DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3150, 3160, 3180, 3200, 3500, 3510, 3520, 3530, 3540, 3550, 3580, 3590, 3600, 3800, 3860

[WO–890–1270–02–24 1A]

RIN 1004–AB55

Public Availability of Mineral Resources Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule of the Bureau of Land Management (BLM) amends regulations addressing the public availability of mineral resource information. The purpose of this rule is to remove conflicts between the Department of the Interior (the Department) regulations implementing the Freedom of Information Act (FOIA), and existing regulations that relate to public availability of mineral resource information. The rule also removes inconsistencies among the various mineral resources regulations relating to release of information under FOIA. Finally, it addresses the protection afforded Indian mineral information under the Indian Mineral Development Act (IMDA) and FOIA.

EFFECTIVE DATE: November 2, 1998.

ADDRESSES: Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sid Vogelpohl, Jackson District, Division of Mineral Resources (601) 977–5400.

SUPPLEMENTARY INFORMATION:

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I. Background

BLM issued the proposed rule on May 31, 1991 (56 FR 24767) with a 60-day public comment period. The proposed rule was designed to conform several mineral resource regulations with the regulations implementing the Freedom of Information Act, 5 U.S.C. 552 (FOIA), in 43 CFR part 2, subpart B, which provides for withholding certain types of information from release under FOIA. In administering FOIA, BLM makes some information available without a written FOIA request at any agency office possessing such information, as provided in standard paragraph (a) as revised in this final rule. Other information may be available to the public only if a written FOIA request is submitted.

FOIA provides various exemptions to its disclosure requirements. Three of them govern release of information under this rule, Exemptions 3, 4, and 9, numbered according to their paragraph designations in the statute. FOIA ''does not apply to matters that are—

* * * (3) specifically exempted from disclosure by statute (other than section 552b of this title [which pertains to agency meetings that may be closed to the public under certain circumstances]), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

''(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; * * * or

''(9) geological and geophysical information and data, including maps, concerning wells.''

Reference in the **SUPPLEMENTARY INFORMATION** to ''standard paragraphs'' is reference to the proposed rule wherein it was proposed that the regulations for each mineral commodity, including oil and gas, solid minerals other than coal, and so forth, would include common or standard section provisions consisting of 2 or more of paragraphs (a), (b), (c), and (d), which appear in final form in section III of this preamble as well as in the regulatory text itself.

II. Responses to Comments

BLM received comments on the proposed rule from 11 sources: 2 from industry associations, 1 from a business entity, 2 from Indian tribes, and 6 from government entities. Three additional business entities requested and were provided copies of the list of ''public'' and ''non-public'' mineral resource information noted to be available on request in the proposed rule.

The following paragraphs provide summaries of the submitted comments and the BLM response to those comments.

1. Public Land Mineral Interests

The two industry associations, representing geophysical contractors and petroleum companies, expressed concern that confidential information would be released as a result of the proposed rule. They stated, for example, that geophysical data obtained at considerable cost would become available to competitors if the protection provided by existing regulations specific to Alaska (43 CFR 3152.6(b)) is removed. Specifically, the comments questioned whether such a change would affect the ''automatic'' protection currently provided by 43 CFR 3152.6(b).

The same respondents objected to the removal of § 3162.8, which excepts geophysical and geological data from public inspection, as well as removal of the provision for consent from the submitter.

By cross-referencing the Department's FOIA regulations, the regulatory amendments adopted in this final rule will protect geophysical and geologic data to the extent that the applicable law, FOIA, allows protection. Exemption 9 of FOIA ''protects geological and geophysical information and data, including maps, concerning wells.'' Geological and geophysical data obtained through surface methods, as opposed to wells, also may be subject to protection under Exemption 4 if it qualifies as confidential commercial or financial information.

BLM recognizes the cost associated with developing geophysical data, and information about such costs may qualify for exemption from disclosure under exemption 4 of FOIA. Therefore, in most cases, geophysical data will be protected from disclosure. The protection of information urged in the comments exists in current FOIA regulations and, by reference, remains in the oil and gas regulations. The amendment of section 3152.6(b) refers to 43 CFR part 2, the Department's FOIA regulations. Section 2.15(d) of that part requires the BLM to contact the submitter whenever the BLM has reason to believe that ''disclosure of information may result in commercial or financial injury to the submitter.'' On the other hand, in those cases where BLM can determine, without additional information, that release will result in competitive harm or injury, the request for data will be denied without contacting the submitter as provided by § 2.15(d)(4)(i). That paragraph provides that notification to the submitter is not required if the bureau determines that disclosure of the record should be denied. The changes were necessary to conform the rule to the terms of FOIA, which mandate release in situations not addressed by FOIA exemptions.

