

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Parts 3600, 3610, 3620, and 3800****[WO-320-1430-PB-24 1A]****RIN 1004-AD29****Mineral Materials Disposal; Sales; Free Use****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is amending its mineral materials regulations by adding or amending provisions on inspection of operations, production verification, contract renewal, procedures for cancellation, bonding, and appeals. The final rule also addresses the rights of purchasers and permittees versus subsequent users of the same land. BLM is amending the regulations in part because notices of intended sale of mineral materials have inspired speculative entries conflicting with the proposed sale, and because BLM has encountered difficulties in verifying production. These amendments are necessary to prevent entries and uses begun after a planned sale has been announced from interfering with the sale. The final rule also reorganizes and simplifies the regulations on mineral materials disposal, and makes a conforming amendment in BLM's regulations on Surface Management of mining claims.

**EFFECTIVE DATE:** December 24, 2001.**ADDRESSES:** You may send inquiries or suggestions to Director (320), Bureau of Land Management, Room 501 LS, 1849 C Street, NW., Washington, DC 20240.**FOR FURTHER INFORMATION CONTACT:** Dr. Durga N. Rimal, Solid Minerals Group, at (202) 452-0350. 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. Background
- II. Discussion of Comments
- III. The Final Rule
- IV. Procedural Matters

**I. Background**

Under the mineral materials program, BLM manages the exploration, development, and disposal of materials such as sand, stone, gravel, and other common rocks. Our primary goal is to make Federal mineral materials

available by sale or free use permit when it will not be detrimental to the public interest. BLM is also responsible for the planning and inventory of mineral materials on the public lands, and prevention and abatement of their unauthorized use. BLM monitors sites, and inspects and verifies production, to ensure compliance with the terms of the contract or permit. This final rule does not address vegetative materials, such as timber.

The general authority for the Mineral Materials Program is the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), commonly referred to as the Materials Act. This Act authorizes the Secretary of the Interior to dispose of mineral and vegetative materials from public lands. This final rule revises the regulations on disposal of mineral materials, and makes two technical amendments and corrects cross-references in the subpart on free use of petrified wood.

The proposed rule was published on September 14, 2000 (65 FR 55864). BLM received 10 comments on the proposed rule. We received 3 comments from business interests, 1 from a private attorney, 1 from a State government agency, 4 from BLM field employees, and 1 from an individual without stated affiliation.

**II. Discussion of Comments**

Most of the comments were generally favorable to the proposed rule, and 4 of the public comments specifically stated that the proposed rule represented an improvement over the previous regulations. However, one of the generally favorable comments, endorsed by 2 others, stated that the question and answer format followed in the proposed rule was confusing.

Many studies have shown that comprehension of user manuals, regulations, and the like improves when they employ this question and answer format. Readers generally find them more user-friendly as well. Therefore, BLM will continue to use this format in most of its section headings. In a few instances, of course, single-word or short-phrase headings are more appropriate. This rule also use headline-type headings to mark major subject changes within subparts in the regulations. This should help you navigate the table of contents.

In the remainder of this portion of the preamble we will discuss those comments that suggested changes in specific provisions in the regulatory text, in order by section number.

*Subpart 3601—Mineral Materials Disposal; General Provisions***Section 3601.5 Definitions**

One comment stated that it should be made clear in the definition of "public lands" that "any lands and interest in lands" includes the mineral estate. The definition we used in the proposed rule is the standard definition, derived from the Federal Land Policy and Management Act of 1976 (FLPMA), which certainly intends to include the mineral estate. The public generally understands this.

The same comment continued by discussing the issue of split estate lands where the United States owns the mineral interests but the surface is private or under the jurisdiction of State or local government. The comment suggested that we should clarify and expand the language in the definition and the regulations at §§ 3601.1 and 3601.13. Because the reasons for estates being split in this way are many, and the statutory authorities are varied, we have included this discussion in the BLM Manual (see BLM Manual 3600) rather than in the regulations.

We asked in the preamble to the proposed rule for comments on the definition of "public lands," noting that the Department of Agriculture uses a definition that excludes acquired lands in its administration of the Materials Act. We received no comments on this issue. We are continuing to review the definition of "public lands" under the Materials Act. As this review is still pending, we have retained for now the definition from the previous version of the rule. If we conclude that the definition should be changed, we will publish the proposed change in the **Federal Register**.

**Section 3601.12 What Areas Does BLM Exclude From Disposal of Mineral Materials?**

One comment raised the question whether language should be added to state that materials will not be disposed of from lands identified as prohibiting disposal in an approved land use plan. This is addressed in BLM's planning regulations (see 43 CFR 1610.5-3(a)), which require that "All future resource management authorizations \* \* \* conform to the approved plan." However, for the convenience of our customers, we have added a paragraph to this effect in this section.

### Section 3601.13 How Can I Obtain Mineral Materials From Federal Lands That Have Been Withdrawn To Aid a Function of Another Federal Agency or of a State or Local Government Agency?

We realized from the comments on this section that the wording of both the question and answer was confusing. We have revised the wording of the question to track more closely the language of the statute, 30 U.S.C. 601. As required by the statute, this section gives veto power over mineral materials development to another Federal agency or State or local government for whose benefit the federal lands have been withdrawn. We have revised the answer to state simply the statutory requirement that if you wish to obtain mineral materials from such lands, the other agency must consent. This section does not address split estates, which, as stated above, are discussed in the BLM Manual rather than in the regulations.

One comment stated that BLM appeared to be abdicating its responsibility in making mineral materials available to the public. The statute, 30 U.S.C. 601, does not allow BLM to dispose of the mineral materials in this instance without the consent of the other agency. The same comment stated that the process called for in this section was cumbersome, especially in the context of competitive sales, because an applicant who has gone through the expensive process of obtaining a surface use permit from a surface management agency has no assurance of winning the competitive contract. There is no need to obtain a surface use permit before ascertaining whether the other agency will consent to the mineral materials disposal. If the agency does consent, and BLM initiates the disposal, an applicant can bid on the contract without first obtaining a surface use permit.

### Section 3601.14 When Can BLM Dispose of Mineral Materials From Unpatented Mining Claims?

One comment, which was endorsed by two others, expressed strong support for this provision, saying that it will promote development of mineral resources while providing adequate safeguards for the mining claim owner, and would discourage speculation in questionable mining claims. The comment pointed out that purchasers of mineral materials would no longer face the cost of a mining claim contest.

Another comment stated that the wording of this provision was too tentative and conditional. The respondent suggested that BLM should require a waiver from the mining

claimant before disposing of mineral materials from an unpatented claim. The comment also recommended removing the final sentence from proposed § 3601.14. This sentence provides that when a mining claimant refuses to sign a waiver, BLM will make sure that disposal would not be detrimental to the public interest, and will consult with the Solicitor's Office if necessary before proceeding with the disposal. We decided not to change the rule in response to this comment because the suggested changes do not address the situation where a mining claimant refuses to sign a waiver. We have retained the language in the proposed rule, which sets up an orderly process for BLM to follow to pursue the public interest.

This change also requires that we amend 43 CFR 3809.101(d), which addresses sale of mineral materials from unpatented mining claims, to conform with this final rule. Therefore, we are amending that paragraph to allow sales of mineral materials absent a waiver from the mining claimant following the procedures in this section, 3601.14. This will allow BLM to dispose of materials if it is not detrimental to the public interest and if we find that disposal would not impair the rights of the mining claimant.

One comment suggested the possibility of distinguishing between pre-1955 unpatented claims and later mining claims. We do not believe this distinction is necessary. Solicitor's Opinion No. M-36998, "Disposal of Mineral Materials from Unpatented Mining Claims," June 9, 1999, concludes that BLM's authority to dispose of mineral materials from unpatented mining claims is based on the Materials Act of 1947, and that authority was left intact by the amendments of the Surface Resources Act of 1955, 30 U.S.C. 601 *et seq.* *Id.* at n.4 and accompanying text. BLM will proceed under the guidelines in § 3601.14 for all unpatented mining claims, consulting with the Solicitor's Office when necessary.

One comment asked whether BLM can establish a community pit on a mining claim. The regulations do not expressly prohibit the opening of a community pit over an unpatented mining claim. If such disposal were possible without endangering or materially interfering with prospecting, mining, or processing operations, or uses reasonably incident thereto, BLM would follow the procedures in § 3601.14 before deciding to proceed.

### Section 3601.21 What Rights Does a Person Have Under a Materials Sales Contract or Use Permit?

One comment addressed this section, recommending that BLM separately authorize under a right-of-way associated uses such as a hot mix plant or a concrete batch plant. The comment pointed out that this would provide the public with additional revenue, and stated that the matter can be a subject for the BLM Manual or a handbook. The comment asked whether such uses as an asphalt mix table would be included in a contract or free use permit area, or in a separate right-of-way authorization.

In the aggregate business, mining, crushing, washing, screening, and separation of materials are processes integral to production of such value added items as asphalt concrete or ready-mix concrete. The regulations could separate the value-adding activities from the mining and extraction processes and require a separate authorization such as a right-of-way permit. However, ready-mix concrete or asphalt concrete batch plants are generally movable, not permanent features. Keeping all activities together and confined to a small area (generally already disturbed by mining) is desirable from an environmental point of view. We believe that contemplated use of concrete or asphalt mix plants should be included in the mining plan and considered in analysis under the National Environmental Policy Act during BLM's permitting process. No change is necessary in the final rule.

### Section 3601.30 Pre-application Activities—How and When May I Sample and Test Mineral Materials?

Comments asked what happens if someone with a letter authorizing exploration under this section fails to submit sampling and testing findings. Another comment stated that the rule should allow BLM to approve exploration under sales contracts or free use permits as well as before their issuance.

Of course, it is possible that a person with an authorization to explore may choose not to explore. Aside from this, experience under the existing regulations, which contain a substantively identical provision, has not demonstrated a need for monetary penalties for failure to submit exploration findings. Furthermore, § 3601.60 allows BLM to cancel a contract or permit if the party fails to comply with any applicable regulation. This provides sufficient incentive for compliance with this requirement.

Sampling and testing are part of mineral material extraction that BLM authorizes under sales contracts or free use permits. Permittees or purchasers need no additional authorization within the permit or contract area.

#### Section 3601.41 What Information Must I Include In My Mining Plan?

One comment stated that the information listed under this section only begins to address what is needed in a mining or reclamation plan, and that operators should closely coordinate with BLM in preparation of both mining and reclamation plans. The comment suggested that it would be helpful if BLM were to provide a proposed mining plan outline, a copy of the BLM reclamation handbook, and other agency requirements. We agree that applicants should coordinate closely with BLM when preparing mining plans. The information the respondent suggested we provide is available in BLM Field Offices, and we can provide copies of sample plans and instructions if you need them.

Another comment suggested that we include "depth" of operations as one of the parameters that operators must include in a mining plan, and that we include "the location of the soil/growth medium stockpile" as an item in the reclamation plan. We have adopted the former suggestion in the final rule. However, we believe there is no need to pinpoint the location of the soil/growth medium stockpile, so long as the area it will disturb is indicated. That information is sufficiently covered in the description of information that you must include in the mining plan.

