

interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Written comments must be received on or before April 23, 2001.

**ADDRESSES:** Comments may be mailed to Donald Dahl, Air Permits Program, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, (617) 918-1657.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: January 8, 2001.

**Mindy S. Lubber,**

*Regional Administrator, EPA-New England.*

[FR Doc. 01-6567 Filed 3-22-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[MO 112-1112; FRL-6956-8]

#### Approval and Promulgation of Implementation Plans and Part 70 Operating Permits Program; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed action.

**SUMMARY:** EPA proposes to approve revisions to the Missouri State Implementation Plan (SIP) and part 70 Operating Permits Program. EPA is approving revisions to Missouri's Definitions and Common Reference Tables rule and Operating Permits rule. These revisions will strengthen the SIP with respect to attainment and

maintenance of established air quality standards, ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revisions pursuant to both section 110 and part 70.

In the final rules section of the **Federal Register**, EPA is approving the state's submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed action must be received in writing by April 23, 2001.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: January 17, 2001.

**Dennis Grams,**

*Regional Administrator, Region 7.*

[FR Doc. 01-7024 Filed 3-22-01; 8:45 am]

**BILLING CODE 6560-50-U**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Parts 2090, 2200, 2710, 2740, 3800 and 9260

[WO-300-1990-00]

**RIN 1004-AD22**

#### Mining Claims Under the General Mining Laws; Surface Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule; proposed suspension of rules.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to suspend final regulations published on November 21, 2000, that amended the rules governing mining operations involving metallic and some other minerals on public lands. A suspension would provide the BLM an opportunity to review some of the new requirements in light of issues plaintiffs raise in four lawsuits challenging the rules and in light of issues the Governor of Nevada and others have raised since the final rules were published. BLM has concerns about substantial policy and legal issues raised in the lawsuits and wants to resolve such concerns before implementing a new regulatory program. To avoid a regulatory vacuum that would result from a suspension, BLM proposes to republish and reinstate as a final rule the rules that were in place on January 19, 2001, the day before the revised rules became effective.

**DATES:** You must submit your comments to BLM at the appropriate address below on or before May 7, 2001. BLM will not necessarily consider any comments received after the above date in making its decisions on the final rule.

**ADDRESSES:**

Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: WOCComment@blm.gov. (Include "Attn: AD22").

**FOR FURTHER INFORMATION CONTACT:**

Michael H. Schwartz, at 202-452-5198. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

- I. Comment Procedures
- II. Background and Proposed Action
- III. Procedural Matters

#### I. Comment Procedures

##### *A. How Do I Comment on the Proposed Rule?*

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.

You may also comment via the Internet to WOCComment@blm.gov.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: "AD22" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 452-5030.

Please make your written comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM will consider comments you submitted during the 1999 and 2000 comment periods on the earlier rulemaking if you identify such comments and ask us to consider them.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

#### *B. May I Review Comments Submitted by Others?*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: "Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

## **II. Background and Proposed Action**

On November 21, 2000, BLM published final regulations revising title 43 of the Code of Federal Regulations (43 CFR) subpart 3809 and related sections governing hardrock mining on the public lands (the "revised 3809 rules"). See 65 FR 69998. BLM completed a final environmental impact statement one month earlier. The revised 3809 rules completely replaced the previous version of 43 CFR subpart 3809 (1999) that, for the most part, were issued in 1980. See 45 Fed. Reg. 78902-78915 (November 26, 1980). The revised 3809 rules were the last step of a

rulemaking which, among other things, relied upon a congressionally mandated report by the National Research Council, entitled *Hardrock Mining on Federal Lands*. Congress also directed BLM as to how to conduct the rulemaking and what provisions BLM could include in a final rule. In particular, Congress provided express guidance to BLM in the FY 2000 and FY 2001 Interior Appropriations bills as follows:

None of the funds in this Act or any other Act shall be used by the Secretary of the Interior to promulgate final rules to revise 43 CFR subpart 3809, except that the Secretary, following the public comment period required by section 3002 of Public Law 106-31, may issue final rules to amend 43 CFR Subpart 3809 which are not inconsistent with the recommendations contained in the National Research Council report entitled "Hardrock Mining on Federal Lands" so long as these regulations are also not inconsistent with existing statutory authorities. Nothing in this section shall be construed to expand the existing statutory authority of the Secretary.

Public Law 106-113, 113 Stat. 1501, App. C., 113 Stat. 1501A-210 sec. 357 (1999). An identical provision was enacted in sec. 156 of the FY 2001 Interior Appropriations Act. Pub. L. 106-291, sec. 156, 114 Stat. 922, 962-63 (Oct. 11, 2000).