Another comment related to the proposed removal of paragraph (d) of § 3162.8, which specifically referred to information submitted to BLM that was not required by regulation. The concern expressed was that voluntarily submitted information could be released without the submitter's consent under the proposed regulations. Voluntarily submitted commercial or financial

information may be protected by FOIA exemption 4, which allows a Government agency to withhold voluntarily submitted information when the information is of a kind that customarily would not be released to the public by the person from whom it was obtained.

The comment interpreted the proposed rule to require marking of data as confidential ''before any right to protect the data would even arise.'' This is not a correct reading of the provision. Absent another specific regulation to the contrary, the FOIA regulations of the Department require protection of confidential commercial or financial information regardless of whether it is marked. Section 2.15(d)(4)(v) of title 43 provides for notification of the submitter in the absence of marking ''if there is substantial reason to believe that disclosure of the information would result in competitive harm.'' Under FOIA, the agency is required to make its own determination as to whether the information meets this standard for withholding and cannot rely solely on the submitter's marking of information as its basis for deciding not to release information. The rule requires marking the confidential material solely to help the review of material for disclosure or protection under FOIA. It will be to the advantage of the submitter to mark the material it considers confidential to reduce the possibility of it being disclosed inadvertently. Further, if the submitter fails to mark every page that it considers confidential, the administrative costs of BLM compliance with FOIA will increase.

Based on the public comments regarding paragraph (b) of the proposed standard FOIA provision, and in recognition that the specific marking used by a private party to mark information as confidential is not critical, we are amending paragraph (b) in the final rule to remove the requirement that specific wording be used for this purpose. Specific reference to 43 CFR 2.15 has also been removed so that the paragraph refers to 43 CFR part 2 as a whole. The requirement that material requested to be kept confidential be submitted separately has also been removed in the final rule. The BLM is responsible for determining whether it is appropriate to withhold information from a person requesting information under FOIA, even in the absence of marking or separate submission.

The same comment also made specific reference to a form of protection for proprietary information that would be lost if the oil and gas regulations were amended merely to refer to the FOIA regulations: the current oil and gas regulations state that certain information is not to be made available to the public without the consent of the submitter. FOIA does not authorize agencies to give submitters a veto over disclosure. An agency must disclose commercial and financial information that is not competitively sensitive and that it had required to be submitted. However, experience indicates that information typically considered confidential by industry will also typically be viewed as potentially confidential by the BLM. In any case of doubt, BLM will notify the submitter before deciding to disclose information, as detailed in the FOIA regulations and further discussed below.

A comment agreed that exemptions 4 and 9 would adequately protect confidential information from disclosure. No change is necessary in the final rule as a result of this comment.

2. Indian Mineral Interests

Comments of two Indian tribes expressed concern that information considered confidential by the Indian mineral owner would be released to the public. They pointed out that information in the possession of the BLM as a result of its oversight responsibilities may be confidential as to the Indian mineral owners, even if the submitter does not consider it confidential. BLM recognizes this characteristic of information relating to Indian mineral resources, as noted in the preamble of the proposed rule, and has addressed the concern by adding new paragraph (d) to the proposed rule. BLM will also address the subject in internal guidance, as discussed below.

For each category of Indian and Federal mineral resource information, one Departmental office or bureau has been identified in the Tripartite Agreement of September 6, 1991, (Tripartite Agreement) among BLM, the Bureau of Indian Affairs (BIA) and the Minerals Management Service (MMS), as the Office of Primary Control (OPC) for information shared among agencies, as provided by FOIA. The OPC, under 43 CFR 2.15(b)(2), decides whether to grant or deny the FOIA request based on provisions in the FOIA regulations. The BLM, in concert with BIA and MMS, in Appendix D of the Tripartite Agreement, classified various types of mineral resources information as ''public'' or ''non-public.'' ''Public'' information is available without a written FOIA request at any agency office possessing such information. ''Non-public'' information may be available to the public only if a written FOIA request is submitted. ''Public'' Indian and Federal information would be available on request from any agency possessing the information, without a FOIA request. See BLM Manual Section 1278—External Access to BLM Information. BLM is preparing further internal guidance: guidelines that list public and other information for various mineral commodities, and an Instruction Memorandum further explaining the FOIA exemptions and IMDA, and directing agency officials how to proceed under each.