#### Section 3601.44 How and When May My Mining or Reclamation Plan Be Modified?

One comment suggested that the regulations elaborate on stop orders that BLM could issue under this section if a purchaser fails to modify a plan to BLM's satisfaction. The comment also asked that the regulations provide for penalties for such failure. The comment pointed to the regulations on use and occupancy of mining claims in 43 CFR subpart 3715 as a model. The regulations in subpart 3715 address abatement of unauthorized use and occupancy of unpatented mining claims. Unauthorized use and occupancy is a much more widespread and serious problem in the mining industry than failure to modify mining plans is in the mineral materials industry. We believe the consequences of failure to comply with these regulations—possible cancellation or suspension of the contract or permit—

are serious enough without bringing to bear the heavy artillery of criminal penalties.

Another comment stated that this provision should direct BLM to provide justification before requiring a purchaser or permittee to modify an approved plan, and that the proposed rule would encourage BLM to act arbitrarily and abrogate terms of a binding contract. The rule limits BLM's discretion to require plan modification. We can do so only when we can point to changed conditions or an oversight that needs to be corrected. We believe that these limitations preclude arbitrary action. Each contract will state that it includes the requirements of all regulations, including this section, so operators are on notice that BLM can modify the plan if necessary. In the final rule we have added language providing for BLM to consult with the purchaser or permittee before requiring modifications.

#### Section 3601.51 How Will BLM Inspect My Operation?

One respondent, endorsed by two others, supported the inspection provisions in this section, stating that they codify how BLM field offices have been operating in his area. Another comment suggested that the regulations should also allow BLM to inspect weight tickets, truck logs, and other records of this type. We have added such a provision to the final rule in order to improve our ability to account for production.

#### Section 3601.61 When May BLM Cancel My Contract or Permit?

#### Section 3601.62 Cancellation Procedures.

One respondent, endorsed by two others, supported the cancellation provisions in these two sections, stating that the cancellation procedures give purchasers reasonable notice of BLM expectations. They agreed that a notice of intent to cancel with a period of time to rectify a problem or prove no wrongdoing is a common way of dealing with disputes in private mineral leases.

We have simplified the wording of § 3601.61(b), which in the proposed rule stated that BLM could cancel your contract or permit if you failed to comply with "any applicable regulations, including the inspection requirements of § 3601.51." Because "any applicable regulations" necessarily includes the inspection requirements of § 3601.51, we determined that the reference to inspection requirements was superfluous, and we removed it.

#### Section 3601.71 What Constitutes Unauthorized Use?

One comment asked how the prohibition of extracting, severing, or removing mineral materials from public lands applies to split estate lands, where the surface owner may use mineral materials for purposes of improving the surface, so long as the owner does not remove the materials off-site. We have added a paragraph to this section stating BLM's long-standing policy that without a contract or permit, or other express authorization, a surface estate owner may make only minimal personal use of federally reserved mineral materials within the boundaries of the surface estate. Minimal use would include, for example, moving mineral materials to dig a personal swimming pool and using those excavated materials for grading or landscaping on the property. It would not include large-scale use of mineral materials, even within the boundaries of the surface estate.

#### Subpart 3602—Mineral Materials Sales Applications

#### Section 3602.12 How Does the Mineral Materials Sales Process Affect Other Users of the Same Public Lands?

Several comments addressed this section, supporting the language that provides that BLM's designation of a tract for a mineral materials sale establishes, for the ultimate purchaser, a superior right over subsequent third party entries or applications. These comments said that the provision gives the mineral producer certainty as to the status of its interest and protects its investment.

One comment asked for clarification as to exactly what period of time the superior right pertains. We have amended this section in the final rule to make it clear that the superior right pertains to the entire term of the sales contract or permit, including any renewal periods, of a contract or permit issued within the 2-year period following the date BLM notes the designation in the public land records. We have further amended his section to provide that the superior right applies to subsequent contracts or permits that BLM authorizes within 2 years after the previous contract or permit expires or terminates. This provision would prevent other claimants from speculatively establishing claims when BLM designates tracts in the hope that BLM contracts or permits will terminate before the mineral materials are exhausted. It allows BLM the same time period to enter into another contract or issue a permit for the remaining mineral materials and gives subsequent

purchasers or permittees the same certainty that the first purchaser or permittee enjoyed. This principle applies no matter how many successive contracts or permits there may be.

#### Section 3602.13 How Does BLM Measure and Establish the Price of Mineral Materials?

One comment, endorsed by two others, supported this provision, saying that it follows private industry standards, and that the reappraisal provisions also track industry practices, which allow for changes in unit price over time. This comment said that the two-year window when the price is fixed is reasonable.

One comment suggested that we amend paragraph (c), which allows the purchaser or permittee to choose between the two measurement methods: In-place volume or weight equivalent, to provide that BLM may designate the method of measurement that operators must use. We agree, and have amended the rule to allow BLM to choose the method. BLM will not always exercise this option, but will allow the operator to make the choice in many cases.

#### Section 3602.14 What Kind of Financial Security Does BLM Require?

Several comments addressed this section. One comment stated that the bonding provision is cumbersome because it appears to set up a dual bond requirement—a performance bond of 5 percent, and a reclamation bond of at least \$500. The intent of the proposed rule was not to require two bonds, but to set up a two-stage calculation to determine the required amount of the bond, which BLM could have used to enforce any part of the contract performance.

BLM has determined that the two-stage calculation is unnecessary, and we have removed the requirement that the bond include 5 percent of the total contract price. A performance bond large enough to cover reclamation costs should be sufficient for environmental protection, and BLM can still use the bond amount to enforce any part of the contract performance. For average operations (contracts of \$57,000) the bond amount under these new requirements is expected to decrease from \$11,400 to \$5,000, a reduction of \$6,400. While on its face, this reduction might appear to afford less protection to the Federal Government, it actually only recognizes that the relatively high bonding requirements of the mineral materials program have been unnecessary. Moreover, we will also be holding the purchaser's cash deposit of 5 percent of the contract value, or \$500,

whichever is larger, which will further guarantee performance. These changes make the bonding system for mineral materials more consistent with bonding standards in other minerals programs, such as oil and gas, leaseable minerals, and the mining law. Further, if the purchaser removes excess materials, we can use trespass procedures under 43 CFR 9239.0–7 and 9239.0–8 to recover damages.

One comment recommended that BLM accept other forms of security besides performance bonds, and went on to suggest examples of types of security that other agencies accept. The comment suggested that we add language allowing “any other form of financial security which is acceptable to the Secretary.” We have adopted the suggestion that we accept other forms of security, and have added irrevocable letters of credit to the forms that BLM will accept. We have also made clear that surety bonds can be arranged or paid for by third parties. We have not adopted the broad language suggested by the comment because we have determined that the rules should not provide open-ended discretion in the bonding area.

One comment urged that BLM not set a maximum bond of 20 percent of contract value for contract sales less than \$2,000. The respondent raised two concerns: First, reclamation costs may exceed the bond in some circumstances, and second, the Federal upper limit may cause problems with State and local bonding requirements. BLM does not view these concerns as outweighing the reasons for the provision.

- This bonding provision is necessary to protect the interests of small purchasers. Many of our small sales are from community pits and common use areas, where bonds are generally not needed at all. For other small sales, BLM takes extra care to select sites with minimal possibility of environmental damage and therefore low reclamation costs.

- BLM bonding levels should have no effect on State or other agency bonding policies and requirements. It is quite common for different levels of government to have different bonding requirements.

Finally, one comment pointed out that paragraph (a)(2) of this section as proposed would seem to require bonding for sales of \$2,000 or more from community pits, and said that this seems to be an unnecessary burden on business. BLM agrees, and, as stated above, in the final rule, we have removed the provision requiring a 5 percent bond.

#### Section 3602.21 What Payment Terms Apply to My Mineral Materials Sales Contract?

Several comments addressed this section. Three comments, one of them endorsed by two others, stated general support for this section, pointing out that the procedure outlined in this section tracks the standard operating procedure in private sales.

One comment suggested removing the requirement for payment in lieu of production in § 3602.21(a)(3). The respondent thought the requirement in paragraph (a)(2)(iii) that the full contract amount be paid before contract expiration should sufficiently assure BLM that the purchaser will make full payment. BLM has not adopted this comment in the final rule. The provision for in lieu payments promotes diligent development and deters speculative holding of mineral deposits. Without it, purchasers may be tempted to obtain large contracts for speculative purposes or to reduce competition.

One comment suggested that the regulation should allow an annual payment at the end of the year for mineral materials actually mined during the year. We have amended this section in the final rule to allow annual payments for the upcoming year based on the amount produced in the previous year or an estimate of production for the upcoming year. If you choose to make payments this way, you must reconcile the amount as the year progresses.

The proposed rule provided, at § 3602.21(a)(2)(iii)(A), that you must make installment payments monthly in an amount equal to the value of the mineral materials you removed that month. We have revised this section to specify that the payment must be made by the 15th day following the end of the month for which you are reporting, to give you time to determine the value of the materials removed.

#### Section 3602.22 When Will a Contract Terminate?

Two comments addressed this section, stating that a contract should terminate when the purchaser has removed the contracted-for amount of mineral materials rather than when its term expires. Automatically terminating a contract when the amount of material contracted for has been removed would conflict with contract renewal provisions and could conflict with the purchaser's obligation to perform reclamation. However, we have added a provision that the contract or permit will terminate when the operator has completed both production and all required reclamation. Once an operator

completes all reclamation, there is no longer any reason to encumber the land with a contract or permit, as the operator has no interest in renewal, and BLM's interest in reclamation is satisfied.

#### Section 3602.23 When Will BLM Make Refunds or Allow Credits?

The proposed rule provided that BLM would reduce the amount of any refund by the amount of the administrative cost of processing the disposal action. In the final rule, we have amended this language to provide that BLM will reduce the refund or credit due to administrative costs only when the refund or credit results from terminating the contract by mutual agreement. Our intention was not to withhold administrative costs when purchasers have simply overpaid or when our initial estimate of mineral materials available was mistaken.

#### Section 3602.24 When May I Assign My Materials Sales Contract?

One comment stated that paragraph (b)(1) of this section seems not to require an assignee to provide a reclamation bond. This comment is related to the comment on § 3602.14, and is based on the notion that that section required dual bonds. Our revision of § 3602.14 to require a performance bond based only on estimated reclamation costs eliminates this confusion. Nevertheless, we have also amended this provision to require the assignee to provide a "financial guarantee" under § 3602.14, rather than a "performance bond."

#### Section 3602.26 If I Assign My Contract, When Do My Obligations Under the Contract End?

Two comments addressed this section. One respondent thought that the word "accrual" did not pertain to obligations and liabilities, but only to gains or additions, and suggested that the provision is unnecessary, because operators can negotiate responsibility for reclamation and similar matters at the time of assignment. The other comment suggested that this section conflicted with § 3602.15, which provides for cancellation of the assignor's bond obligations when the assignee provides an appropriate bond. We have amended this provision in the final rule by removing the phrase "such as reclamation." This phrase produced more confusion than clarification in the proposed rule. We believe that the term "accrual" is appropriate for obligations as well as benefits, and the assignor is responsible for all contract obligations that accrued before BLM approves the

assignment, regardless of whether the assignor's bond obligations have been canceled.

#### Section 3602.28 What Records Must I Maintain and How Long Must I Keep Them?

and

#### Section 3602.29 How Will BLM Verify My Production?

The several comments addressing these sections all supported the production verification methods in the proposed rule. One comment recommended that BLM require monthly reporting. We have not adopted this comment in the final rule, but have revised this provision to say that you must submit at least one report per contract year. Both the proposed and final rules make it clear that BLM may require reporting more frequently than annually.

