

Form 1221-2
(June 1969)



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MANUAL TRANSMITTAL SHEET

Release

3-335

Date

9/17/2012

Subject

MS – 3809 – Surface Management

- 1. Explanation of Materials Transmitted:** This release revises Manual Section 3809-Surface Management in its entirety. The revised Manual incorporates changes in policies resulting from the revision of regulations in 43 CFR 3809.
- 2. Reports Required:** None.
- 3. Materials Canceled:** The manual pages superseded by this release are listed under “REMOVE” below. No other directives are superseded.
- 4. Filing Instructions:** File as directed below.

REMOVE

All of MS – 3809 (Release 3-118)
(21 Sheets)

INSERT

MS – 3809 (27 pages)

/s/ Michael D. Nedd

Michael D. Nedd
Assistant Director, Minerals and Realty Management

Table of Contents

CHAPTER 1. OVERVIEW 1-1

1.1 Purpose 1-1

1.2 Objective 1-1

1.3 Authority 1-1

 A. Statutes..... 1-1

 B. Regulations 1-1

1.4 Responsibility..... 1-2

 A. The Director..... 1-2

 B. The State Director..... 1-2

 C. District, Field, and Monument Managers 1-3

 D. The Program Specialists 1-4

 E. The Bureau of Land Management Delegation of Authority..... 1-5

1.5 References 1-5

1.6 Policy..... 1-5

 A. The Mining Law of 1872..... 1-5

 B. Surface Resources Act of 1955 1-5

 C. The Mining and Minerals Policy Act of 1970 1-5

 D. The Federal Land Policy and Management Act of 1976..... 1-5

 E. The National Materials and Minerals Policy, Research and Development Act of 1980 1-5

 F. Guiding Principles 1-6

 G. Specific Guidance..... 1-8

1.7 File and Record Maintenance..... 1-8

CHAPTER 2. MINERAL ACTIVITIES 2-1

2.1 Casual Use Activities 2-1

2.2 Operations Conducted under Notices..... 2-1

2.3 Operations Conducted under Plans of Operations 2-3

2.4 Performance Standards..... 2-5

2.5 Financial Guarantees 2-5

2.6 Cessations and Abandonments..... 2-9

2.7 Special Situations and Land Use Planning..... 2-9

2.8 Inspection 2-12

2.9 Enforcement 2-12

2.10 Administrative Review 2-13

2.11 Federal-State Agreements 2-14

2.12 Records Management..... 2-14

This Page Left Blank

CHAPTER 1. OVERVIEW

1.1 Purpose.

This manual section conveys the policies, procedures, and standards for Bureau of Land Management (BLM) employees to implement the BLM's surface management program. This manual conveys our policies and procedures applicable to all surface disturbing activity conducted under the Mining Law of 1872, as amended (Mining Law), 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 manual is subordinate to the applicable legal and regulatory mandates.

1.2 Objective.

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

1.3 Authority.

A. Statutes.

1. Mining Law of 1872 (30 U.S.C. § § 22-42) as amended
2. Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701) as amended
3. Surface Resources Act of 1955 (30 U.S.C. § 612)

B. Regulations.

1. 43 CFR Subpart 3809 - Surface Management
2. 43 CFR Subpart 3715 - Use and Occupancy under the Mining Laws
3. 43 CFR Part 3730 - Public Law 359 Mining in Powersite Withdrawals
4. 43 CFR Subpart 3821 - O&C Lands
5. 43 CFR Part 3838 - Special Procedures for Locating and Recording Mining Claims and Tunnel Sites on Stock Raising Homestead Act (SRHA) Lands

1.4 Responsibility.

- A. 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.