Following issuance of the revised 3809 rules, four lawsuits were filed challenging the rules, three in the U.S. District Court for the District of Columbia (brought by the National Mining Association (NMA), the Newmont Mining Corporation, and the Mineral Policy Center and two other environmental groups), and one in the U.S. District Court for Nevada (brought by the State of Nevada). These cases include *National Mining Association v. Babbitt*, No. 00CV-2998 (D.D.C. filed December 15, 2000); *Newmont Mining Corporation v. Babbitt*, No. 01CV-23 (D.D.C. filed January 5, 2001); *Mineral Policy Center v. Babbitt*, No. 01CV-73 (D.D.C. filed January 16, 2001); and *State of Nevada v. DOI*, No. CV-N01-0040-ECR-VPC (D. NV filed January 19, 2001).

The industry plaintiffs and the State of Nevada assert that BLM improperly issued the revised 3809 rules, and violated numerous statutes, including: the specific congressional provisions cited above applicable to promulgation of the revised 3809 rules; the notice and comment provisions of the Administrative Procedure Act, particularly with regard to the "substantial irreparable harm" standard of the final regulatory definition of the term "unnecessary or undue degradation;" the National

Environmental Policy Act; the Regulatory Flexibility Act; the Federal Land Policy and Management Act; and the General Mining Law. The environmental plaintiffs assert that the 3809 rules are not sufficiently stringent and improperly allow mining operations on lands without valid mining claims or mill sites.

On January 19, 2001, the judge in the National Mining Association suit denied NMA's motion for a preliminary injunction to stay the effective date of the final rules, holding that the plaintiff did not successfully meet its burden of showing that the revised 3809 rules becoming effective would cause irreparable harm. As to the merits of the plaintiff's claims, the federal district court concluded that, although such claims may or may not have merit, it was unclear at the preliminary injunction stage of the proceeding that the NMA would eventually prevail.

The revised 3809 rules became effective on January 20, 2001.

On February 2, 2001, the Nevada Governor sent an urgent request to the Secretary of the Interior requesting postponement of the effective date and the implementation of the revised 3809 rules, based on legal deficiencies associated with promulgation of the new rules and the assertion that the revised 3809 rules were unnecessary. In his February 2, 2001, letter, the Governor expressed concern that:

These new regulations will, if not overturned, impose significant new and unnecessary regulatory burdens on Western States and will preclude mining companies from engaging in operations they might otherwise pursue, thereby leading to a dramatic decrease in employment and revenue in the mining sector and a corresponding decrease in tax revenue and other economic benefits to Western states. BLM's own Final Environmental Impact statement concludes that the new rules will result in a loss of up to 6,050 jobs, up to \$396 million in total income and up to \$877 million in total industry output.

The Governor was particularly concerned because the greatest impact of the revised 3809 rules would be borne by Nevada.

The U.S. District Court for the District of Columbia concluded that the plaintiff was not entitled to a preliminary injunction. Nevertheless, BLM recognizes that the plaintiff raised serious concerns regarding the revised 3809 rules. Also, BLM recognizes the concerns expressed by the Nevada Governor. Therefore, BLM believes that undertaking implementation of a complex new regulatory program applicable to hardrock mining on public lands before additional examination of

the legal, economic, and environmental concerns that plaintiffs and the Nevada Governor raise could prove unnecessarily disruptive and confusing to the mining industry and the States that, together with BLM, regulate the mining industry. If BLM were to implement the new regulations, and then be required to change back again if the new rules are found deficient, the impact on both large and small miners is of substantial concern. Many of the latter, particularly, may not be sophisticated in dealing with changing regulatory requirements. On a larger scale, implementation of the revised 3809 rules could create an uncertain economic environment. Although this disruption and atmosphere of uncertainty may not rise to the standard of immediate irreparable harm, BLM believes that it has a responsibility to the mining industry, the affected States, and the public to ensure that the new regulatory regime it is imposing is sound, both legally and from a policy view. Suspending implementation of the revised 3809 rules will allow this examination to occur while maintaining the previous status quo, and eliminate the possibility of disruptive effects if the industry must switch to new rules and then back again if the new rules are found to be deficient.

