

§ 3809.592

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

(a) Release of your financial guarantee under this subpart does not release you (the mining claimant or operator) from responsibility for reclamation of your operations should reclamation fail to meet the standards of this subpart.

(b) Any release of your financial guarantee under this subpart does not release or waive any claim BLM or other persons may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or regulations.

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

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

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

(a) When your mining claim or millsite is patented, BLM will release the portion of the financial guarantee that applies to operations within the boundaries of the patented land. This paragraph does not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area.

(b) BLM will release the remainder of the financial guarantee, including the portion covering approved access outside the boundaries of the mining claim, when you have completed reclamation to the standards of this subpart.

43 CFR Ch. II (10–1–03 Edition)

FORFEITURE OF FINANCIAL GUARANTEE

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

BLM may initiate forfeiture of all or part of your financial guarantee for any project area or portion of a project area if—

(a) You (the operator or mining claimant) refuse or are unable to conduct reclamation as provided in the reclamation measures incorporated into your notice or approved plan of operations or the regulations in this subpart;

(b) You fail to meet the terms of your notice or your approved plan of operations; or

(c) You default on any of the conditions under which you obtained the financial guarantee.

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

When BLM decides to require the forfeiture of all or part of your financial guarantee, BLM will notify you (the operator or mining claimant) by certified mail, return receipt requested; the surety on the financial guarantee, if any; and the State agency holding the financial guarantee, if any, informing you and them of the following:

(a) BLM's decision to require the forfeiture of all or part of the financial guarantee;

(b) The reasons for the forfeiture;

(c) The amount that you will forfeit based on the estimated total cost of achieving the reclamation plan requirements for the project area or portion of the project area affected, including BLM's administrative costs; and

(d) How you may avoid forfeiture, including—

(1) Providing a written agreement under which you or another person will perform reclamation operations in accordance with a compliance schedule which meets the conditions of your notice or your approved plan of operations and the reclamation plan, and a demonstration that such other person has the ability to satisfy the conditions; and

(2) Obtaining written permission from BLM for a surety to complete the

reclamation, or the portion of the reclamation applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in your notice or approved plan of operations.

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

If you fail to meet the requirements of BLM's forfeiture decision provided under § 3809.596, and you fail to appeal the forfeiture decision under §§ 3809.800 to 3809.807, or the Interior Board of Land Appeals does not grant a stay under 43 CFR 4.321, or the decision appealed is affirmed, BLM will—

(a) Immediately collect the forfeited amount as provided by applicable laws for the collection of defaulted financial guarantees, other debts, or State bond pools; and

(b) Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof, on the area or portion of the area to which financial guarantee coverage applies.

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

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

[66 FR 54862, Oct. 30, 2001]

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

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

INSPECTION AND ENFORCEMENT

§ 3809.600 With what frequency will BLM inspect my operations?

(a) At any time, BLM may inspect your operations, including all structures, equipment, workings, and uses located on the public lands. The inspection may include verification that your operations comply with this subpart. See § 3715.7 of this title for special provisions governing inspection of the inside of structures used solely for residential purposes.

(b) At least 4 times each year, BLM will inspect your operations if you use cyanide or other leachate or where there is significant potential for acid drainage.

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

BLM may issue various types of enforcement orders, including the following:

(a) *Noncompliance order.* If your operations do not comply with any provision of your notice, plan of operations, or requirement of this subpart, BLM may issue you a noncompliance order; and

(b) *Suspension orders.* (1) BLM may order a suspension of all or any part of your operations after—

(i) You fail to timely comply with a noncompliance order for a significant violation issued under paragraph (a) of this section. A significant violation is one that causes or may result in environmental or other harm or danger or that substantially deviates from the complete notice or approved plan of operations;

(ii) BLM notifies you of its intent to issue a suspension order; and

(iii) BLM provides you an opportunity for an informal hearing before the BLM State Director to object to a suspension.

(2) BLM may order an immediate, temporary suspension of all or any part of your operations without issuing a noncompliance order, notifying you in advance, or providing you an opportunity for an informal hearing if—