- B. 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:
 - 1. Review and approve mineral reports before authorizing mining operations on lands with suspected common variety minerals and lands withdrawn from mineral entry under the Mining Laws.
 - 2. Adjudicate all financial guarantees including acceptance, obligation, termination, modifications, collection, and tracking bankruptcy filings. The office responsible for adjudicating financial guarantees will maintain the physical possession of all original bond contracts and their accompanying financial instruments.
 - 3. Conduct State Director reviews and forward appeals of the State Director's decision to the Office of Hearings and Appeals (OHA) within 10 business days of receiving a notice of appeal.
 - 4. Enter into statewide agreements concerning management of operations authorized by the mining laws on public lands.
 - 5. Provide oversight and program guidance to the District/Field Offices.
 - 6. Provide technical support and review to ensure uniform application of the regulations by the District/Field Offices.
 - 7. Provide annual certification to the Director, as specified by directives, that all reclamation cost estimates requiring review were examined and financial guarantees are adequate to meet the requirements of the regulations. Corrective actions plans will be developed for cases with

3809 - SURFACE MANAGEMENT (P)

1-3

problematic currency of reclamation cost estimate reviews or inadequacy of financial guarantees.

- C. District, Field, and Monument Managers are responsible for the day-today 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. The manager responsibilities are to:
1. Serve as the line officer for accepting Notices and approving or denying Plans of Operations.
 2. Establish the amounts of financial guarantees for reclamation of exploration and mining activities.
 3. Ensure that UUD does not occur from accepted Notices and approved Plans of Operations.
 4. Determine the appropriate enforcement action to take.
 5. Forward appeals to the appropriate parties (either the State Director or OHA, and Office of the Solicitor) within 10 business days of receiving a Notice of Appeal.
 6. Sponsor public visits to mines if requested.
 7. Enter into agreements for management of site-specific operations.
 8. Determine if escrow accounts are needed for a Notice or Plan of Operations until the status of the mineral material is determined.
 9. Maintain administrative records, case files, and the Legacy Rehost System 2000 (LR2000) database in accordance with BLM data and recordkeeping standards.
 10. Ensure that the qualifications of the program specialists are appropriate for the scope of the duties performed.
 11. 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 Subpart 3809.

- D. 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 in the review of Notices and Plans of Operations. The roles and responsibilities are to:
1. Review submitted Notices, Plans of Operations, and associated modifications.
 2. Review and verify the reclamation cost estimates submitted by the operator for proposed activities and recommend to the manager the reclamation cost estimate amount.
 3. Identify the necessity for and require a trust fund or other funding mechanism to ensure long-term post-mining maintenance, including treatment to achieve long-term water quality standards.
 4. Conduct field inspections and make compliance determinations for operations conducted under a Notice or Plan.
 5. Identify situations of noncompliance or prohibited actions and recommend corrective actions to the manager.
 6. Ensure enforcement actions are implemented and monitored for a noncompliance situation.
 7. Serve as the main contact between the BLM and an operator conducting activities on public lands.
 8. Prepare necessary documents to implement cost recovery.
 9. Prepare, or coordinate preparation of, the appropriate National Environmental Policy Act (NEPA) documents for approval of Plans of Operations and associated Plan modifications.
 10. Prepare, or cause to be prepared, mineral reports for determining mining claim validity before approving mining activity within a withdrawn area, or prepare, or cause to be prepared, other determinations before approving operations under the Mining Law.
 11. Receive and properly handle confidential business information and information protected under the Privacy Act. Maintain administrative records and case files for surface management activities, and update the LR2000 database in accordance with BLM standards.

3809 - SURFACE MANAGEMENT (P)

1-5

- E. The Bureau of Land Management Delegation of Authority Manual 1203 and State Manual Supplements should also be consulted. These manuals are updated on a regular basis and clarify the level at which decision-making authority is held within a State.

1.5 References.

See BLM Handbook H-3809-1.