If a final decision is reached to suspend the revised rules, BLM would reinstate the previous rules verbatim as a final rule to avoid a regulatory vacuum while judicial and administrative review of the revised 3809 rules proceed. The final rule would thus include provisions identifying the suspended provisions and regulatory text identical to the previous 3809 rules. BLM would also reinstate sections of 43 CFR subparts 2091, 2201, 2711, 2741, and 9263 that were revised by the November 2000 final rules.

To avoid confusion for the readers of the Code of Federal Regulations if the suspension continues on October 1, 2001, the previous regulations that were in effect on October 1, 2000, would appear in the next published version of the CFR as subpart 3809. The suspended regulations also would appear in the CFR and would be designated as "subpart 3809a" for clarity of citation purposes and because two distinct regulations cannot use the same regulation number. The suspended regulations would be printed in small type.

Although BLM cannot predict the outcome of its review of the issues that have been raised or the outcome of the legal challenges to the revised 3809 rules, at some point either the

suspension will be lifted or BLM may engage in further rulemaking.

As a final matter, we specifically solicit comments as to whether some provisions of the revised 3809 rules should not be suspended while BLM conducts its review of the issues. For example, rather than suspending all of the revised 3809 rules, BLM could leave in place some or all of the new revisions that address the specific regulatory gaps identified by the National Research Council (as identified in Alternative 5, the "NRC Alternative," in BLM's final environmental impact statement), which most commenters agreed are warranted. BLM requests comments on this approach or others, e.g., whether all of the revised rules should be suspended until either BLM completes further rulemaking or until the litigation is resolved.

### III. Procedural Matters

For purposes of suspending the revised 3809 rules and reinstating the previous rules, BLM relies on the supporting documents and analyses prepared for the November 2000, final rules. Although the sufficiency of some of these documents has been questioned, these documents are sufficient for the purpose of restoring the status quo as it existed on January 19, 2001 or, if selected, for one of the other alternatives included in BLM's final EIS.

#### List of Subjects

##### 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians-lands, Public lands, Public lands-classification, Public lands-mineral resources, Public lands-withdrawal, Seashores.

##### 43 CFR Part 2200

Administrative practice and procedure, Antitrust, Coal, National forests, Public lands.

##### 43 CFR Part 2710

Administrative practice and procedure, Public lands-mineral resources, Public lands-sale.

##### 43 CFR Part 2740

Intergovernmental relations, Public lands-sale, Recreation and recreation areas, Reporting and recordkeeping requirements.

##### 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and

recordkeeping requirements, Surety bonds, Wilderness areas.

##### 43 CFR Part 9260

Continental shelf, Forests and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, wildlife.

Dated: March 14, 2001.

**Piet de Witt,**

*Acting Assistant Secretary, Land and Minerals Management.*

Accordingly, BLM proposes to amend Title 43 of the Code of Federal Regulations parts 2090, 2200, 2710, 2740, 3800, and 9260 as set forth below:

### PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 continues to read as follows:

**Authority:** 16 U.S.C. 3124; 30 U.S.C. 189; and 43 U.S.C. 322, 641, 1201, 1624, and 1740.

#### Subpart 2091—Segregation and Opening of Lands

2. In § 2091.2–2, add paragraph (b) to read as follows:

##### § 2091.2–2 Opening.

\* \* \* \* \*

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

3. In § 2091.3–2, redesignate paragraph (c) as paragraph (d) and add paragraph (c) as follows:

##### § 2091.3–2 Opening.

\* \* \* \* \*

(c) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States shall not be open to the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

\* \* \* \* \*

### PART 2200—EXCHANGES: GENERAL PROCEDURES

4. The authority citation for part 2200 continues to read as follows:

**Authority:** 43 U.S.C. 1716 and 1740.

**Subpart 2201—Exchanges—Specific Requirements**

5. In § 2201.1–2, redesignate paragraph (d) as paragraph (e), and add paragraph (d) as follows:

**§ 2201.1–2 Segregative effect.**

\* \* \* \* \*

(d) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States, together with the right to prospect for, mine and remove the minerals, shall be removed from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

\* \* \* \* \*

**PART 2710—SALES: FEDERAL LAND POLICY AND MANAGEMENT ACT**

6. The authority citation for part 2710 continues to read as follows:

**Authority:** 43 U.S.C. 1713 and 1740.

**Subpart 2711—Sales: Procedures**

7. Add § 2711.5–1 as follows:

**§ 2711.5–1 Mineral reservation.**

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met. Where such application has been filed and meets the requirements for conveyance, the authorized officer may withhold issuance of a patent or other document of conveyance on lands sold under this part until processing of the mineral conveyance application is completed, at which time a single patent or document of conveyance for the entire estate or interest of the United States may be issued.