Any FOIA request for information that is obviously confidential will be denied by the OPC without contacting the submitter or BIA. Information that may arguably be confidential would be reviewed by the OPC for possible disclosure. The OPC would first contact the submitter, as provided by 43 CFR part 2, and then, if necessary, BIA. If either the submitter or BIA acting on behalf of an Indian mineral owner can demonstrate that the requested information is exempt from disclosure based on the FOIA regulations, the disclosure request would be denied.

Lists of ''non-public'' information were developed by mineral specialists. The lists are broad and include commercial and financial information, trade secrets, reserve data, solid mineral production data, geologic and geophysical data, and similar data. The lists are available for public review and information as noted in the preamble of the proposed rule.

A comment on behalf of an Indian tribe referred to the tribe's development of its own mineral resources and noted that disclosure of those items specifically identified by the FOIA exemptions, e.g., commercial and financial information, could harm the competitive position of the tribe. The BLM agrees with this comment in principle. Procedures to consider the impact on Indian mineral owners are provided for in paragraph (d) of the standard section.

The comment also noted that the proposed ''regulations do not make it absolutely clear that if an objection is raised by an Indian tribe * * * the information will not be released.'' FOIA places the responsibility to make an informed decision on a FOIA request with the agency. The agency, in turn, considers input from the submitter and Indian mineral owner in light of the guidelines in the FOIA regulations and any applicable case law. In some instances, the OPC may be obligated to disclose information even though the submitter or the Indian mineral owner objects.

The same comment questioned the interpretation of IMDA (25 U.S.C. 2101 *et seq.*) as it relates to public access to information. In the preamble of the proposed rule, BLM took the position that Section 4(c) of IMDA, 25 U.S.C. 2103(c), protects information relating to the findings that form the basis of the decision of the Secretary of the Interior (the Secretary) to approve or disapprove an agreement, including the terms and conditions of such agreements and the agreed manner of disposition of the mineral resource. Such information is confidential under the IMDA statute and thus is not subject to disclosure, as recognized by exemption 3 of FOIA (specifically exempted from disclosure by statute).

Two comments inquired as to why exemption 3 status was not also provided to mineral production information received after approval of an IMDA agreement, since ''production,'' ''products,'' and ''proceeds'' are referred to in Section 4(c) of IMDA. BLM agrees with the comment, noting that the legislative history of Section 4(c) of IMDA reflects an intention to protect ''all information of a business or financial character relating to such agreements.'' H.R. Rep. No. 746, 97th Cong. 2nd Sess. 5 (1982). Therefore, projections, studies, data, or other information regarding the terms and conditions of the agreement, the financial return from the agreement, and information as to the extent, nature, value, or disposition of mineral resources, all enjoy exemption 3 status. So does proprietary information on exploration, development, and production pertaining to an agreement, but created after the Secretary's approval of the agreement. We have revised standard paragraph (c) in the final rule accordingly.

A tribal comment noted that the Indian mineral owner does not have the opportunity to mark Indian information as confidential as required by the proposed rule. The comment recommended that the standard paragraphs be changed to require Indian mineral owners to mark all Indian information as confidential, allowing no release without prior approval of the mineral owner. For the submitter to mark all Indian information confidential is not appropriate, because Indian information held by BLM is subject to FOIA disclosure except to the extent it is protected by a specific exemption. Moreover, marking is not a prerequisite to protection. Whether the information is marked or not, BLM must review it to determine whether disclosure is appropriate. As noted above, the impact of disclosure on both the Indian mineral owner and submitter, based on the FOIA exemptions, will be considered in the OPC's decision.

The same comment requested that standard paragraph (c) be expanded to state that all Indian information relating to IMDA, or the Indian Mineral Leasing Act of 1938, or any other act of Congress, including well applications and reports, will be held confidential unless disclosure is approved by the Indian mineral owner. Paragraph (c) codifies the special protections afforded information furnished in connection with the Secretary's approval of mineral development agreements authorized by IMDA. There is no similar basis for exempting all other Indian information from the disclosure requirements of FOIA. As noted above, a change in standard paragraph (c) has been made to clarify the scope of Section 4(c) of the IMDA.