1.6 Policy.

- A. The Mining Law of 1872, as amended (30 U.S.C. § 22-42) and BLM's implementing regulations at 43 CFR Part 3830), invites citizens to search for, discover, and develop valuable mineral deposits on public domain lands open to mineral entry.
- B. Surface Resources Act of 1955 (30 U.S.C. § 612) provides for the multiple use of the lands and surface resources of mining claims. All surface rights of unpatented mining claims located after the Act are subject to the right of the United States, its permittees, and licensees to use so much of the surface as necessary or for access to other lands; however, uses by the United States, its permittees or licensees, will be such as not to materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.
- C. The Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21a) declares that it is the continuing policy of the Federal Government to foster and encourage private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic mineral resources.
- D. The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. §§ 1701, 1732) reiterates that the 1970 Mining and Minerals Policy Act will be implemented and directs that public lands be managed in a manner that recognizes the Nation's need for domestic sources of minerals and other resources. FLPMA also requires the Secretary of the Interior to take any action necessary to prevent unnecessary or undue degradation of the lands.
- E. The National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. §§ 1602, 1603) restates the need to implement the Mining and Mineral Policy Act of 1970 and requires the Secretary of the Interior to improve the quality of minerals data in Federal land use decision-making.

- F. Guiding Principles. Consistent with these Acts, the following principles will guide the BLM in managing locatable mineral resources on public lands:
1. The BLM land use planning and multiple-use management decisions will recognize that energy and mineral development can occur concurrently or sequentially with other resource uses, providing that appropriate stipulations or conditions of approval are incorporated into authorizations to prevent unnecessary or undue degradation, reduce environmental impacts, and prevent jeopardy to federally listed species or their designated critical habitat.
 2. Land use plans will incorporate and consider energy and geological assessments as well as energy and mineral potential on public lands through existing energy, geology and mineral resource data, and to the extent feasible, through new mineral assessments to determine mineral potential. Partnerships will be considered with the National Renewable Energy Laboratory and Federal and State agencies, such as the U.S. Geological Survey and State Geologists, to obtain existing and new data.
 3. Withdrawals and other closures of the public land must be justified in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1 and the BLM regulations at 43 CFR Subpart 2310. Petitions to the Secretary of the Interior for revocation of land withdrawals in favor of energy and mineral development will be evaluated through the land use planning process.
 4. The BLM will work cooperatively with surface owners, claimants, and operators in recognizing their rights on split estate lands. In the absence of a Surface Owner Agreement and in managing development of the Federal locatable mineral estate on non-Federal surface, the BLM will take into consideration surface owner mitigation requests from pre-development to final reclamation.
 5. The BLM endorses Sustainable Development that encourages social, environmental, and economic considerations before decisions are made on energy and mineral operations. The BLM actively encourages private industry development of public mineral resources, and promotes practices and technology that least impact natural and human resources.

3809 - SURFACE MANAGEMENT (P)

1-7

6. The BLM will adjudicate and process energy and mineral applications, permits, operating plans, leases, rights-of-ways, and other land use authorizations for public lands in a timely and efficient manner and in a manner to prevent unnecessary or undue degradation. The BLM will require financial assurances, including long-term trusts, to ensure reclamation of the land and for other purposes authorized by law. Prior to mine closure, reclamation considerations will include partnerships to utilize the existing mine infrastructure for future economic opportunities such as landfills, wind farms, biomass facilities, and other industrial uses.
7. Energy and mineral-related permit applications will be reviewed consistent with the requirements of NEPA and other environmental laws. The BLM will work closely with Federal, State, and Tribal governments to reduce duplication of effort while processing energy and mineral-related permit applications.
8. The BLM will monitor locatable, salable, and leasable mineral operations and energy operations to ensure proper resource recovery and evaluation, production verification, diligence, and enforcement of terms and conditions. The United States will receive fair market value for its energy and mineral resources unless otherwise provided by statute, and royalty rates will be monitored and evaluated to protect the public interest.
9. The BLM will continue to develop e-Government solutions that will provide for electronic submission and tracking of applications and use Geographic Information System (GIS) technology for development of energy and mineral resources. The BLM will continue to provide public access to up-to-date mineral records, including spatial display of all types of authorizations and mineral resource and ownership data. Data systems, such as LR2000, will be kept current and best management practices sought to reduce backlogs and to identify errors.
10. The BLM will strive to maintain a professional workforce in adjudication, energy, geology, and engineering to support energy and mineral development.
11. To the extent provided by law, regulation, secretarial order, and written agreement with the Bureau of Indian Affairs, the BLM will apply the above principles to the management of mineral resources and operations on Indian Trust lands in order to comply with its Trust Responsibilities.