Another comment recommended that we require volumetric surveys only in certain circumstances such as large volume commercial sales, saying that the cost of these surveys does not justify the public benefit. We agree, and this is how BLM will implement this section. It is not necessary to provide this degree of detail in the regulations, because BLM Manuals and handbooks will provide this instruction to production verification personnel.

#### Section 3602.31 What Volume Limitations Generally Apply to Noncompetitive Mineral Materials Sales?

and

#### Section 3602.32 What Volume and Other Limitations Pertain to Noncompetitive Sales Associated With Public Works Projects?

Five comments supported the increased volume limitations in these sections of the proposed rule. One of them suggested further increases, or even eliminating the limits, on noncompetitive sales. In the final rule, BLM has raised the limit on the total aggregate amount of noncompetitive sales made in any one State for the benefit of any one purchaser, in any period of 12 consecutive months, to 300,000 cubic yards (or weight equivalent). We are not changing the provision for maximum volume limitation for individual noncompetitive sales. We will monitor the mineral materials program and consider raising the volume limit for noncompetitive sales in the future, if we find a need for that change.

#### Section 3602.34 What Is the Term of a Noncompetitive Contract?

One comment recommended that non-competitive mineral materials purchasers be offered the same renewal options and terms as competitive purchasers. The comment cited a specific case, where a mineral trespass situation resulted in a settlement agreement containing a provision under which BLM allowed the offending company multiple sequential noncompetitive contracts during a 10-year period so that we could recover lost revenues from the trespass property. The comment went on to say that the local BLM office should allow other similar noncompetitive sales contracts until that settlement agreement terminates. BLM has not adopted this comment in the final rule. The instance described in the comment involved unique circumstances. The governing statute directs the Secretary to dispose of mineral materials by competitive bidding unless it is impracticable to obtain competition. 30 U.S.C. 602. Because the statute favors competitive contracts, the regulations do not provide for noncompetitive contracts to include the same terms as competitive contracts.

#### Section 3602.45 What Final Steps Will BLM Take Before Issuing Me a Contract?

In the proposed rule, this section was entitled, "What conditions must I meet before BLM will issue me a contract?" Although no comments addressed this section, on review we have decided that the section heading was not completely descriptive. We have given the section a new heading, partially reorganized the section, and added paragraph headings to make its organization clearer. We have also revised paragraph (g) to explain that additional provisions and stipulations that BLM adds to the contract will be for the purpose of conforming to the provisions of the competitive sale notice and to address environmental or other site-specific issues. The standard contract form approved by the Office of Management and Budget is a basic form that can be used for any kind of sale. It is not all-inclusive and states that the contract will include the stipulations and the mining plan attached to it. Provisions that relate to mining on a specific tract of land must be added to the contract. We have not made substantive changes in this section.

#### Section 3602.47 When and How May I Renew My Competitive Contract?

One comment, endorsed by two others, supported this provision as promoting mineral development

because it protects the initial purchaser. It pointed out that the life span of a mineral deposit can be decades, and said that the previous regulations provided no incentive for exploration and development because there was no guarantee that the purchaser would be in place for more than one contract term.

Another comment recommended amending the section to allow renewals of noncompetitive contracts, saying that the noncompetitive purchaser has the same investment in the application process, site and access preparation, and, with some commodities, market development costs, as the competitive purchaser. BLM is not amending the final rule in response to this comment. First, most noncompetitive contracts are for minerals in community pits and common use areas, where site and access preparation are not economic factors. Second, the regulations provide for a one-year extension (see § 3602.27) if the purchaser was unable to finish operations under the contract for reasons beyond his or her control and meets the appropriate procedural deadline described in § 3602.27. Finally, as discussed above, the governing statute requires competitive contracts whenever competition is practicable, so BLM will not allow unlimited renewals when we did not award the initial contract on a competitive basis.

One comment asked for assurance that renewals of competitive contracts would be done non-competitively. We amended this section to make it clear that once you have been awarded a contract through competitive bidding, you may apply for a renewal of that contract without further competitive bidding. BLM's experience with the mineral materials markets has shown that we need to offer competitive contracts with options for renewal to attract the competition that will bring the greatest economic benefit for the United States. In essence, we are offering for competitive bidding both a stated amount of mineral materials and options for additional amounts, in a process of two or more stages. Adding options for contract renewal at the time of competitive bidding allows BLM to improve the economic return to the United States.

One comment stated that this section in the proposed rule, with its deadline for requesting a renewal 90 days before contract expiration, conflicted with section 3602.21(a)(2)(iii), which directs purchasers to pay the full amount of their contracts no later than 60 days before the contracts are to expire. There is no conflict between these two provisions. A purchaser who wants to

renew a competitive contract must pay the full contract value before applying for renewal at least 90 days before the contract expires. Others, for whom renewal is not of interest, must pay the full contract value no later than 60 days before contract expiration. Those who wish to renew simply have an earlier payment deadline.

#### Section 3602.48 What May BLM Require When Renewing My Contract?

One comment, endorsed by two others, supported the reappraisal requirements in this section. The respondent said that his contracts commonly provide for a change in unit price over time.

#### Section 3602.49 When Will BLM Issue a Non-Renewable Contract?

We received no comments on this section. We decided, however, to amend paragraph (c) to provide that if fewer than 120 days remain on your contract after the effective date of this rule, BLM may approve your renewal request submitted less than 90 days before the contract expires if we decide the contract qualifies for renewal and we have sufficient time to process your request before your contract is due to expire. We added this provision to give an opportunity for contract renewal to purchasers who have existing contracts on the effective date of this rule, but who would be unable to meet the 90-day deadline due to the short time remaining on the contracts after the effective date. (Since this paragraph is of strictly limited applicability, we will remove it from the regulations at the earliest opportunity in an administrative final rule.)

#### Section 3603.14 What Plans Do I Need to Prepare To Mine or Remove Mineral Materials From a Community Pit or Common Use Area?

This section in the proposed rule provided that BLM would not require a mining or reclamation plan before authorizing mining or removing mineral materials from a community pit or common use area. One comment urged that BLM amend this section to give us discretion as to whether to require a mining plan in these instances. We have changed the final rule to state that BLM generally will not require a mining or reclamation plan in such cases, but may require a plan if we find that circumstances warrant it. Not all removals are of such a scale that we need a mining plan.

#### Section 3603.22 What Fees Must I Pay to Cover the Cost of Reclamation of Community Pits and Common Use Areas?

One comment noted that the rule contained no bonding provision to cover reclamation of community pits. Although it was not clear, the comment appeared to say that the rule should provide for bonding of operations in community pits if the operator elects to perform reclamation in lieu of paying a reclamation fee. We have amended the rule in response to this comment, giving BLM discretion to require a bond in these circumstances, in either community pits or common use areas. However, our normal practice is to collect a reclamation fee and not require a bond. The reclamation fee is paid under Section 305 of FLPMA (43 U.S.C. 1735) into the Fund for Repair of Damaged Lands. BLM uses moneys from this fund to pay for reclamation of exhausted community pits.

#### Section 3604.11 How Do I Apply for a Free Use Permit?

One comment suggested that this section require or allow a letter from the applicant to BLM in place of BLM Form 5510-1. It said that applicants often incorrectly fill it out and must resubmit it. The comment said that personal experience with letter transactions has been favorable. We have amended this provision in the final rule to allow letter applications for free use permits. You may send a letter or use BLM Form 5510-1.

#### Section 3604.22 What Conditions and Restrictions Pertain to My Free Use Permit?

One comment asked what recourse BLM has if a free use permittee violates a permit restriction or condition, and suggested that it may be politically difficult to hold a local government in trespass. We have made no change in the final rule in this respect. We have the authority and responsibility to initiate trespass proceedings in any case where they are indicated. Of course, we would carry out such proceedings only as a last resort when persuasion fails.

### III. The Final Rule

The final rule substantially reorganizes parts 3600, 3610, and 3620. We are reorganizing the regulations for two reasons: (1) To make them read more logically and clearly; and (2) to conform more closely to Office of the Federal Register numbering conventions. The following table shows how numbers are changed from the previous regulations to the final rule.

## Section Conversion Table

| Old section                    | New section                | Old section            | New section       |
|--------------------------------|----------------------------|------------------------|-------------------|
| Group 3600 heading             | none                       | § 3610.3-2             | § 3602.42(a), (b) |
| Group 3600 Note                | § 3601.9                   | § 3610.3-3             | § 3602.43         |
| Part 3600                      | Part 3600                  | § 3610.3-4             | § 3602.44         |
| Subpart 3600                   | Subpart 3601               | § 3610.3-5             | § 3602.45         |
| § 3600.0-1                     | § 3601.1                   | § 3610.3-6             | § 3602.46         |
| § 3600.0-3                     | § 3601.3                   | none                   | § 3602.47         |
| § 3600.0-3(a)(3)               | § 3601.12                  | none                   | § 3602.48         |
| § 3600.0-4                     | § 3601.6                   | none                   | § 3602.49         |
| § 3600.0-5                     | § 3601.5                   | Part 3620              | none              |
| § 3600.0-8                     | § 3601.8                   | Subpart 3621           | Subpart 3604      |
| Subpart 3601                   | none                       | § 3621.1               | § 3604.10         |
| § 3601.1                       | § 3601.10                  | § 3621.1-1             | § 3604.11         |
| § 3601.1-1(a)(1)               | § 3601.14                  | § 3621.1-2             | § 3604.21         |
| § 3601.1-1(a)(2)               | § 3601.12                  | § 3621.1-3             | § 3604.23         |
| § 3601.1-2(a), (c)             | § 3601.21                  | § 3621.1-4(a), (c)-(d) | § 3604.22         |
| § 3601.1-2(b)                  | § 3601.22                  | § 3621.1-4(b)          | § 3604.13         |
| § 3600.0-3(a)(2)               | § 3601.13                  | § 3621.1-5             | § 3604.24         |
| § 3601.1-3                     | § 3601.11                  | § 3621.1-6             | § 3604.25         |
| Subpart 3602                   | none                       | § 3621.1-7             | § 3604.26         |
| § 3602.1                       | § 3601.40                  | § 3621.2(a)            | § 3604.12(a)      |
| § 3602.1-1                     | § 3601.41                  | § 3621.2(b)            | § 3604.12(b)      |
| § 3602.1-2                     | § 3601.42                  | § 3621.2(c)            | § 3604.27         |
| § 3602.1-3(a), (b)             | § 3601.43                  | Subpart 3622           | Subpart 3622      |
| § 3602.1-3(c), (d)             | § 3601.44                  |                        |                   |
| § 3602.2                       | § 3601.30                  |                        |                   |
| § 3602.3                       | § 3601.52                  |                        |                   |
| none                           | § 3601.51                  |                        |                   |
| none                           | § 3601.60                  |                        |                   |
| none                           | § 3601.61                  |                        |                   |
| none                           | § 3601.62                  |                        |                   |
| Subpart 3603                   | none                       |                        |                   |
| § 3603.1                       | §§ 3601.70 through 3601.72 |                        |                   |
| none                           | § 3601.80                  |                        |                   |
| Subpart 3604                   | Subpart 3603               |                        |                   |
| § 3604.1(a)                    | § 3603.10                  |                        |                   |
| § 3604.1(b)                    | § 3603.11                  |                        |                   |
| § 3604.1(c)                    | § 3603.12                  |                        |                   |
| § 3604.1(d) (first sentence).  | § 3603.13                  |                        |                   |
| § 3604.1(d) (second sentence). | § 3603.14                  |                        |                   |
| § 3604.2                       | § 3603.20                  |                        |                   |
| § 3604.2(a)                    | §§ 3603.21 and 3603.22(b)  |                        |                   |
| § 3604.2(b)                    | § 3603.22(a)               |                        |                   |
| Part 3610                      | none                       |                        |                   |
| Subpart 3610                   | Subpart 3602               |                        |                   |
| § 3610.1                       | § 3602.10                  |                        |                   |
| § 3610.1-1                     | § 3602.11                  |                        |                   |
| none                           | § 3602.12                  |                        |                   |
| § 3610.1-2                     | § 3602.13                  |                        |                   |
| § 3610.1-3(a)(1)-(5)           | § 3602.21(a)               |                        |                   |
| § 3610.1-3(a)(6)               | §§ 3602.21(b), 3602.22(a)  |                        |                   |
| § 3610.1-3(b)                  | § 3602.22(b)               |                        |                   |
| § 3610.1-4                     | § 3602.23                  |                        |                   |
| § 3610.1-5                     | § 3602.14                  |                        |                   |
| none                           | § 3602.15                  |                        |                   |
| § 3610.1-6(a), (b)             | § 3602.24                  |                        |                   |
| § 3610.1-6(c)                  | §§ 3602.25, 3602.26        |                        |                   |
| § 3610.1-7                     | § 3602.27                  |                        |                   |
| none                           | § 3602.28                  |                        |                   |
| § 3610.1-3(a)(7)               | § 3602.29                  |                        |                   |
| § 3610.2                       | § 3602.30                  |                        |                   |
| § 3610.2-1                     | § 3602.31                  |                        |                   |
| § 3610.2-2                     | § 3602.32                  |                        |                   |
| § 3610.2-3                     | § 3602.33                  |                        |                   |
| § 3610.2-4                     | § 3602.34                  |                        |                   |
| § 3610.3                       | § 3602.40                  |                        |                   |
| § 3610.3-1(a)                  | § 3602.41                  |                        |                   |
| § 3610.3-1(b)                  | § 3602.42(c)               |                        |                   |