The comment recommended a provision that would give Indian and Indian land information a presumption of privilege and confidentiality. The writer also expressed concern that the rule as proposed would adversely affect Indian tribes whose land holdings have oil and gas development potential. The oil and gas regulations, as previously written at section 3162.8, specifically made reference to ''confidential and privileged'' Indian information, requiring that such information not be released without ''the express authorization'' of the Indian mineral owner. We do not anticipate any significant impact on Indian mineral owners, because FOIA has always required disclosure in the absence of a FOIA exemption or a statutory guarantee of confidentiality. To the extent that prior regulations may have been read otherwise, those regulations were unenforceable. Under the final rule, ''confidential and privileged'' Indian information will not be disclosed. However, it is the responsibility of the OPC to reach an informed decision as to whether particular information is ''confidential and privileged,'' based on FOIA regulations, which would include considering the effect of disclosure on the Indian mineral owner. Additionally, as previously stated, it will be BLM policy to consult with the Indian mineral owner through the BIA, if the requested information is not clearly confidential. In situations where it is clear, the OPC would reach a decision without consultation.

A second Indian tribe also commented that the Indian information differs from Federal information in the BLM's possession in that it was obtained to fulfill a trust responsibility to the Indians. The comment went on to state that disclosure of Indian information, when it does not protect the best interests of the Indian mineral owner, would violate that trust. The comment noted that exemption 4 protects certain information from disclosure, that FOIA does not limit consultation to the submitter, and that contact must be made with the land or mineral owner.

Absent statutory authority otherwise, records in the possession and control of the United States are subject to FOIA, regardless of the reason the government received the information. However, being subject to FOIA does not mean that all information will be disclosed. The information exempted from disclosure under FOIA will not be disclosed. While certain information is obviously exempt from disclosure, the status of some information is ambiguous. It is this ambiguity which requires a review of any request for some borderline information with specific attention to the interests of the submitter and the Indian mineral owner. Abiding by the provisions of FOIA fulfills BLM's trust responsibilities.

BLM agrees with the comment that Indian mineral owners may have a commercial interest in data submitted by a company that through lease or other contract has information concerning the Indian minerals, even if the submitting company does not have such an interest in protecting that information. For example, the company may be prepared to relinquish the lease, whereupon the Indian mineral owner is likely to re-offer the tract for lease. The disclosure of data from the existing lessee's seismic work, drilling, or production could significantly affect the number and level of potential bids to lease the Indian minerals.

The protection of exemption 4 of FOIA extends to commercial and financial information of an Indian mineral owner obtained from a person outside the government, if release would be competitively harmful to the Indian mineral owner. That protection is not lost merely because the immediate submitter of the data to the Department was not the Indian mineral owner, but a party in contractual privity with the Indian mineral owner. Sensitive data concerning the Indian's minerals must be provided to the government by the lessee/contractor, because of the trust relationship, which the government does not receive for other private lands. Therefore, construing the exemption to protect only the immediate submitter (lessee/contractor) would put the Indian in a disadvantageous position vis-a-vis other

mineral owners. Contrariwise, the United States owes special duties to the Indian mineral owner. While the trust relationship, in and of itself, does not afford confidentiality to data that would otherwise be releasable, the trust relationship should not cause Indian mineral owners to lose the confidentiality enjoyed by those private mineral owners whose mineral information is not disclosed to the Federal Government. Therefore, BLM agrees with the comment that the Indian mineral owner should have notice, and an opportunity to object if the submitter has not established that the Indian interest in the record can be protected. The bases for such consultation are the submitter's contractual privity with the Indian mineral owner and the trust responsibility of the Secretary.

In the preamble of the proposed rule, BLM announced its intention to consult with the Indian mineral owner when it receives a request for commercial or financial information that may be protected by exemption 4. BLM received no comments opposing this policy. Accordingly, the final rule contains an additional paragraph (d) providing Indian mineral owners an opportunity to object to disclosure, when BLM is uncertain whether the information is data protected by exemption 4.

Paragraph (d)(1) reflects BLM's commitment to asserting such FOIA exemptions as are available to protect the confidentiality of Indian information. Paragraph (2) addresses the situation in which, following consultation with the submitter, BLM determines that the submitter has no interest in withholding the data that can be protected, but Indian mineral owners may have interests protected by exemption 4. It provides that the agency will notify the Indian mineral owners of record of such requests and offer to consider the owner's view as to whether there are grounds under exemption 4 for withholding the information requested.

This parallels the procedures for consultation with submitters and will apply only in the cases in which BLM is unable to determine independently whether the information is protected under exemption 4, taking into account the nature and age of the data. No notification will take place if BLM can determine that the data is commercial or financial information that can be protected. BLM is dependent on the records of BIA for the identity and addresses of the Indian mineral owners. BLM fulfills the requirements of paragraph (d) when it mails notice of the opportunity to object to disclosure to the last known address of the record mineral owner and waits a reasonable time for a response.