3809 - SURFACE MANAGEMENT (P)

1-8

- G. Specific Guidance. Specific policy and procedural guidance are provided in BLM Handbook H-3809-1.

1.7 File and Record Maintenance.

All records and data will be managed according to established records retention and disposal policies. Refer to General Records Schedule (GRS)/BLM Combined Records Schedule. Also see BLM Handbook H-3809-1.

This Page Left Blank

CHAPTER 2. MINERAL ACTIVITIES

2.1 Casual Use Activities.

Activities that ordinarily result in no or negligible disturbance of the public lands or resources are termed “casual use.” Except in special situations, the operator may engage in casual use activities without consulting, notifying, or seeking approval from the BLM.

2.2 Operations Conducted under Notices.

A Notice is required for exploration activity, greater than casual use, causing surface disturbance of 5 acres or less on public lands. Activity causing more than negligible disturbance that does not qualify as a notice-level operation, including all mining, must be conducted under an approved Plan of Operations.

A. Reviewing a Notice Filing.

1. Within 15 calendar days of receipt of a Notice, the BLM will review the filing to determine if it is complete according to 43 CFR 3809.301(b). If a Notice does not contain the information required by 43 CFR 3809.301, the BLM will inform the operator of the additional information that must be submitted as required under 43 CFR 3809.311
2. The BLM review of the complete Notice is to confirm that the operations conducted under the Notice will not cause UUD.
3. 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. 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, does not require an environmental review under NEPA, and is not an approval of the Notice.

- #### B. Commencing Operations.
- The BLM will notify the operator that the BLM has received and reviewed the complete Notice, and that the BLM has received and obligated the required financial guarantee.

- C. Notice Modification.
 - 1. At any time, the authorized officer may require the operator to modify its Notice when UUD is occurring, or where the BLM determines a modification is needed to prevent UUD from occurring.
 - 2. The BLM will review the Notice modification in the same manner as a new Notice.
 - 3. To prevent UUD, the BLM may direct the operator to cease all operations described in the original Notice pending completion of the BLM's review of the proposed modification.
- D. Change of Operator. The BLM will approve an operator change subject to the new operator's satisfactory financial guarantee being accepted and obligated to cover the operation.
- E. Notice Extension.
 - 1. When the operator notifies the BLM of its intent to extend the Notice on or before the expiration date, the BLM must review the original Notice and any additional information submitted by the operator to verify that the Notice qualifies for an extension; that the operation will not cause UUD; and that all information required for a complete Notice has been submitted, including an acceptable revised reclamation cost estimate (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.
 - 2. When the operator notifies the BLM of its intent to extend the Notice on or before the expiration date, but the BLM determines that (1) additional information and/or an increase in the financial guarantee is required and (2) that information and/or financial guarantee cannot be obtained before the expiration date, the Notice may be extended, conditioned upon the receipt of the required information and/or financial guarantee within the time allowed.
 - 3. The Notice expires when the operator fails to extend the Notice on or before the expiration date, fails to provide any additional information required by the BLM within the timeframe provided, or fails to provide the BLM with an acceptable financial guarantee within the time allowed.

2.3 Operations Conducted under Plans of Operations.

A Plan of Operations is required for surface disturbance greater than casual use, unless the activity qualifies for a Notice filing. Surface disturbance greater than casual use on certain special category lands always requires the operator to file a Plan of Operations and receive BLM approval.