#### A. How Does BLM Dispose of Mineral Materials? (See § 3601.6.)

BLM disposes of mineral materials from public lands by selling them and, under some circumstances, giving them away. We dispose of materials from exclusive sites used by one operator or nonexclusive sites (community pits or common use areas) used by more than one operator. Under the final rule and BLM policies, disposal methods are as follows:

##### 1. Negotiated Sales (see § 3602.30 *et seq.*).

BLM will negotiate a sale contract for quantities of materials not greater than 200,000 cubic yards, with certain exceptions detailed in the regulations. The price will be fair market value of the minerals as BLM determines through an appraisal. Contracts have a maximum term of 5 years, with a possible one-time extension not greater than one year.

##### 2. Competitive Sales (see § 3602.40 *et seq.*).

For quantities of materials greater than 200,000 cubic yards, or if BLM is aware that there is competitive interest in the materials site, we advertise the availability of the material at the particular site and sell it to the highest bidder. Contracts issued through this process have a term of no more than 10 years, but BLM may allow a one-time extension of up to one year and you may apply for renewal of the contract to purchase additional material at the site.

##### 3. Free Use Permits (see subpart 3604).

BLM issues free use permits for sand and gravel and other materials to government agencies and to non-profit

organizations. A large part of mineral materials produced under the program is under free use permits to local, State, and other Federal Government agencies, including State and county highway departments, cities, and municipalities. As a government agency, you may obtain free use permits to extract specified quantities of material for public works projects. BLM may specify the amount you may extract under a government agency free use permit, and may allow your operation to continue for up to 10 years. You may not barter or sell the material.

BLM also issues free use permits to non-profit organizations for up to 5,000 cubic yards for any 12 consecutive months. These permits have a one-year term. If there is an additional need, you must apply for a new permit. You also may not barter or sell this material.

#### B. Surface Management Operations

BLM is responsible for monitoring the sites, inspection, and production verification to ensure compliance with the terms of the contract or permit. BLM seeks (1) accurate accounting for materials you remove, (2) proper compensation to the Federal Government, and (3) protection of the environment, public health, and safety. We may use field inspections and site surveys, or high-tech methods, such as aerial surveys or computer modeling, that quantify the volume of material removed. We generally base the frequency of inspections and the choice of verification method on the size and type of disposal.

Substantive changes in the final rule from the previous regulations include the following:

(1) The rule provides that BLM may dispose of mineral materials from unpatented mining claims in accordance with Solicitor's Opinion No. M-36998, Disposal of Mineral Materials from Unpatented Mining Claims, June 9, 1999. See § 3601.14.

(2) The rule requires permittees and purchasers to allow BLM to inspect their operations, conduct surveys, and estimate the volume and type of production. See § 3601.51.

(3) The rule adds a provision that when BLM designates a tract for sale of mineral materials, subsequent contracts or permits on that tract have priority over any subsequent conflicting mining claim, entry, or other use of the land. See § 3602.12.

(4) The rule allows BLM to cancel permits or sales contracts for failure of the purchaser or permittee to comply with the law, regulations, or contract or permit terms. It requires BLM to provide written notice of our intent to cancel,



allowing time to correct performance problems, to request an extension, or to show why the contract or permit should not be canceled. See §§ 3601.61 and 3601.62.

(5) The rule includes a cross reference to the Department of the Interior appeals regulations in 43 CFR part 4. See § 3601.80.

(6) The rule makes the provisions for reappraisal clearer. BLM will not reappraise sooner than 2 years after we issue the contract or complete a previous reappraisal. See §§ 3602.13 and 3602.48.

(7) The final rule amends the bonding requirements for mineral material sales by accepting qualified certificates of deposit and irrevocable letters of credit as surety bonds, and by changing bonding requirements for sales of \$2,000 or more. We set bonds at more realistic levels, and they should ensure that amounts needed to cover the cost of reclamation will be available. See § 3602.14.

(8) The rule reduces the percentage amount BLM requires, under a material sales contract, for the first installment payment and in lieu of production payments. See § 3602.21.

(9) The rule provides that you must—

- Make monthly installment payments in an amount equal to the value of the materials removed the previous month, or
- Make an annual prepayment based on the previous year's production or a projection of the current year's production. See § 3602.21(a)(2).

(10) The rule allows purchasers with contract terms of 90 days or less to request contract extensions no later than 15 days instead of 30 days before the end of the contract. See § 3602.27.

(11) The rule strengthens and clarifies provisions allowing BLM to require purchasers of mineral materials to keep records to verify production and to make them available to BLM. BLM uses these records to ascertain whether purchasers have complied with regulations and contract terms. To allow BLM to verify production, the rule requires purchasers to submit production reports at least annually. It allows BLM to require purchasers to conduct volumetric surveys of the operation site as well. See §§ 3602.28 and 3602.29.

(12) The rule increases the volume limitation for noncompetitive sales from 100,000 to 200,000 cubic yards. It also increases the limit for sales in any one State for the benefit of any one purchaser in a 12-month period from 200,000 to 300,000 cubic yards. The rule also increases the volume limitation for noncompetitive sales in support of a

public works improvement program from 200,000 to 400,000 cubic yards. See §§ 3602.31 and 3602.32.

(13) The rule allows the successful bidder in a competitive sale 60 days instead of 30 days to ratify and execute the contract. See § 3602.45.

(14) The rule adds a provision for renewing contracts, allowing a purchaser who has paid the full contract price for the purchased mineral material to apply for renewal of the contract to allow purchase of additional material from the same site. The maximum renewal term is 10 years, but there is no limit on the number of renewals BLM allows. However, each renewal requires a reappraisal, a new environmental analysis when we find it necessary, and a possible increase or decrease in the bond the purchaser must post. See § 3602.47.

These regulations apply from the effective date of the final rule to all future contracts and permits. They also apply to existing contracts and permits to the extent—

- The contract or permit incorporates future regulations, and
- The regulations are not inconsistent with the express terms of the contract or permit.

#### IV. Procedural Matters

The principal author of this final rule is Dr. Durga N. Rimal of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, Bureau of Land Management.

#### *Regulatory Planning and Review (E.O. 12866)*

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of \$100 million or adversely affect in a material way the economy, an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government or communities. A cost-benefit and economic analysis is not required.

During fiscal years 1996 through 1998, BLM annually issued an average of a little over 2,900 mineral materials free use permits and sales contracts, valued at a little less than \$12 million over the life of the contracts. Of this value, about \$4.2 million was disposed of under free-use permits, and about \$1.3 million was sold in non-exclusive sales from community pits, with an average sale of about \$570. There were 395 exclusive sales in an average fiscal year during the period, valued at a little

less than \$6.5 million, with an average sale of a little over \$16,400.

During the next two fiscal years, this approximate sale and permit disposal rate continued. In fiscal year 1999, BLM processed 2,887 sales contracts and free-use permits for 12.8 million cubic yards of mineral materials, valued at \$9.4 million. Of these, 2,344 were non-exclusive sales, totaling nearly 1.28 million cubic yards, valued at \$1.57 million. Of the remainder, 332 were exclusive sales, totaling nearly 4.58 million cubic yards, valued at \$4.3 million, and 211 were free-use permits, totaling 6.95 million cubic yards, valued at \$3.54 million. There was production on 3,307 contracts and permits, some of which carried over from previous years, amounting to 10.9 million cubic yards, valued at \$8.9 million.

In fiscal year 2000, BLM processed 3,542 sales contracts and free-use permits for 18.7 million cubic yards of mineral materials, valued at \$15 million. Of these, 2,755 were non-exclusive sales, totaling nearly 1.36 million cubic yards, valued at nearly \$1.4 million. Of the remainder, 500 were exclusive sales, totaling 6.6 million cubic yards, valued at nearly \$5.7 million, and 287 were free-use permits, totaling 10.7 million cubic yards, valued at nearly \$8 million. There was production on 4,801 contracts and permits, some of which carried over from previous years, amounting to 11.95 million cubic yards, valued at \$9.8 million.

Average annual production for these 5 years, under existing and new permits and contracts (some being multi-year contracts), exclusive and non-exclusive, amounted to just under \$9 million.

The changes proposed in this rule are:

1. Adding procedures for inspection, production verification, and cancellation of contracts;
2. Protecting material sales from interference by subsequent land users and claimants;
3. Allowing BLM to dispose of mineral materials from unpatented mining claims;
4. Reducing the amount of required installment payments;
5. Increasing the value threshold triggering the requirement for competitive bidding;
6. Allowing additional time to prepare and submit mining and reclamation plans;
7. Adding certificates of deposit and irrevocable letters of credit as acceptable financial instruments for bonds;
8. Ensuring that bonding amounts for sales contracts of \$2,000 or more are adequate to perform reclamation; and



9. Adding provision for the renewal of competitive sales contracts.

These changes should not have appreciable effects on the economy, and any effects certainly will not approach \$100 million annually.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule will have no effect on disposal of mineral materials from national forest lands. The rule will not be in conflict with State regulations or requirements. The rule will have no effect on lands over which States have jurisdiction, other than to require a State's consent before materials may be disposed of from public lands that are withdrawn for its use, as already required. The rule expressly does not apply to national park lands or to Indian lands.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. BLM sells mineral materials at not less than the fair market value of the materials extracted, except in the instance of free use. The proposed rule will not have an effect on user fees.