**PART 2740—RECREATION AND PUBLIC PURPOSES ACT**

8. The authority citation for part 2740 continues to read as follows:

**Authority:** 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

**Subpart 2741—Recreation and Public Purposes Act: Requirements****§ 2741.7 [Amended]**

9. In § 2741.7, add paragraph (d) as follows:

\* \* \* \* \*

(d) All leases and patents issued under the act shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior. Where such reserved minerals are subject to disposition under the provisions of the Mineral Leasing Act of 1920, as amended, and supplemented (30 U.S.C. 181 *et seq.*), the Materials Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), the regulations contained in Subchapter C of this title shall be utilized.

**PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS**

10. The authority citation for Part 3800 continues to read as follows:

**Authority:** 5 U.S.C. 552; 16 U.S.C. 1131–1136; 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21a, 22 *et seq.*, 36, 621 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*, 62 Stat. 162.

10a. Amend part 3800 by redesignating subpart 3809 as subpart 3809a and suspending newly designated subpart 3809a.

11. Amend part 3800 by adding subpart 3809 to read as follows:

**Subpart 3809—Surface Management**

Sec.

- 3809.0–1 Purpose.
- 3809.0–2 Objectives.
- 3809.0–3 Authority.
- 3809.0–5 Definitions.
- 3809.0–6 Policy.
- 3809.0–9 Information collection.
- 3809.1 Operations.
- 3809.1–1 Reclamation.
- 3809.1–2 Casual use: Negligible disturbance.
- 3809.1–3 Notice: Disturbance of 5 acres or less.
- 3809.1–4 Plan of operations: When required.
- 3809.1–5 Filing and contents of plan of operations.
- 3809.1–6 Plan approval.
- 3809.1–7 Modification of plan.
- 3809.1–8 Existing operations.
- 3809.1–9 Bonding requirements.
- 3809.2 Prevention of unnecessary or undue degradation.
- 3809.2–1 Environmental assessment.
- 3809.2–2 Other requirements for environmental protection.
- 3809.3 General provisions.
- 3809.3–1 Applicability of State law.
- 3809.3–2 Noncompliance.

- 3809.3–3 Access.
- 3809.3–4 Fire prevention and control.
- 3809.3–5 Maintenance and public safety.
- 3809.3–6 Inspection.
- 3809.3–7 Periods of non-operation.
- 3809.4 Appeals.
- 3809.5 Public availability of information.
- 3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

\* \* \* \* \*

**Subpart 3809—Surface Management**

**Note:** The information collection requirements contained in this subpart have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0104. This information is needed to permit the authorized officer to determine if a plan of operation is needed to protect the public lands and their resources and to determine if the plan of operations, if one is required, is adequate. The obligation to respond is required to obtain a benefit.

**General****§ 3809.0–1 Purpose.**

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of Federal lands which may result from operations authorized by the mining laws.

**§ 3809.0–2 Objectives.**

**The objectives of this regulation are to:**

- (a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the Federal lands;
- (b) Provide for reclamation of disturbed areas; and
- (c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

**§ 3809.0–3 Authority.**

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on Federal lands shall be “under regulations prescribed by law,” and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management

Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the Federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y-8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

#### § 3809.0-5 Definitions.

As used in this subpart, the term:

(a) Authorized officer means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) Casual Use means activities ordinarily resulting in only negligible disturbance of the Federal lands and resources. For example, activities are generally considered casual use if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed to

off-road vehicles as defined in subpart 8340 of this title.

(c) Federal lands means lands subject to the mining laws including, but not limited to, the certain public lands defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stockraising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR part 3802 regulations).

(d) Mining claim means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) Mining laws means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) Operations means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across Federal lands subject to these regulations.

(g) Operator means a person conducting or proposing to conduct operations.

(h) Person means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) Project area means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be

conducted, as well as Federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) Reclamation means taking such reasonable measures as will prevent unnecessary or undue degradation of the Federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) Unnecessary or undue degradation means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, areas designated as part of the National Wilderness System administered by the Bureau of Land Management and other such areas, that level of protection shall be met.

(l) King Range Conservation Area means the area designated pursuant to the Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y-8).

#### § 3809.0-6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of Federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) Federal lands for the purpose of mineral prospecting, exploration, development, extraction

and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the Federal lands and to provide for reasonable reclamation.