A. Plan Review.

1. The BLM will review the operator's proposed Plan of Operations for completeness and give notice within 30 calendar days as to the review results. When Plans of Operations do not contain a complete description of the proposed operations under 43 CFR §3809.401(b), the BLM will identify the deficiencies and notify the operator.
2. 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 as provided for under 43 CFR 3809.411(b).
 - a. The expedited approval of activity needed to comply with environmental laws or mitigate undesirable events 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.
 - b. As soon as practical, the appropriate level of NEPA analysis must be completed for any activities approved under this provision of the regulations.
 - c. As soon as practical, the amount of the reclamation financial guarantee will be modified to reflect the additional reclamation liabilities on the ground.
3. The BLM must complete the environmental review required under NEPA before it can issue a decision on the proposed Plan of Operations, or on a modification to an existing Plan under 43 CFR 3809.432(a).
 - a. The Decision Record (DR) or Record of Decision (ROD) will explain how the selected alternative meets the requirements of the regulations to prevent

UUD and is in conformance with the applicable land use plan(s).

- b. Mitigating measures to the operator's proposed Plan may be required as conditions of approval in the DR or ROD, along with a brief rationale as to why the measures are needed to prevent UUD.
- c. If the Plan contains any future occupancy, the approval decision must also contain a written determination of concurrence or non-concurrence regarding the occupancy as per 43 CFR Subpart 3715.

B. Decision. The BLM will issue a decision regarding a Plan of Operations.

- 1. Disapproved. The BLM decision must clearly state why the proposed Plan of Operations is inadequate in preventing UUD.
- 2. Approval Withheld. The BLM decision must clearly state why a decision on the proposed Plan of Operations is being withheld. In most cases, approval is withheld pending satisfaction of a procedural or legal requirement.
- 3. Approval. Approve the complete Plan as submitted. The BLM decision should reference the approved plan and associated documents that describe the extent and limits of the authorized on-the-ground activities when the Plan of Operations is approved.
- 4. Conditional/Phased Approval. Approve the Plan subject to certain conditions imposed to ensure the operation meets the performance standards and does not result in UUD. The BLM decision must clearly state the extent and limits of the authorized on-the-ground activities when the Plan of Operations is approved. 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. 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.

C. Commencing Operations. The operator must not begin operations until the BLM 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.

D. Plan of Operations Modification.

1. The operator may request a modification to the Plan, or if the BLM identifies or anticipates UUD, the BLM may order the operator to modify the Plan of Operations.
2. The BLM will review and approve a modification to a Plan of Operations in the same manner as the BLM reviewed and approved the initial Plan under 43 CFR 3809.401 through 3809.420 unless the modification is considered minor. 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.

E. 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 Environmental Impact Statement (EIS)-level environmental analysis.

2.4 Performance Standards.

The Federal Land Management and Policy Act (FLPMA) prohibits anyone using the public lands from causing UUD of the public lands.

- A. Review. The responsible BLM office must review a Notice or Plan of Operations to determine if the operations will cause UUD under 43 CFR 3809.415.
- B. Monitoring. The BLM must ensure that ongoing operators are complying with the performance standards under 43 CFR 3809.420.

2.5 Financial Guarantees.

- A. Reviewing the Reclamation Cost Estimate (RCE). The BLM must review the operator's estimate of the cost to reclaim the operations to ensure the estimate meets the requirements of 43 CFR 3809.552(a), 3809.552(c), and 3809.554(a).
 1. The amount of the financial guarantee must cover the estimated cost as if BLM were to contract with a third party to reclaim the operation in accordance with the reclamation performance standards listed

within 43 CFR 3809.420 and all reclamation and closure requirements identified in the accepted Notice or approved Plan of Operations.