(4) This rule does not raise novel legal or policy issues.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the purpose of this section a "small entity", as defined by the Small Business Administration for mining and quarrying of nonmetallic minerals, except fuels, is considered to be an individual, limited partnership, or small company (together with its affiliates), with fewer than 500 employees. Most sand and gravel companies and other mineral material enterprises that purchase mineral materials from BLM are small businesses, employing fewer than 500 persons, and many governmental units that may obtain free use permits are also small entities.

Nationwide average production of crushed stone and sand and gravel used for construction for 1996–1998 was about \$12.3 billion per year. The value of production from public lands is a small portion of this figure. For instance, the value of mineral materials produced from mineral material sales contracts averaged about \$74 million or less than 2/3 of 1 percent of the national production. (Note that this represents the value of the product free on board (FOB) at the pit, not the fair market

value of the in-place (in situ) material. Experience shows the average in-place value to be about 8% of the FOB price.) Even when we add production from free use permits the total annual production averages about \$119 million, still under 1% of the national total. The specific changes in this rule, including changes in bonding requirements for material sales contracts of \$2,000 or more, should not have an appreciable effect on small business. For average operations (contracts of \$57,000) the bond amount is expected to decrease from \$11,400 to \$5,000, a reduction of \$6,400. Therefore, the impact of this rule on the entire industry, including small business entities, is expected to be minor, and neither an initial Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. See the discussion in the previous section of this preamble.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule should have little or no effect on prices of mineral materials, which are determined under the regulations by fair market value. The changes in the rule, which are described in the previous section of the preamble, should have no appreciable effect on costs.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule should have marginal economic effects on a small segment of one industry. The mineral materials industry deals with materials that generally have high bulk and low unit value, and thus does not have appreciable foreign competition due to the high costs of transportation.

The Small Business Administration established the Small Business and Agricultural Regulatory Enforcement Ombudsman and ten Regional Fairness Boards to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates these enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on enforcement

aspects of this rule, you may call 1–888–734–4247.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The previous regulations and these final regulations both allow State and local government agencies free use of mineral materials for public projects. Such governments must show that their proposed use is a public project, and meet certain other requirements stated in the regulations. The rule would not require anything of State or local governments other than an application for a free use permit. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

#### *Takings (E.O. 12630)*

In accordance with Executive Order 12630, BLM has found that the rule does not have significant takings implications. No takings of personal or real property will occur as a result of this rule. Although the rule does include new provisions for contract cancellation, a contract issued under these regulations does not convey a property interest protected by the Takings Clause. A takings implication assessment is not required.

#### *Federalism (E.O. 13132)*

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The main connection the mineral materials program regulations have with other levels of government is in the context of free use of these resources. The rule does not place any new burdens on this use. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, BLM finds that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

### *Consultation and Coordination With Indian Tribal Governments (E.O. 13175)*

In accordance with E.O. 13175, we have found that this final rule does not include policies that have tribal implications. The Materials Act and these regulations expressly exclude Indian lands and lands set aside or held for the benefit or use of Indians from any effects of the statute or regulations (see § 3601.12). The regulations do not bar Indians or Tribes from buying mineral materials from public lands, although the abundance of these materials on Indian lands has made such purchases unnecessary. We do not know of any instances of tribal use of mineral materials from public lands.

### *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)*

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule applies only to mineral materials like sand and gravel used in construction, not to energy minerals. To the extent that the rule relieves constraints on purchase and mining of construction materials that may be used in aid of developing energy minerals, it will have a marginally beneficial effect on energy supplies.

### *Paperwork Reduction Act*

The regulations in part 3600 require information collections from 10 or more parties and submissions under the Paperwork Reduction Act. These information collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0103. BLM is collecting the information to allow us to determine if you are qualified to purchase or have free use of mineral materials on the public lands. You must respond to obtain a benefit.

### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) is not required.

BLM has determined that any environmental effects that this final rule may have are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Each sale of mineral materials other than from a community pit or common use area, each designation of the community pit or common use area itself, and each free use permit, will be subject to evaluation

under NEPA. The final rule also provides that BLM will perform additional NEPA analyses as required before renewing mineral materials sales contracts. Therefore, the final rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) 2.3A and 516 DM 2, Appendix I, Item 1.10, and does not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusion" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

### **List of Subjects**

#### *43 CFR Part 3600*

Governmental contracts, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds

#### *43 CFR Part 3610*

Governmental contracts, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds

#### *43 CFR Part 3620*

Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

**J. Steven Griles,**

*Deputy Secretary of the Interior.*

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM amends Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

1. Part 3600 is revised to read as follows:

### **PART 3600—MINERAL MATERIALS DISPOSAL**

#### **Subpart 3601—Mineral Materials Disposal; General Provisions**

Sec.

#### **Fundamental Provisions**

- 3601.1 Purpose.
- 3601.3 Authority.

3601.5 Definitions.

3601.6 Policy.

3601.8 Public availability of information.

3601.9 Information collection.

#### **Limitations on Disposal of Mineral Materials**

3601.10 Limitations on BLM's discretion to dispose of mineral materials.

3601.11 When will environmental considerations prevent BLM from disposing of mineral materials?

3601.12 What areas does BLM exclude from disposal of mineral materials?

3601.13 How can I obtain mineral materials from Federal lands that have been withdrawn to aid a function of another Federal agency or of a State or local government agency?

3601.14 When can BLM dispose of mineral materials from unpatented mining claims?

#### **Rights of Purchasers and Permittees**

3601.20 Rights of parties.

3601.21 What rights does a person have under a materials sales contract or use permit?

3601.22 What rights remain with the United States when BLM sells or issues a permit for mineral materials?

#### **Pre-Application Sampling and Testing**

3601.30 Pre-application activities—how and when may I sample and test mineral materials?

#### **Mining and Reclamation Plans**

3601.40 Mining and reclamation plans.

3601.41 What information must I include in my mining plan?

3601.42 What information must I include in my reclamation plan?

3601.43 What is the process for BLM to approve my mining and reclamation plans?

3601.44 How and when may my mining or reclamation plan be modified?

#### **Contract and Permit Administration**

3601.50 Administration of sales contracts and free use permits.

3601.51 How will BLM inspect my operation?

3601.52 After I finish my operations, when must I remove improvements and equipment?

#### **Contract and Permit Cancellation**

3601.60 Cancellation.

3601.61 When may BLM cancel my contract or permit?

3601.62 Cancellation procedure.

#### **Unauthorized Use**

3601.70 Unauthorized use.

3601.71 What constitutes unauthorized use?

3601.72 What are the consequences of unauthorized use?

#### **Appeals**

3601.80 How do I appeal a final decision by BLM?

**Subpart 3602—Mineral Materials Sales****Applications**

- 3602.10 Applying for a mineral materials sales contract.
- 3602.11 How do I request a sale of mineral materials?
- 3602.12 How does the mineral materials sales process affect other users of the same public lands?
- 3602.13 How does BLM measure and establish the price of mineral materials?
- 3602.14 What kind of financial security does BLM require?
- 3602.15 What will happen to my bond if I transferred all of my interests or operations to another bonded party?

**Administration of Sales**

- 3602.20 Administration of mineral materials sales.
- 3602.21 What payment terms apply to my mineral materials sales contract?
- 3602.22 When will a contract terminate?
- 3602.23 When will BLM make refunds or allow credits?
- 3602.24 When may I assign my materials sales contract?
- 3602.25 What rights and responsibilities does my assignee assume?
- 3602.26 If I assign my contract, when do my obligations under the contract end?
- 3602.27 When will BLM extend the term of a contract?
- 3602.28 What records must I maintain and how long must I keep them?
- 3602.29 How will BLM verify my production?

**Noncompetitive Sales**

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**Authority:** 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87-713, 76 Stat. 652).

**Subpart 3601—3601—Mineral Materials Disposal; General Provisions****Fundamental Provisions****§ 3601.1 Purpose.**

The regulations in this part establish procedures for the exploration, development, and disposal of mineral material resources on the public lands, and for the protection of the resources and the environment. The regulations apply to permits for free use and contracts for sale of mineral materials.

**§ 3601.3 Authority.**

(a) BLM's authority to dispose of sand, gravel, and other mineral and vegetative materials that are not subject to mineral leasing or location under the mining laws is the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), commonly referred to as the Materials Act. This authority applies to sale and free use of these materials. BLM's authority to allow removal of limited quantities of petrified wood from public lands without charge is section 2 of the Act of September 28, 1962 (Pub. L. 87-713, 76 Stat. 652).

(b) Section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1732) provides the general authority for BLM to manage the use, occupancy, and development of the public lands under the principles of multiple use and sustained yield in accordance with the land use plans that BLM develops under FLPMA.

(c) Section 304 of FLPMA (43 U.S.C. 1734) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) authorize the U.S. Government to collect fees and to require reimbursement of its costs.

**§ 3601.5 Definitions.**

As used in this part the term:  
*Act* means the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, *et seq.*).

*BLM* means the Bureau of Land Management.

*Common use area* means a generally broad geographic area from which BLM can make disposals of mineral materials to many persons, with only negligible surface disturbance. The use is dispersed throughout the area.

*Community pit* means a relatively small, defined area from which BLM can make disposals of mineral materials to many persons. The surface disturbance is usually extensive in the confined area.

*Mineral materials* means, but is not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay.

*Performance bond* means a bond to ensure compliance with the terms of the contract and reclamation of the site as BLM requires.

*Permittee* means any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any non-profit organization, to which BLM issued a free use permit for the removal of mineral materials from the public lands.

*Public lands* means any lands and interest in lands owned by the United States and administered by the Secretary of the Interior through BLM

without regard to how the United States acquired ownership, except lands held for the benefit of Indians, Aleuts, and Eskimos.

*Purchaser* means any person, including a business or government entity, buying or holding a contract to purchase mineral materials on the public lands.

#### **§ 3601.6 Policy.**

It is BLM's policy:

- (a) To make mineral materials available unless it is detrimental to the public interest to do so;
- (b) To sell mineral material resources at not less than fair market value;
- (c) To permit Federal, State, Territorial, and local government entities and non-profit organizations free use of these materials for qualified purposes;
- (d) To protect public land resources and the environment and minimize damage to public health and safety during the exploration for and the removal of such minerals;
- (e) To prevent unauthorized removal of mineral materials; and
- (f) To require purchasers and permittees to account for all removals of mineral materials.

#### **§ 3601.8 Public availability of information.**

(a) All data and information concerning Federal and Indian minerals that you submit under this part are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. BLM may make available for inspection certain mineral information not protected from disclosure under part 2 of this title without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part that you believe to be exempt from public disclosure, and that you wish BLM to withhold from such disclosure, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

#### **§ 3601.9 Information collection.**

The Office of Management and Budget has approved the information collection requirements in part 3600 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0103. BLM is collecting the information to allow us to determine if you are qualified to purchase or have free use of mineral materials on the public lands. You must respond to obtain a benefit.

### **Limitations on Disposal of Mineral Materials**

#### **§ 3601.10 Limitations on BLM's discretion to dispose of mineral materials.**

#### **§ 3601.11 When will environmental considerations prevent BLM from disposing of mineral materials?**

BLM will not dispose of mineral materials if we determine that the aggregate damage to public lands and resources would exceed the public benefits that BLM expects from the proposed disposition.

#### **§ 3601.12 What areas does BLM exclude from disposal of mineral materials?**

(a) BLM will not dispose of mineral materials from wilderness areas or other areas where it is expressly prohibited by law. This includes national parks and monuments.

(b) BLM will not dispose of mineral materials from Indian lands and lands set aside or held for the use or benefit of Indians.

(c) BLM will not dispose of mineral materials from areas identified in land use plans as not appropriate for mineral materials disposal.