The same comment also stated that Indian tribes have enacted tribal laws prohibiting their lessees from publicly disclosing information regardless of the authorizing leasing statute. The comment stated that the BLM may not ''undercut'' tribal law. The FOIA places statutory requirements and responsibilities on the BLM. Public disclosure is required by FOIA, but FOIA also provides exemptions to avoid competitive harm, protect trade secrets, and prevent unwarranted invasion of personal privacy. Tribal laws cannot exempt BLM from compliance with Federal statutes, such as FOIA. However, the OPC will fully weigh the reasons for any objection from the Indian mineral owner, and to the extent permitted by Federal law will protect the confidentiality of these data. With the range of exemptions and court interpretation of those exemptions, BLM expects to be able to protect justifiable Indian mineral owner expectations of confidentiality. To emphasize the BLM policy of consulting with the Indian or Indian tribe when appropriate, paragraph (d) is added as noted in the previous paragraph.

The comment further noted that exemption 4 protects certain information from disclosure, that FOIA does not limit consultation to the submitter, and that contact must be made with the landowner. FOIA requires contact with the ''submitter.'' However, in the case of public request for Indian mineral information, when BLM determines that it is appropriate to contact the submitter, we will contact the industry submitter first as provided in 43 CFR 2.15(d). If BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA, and we have reason to believe but are not certain that disclosure of the information may result in commercial or financial injury to the Indian mineral owner, we will give notice to the Indian mineral owner. The OPC will be particularly sensitive to impacts on the Indian mineral owner to the extent allowed by law.

The comment noted that exemption 9 pertains to a myriad of information in BLM files and would permit the BLM to withhold most Indian mineral information. The comment is correct, but this exemption concerns ''wells'' only. Under BLM policy, this exemption applies to geologic and geophysical information obtained from a well, exploration hole, or any excavation revealing such information. Information that does not concern a ''well'' could be exempt under another exemption, especially exemption 4 (commercial and financial information).

The comment rejected ''the notion that compliance with FOIA requires that the BLM adopt the proposed regulations.'' As stated above, BLM cannot by regulation protect what Federal statute requires to be disclosed.

The comment noted that contact with the Indian mineral owner would be helpful in determining whether the Indian mineral owner will be adversely affected, and that contact would be needed for consent to disclosure. As noted previously, the OPC will consult the submitter and then, if necessary, the Indian mineral owner, when such consultation is appropriate under FOIA. Once the OPC has determined that certain information is exempt from disclosure, the FOIA request would be denied without further contact with the Indian mineral owner or the submitter. Nonconsent, absent protection by a FOIA exemption, cannot prevent disclosure after full consideration of relevant information and consultation.

All of the commenting governmental agencies generally supported the goals of the proposed rule. One comment suggested that the BLM coordinate closely with the BIA or the Indian mineral owner prior to disclosure of information. As previously discussed, the OPC will contact the submitter first, and then, if necessary because there is a question as to whether Indian interests will be put at risk, the Indian mineral owner(s) as disclosed in BIA records. A FOIA request may be denied if either of these parties demonstrates to the satisfaction of BLM that the information may be withheld from the public based on the FOIA exemptions.

Another agency's comment suggested that to expect a private party to mark confidential information with specific notations, and to separate it from other information, is not realistic. The comment suggested that any marking that clearly indicates confidential information is sufficient. BLM agrees. As noted above, a change in standard paragraph (b) should resolve this concern.

One internal comment stated that removal of section 3590.1 would hamper administration of solid mineral leases and permits. The section has not been restored in the final rule, but section 3500.5–2 of the final rule pertains to information submitted under part 3590 as well as the rest of the regulations on leasing and management of solid minerals other than coal.

III. Final Rule as Adopted

To summarize, the standard paragraphs presented in the proposed rule have been modified and paragraph (d) has been added. These paragraphs are added to BLM's mineral regulations in this final rule where and as appropriate. All four paragraphs have been added to the introductory regulations on oil and gas leasing in part 3100, the regulations on geothermal resources leasing in part 3200, and the regulations on leasing of solid minerals other than coal and oil shale in part 3500. Only paragraphs (a) and (b) have been incorporated in the regulations on mineral material disposal and sale in part 3600 and the regulations on mining under the mining laws in part 3800.