2. If the BLM determines the operation, as proposed, will cause UUD, the BLM will not make a determination as to the amount of the required financial guarantee; therefore, the operation, as proposed, may not be authorized.
3. It is the BLM's responsibility to conduct a periodic review of the RCE for ongoing operations to ensure the amount of the required financial guarantee, including trust funds required under 43 CFR 3809.552(c), continues to meet the requirements of the regulations and all reclamation requirements in the accepted Notice or approved Plan of Operations.
4. BLM's review and approval of a financial guarantee is part of its compliance enforcement program to ensure that an operator fulfills its reclamation responsibility and not cause UUD. 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. These decisions do not require an environmental review under NEPA and are not to be included in NEPA documents used to review a proposed operation.

B. Review Results.

1. When an estimate for a proposed operation is not acceptable, the BLM 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.
2. For ongoing operations, where the BLM lacks the information necessary to determine the adequacy of the existing cost estimate, the BLM must notify the operator of the deficiencies or errors and require that additional information or revised RCE be submitted within the time allowed.
3. When the BLM completes a review of an acceptable RCE, the BLM must document the findings.
 - a. For a new or modified Notice or Plan, the BLM will issue a decision on the amount of the required financial guarantee.

- b. For ongoing operations, where the amount of the required financial guarantee increased, the BLM will issue a decision stating the amount of the required financial guarantee and the date, not to exceed 60 days from receipt of the decision, when an acceptable financial guarantee must be submitted.
 - c. For a Notice extension under 43 CFR 3809.333, where the amount of the required financial guarantee has increased, the BLM will issue a decision stating the amount of the required financial guarantee, that the Notice is conditionally extended subject to meeting the financial guarantee requirements, and the date, not to exceed 60 days from receipt of the decision, when the required financial guarantee must be submitted.
 - d. For ongoing operations, if the RCE does not require an adjustment in the required financial guarantee amount and a decision is not issued, the BLM will add a statement to the case file certifying that the cost estimate and financial guarantee have been reviewed in conformance with the established review periods, and the estimate and guarantee continue to meet the requirements of the regulations.
- C. 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.
- 1. The BLM will require a financial guarantee for all identified operator obligations, including post-reclamation obligations. The BLM may require the establishment of a trust fund or other funding mechanism to meet those post-reclamation obligations.
 - 2. The determination that a trust fund is needed and/or the amount needed in the fund will ordinarily occur during review of the proposed operation. Rarely, changed circumstances may require that the determination be made later.

3. The BLM will not use 43 CFR 3809.552(c) to require an operator to establish a fund to address unanticipated or theoretical events, such as accidents, failures, or spills, or worst-case scenarios that have not occurred. If such events occur, the BLM will require a trust fund or other funding mechanism to address any long-term requirements.
 4. Any post-reclamation obligations covered by the long-term funding mechanism must be described in the approved Plan of Operations. If the BLM determines the operator is responsible for post-reclamation obligations not described in the original reclamation plan, the BLM will direct the operator to submit a modification to the Plan of Operations covering those obligations per 43 CFR 3809.431(b).
 5. The BLM must periodically review long-term funding mechanisms established under 43 CFR 3809.552(c) to ensure adequacy.
- D. 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 Plan of Operations, the operator may request a reduction in the amount of the required financial guarantee.
1. The BLM will inspect the reclaimed portion of the operation and issue a decision on the required financial guarantee.
 2. The BLM must ensure that any existing enforcement actions, including noncompliance orders, are resolved before any release or reduction of the financial guarantee requirements may be authorized.
 3. The final reduction or release of the requirement to maintain a financial guarantee for a Plan of Operations requires public notification and a comment period.
- E. Release of 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 if the reclamation fails to meet the standards of the regulations or the reclamation responsibilities as specified in the filed Notice or approved Plan of Operations.
1. The BLM will terminate the period of liability of a financial guarantee when all obligations of the terms of the authorization have been fulfilled, or payment of the bond proceeds (penal sum) is received by the BLM, or when a satisfactory replacement financial guarantee has been accepted by the BLM.

2. 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, or under any other applicable statutes or regulations.