#### **§ 3601.13 How can I obtain mineral materials from Federal lands that have been withdrawn to aid a function of another Federal agency or of a State or local government agency?**

If you wish to obtain mineral materials from lands withdrawn to aid a function of another Federal agency or of a State or local government agency, you may apply to BLM. BLM will dispose of the mineral materials only with the consent of that agency.

#### **§ 3601.14 When can BLM dispose of mineral materials from unpatented mining claims?**

(a) BLM may dispose of mineral materials from unpatented mining claims if disposal does not endanger or materially interfere with prospecting, mining, or processing operations, or uses reasonably incident thereto.

(b) BLM will ask a mining claimant for a waiver before disposing of mineral materials from a claim. If the mining claimant refuses to sign a waiver, BLM will make sure that disposal of the mineral materials will not be detrimental to the public interest. We also will consult with the Solicitor's Office, if necessary, before proceeding with the disposal.

### **Rights of Purchasers and Permittees**

#### **§ 3601.20 Rights of parties.**

#### **§ 3601.21 What rights does a person have under a materials sales contract or use permit?**

(a) Unless otherwise provided, if you are a purchaser under a sales contract or a free use permittee, you have the right to:

(1) Extract, remove, process, and stockpile the material until the contract or permit terminates, regardless of any rights others acquire later under the provisions of the general land laws; and

(2) Use and occupy the described lands to the extent necessary for fulfillment of the contract or permit.

(b) Users of the lands covered by your materials sales contract or free use permit who acquire their rights later than the date BLM designated the tract for mineral materials disposal will be subject to your existing use authorization, as provided in § 3602.12. This applies to uses due to any later settlement, location, lease, sale, or other appropriation under the general land laws, including the mineral leasing and mining laws.

#### **§ 3601.22 What rights remain with the United States when BLM sells or issues a permit for mineral materials?**

Your sale contract or use permit is subject to the continuing right of the United States to issue leases, permits, and licenses for the use and occupancy of the lands, if such use would not endanger or materially interfere with the production or removal of materials under contract or permit.

### **Pre-Application Sampling and Testing**

#### **§ 3601.30 Pre-application activities—how and when may I sample and test mineral materials?**

(a) BLM may authorize you in writing to sample and test mineral materials. The authorization letter expires after 90 days, but BLM may extend it for an additional 90 days if you show us that an extension is necessary. BLM may authorize these activities before issuing a sales contract or free use permit.

(b) You must submit your sampling and testing findings to BLM. All information you submit under this section is subject to part 2 of this title. That part sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records. (See § 3601.8.)

(c) A letter from BLM authorizing you to sample and test mineral materials does not give you a preference right to a sales contract or free use permit.

(d) BLM may impose bonding and reclamation requirements on sampling and testing that you conduct under an authorization letter.

### **Mining and Reclamation Plans**

#### **§ 3601.40 Mining and reclamation plans.**

BLM may require you to submit mining and reclamation plans before we begin any environmental review or issue a contract or permit. You may combine these plans in one document.

#### **§ 3601.41 What information must I include in my mining plan?**

If BLM requires you to submit a mining plan, it must include:

- (a) A map, sketch, or aerial photograph identifying the area for which you are applying, the area and depth you plan to disturb, existing and proposed access, and the names and locations of major topographic and known cultural features;
- (b) A description of your proposed methods of operation and the periods during which you will operate;
- (c) A description of measures you will take to prevent hazards to public health and safety and to minimize and mitigate environmental damage; and
- (d) Such other information as BLM may require.

#### **§ 3601.42 What information must I include in my reclamation plan?**

If BLM requires you to submit a reclamation plan, it must include:

- (a) A statement of the proposed manner and time in which you will complete reclamation of the areas disturbed by your operations;
- (b) A map or sketch which delineates the area you will reclaim; and
- (c) Such other information as BLM may require.

#### **§ 3601.43 What is the process for BLM to approve my mining and reclamation plans?**

(a) After reviewing your mining and reclamation plans, BLM will notify you of any deficiencies in the plans and recommend the changes necessary. BLM will notify you in writing when we approve your plan. You must follow BLM-approved mining and reclamation plans, which become part of the contract or permit.

(b) Your operation must not deviate from the plan BLM approves, unless it is modified under § 3601.44.

#### **§ 3601.44 How and when may my mining or reclamation plan be modified?**

(a) Either you or BLM may initiate a modification of an approved mining or reclamation plan to adjust for changed conditions or to correct any oversight. BLM will consult with you before requiring a modification.

(b) If BLM notifies you that you must modify your plan, you must prepare the modification, or explain why you need more time, within 30 days. If you fail to modify your plan to BLM's satisfaction, BLM may order you to stop operations under your contract or permit.

(c) When you ask to change an approved mining or reclamation plan for one of the reasons in paragraph (a) of this section, BLM will notify you in writing within 30 days whether we approve the modification, deny it, or require any changes in it.

### **Contract and Permit Administration**

#### **§ 3601.50 Administration of sales contracts and free use permits.**

#### **§ 3601.51 How will BLM inspect my operation?**

You must allow BLM access at any reasonable time:

- (a) To inspect or investigate the mine condition;
- (b) To conduct surveys;
- (c) To estimate the volume, types, and composition of commodities that you mine or remove;
- (d) To examine weight tickets, truck logs, and other records that BLM finds necessary to verify production; and
- (e) To determine whether you comply with contract, permit, statutory, or regulatory requirements.

#### **§ 3601.52 After I finish my operations, when must I remove improvements and equipment?**

After your contract or permit period expires, or after cancellation of your permit or contract, BLM will allow you up to 90 days, excluding periods of inclement weather, to remove the equipment, personal property, and any other improvements that you placed on the public lands. You may leave in place improvements such as roads, culverts, and bridges if BLM consents. If you fail to remove equipment, personal property, or any other improvement, it becomes the property of the United States. However, you remain liable for the cost of its removal and for restoration of the site.

### **Contract and Permit Cancellation**

#### **§ 3601.60 Cancellation.**

#### **§ 3601.61 When may BLM cancel my contract or permit?**

BLM may cancel your contract or free use permit if you:

- (a) Fail to comply with the provisions of the Materials Act of 1947, as amended (30 U.S.C. 601 *et seq.*);
- (b) Fail to comply with any applicable regulations; or

(c) Default in the performance of any material term, covenant, or stipulation in the contract.

#### **§ 3601.62 Cancellation procedure.**

(a) BLM will give you written notice of any defaults, breach, or cause of forfeiture, either in person or by certified mail. You have 30 days after receiving the notice:

- (1) To correct all defaults;
- (2) To request an extension of time in which to correct the defaults; or
- (3) To submit evidence showing to BLM's satisfaction why we should not cancel your contract or free use permit.

(b) If you fail to respond to the notice under paragraph (a) of this section, or if delivery of the notice is refused, or not completed as described in § 1810.2 of this chapter, BLM may cancel the contract or permit.

### **Unauthorized Use**

#### **§ 3601.70 Unauthorized use.**

#### **§ 3601.71 What constitutes unauthorized use?**

(a) Except as provided in paragraph (b) of this section, you must not extract, sever, or remove mineral materials from public lands under the jurisdiction of the Department of the Interior, unless BLM or another Federal agency with jurisdiction authorizes the removal by sale or permit. Violation of this prohibition constitutes unauthorized use.

(b) If you own the surface estate of lands with reserved Federal minerals, you may use mineral materials within the boundaries of your surface estate without a sales contract or permit only in the following circumstances:

- (1) You use a minimal amount of mineral materials for your own personal use;
- (2) You have statutory authority to use the mineral materials; or
- (3) You have other express authority to use the mineral materials.

#### **§ 3601.72 What are the consequences of unauthorized use?**

Unauthorized users are liable for damages to the United States, and are subject to prosecution for such unlawful acts (see subpart 9239 of this chapter).

### **Appeals**

#### **§ 3601.80 How do I appeal a final decision by BLM?**

If a BLM decision adversely affects you, you may appeal the decision in accordance with parts 4 and 1840 of this title.

**Subpart 3602—Mineral Materials Sales****Applications****§ 3602.10 Applying for a mineral materials sales contract.****§ 3602.11 How do I request a sale of mineral materials?**

(a) You may submit a written request for sale of mineral materials to the BLM office with jurisdiction over the site containing the materials. No particular form is required for this request.

(b) BLM also may initiate a sale without a request under paragraph (a) of this section.

**§ 3602.12 How does the mineral materials sales process affect other users of the same public lands?**

(a) When BLM designates tracts for competitive or noncompetitive sale of mineral materials, and notes the designation in the public land records, it creates a right to remove the materials superior to any subsequent claim, entry, or other conflicting use of the land, including subsequent mining claim locations.

(b) The superior right under paragraph (a) of this section is part of all contracts and permits BLM authorizes within 2 years after the date we designate the tract. BLM may extend this 2-year period for one additional year for good cause. The right continues for the entire term of the contract or permit and any renewal term. The superior right under paragraph (a) of this section also applies to any subsequent contracts or permits that BLM authorizes within 2 years after the previous contract or permit expires or terminates.

(c) This right does not prevent other uses or segregate the land from the operation of the public lands laws, including the mining and mineral leasing laws. However, such subsequent uses must not interfere with the extraction of mineral materials.

**§ 3602.13 How does BLM measure and establish the price of mineral materials?**

(a) BLM will not sell mineral materials at less than fair market value. BLM determines fair market value by appraisal.

(b) BLM may periodically reappraise the value of mineral materials not yet removed, and adjust your contract price accordingly. BLM will not adjust the price during the first 2 years of the contract. BLM also will not adjust the contract price during the 2-year period following any adjustment. However, BLM may adjust the price at the beginning of any contract renewal period.

(c) BLM measures mineral materials by in-place volume or weight equivalent. When BLM requires you to measure materials, we may either designate the method you must use or allow you to choose either method. We will verify your results.

**§ 3602.14 What kind of financial security does BLM require?**

(a) For contracts of \$2,000 or more, BLM will require a performance bond of an amount sufficient to meet the reclamation standards provided for in the contract, but at least \$500. If you have a sales contract from a community pit or common use area and you pay a reclamation fee, BLM will not require you to post a performance bond.

(b) BLM may require a performance bond for contracts of less than \$2,000. We will not require a bond amount greater than 20 percent of the total contract value.

(c) A performance bond may be a—

(1) Bond of a corporate surety shown on the approved list (Circular 570) issued by the U.S. Treasury Department, including surety bonds arranged or paid for by third parties;

(2) Certificate of deposit that:

(i) Is issued by a financial institution whose deposits are Federally insured;

(ii) Does not exceed the maximum insurable amount set by the Federal Deposit Insurance Corporation;

(iii) Is made payable or assigned to the United States;

(iv) Grants BLM authority to demand immediate payment if you fail to meet the terms and conditions of the contract;

(v) States that no party may redeem it before BLM approves its redemption; and

(vi) Otherwise conforms to BLM's instructions as found in the contract terms;

(3) Cash bond, with a power of attorney to BLM to convert it upon your failure to meet the terms and conditions of the contract;

(4) Irrevocable letter of credit from a bank or financial institution organized or authorized to transact business in the United States, with a power of attorney to BLM to redeem it upon your failure to meet the terms and conditions of the contract; or

(5) Negotiable Treasury bond of the United States of a par value equal to the amount of the required bond, together with a power of attorney to BLM to sell it upon your failure to meet the terms and conditions of the contract.