**§ 3809.0–9 Information collection.**

(a) The collections of information contained in subpart 3809 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0176. BLM will use the information in regulating and monitoring mining and exploration operations on public lands. Response to requests for information is mandatory in accordance with 43 U.S.C. 1701 *et seq.* The information collection approval expires December 31, 1999.

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

**§ 3809.1 Operations.**

**§ 3809.1–1 Reclamation.**

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

**§ 3809.1–2 Casual use: Negligible disturbance.**

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of Federal lands will not occur.

**§ 3809.1–3 Notice: Disturbance of 5 acres or less.**

(a) All operators on project areas whose operations, including access across Federal lands to the project area, cause a cumulative surface disturbance

of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice covering substantially the same ground, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under paragraph (c)(3) of this section when the construction of access routes are involved. Notices properly filed under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which 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;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1–3(d) of this title and that reasonable measures will be taken to prevent unnecessary or undue degradation of the Federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

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

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

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

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

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

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

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

(v) Rehabilitation of fisheries and wildlife habitat.

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

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to prevent undue or unnecessary degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3–2 of this title.

**§ 3809.1–4 Plan of operations: when required.**

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1–3 of this title.

(b) Any operation, except casual use, in the following designated areas:

(1) Lands in the California Desert Conservation Area designated as controlled or limited use areas by the California Desert Conservation Area plan;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas designated as closed to off-road vehicle use as defined in subpart 8340 of this title.

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

(c) Plans properly filed and approved under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

**§ 3809.1-5 Filing and contents of plan of operations.**

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the Federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1-3(d) of this title. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's

plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

**§ 3809.1-6 Plan approval.**

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be

completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1-9 of this title as it relates to bonding.

**§ 3809.1-7 Modification of plan.**

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the Federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

#### **§ 3809.1—8 Existing operations.**

(a) Persons conducting operations on January 1, 1981, who would be required to submit a notice under § 3809.1–3 or a plan of operations under § 3809.1–4 of this title may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1–3 of this title for operations where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1–4 of this title. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the Federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

#### **§ 3809.1–9 Bonding requirements.**

(a) No bond shall be required for operations that constitute casual use

(§ 3809.1–2) or that are conducted under a notice (§ 3809.1–3 of this title).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1–5 of this title may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1–7 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced

proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents. Issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6 of this title).

#### **§ 3809.2 Prevention of unnecessary or undue degradation.**

##### **§ 3809.2–1 Environmental assessment.**

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is *substantial public interest* in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan in § 3809.1–6 of this title, is required to consider public comments on the environmental assessment.

**§ 3809.2-2 Other requirements for environmental protection.**

All operations, including casual use and operations under either a notice (§ 3809.1-3) or a plan of operations (§ 3809.1-4 of this title), shall be conducted to prevent unnecessary or undue degradation of the Federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

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

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

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

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

(e) Cultural and paleontological resources. (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

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

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

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

**§ 3809.3 General provisions.****§ 3809.3-1 Applicability of State law.**

(a) Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on Federal lands under the mining laws.

(b) After November 26, 1980 the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the Federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible, provide for State administration and enforcement of such programs.

**§ 3809.3-2 Noncompliance.**

(a) Failure of an operator to file a notice under § 3809.1-3 of this title or a plan of operations under § 3809.1-4 of this title will subject the operator, at the discretion of the authorized officer, to being served a notice of non-compliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1-3 of this title is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the same manner as described in § 3809.3-2(b)(1) of this section.

(c) All operators who conduct operations under a notice pursuant to § 3809.1-3 and a plan pursuant to § 3809.1-4 on Federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1-5 and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1-3 of this title.

**§ 3809.3-3 Access.**

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may

require the operator to make appropriate arrangements for use and maintenance.

**§ 3809.3-4 Fire prevention and control.**

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

**§ 3809.3-5 Maintenance and public safety.**

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

**§ 3809.3-6 Inspection.**

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

**§ 3809.3-7 Periods of non-operation.**

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

**§ 3809.4 Appeals.**

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part

4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of receipt of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

**§ 3809.5 Public availability of information.**

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR part 2.

**§ 3809.6 Special provisions relating to mining claims patented within the boundaries of the California desert conservation area.**

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject to the regulations in this part, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

**PART 9260—LAW ENFORCEMENT—CRIMINAL**

11. The authority citation for part 9260 continues to read as follows:

**Authority:** 16 U.S.C. 433; 16 U.S.C. 4601-6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851-1861; 18 U.S.C. 3551 *et seq.*; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

12. Amend part 9260 by suspending § 9263.1

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