The standard paragraphs are:

(a) All data and information concerning Federal and Indian minerals submitted under parts _____ are subject to part 2 of this title, except as provided in paragraph (c) of this section. 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. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.

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

(c) Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe—

(1) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(2) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to—

(i) The terms, conditions, or financial return to the Indian parties;

(ii) The extent, nature, value, or disposition of the Indian mineral resources; or

(iii) The production, products, or proceeds thereof.

(d) For information concerning Indian minerals not covered by paragraph (c) of this section—

(1) BLM will withhold such records as may be withheld under an exemption to the Freedom of Information Act (FOIA) when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation;

(2) BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of § 2.15(d) of this title, before making a decision about the applicability of FOIA exemption 4 to:

(i) Information obtained from a person outside the United States Government; when

(ii) Following consultation with a submitter under § 2.15(d) of this title, BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

As indicated in the proposed rule, the standard paragraphs will eventually be incorporated in all BLM mineral regulations. The provision for coal (part 3400), will be added in a subsequent proposed rule amending other aspects of that program.

We have amended sections 3514.5, 3524.5, 3534.5, 3544.5, 3554.5, and 3585.5–9 editorially in this final rule to restore language to the provision that was inadvertently removed in the proposed rule. This language allows BLM to make public any information submitted under an exploration license once BLM has issued a solid mineral lease.

In response to a Congressional moratorium on publishing amendments of 43 CFR subpart 3809 (see Section 339 of the Department of the Interior and Related Agencies Appropriations Act of 1998, P.L. 105–83), we have removed from this final rule the provision adding standard paragraphs (a) and (b) to subpart 3809.

IV. Procedural Matters

The principal author of this final rule is Sid Vogelpohl, Jackson District, Division of Mineral Resources, assisted by Ted Hudson of the Regulatory Affairs Group, BLM, and Dennis Daugherty of the Office of the Solicitor, Department of the Interior.

National Environmental Policy Act

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department, ''categorical exclusions'' means a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. In this case, the regulations are purely of an administrative and procedural nature, relating to the form in which information relating to mineral exploration and development must be submitted to keep it confidential, and how BLM will handle such information.

Executive Order No. 12866

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The rule enhances competition by providing mechanisms to protect proprietary and other information used by mineral interests to protect their competitive positions, among other purposes. The only substantive requirement the rule imposes on the regulated public is to mark the material that such public wishes to be kept confidential. (Some of the regulations that are superseded by this final rule have similar requirements.) The effect of the rule on the national economy will be minimal, and would by no means approach $100 million annually.

As of September 30, 1997, there were on public and related lands:

19,061 competitive oil and gas and geothermal leases;

27,014 noncompetitive oil and gas and geothermal leases;

538 solid mineral (other than coal) leases, permits, licenses, etc.;

3,239 mineral material sales & free use permits;

3,040,117 recorded mining claims (324,651 active), of which 1,073 filed notices with BLM, and 248 filed plans of operations with BLM.

Comparatively few of these mineral authorizations involve the submission of proprietary, financial, or other data that need to be marked as confidential. For example, of the 46,000 fluid mineral

leases shown above in the data for FY 1997, on only about 2,700 were there new wells started or producible wells completed during the year. Of these, a very small percentage probably involved submission of such data. Even assuming that all 2,700 involved such data, the clerical costs of marking it would have to exceed $37,000 per lease to approach the $100 million annual threshold.

Of course, oil and gas is just one of the mineral programs affected by this final rule, but the amount of confidential material submitted to BLM is probably greatest in this program. The cost of complying with the rule is clearly minimal.

A large number of entities are affected in a small-to-minuscule way by this rule. Of course, not all of these entities submit information that is affected by the final rule, and it is impossible to quantify those that do each year.

Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Many of BLM's customers are small businesses, and both business entities and government entities, including local governments that may qualify as small entities, can apply for benefits under BLM's mineral development regulations. BLM cannot quantify the number of business and government entities that may explore for minerals, obtain mineral leases, locate mining claims, obtain mineral material permits, or seek patents under the mining laws, and qualify as small under the Act. However, the only cost imposed by this final rule is the clerical cost of marking each page that the entity wishes to protect from disclosure under FOIA, a cost that is already required by some of the existing regulations that are being replaced.

Small Business Regulatory Enforcement Fairness Act.

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

a. Will not have an annual effect on the economy of $100 million or more.