**§ 3602.15 What will happen to my bond if I transferred all of my interests or operations to another bonded party?**

BLM will cancel your bond obligations following approval of the

transfer of your interests or operations if the transferee provides a bond that assumes all of your existing liabilities as required in § 3602.24. However, under § 3602.26, you remain liable for any reclamation or other obligation that accrued during the time you held your interest.

**Administration of Sales****§ 3602.20 Administration of mineral materials sales.****§ 3602.21 What payment terms apply to my mineral materials sales contract?**

(a) Under a sales contract for mineral materials—

(1) For sales of \$2,000 or less, you must pay the full amount before BLM will sign the contract.

(2) When the sale exceeds \$2,000, you may make installment payments. The first installment payment must be the greater of \$500 or 5 percent of the total purchase price. If you elect to make installment payments—

(i) For non-competitive sales, you must pay the first installment at or before the time BLM awards the contract;

(ii) For competitive sales, you must pay the first installment as a deposit at the time you submit the bid; and

(iii) For noncompetitive and competitive sales—

(A) Once you have removed materials, you must make each subsequent installment payment monthly in an amount equal to the value of the minerals you remove each month. You must make the payment by the 15th day following the end of the month for which you are reporting. However, you must pay the balance of the purchase price not later than 60 days before the expiration date of the contract. BLM will credit your first installment payment to you at the time of your final payment unless we cancel your contract under § 3601.61; or

(B) You may make advance payment for your annual production based on the previous year's production or your projection of the current year's production, so long as you resume paying on a monthly basis as required in paragraph (a)(2)(iii)(A) of this section if your annual payment does not cover your actual production for the current year. You must resume monthly payments no later than the 15th day following the end of the month in which production exceeds the projected production on which payments were based.

(3) You must annually (as provided in your contract) produce an amount sufficient to pay to the United States a sum of money equal to the first

installment determined under paragraph (a)(2) of this section. In lieu of such production, you may make an annual payment in the amount of the first installment. If in any contract year you make production payments that are less than the first installment, you must pay the difference between the production payments and the amount of the first installment. These annual payments are due on or before each anniversary date of the contract.

(b) If you fail to comply with the terms and conditions of the contract and BLM cancels your contract under § 3601.61, you will forfeit all moneys that you paid.

**§ 3602.22 When will a contract terminate?**

(a) Your contract terminates when—

(1) Its term expires;

(2) You have completed production under your contract or permit and any renewal, and completed required reclamation; or

(3) BLM cancels your contract under § 3601.60 *et seq.* of this part.

(b) You and BLM may, by agreement, terminate the sales contract at any time.

**§ 3602.23 When will BLM make refunds or allow credits?**

(a) BLM may make refunds or allow credits if—

(1) When your contract expires, your total payments exceed the total value of mineral materials included in the contract;

(2) BLM determines that insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(3) Materials you paid for are unavailable as a result of terminating your contract by mutual agreement under § 3602.22(b).

(b) If your refund or credit is a result of terminating your contract by mutual agreement under § 3602.22(b), BLM will reduce the amount of the refund or credit by the amount of the administrative cost of processing the disposal action. If these administrative costs exceed your total payments, BLM will not make a refund or allow a credit.

(c) BLM may credit to future production on the same contract, but not refund, payments that you make in lieu of production under § 3602.21(a)(3). However, if, upon expiration of the contract, the total value of payments you have made exceeds the total value of mineral materials included in your contract, BLM will refund the difference in accordance with paragraphs (a) and (b) of this section.

**§ 3602.24 When may I assign my materials sales contract?**

(a) You may not assign the contract or any interest therein unless BLM approves the transfer in writing.

(b) BLM will not approve your proposed assignment of contract, unless—

(1) Your assignee—

(i) Furnishes a financial guarantee as required by § 3602.14; or

(ii) Obtains a written commitment from the previous surety that it will be bound by the assignment when BLM approves it; and

(2) The assignment contains all the terms and conditions in your contract.

**§ 3602.25 What rights and responsibilities does my assignee assume?**

When BLM approves your assignment, your assignee is entitled to all the rights and is subject to all the obligations under the contract.

**§ 3602.26 If I assign my contract, when do my obligations under the contract end?**

When BLM approves your assignment, you are released from any further liability under the contract for actions the assignee may take after the effective date of the assignment. You continue to be responsible for obligations that accrued before the approval date, whether or not you knew of them at the time of the transfer.

**§ 3602.27 When will BLM extend the term of a contract?**

BLM may grant a one-time extension of the contract not to exceed 1 year, if:

(a) (1) For contracts with terms over 90 days, BLM receives your written request between 30 and 90 days before the contract expires; or

(2) For contracts with terms of 90 days or less, BLM receives your written request not later than 15 days before the contract expires; and

(b) You show in writing that the delay in removing the mineral materials was due to causes beyond your control and was not due to your fault or negligence.

**§ 3602.28 What records must I maintain and how long must I keep them?**

(a) BLM may require you to maintain and preserve for 6 years records, maps, and surveys relating to production verification and valuation. These include, but are not limited to, detailed records of quantity, types, and value of commodities you moved, processed, sold, delivered, or used.

(b) You must make such records available to BLM to allow us to determine whether you have complied with statutes, regulations, and the terms of the contract.

**§ 3602.29 How will BLM verify my production?**

(a) You must submit at least one report per contract year of the amount of mineral materials you have mined or removed under your sales contract so BLM can verify that you have made the required payments. BLM will specify the timing of the reports in your contract or permit.

(b) BLM may require more frequent reporting if we find it necessary.

(c) BLM may require you to conduct pre-operation, annual, and post-operation volumetric surveys of the mine site.

**Noncompetitive Sales**

**§ 3602.30 Noncompetitive sales.**

In addition to the following sections, §§ 3602.31 through 3602.35, the provisions of §§ 3602.11 through 3602.29 also apply to noncompetitive sales.

**§ 3602.31 What volume limitations generally apply to noncompetitive mineral materials sales?**

(a) BLM may sell, at not less than fair market value, and without advertising or calling for bids, mineral materials not greater than 200,000 cubic yards (or weight equivalent) in any individual sale, when BLM determines it to be:

(1) In the public interest; and

(2) Impracticable to obtain competition.

(b) BLM will not approve multiple noncompetitive sales that exceed a total of 300,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one purchaser, whether an individual, partnership, corporation, or other entity, in any period of 12 consecutive months.

(c) The volume limitations in paragraphs (a) and (b) of this section do not apply to sales in the State of Alaska that BLM determines are needed for construction, operation, maintenance, or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

(d) The volume limitations in paragraphs (a) and (b) of this section do not apply if:

(1) BLM determines that circumstances make it impossible to obtain competition; or

(2) There is insufficient time to invite competitive bids, because of an emergency situation affecting public property, health, or safety.

**§ 3602.32 What volume and other limitations pertain to noncompetitive sales associated with public works projects?**

BLM may sell mineral materials not exceeding 400,000 cubic yards (or



weight equivalent), at not less than fair market value, without advertising or calling for bids if:

(a) BLM determines the sale to be in the public interest; and

(b) The materials will be used in connection with an urgent public works improvement program on behalf of a Federal, State, or local governmental agency, and time does not permit advertising for a competitive sale.

**§ 3602.33 How will BLM dispose of mineral materials for use in developing Federal mineral leases?**

(a) If you propose to use mineral materials in connection with developing a mineral lease issued by BLM, we may, without calling for competitive bids, sell you at fair market value a volume of mineral materials not exceeding a total of 200,000 cubic yards (or weight equivalent) in one State in any period of 12 consecutive months.

(b) If the materials remain within the boundaries of the lease, BLM will not charge for mineral materials that you must move in order to extract minerals under a Federal lease, whether or not you use them for lease development.

**§ 3602.34 What is the term of a noncompetitive contract?**

BLM will not issue a noncompetitive contract for the sale of mineral materials for a term exceeding 5 years, excluding any contract extension under § 3602.27 and any period that BLM may allow for removal of equipment and improvements under § 3601.52.

**Competitive Sales**

**§ 3602.40 Competitive sales.**

In addition to the following sections, §§ 3602.41 through 3602.49, the provisions of §§ 3602.11 through 3602.29 also apply to competitive sales.

**§ 3602.41 When will BLM sell mineral materials on a competitive basis?**

Except for sales from community pits and common use areas under subpart 3603 of this part, and noncompetitive sales under § 3602.30 *et seq.*, BLM will make sales only after inviting competitive bids through publication and posting under § 3602.42.

**§ 3602.42 How does BLM publicize competitive mineral materials sales?**

(a) When offering mineral materials for sale by competitive bidding, BLM:

(1) Will advertise the sale by publishing a sale notice in a newspaper of general circulation in the area where the material is located, on the same day once a week for 2 consecutive weeks; and

(2) Will post a sale notice in a conspicuous place in the office where you will submit bids.

(b) In the sale notice, BLM will state:

(1) By legal description, the location of the tract or tracts on which we are offering the materials;

(2) The kind of materials we are offering;

(3) The estimated quantities of materials we are offering;

(4) The unit of measurement;

(5) The appraised prices;

(6) The time and place for receiving and opening of bids;

(7) The minimum deposit we require;

(8) The site access that will be available to the purchaser;

(9) The method of bidding;

(10) If applicable, that the purchaser must file mining or reclamation plans;

(11) The bonding requirement;

(12) The location for inspection of contract terms and proposed stipulations;

(13) The address and telephone number of the office where you may obtain additional information;

(14) Whether BLM will renew the contract; and

(15) Any additional information that BLM deems necessary.

(c) BLM may, in its discretion, extend the period of time for advertising;

(d) BLM will not hold sales sooner than 1 week after the last advertisement.

**§ 3602.43 How does BLM conduct competitive mineral materials sales?**

(a) In conducting a competitive sale, BLM may require submission of sealed written bids, oral bids, or a combination of both. The sale notice will state how you must submit your bid. If 2 or more persons make identical high sealed bids, BLM will determine the highest bid by holding an oral auction among the persons making the identical high bids. If no oral bid is made higher than the sealed bids, BLM will pick the successful bidder by lot. After BLM announces the high bid at an oral auction, if you are the high bidder you must confirm that bid in writing at least by the close of business on the date of the sale, or by such time as BLM may specify in the sale notice.

(b) When BLM determines that it is in the public interest to do so, we may reject any or all bids, or may waive minor deficiencies in the bids that would not ordinarily affect the outcome of the bidding.

**§ 3602.44 How do I make a bid deposit?**

(a) If you wish to make a bid to purchase mineral materials, you must submit a deposit in advance of the sale.

(1) Your sealed bids must contain a deposit.

(2) At an oral auction, you must make your deposit before the opening of the bidding.

(b) Your deposit must be the greater of \$500 or 5 percent of the appraised value as we specify in the sale notice.

(c) Your deposit may be in the form of cash, a money order, a bank draft, or a cashier's or certified check made payable to the Bureau of Land Management.

(d) If you are not the successful bidder, BLM will return your bid deposit when the bidding concludes.

(e) If you are the successful bidder, BLM will apply your deposit to the purchase price.

**§ 3602.45 What final steps will BLM take before issuing me a contract?**

(a) *Ability to perform.* BLM may require you to furnish information we find necessary to determine whether you are able to meet the obligations of the contract.

(b) *Reasons for denying a contract.* We will deny you the contract, even if you made the highest bid, if—

(1) We determine that you are unable to meet the obligations of the contract,

(2) You are unwilling to accept the terms of the contract, or

(3) BLM rejects all bids.

