is checked to verify mineral or surface ownership, etc.	**Land Status Checked (M)**	380210 380910 381402 380913 371511		
672	Enter date the successor operator is approved or accepted.	**Successor Operator (R)**	380210 380910 381402 380913	Enter previous operator followed by a semicolon, EX: ATLAS GOLD;	
678	Enter effective date suspension is	**Sus Lifted (R)**	380210 380910		May be used in conjunction with "127" **Action Suspended**.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	terminated.		381402 380913 371511		
763	Enter date Notice expires.	**Expires (R)**	380913		Delete this code if case is closed before expiration date.
817	Enter date of decision recognizing the merger of two or more corporations/partnerships.	**Merger Recognized (R)**	380210 380910 381402 380913	Enter old name followed by a semicolon (EX: GOLDSPIKE;), and new name in the proprietor field.	
853	Enter date compliance review is due.	**Compl/Review Due Date (R)**	380210 380910 381402 380913 371511	Note whether inspections are completed biannually or quarterly followed by a semicolon. EX: Biannual;	Pending action required. Once the inspection has been completed and recorded with AC 041- **Compliance Exam/Rpt.** Completed, change the date of this AC to next required inspection date.
874	Enter date cultural and T&E clearances are completed.	**Resource Clearances (R)**	380210 380910 381402 380913 371511	Note type of review completed (e.g., T&E, CULT) followed by Semicolon. If T&E plant and animal clearances are completed separately, note which one was completed. EX: T&E PLANT;	
875	Enter date completed plan is filed or date operation began utilizing leachate.	**Oper Utilizing Leachate (R)**	380210 380910 381402	Note type of leachate followed by a semicolon, EX: SODIUM BROMIDE, CYANIDE HEAP, CYANIDE VAT, etc.	
891	Enter date of actual onset of activities in association with plan of operations.	**Beginning Date (R)**	380210 380910 381402		For proposed beginning date use cone “247” **Future Action Suspense** & enter “PROPOSED BEGIN DATE” IN ACTION REMARKS. Use in conjunction with code “393” Completion Date.
893	Enter actual completion date in association with plan of operations.	**Completion Date (R)**	380210 380910 381402		For proposed completion date use code “247” **Future Action Suspense** & enter “PROP COMPLETION DATE” in action remarks.

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
					Use in conjunction with code "891" **Beginning Date**.
896	Enter date conflict identified on same lands.	**Conflict Identified (R)**	380210 380910 381402 380913	Cross-reference serial numbers of cases involved in action or general remarks.	Pending entity required.
897	Enter date conflict on same lands resolved.	**Conflict Resolved (R)**	380210 380910 381402 380913		Use in conjunction with AC 896 **Conflict Identified** or AC 127 **Action Suspended**.
909	Enter date bond is accepted.	**Bond Accepted (R)**	380210 380910 381402 380913	Enter effective date, semicolon, and BLM bond number. EX: EFF MM/DD/YY;AZB0043 If characters exceed 21 spaces, complete entry in general remarks using an alpha tie in action remarks. EX: /A/	Recommend entering bond amount in General Remarks. Populate the document number field with the alpha code that corresponds with the initiating AC 376 (document). All cases that contain AC 909 must contain AC 376.
915	Enter date BLM notifies operator bond is accepted and operations may commence.	**Operations Authorized (M)**	380210 380910 381402 380913		Replaces AC 868 for case type 380913. For case type 380913 use AC 915 after AC 909 and AC 460 have been entered. For 380210, 380910 and 381402 case types, use AC 915 after AC 422, AC 909 and AC 460 have been entered. AC 915 is entered only once on a case and sets the disposition to AUTHORIZED.
930	Enter date appeal is withdrawn.	**Appeal Withdrawn (R)**	380210 380910 381402 380913 371511	If applicable, enter decision citation in action remarks. Tike to original decision with alpha tie in action remarks. EX:/A/	Populate the document number field with the number that corresponds with the initiating AC 120 (document).
940	Enter date of decision	**Name Change**	380210	Enter old name followed by a	Usually refers to a corporate name