Very many of the leases, permits, claims, etc., referred to in the previous two sections are held or operated by small entities, including individual mining claimants with 10 or fewer claims, small towns that buy sand and gravel from public lands, and probably 90 percent of oil and gas operators. From the data available, however, it is impossible to say precisely how many meet the definition of a small entity. However, even if it is a substantial number, it is very unlikely, as shown in the previous section, that the economic effects on any of them will be measurable, much less significant.

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 will not affect government agencies other than BLM, for which we hope it will marginally reduce costs. Based on the discussion in the section on Executive Order 12866, above, we conclude that the effect of the rule on industry and ripple effects on the economy will be *de minimis*.

c. Does 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. See the discussion in the section on Executive Order No. 12866, above.

Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in expenditures of $100 million or more in any one year by State, local, and tribal governments in the aggregate, or to the private sector. The only expenditure resulting from the rule will be the additional clerical cost to the entity submitting mineral information of marking certain pages of that information ''confidential'' that the entity wishes to be withheld from disclosure. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order No. 12612

Because the rule does not impose requirements on any government entity other than the Federal Government, BLM has determined that the final rule does not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment.

Executive Order No. 12630

The Department has determined that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not relate to the physical taking of real or personal property. The rule does provide mechanisms for protection of property rights in proprietary information to the extent allowed by law. Therefore, as required by Executive Order 12630, the Department certifies that the rule would not cause a taking of private property.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order No. 12988

The Department hereby certifies to the Office of Management and Budget that this final rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

43 CFR Part 3100

Confidential business information, Freedom of information, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Administrative practice and procedure, Alaska, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3200

Confidential business information, Freedom of information, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Confidential business information, Freedom of information, Government contracts, Indians—lands, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3510

Government contracts, Mineral royalties, Mines, Phosphate, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3520

Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Sodium, Surety bonds.

43 CFR Part 3530

Government contracts, Mineral royalties, Mines, Potassium, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3540

Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulfur, Surety bonds.

43 CFR Part 3550

Government contracts, Hydrocarbons, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3580

Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Recreation and recreation areas, Surety bonds.

43 CFR Part 3590

Environmental protection, Government contracts, Indians—lands, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3600

Confidential business information, Freedom of information, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3800

Administrative practice and procedure, Confidential business information, Environmental protection, Freedom of information, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3860

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 28, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

For the reasons stated in the Preamble, and under the authority of the Freedom of Information Act as amended and supplemented (5 U.S.C. 552), parts 3100, 3150, 3160, 3180, 3200, 3500, 3510, 3520, 3530, 3540, 3550, 3580, 3590, 3600, 3800, and 3860, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation for part 3100 is revised to read as follows:

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306, and 359; 43 U.S.C. 1201, 1732(b), 1733, 1734, and 1740; 95 Stat. 748; and 111 Stat. 1629.

2. Section 3100.4 is added to read as follows:

§ 3100.4 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3100 and parts 3110 through 3190 of this chapter are subject to part 2 of this title, except as provided in paragraph (c) of this section. 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. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3100 and parts 3110 through 3190 of this chapter that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all such data and information confidential to the extent allowed by § 2.13(c) of this title.

(c) Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe—

(1) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(2) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to—

(i) The terms, conditions, or financial return to the Indian parties;

(ii) The extent, nature, value, or disposition of the Indian mineral resources; or

(iii) The production, products, or proceeds thereof.

(d) For information concerning Indian minerals not covered by paragraph (c) of this section—

(1) BLM will withhold such records as may be withheld under an exemption to FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation;

(2) BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of § 2.15(d) of this title, before making a decision about the applicability of FOIA exemption 4 to:

(i) Information obtained from a person outside the United States Government; when

(ii) Following consultation with a submitter under § 2.15(d) of this title, BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

3. The authority citation for part 3150 is revised to read as follows:

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189 and 359; 42 U.S.C. 6508; 43 U.S.C. 1201, 1732(b), 1733, 1734, 1740.

4. Section 3152.6(b) is revised to read as follows:

§ 3152.6 Collection and submission of data.

* * * * *

(b) All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided at § 3100.4 of this chapter.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

5. The authority citation for part 3160 is revised to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

§ 3162.8 [Removed]

6. Section 3162.8 is removed in its entirety.

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS

7. The authority citation for part 3180 is revised to read as follows:

Authority: 30 U.S.C. 189.

8. Section 3181.2 is amended by revising the sixth sentence, to read as follows:

§ 3181.2 Designation of unit area; depth of test well.