F. Change in Land Ownership. When there is a change in the land status out of public ownership, the BLM must determine if retention of all or part of the financial guarantee is still warranted.

G. Forfeiture of Financial Guarantee. The BLM may initiate forfeiture of all or part of an operator's financial guarantee for any project area or portion of a project area if one the following occurs:

1. The operator or mining claimant is unable or unwilling to conduct reclamation as provided for and as scheduled in the reclamation plan or in accordance with the regulations.
2. The operator fails to meet the terms of the Notice or approved Plan of Operations.
3. The operator defaults on any of the conditions under which the operator obtained the financial guarantee.

2.6 Cessations and Abandonments.

A. Abandoned Operations. If the BLM determines that operations are abandoned, the BLM will issue a decision that identifies any remaining reclamation obligations, and 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 specified date.

B. Forfeiture of Financial Guarantee. 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 BLM will initiate forfeiture of the financial guarantee as provided under 43 CFR 3809.595.

2.7 Special Situations and Land Use Planning.

A. Withdrawn and Segregated Lands. The regulations at 43 CFR 3809.100 have special provisions that apply to proposed operations on segregated or withdrawn lands.

1. For withdrawn lands the BLM must conduct a validity examination and determine that the mining claim(s) subject to the Notice or Plan were valid, (1) as of the date of the withdrawal, and (2) as of the date of the exam before approving a Plan or determining a Notice to be complete. For withdrawn lands preceded by a segregation, the date for which the BLM must determine validity is the date of the segregation.
2. The BLM may decide to prepare a validity examination and report before approving a Plan of Operations or accepting a Notice on lands that are segregated and not formally withdrawn from the operation of the Mining Law.
3. If the validity determination and mineral report conclude that the mining claim was invalid, (1) at the time of the withdrawal or segregation, or (2) at the time of the validity examination, the BLM will not approve the Plan of Operations or accept the Notice, or allow any other activities on the mining claim, except as necessary for the operator to defend any pending contest proceeding.
4. If BLM has not completed the validity report, or 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 allowed.
 - a. The BLM 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. If the lands are subject to segregation followed by a withdrawal with no change in land status, then the earliest date applies.
 - b. The BLM may 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.
5. 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).

3809 - SURFACE MANAGEMENT

2-11

6. Material modifications to accepted Notices or approved Plans of Operations that were in place prior to the withdrawal or segregation date are subject to the valid existing rights determination procedures at 43 CFR 3809.100(a) if the modification postdates the withdrawal or segregation.
- B. Common Variety Minerals. When a Plan of Operations or Notice is submitted to the BLM to remove suspected common-variety minerals, as 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.
1. Pending completion of a common-variety determination, the BLM may provide interim authorization under 43 CFR 3809.101(b) to conduct operations in three circumstances:
 - a. The BLM 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.
 - b. The BLM may approve a Plan of Operations or allow notice-level operations for the operator to perform the minimum necessary annual assessment work if required under 43 CFR Part 3836.
 - c. The BLM may authorize the operator to remove possible common-variety minerals if the operator establishes an escrow account acceptable to the BLM.
 2. If the material is determined to be a common-variety mineral, not subject to the Mining Law or the 43 CFR Subpart 3809 regulations, the operator may either relinquish the mining claims or the BLM will initiate contest proceedings.
- C. Split Estate Lands. In certain cases, the BLM's surface management regulations apply to operations authorized under the Mining Law on split estate lands.
1. 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

3809 - SURFACE MANAGMENT

2-12

authorization under the surface management regulations. If there is not an agreement with the surface owner, the operator must submit a Plan of Operations to the BLM.

2. For split estate lands other than SRHA lands, the operator must file a Plan of Operations or Notice for all proposed operations.
3. Where the mineral estate is private and the surface is managed by the BLM, the 43 CFR Subpart 3809 regulations do not apply because the non-Federal minerals are not subject to the Mining Law.