Action Code	Action Code Date	Action Text	Case Type	Action Remarks	Other Remarks
	recognizing name change.	**Recognized (R)**	380910 381402 380913 371511	semicolon (EX: GOLDSTRIKE;), and new name in proprietor field.	change; includes dissolution of corporation or partnership, marriage or divorce.
967	Enter date case is closed.	**Closed Without Action (R)**	380210 380910 381402 380913 371511	Enter particulars of closure.	Use in instances where no Bureau action or decision was required. **Note** do not use this code in place of "970" when decision has been issued and the case authorized, etc. Alters case disposition to Closed.
970	Enter date all case processing is finished and case is closed	**Case Closed (M)**	380210 380910 381402 380913 371511		Requires the entry of a prior status setting actions code, i.e., AC 125, Apln **Rej/Denied**, AC 130 Apln **Withdrawn**, AC 234-**Expired** or AC 244-**Terminated**. Sets disposition to CLOSED.

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Appendix F – Arrest Warrant or Summons upon Complaint

FEDERAL RULES OF CRIMINAL PROCEDURE

II. PRELIMINARY PROCEEDINGS

Rule 4. Arrest Warrant or Summons Upon Complaint

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. The warrant shall be signed by the magistrate judge and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate judge.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

(d) Execution or service; and return.

(1) By whom. The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant at the time of the arrest but upon request shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

(4) Return. The officer executing a warrant shall make return thereof to the magistrate judge or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to and canceled by the magistrate judge by whom it was issued. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate judge before whom the summons is returnable. At the request of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate judge to the marshal or other authorized person for execution or service.

[Amended July 1, 1966; Oct. 1, 1972; July 31, 1975, P. L. 94-64, §§ 2, 3(l)-(3), 89 Stat. 370; Dec. 1, 1975; Aug. 1, 1987; Dec. 1, 1993.]

Appendix G – Visitor Pass

To be included on a Visitor Pass to be worn by the member of the public visiting the mining operation with BLM staff:

VISITOR PASS. This Pass is subject to the conditions on the back. You must sign this Pass for it to be valid. Your signature on the back of this Pass confirms that you have read and understood the conditions on this Pass and that you agree to comply with those conditions.

On the reverse side of the Pass:

ACKNOWLEDGMENT OF COMPLIANCE WITH BLM
INSTRUCTIONS AND ASSUMED RISKS

Conditions:

The U.S. Bureau of Land Management (BLM) gave you this Pass upon your request to visit the mining operations located on public lands. With this Pass, you may accompany employees of the BLM on a visit to _____ mine(s). This Pass is valid for your use only on _____,20___, and may not be transferred to any other person.

You must promptly comply with all instructions given to you by BLM employees during the course of your visit to the mining operation. If the BLM provides you with transportation to and from the mining operation, you must also comply with any instructions given to you during the course of that transportation. You must attend any safety training offered to you by the mining operator or by the BLM before you enter the mining operation, and properly use all safety equipment provided to you by the operator and/or by the BLM during your visit.

You understand and acknowledge that there are risks of physical injury, death, and property damage inherent in entering any mining operation. Injuries, death, or damage can occur at any time. ACCORDINGLY, YOU UNDERSTAND AND ACKNOWLEDGE THAT YOUR VISIT TO THIS MINING OPERATION IS AT YOUR OWN RISK. IF YOU ARE INJURED, KILLED, OR SUFFER ANY DAMAGE OR LOSS OF ANY KIND TO YOUR PERSON OR PROPERTY, YOU AGREE THAT THE BLM SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS ARE CAUSED BY THE NEGLIGENCE OF THE BLM OR ANY OF ITS EMPLOYEES.

Your signature below means that you accept all of the terms above.

Signed: Dated:

Print Name:_____