(c) *Refund of deposit.* If BLM denies you a contract under paragraph (b)(1) or (b)(3) of this section, we will refund your deposit.

(d) *Awarding a contract.* BLM will notify you of your contract award by presenting you with or sending you the contract.

(e) *Accepting a contract.* If BLM awards you the contract, you must, within 60 days after receiving it, sign and return the contract, together with a performance bond and mining and reclamation plan when BLM requires them. BLM may extend this period an additional 30 days if you request it in writing within the first 60-day period. If you fail to sign and return the contract within the first 60-day period, or an approved 30-day extension period, you will forfeit the bid deposit.

(f) *Awarding the contract to the second-highest bidder.* If BLM determines that you are unable to meet the obligations of the contract, or if you fail to sign and return the contract within the time period specified, BLM may offer and award the contract for the amount of the high bid to the person making the next highest complete bid. That person must be qualified and willing to accept the contract, and must redeposit the amount required under § 3602.44(b).

(g) *Contract form.* BLM will make all sales on BLM standard contract forms

approved by the Director, Bureau of Land Management. We will include as necessary additional provisions and stipulations in the contract to conform to the provisions of the competitive sale notice and to address environmental concerns or other site-specific issues.

**§ 3602.46 What is the term of a competitive contract?**

The term of the contract will be in the sales notice. BLM will not issue a competitive contract for the sale of mineral materials for a term exceeding 10 years. However, the 10-year period does not include any contract extension under § 3602.27, any contract renewal under § 3602.47, and any periods for removal of equipment and improvements under § 3601.52 of this part.

**§ 3602.47 When and how may I renew my competitive contract?**

(a) *Applying for competitive contract renewal.* When you have paid the United States the full contract price for the mineral materials you purchased under a competitive contract, you may apply for renewal of the contract without further competitive bidding in order to purchase and extract additional material that may be available at the contract site. You must submit your request for renewal of the contract at least 90 days before it expires. You do not need to use a specific form.

(b) *BLM's response to the application.* BLM will renew your contract if—

- (1) You meet all the requirements of this section;
- (2) Your contract is not limited under § 3602.49; and
- (3) BLM determines that you are able to fulfill the obligations of a new contract.

(c) *Renewal term.* BLM will renew your contract for a maximum term of 10 additional years. The renewal may be for less than 10 years if you do not request that much time, or if BLM finds that the quantity of material involved does not justify a 10-year term.

(d) *Number of times BLM may renew a contract.* There is no maximum number of times BLM may renew a contract.

**§ 3602.48 What may BLM require when renewing my contract?**

(a) *Reappraisal.* BLM will not grant a renewal without requiring a reappraisal under § 3602.13.

(b) *Bond amount and terms.* Before renewing your contract, BLM may require you to increase, or allow you to decrease, the amount of the performance bond you posted under § 3602.14. BLM may also require other bond

modifications to ensure coverage for the renewed contract.

(c) *Environmental protection requirements.* Before renewing your contract, BLM will perform additional environmental analysis as required, and may require you to adopt additional measures to prevent hazards to public health and safety, and to minimize and mitigate environmental damage.

(d) *Other requirements.* BLM may require additions or changes to other terms or conditions of your contract.

**§ 3602.49 When will BLM issue a non-renewable contract?**

(a) BLM may offer you a contract restricted to a single term or otherwise limited in its duration. We will base this restriction on a finding that—

- (1) The land should be used for another, possibly conflicting, purpose after mineral materials are removed;
- (2) The deposit of mineral materials may be appropriate for future use by multiple operators or by the local community; or
- (3) Other circumstances make renewal inappropriate.

(b) If BLM limits a contract under this section, the sale notice under § 3602.42 will include this information.

(c) If your contract is in existence on December 24, 2001, BLM will decide whether you may request renewal of that contract. You must ask BLM for this decision at least 90 days before the contract expires. If fewer than 120 days remain on your existing contract on December 24, 2001, BLM may approve a renewal request that you submit less than 90 days before the contract expires if we decide the contract qualifies for renewal and we have sufficient time to process your request before your contract is due to expire.

**Subpart 3603—Community Pits and Common Use Areas**

**Disposal of Materials—Community Pits and Common Use Areas**

**§ 3603.10 Disposal of mineral materials from community pits and common use areas.**

(a) BLM may make mineral material sales and allow free use under permit from the same deposit within areas that we designate for this purpose. These kinds of disposals must be consistent with other provisions of this part. These designated community pit sites or common use areas may be any size.

(b) This subpart applies to both sales and free use from community pits and common use areas unless otherwise stated. Refer to subpart 3604 of this part for additional regulations applicable to the free use of mineral materials.

**§ 3603.11 What rights pertain to users of community pits?**

BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the materials superior to any subsequent claim or entry of the lands.

**§ 3603.12 What rights pertain to users of common use areas?**

(a) BLM's designation of a common use area does not establish a right to remove the materials superior to any subsequent claim or entry of the lands.

(b) Once you have a permit or a sales contract to remove mineral materials from a common use area, your rights under that permit or contract are superior to any subsequent claim or entry on the lands.

**§ 3603.13 What price does BLM charge under materials sales contracts for mineral materials from community pits and common use areas?**

BLM will sell mineral materials from community pits or common use areas under materials sales contracts for not less than fair market value.

**§ 3603.14 What plans do I need to prepare to mine or remove mineral materials from a community pit or common use area?**

BLM generally will not require a mining or reclamation plan before you mine or remove mineral materials from a community pit or common use area. We may require such a plan if we find that circumstances warrant it. In all cases, you must comply with the terms of the contract or permit to protect health, safety, and the environment.

**Reclamation**

**§ 3603.20 Reclamation.**

**§ 3603.21 What reclamation requirements pertain to community pits and common use areas?**

Generally, you do not need to perform reclamation after extracting mineral materials from community pits or common use areas. However, you must pay a reclamation fee as provided in § 3603.22.

**§ 3603.22 What fees must I pay to cover the cost of reclamation of community pits and common use areas?**

(a) You must pay a reclamation fee based on the amount of mineral materials you extract from the community pit or common use area, unless you make an alternative arrangement under paragraph (b) of this section. The reclamation fee you pay is a proportionate share of the total estimated cost of reclamation, determined by using the ratio of the material that you extract under your

permit or contract to the total volume of the material BLM estimates will be extracted from the site.

(b) BLM may, at our discretion, allow purchasers and permittees to perform interim or final reclamation, where needed, in lieu of paying reclamation charges. If BLM allows you to perform reclamation in lieu of paying a fee, we may also require you to post a bond under § 3602.14.

### **Subpart 3604—Free Use of Mineral Materials**

#### **Obtaining Free Use Permits**

##### **§ 3604.10 Permits for free use of mineral materials.**

##### **§ 3604.11 How do I apply for a free use permit?**

If you wish to apply for free use of mineral materials, you may file a letter of request or a BLM standard application form approved by the Office of Management and Budget.

##### **§ 3604.12 Who may obtain a free use permit?**

Any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any non-profit organization, may apply for a free use permit to extract and use mineral materials.

(a) BLM may issue free use permits to a government entity without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that the government entity shows that it will not use these materials for commercial or industrial purposes.

(b) BLM may issue free use permits to a non-profit organization for not more than 5,000 cubic yards (or weight equivalent) in any period of 12 consecutive months, provided that the organization shows that it will not use these materials for commercial or industrial purposes.

##### **§ 3604.13 When will BLM decline to issue a free use permit to a qualified applicant?**

BLM will not issue a free use permit if we determine that you own or control an adequate supply of suitable mineral materials that:

(a) Are readily available, and

(b) You can mine in a manner that is economically and environmentally acceptable.

### **Administration of Free Use**

#### **§ 3604.20 Administration of free use permits.**

##### **§ 3604.21 What is the term of a free use permit?**

(a) BLM will determine the appropriate length of your free use permit term.

(1) BLM will not grant free use permits to government entities for terms exceeding 10 years.

(2) BLM will not grant free use permits to non-profit organizations for terms exceeding one year.

(b) BLM may extend any free use permit term for a single additional period not to exceed one year.

##### **§ 3604.22 What conditions and restrictions pertain to my free use permit?**

(a) You must not barter or sell mineral materials that you obtain under a free use permit.

(b) You must not remove mineral materials before BLM issues you a permit or after your permit expires.

(c) BLM may incorporate other conditions and restrictions into your free use permit.

##### **§ 3604.23 When and how may I assign my free use permit?**

You may assign or transfer your free use permit to entities qualified under § 3604.12. You must first obtain BLM's written approval.

##### **§ 3604.24 Who may remove materials on my behalf?**

(a) You may allow your agent to extract mineral materials under your free use permit.

(b) Your agent may charge you only for extraction services and must not—

(1) Charge you for the materials extracted, processed, or removed; or

(2) Take mineral materials from the permit area as payment for services rendered to you, or as a donation or gift.

##### **§ 3604.25 What bond requirements pertain to free use permits?**

BLM may require a bond or other security as a guarantee of your faithful compliance with the provisions of your permit and applicable regulations, including reclamation. The type of security must be one of those provided for in § 3602.14(c) of this part.

##### **§ 3604.26 When will BLM cancel my permit?**

BLM may cancel your permit if you fail, after adequate notice, to follow its terms and conditions.

#### **§ 3604.27 What rights does a free use permit give me against other users of the land?**

Permits that BLM issues under this subpart constitute a superior right to remove the materials in accordance with the permit terms and provisions, as against any claim to or entry of the lands made after the date BLM designated the tract for mineral materials disposal. *See* § 3602.12.

### **PART 3610—[REMOVED]**

2. Part 3610 is removed.

### **PART 3620—FREE USE OF PETRIFIED WOOD**

3. The authority citation for part 3620 is revised to read as follows:

**Authority:** 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87-713, 76 Stat. 652).

4. The heading of part 3620 is revised to read as set forth above.

5. Subpart 3621 consisting of §§ 3621.1 through 3621.7 and 3621.2, is removed.

### **Subpart 3622—Free Use of Petrified Wood**

6. Section 3622.1 is amended by revising paragraph (b) to read as follows:

#### **§ 3622.1 Program: General.**

\* \* \* \* \*

(b) The purchase of petrified wood for commercial purposes is provided for in § 3602.10 *et seq.* of this chapter.

7. Section 3622.2 is amended by removing the phrase “subpart 3621 of this title” from the second sentence and adding in its place the phrase “subpart 3604 of this chapter.”

8. Section 3622.4 is amended by:

a. Removing the phrase “subpart 3621 of this title” from paragraph (a)(2) and adding in its place the phrase “subpart 3604 of this chapter,”

b. Removing the phrase “unnecessary and undue degradation of lands” from paragraph (a)(4) and adding in its place the phrase “hazards to public health and safety, and minimizes and mitigates environmental damage.”

c. Removing the phrase “in § 3622.4(a) of this title” at the end of paragraph (b), and adding in its place the phrase “in paragraph (a) of this section.”

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

#### **Subpart 3809—Surface Management**

9. The authority citation for part 3800 continues to read as follows:

**Authority:** 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C.1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

10. Section 3809.101 is amended by revising paragraph (d) to read as follows:

**§ 3809.101 What special provisions apply to minerals that may be common variety minerals, such as sand, gravel, and building stone?**

\* \* \* \* \*

(d) *Disposal.* BLM may dispose of common variety minerals from

unpatented mining claims in accordance with the provisions of § 3601.14 of this chapter.

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