D. Suction Dredging. The use of a suction dredge may be allowed or authorized under the surface management regulations or may be authorized under State regulations if the BLM and the State enter into an agreement under 43 CFR 3809.200 through 3809.204.

2.8 Inspection.

The responsibilities for the inspection of operations are specifically addressed at 43 CFR 3809.600.

A. Frequency.

1. At least four times each year, the BLM will inspect an operation if the operator uses cyanide, or other leachates, or where there is significant potential for acidic or deleterious drainage.
2. Active Plans that do not involve leachates will be inspected at least two times per year.
3. Active Notices will be inspected at least once each year.

B. Documentation. The findings and results of each inspection must be documented, including any identified noncompliance documented in a noncompliance order.

2.9 Enforcement.

The regulations at 43 CFR 3809.601 through 3809.604 address the BLM's authority to take enforcement actions when an operator engages in one of the prohibited acts under 43 CFR 3809.605, or otherwise does not meet the requirements of these regulations.

- A. Types of Enforcement Orders. The BLM may issue three types of enforcement orders: noncompliance orders, suspension orders, and immediate temporary suspension orders.
- B. Preparation of Enforcement Orders. All enforcement orders must be in writing, issued as formal decisions, and include the pertinent appeals language.
- C. Duration of Order. 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.
- D. Failure to Comply. The BLM may take a variety of actions where an operator fails or refuses to comply with an enforcement order, including 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 of Operations or nullifying the operator's Notice.
- E. Criminal Penalties. In circumstances described in 43 CFR 3809.700 and 43 CFR 3809.701, the BLM may seek criminal penalties for individuals and organizations that knowingly and willfully violate 43 CFR Subpart 3809.

2.10 Administrative Review.

An operator or other adversely affected party may request administrative review of a BLM decision. The adversely affected party may either request a State Director Review (SDR) or appeal directly to the OHA.

- A. State Director Review. A request for SDR must be made in writing and may include a request to meet with the State Director.
 - 1. Within 21 days of receipt of the request, the State Director will notify the party seeking a SDR as to whether the State Director will review the original BLM decision.
 - 2. If the adversely affected party files an appeal to OHA while the State Director is reviewing the BLM's decision, then the State Director must stop the SDR and forward the original decision and case file to OHA unless OHA agrees to defer consideration of the appeal at the request of the State Director.

3. The State Director may affirm the original decision, reverse the decision completely, modify it, or remand the original decision back to the office that issued the decision.
4. If requested, the State Director must determine whether or not the State Director can accommodate a meeting request.

B. OHA Appeals.

1. If the appellant files a Notice of Appeal, the BLM's only responsibility is to prepare the case file and transmit it along with the Notice of Appeal to OHA. The BLM must wait for the appellant to file its Statement of Reasons or for the time for filing a Statement of Reasons to expire.
2. If the appellant files a Notice of Appeal and a Statement of Reasons, the BLM must transmit the case file to OHA as well as file its answer with OHA.
3. If the appellant files both a Notice of Appeal and request for stay, the BLM must transmit the case file to OHA as well as any response to the stay request within 10 days of service.

C. Litigation in Federal Court. The BLM decisions under 43 CFR 3809 may be challenged in Federal court. A party may seek judicial review of a decision made by the OHA or during SDR in Federal court, or a party may challenge the BLM decision in Federal court without going to OHA or seeking SDR first.

2.11 Federal-State 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 certain surface management responsibilities to the State administration. Such agreements are made under the authority of the appropriate State Director.

2.12 Records Management.

The BLM is responsible for the creation and maintenance 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), facilitate budget planning, assess units of accomplishment, respond to information requests from the BLM Washington Office, identify unnecessary or undue degradation, ensure that the approved Plan of Operations or accepted Notice is followed,

3809 - SURFACE MANAGMENT

2-15

support enforcement actions, and document the BLM decision-making process in the event of administrative or judicial review.