* * * All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided under this part at § 3100.4 of this chapter. * * *

PART 3200—GEOTHERMAL RESOURCES LEASING: GENERAL

9. The authority citation for part 3200 is revised to read as follows:

Authority: 5 U.S.C. 552; 25 U.S.C. 396d, 2107; 30 U.S.C. 1023.

10. Section 3255.13 is added to read as follows:

§ 3255.13 How will BLM treat Indian information submitted under the Indian Mineral Development Act?

Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe—

(a) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(b) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to—

(1) The terms, conditions, or financial return to the Indian parties;

(2) The extent, nature, value, or disposition of the Indian mineral resources; or

(3) The production, products, or proceeds thereof.

11. Section 3255.14 is added to read as follows:

§ 3255.14 How will BLM administer information concerning other Indian minerals?

For information concerning Indian minerals not covered by § 3255.13, BLM will withhold such records as may be withheld under an exemption to the Freedom of Information Act (FOIA) (5 U.S.C. 552) when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation.

12. Section 3255.15 is added to read as follows:

§ 3255.15 When will BLM consult with Indian mineral owners when information concerning their minerals is the subject of a FOIA request?

BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of § 2.15(d) of this title, before making a decision about the applicability of FOIA exemption 4 to:

(a) Information obtained from a person outside the United States Government; when

(b) Following consultation with a submitter under § 2.15(d) of this title, BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(c) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

13. The authority citation for part 3500 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. appendix; 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2, 460mm–4, 508(b); 25 U.S.C. 396d, 2107; 30 U.S.C. 189, 192c, 293, 359; 31 U.S.C. 9701; 43 U.S.C. 1201, 1732(b), 1733, 1740; 47 Stat. 1487.

14. Section 3500.5 is revised to read as follows:

§ 3500.5 Document submission and availability.

15. Section 3500.5–1 is added to read as follows:

§ 3500.5–1 Filing of documents.

All necessary documents must be filed in the proper BLM office. A document will be considered filed when it is received in the proper BLM office.

16. Section 3500.5–2 is added to read as follows:

§ 3500.5–2 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3500 and parts 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580, and 3590 of this chapter are subject to part 2 of this title, except as provided in paragraph (c) of this section. 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. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3500 and parts 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580, and 3590 of this chapter that you believe to be exempt from disclosure to the public, 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.

(c) Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe—

(1) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(2) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to—

(i) The terms, conditions, or financial return to the Indian parties;

(ii) The extent, nature, value, or disposition of the Indian mineral resources; or

(iii) The production, products, or proceeds thereof.

(d) For information concerning Indian minerals not covered by paragraph (c) of this section—

(1) BLM will withhold such records as may be withheld under an exemption to FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation;

(2) BLM will notify the Indian mineral owner(s), as identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure using the standards and procedures of § 2.15(d) of this title, before making a decision about the applicability of FOIA exemption 4 to:

(i) Information obtained from a person outside the United States Government; when

(ii) Following consultation with a submitter under § 2.15(d) of this title, BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the

Indian mineral owner(s), but is uncertain that such is the case.

PART 3510—PHOSPHATE

17. The authority citation for part 3510 is revised to read as follows:

Authority: 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2, 460mm–4; 30 U.S.C. 189, 359; 31 U.S.C. 9701; 43 U.S.C. 1201, 1732(b), 1733, 1740; 47 Stat. 1487.

18. Section 3514.5 is revised to read as follows:

§ 3514.5 Submission of data.

The licensee must furnish to BLM copies of all data obtained during exploration. If part 2 of this title requires any of such data to be held confidential, BLM will not make it public.

PART 3520—SODIUM

19. The authority citation for part 3520 is revised to read as follows:

Authority: 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2, 460mm–4; 30 U.S.C. 189, 359; 31 U.S.C. 9701; 43 U.S.C. 1201, 1732(b), 1733, 1740; 47 Stat. 1487.

20. Section 3524.5 is revised to read as follows:

§ 3524.5 Submission of data.

The licensee must furnish to BLM copies of all data obtained during exploration. If part 2 of this title requires any such data to be held confidential, BLM will not make it public.

PART 3530—POTASSIUM

21. The authority citation for part 3530 is revised to read as follows:

Authority: 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2, 460mm–4; 30 U.S.C. 189, 359; 31 U.S.C. 9701; 43 U.S.C. 1201, 1732(b), 1733, 1740; 47 Stat. 1487.

22. Section 3534.5 is revised to read as follows:

§ 3534.5 Submission of data.

The licensee must furnish to BLM copies of all data obtained during exploration. If part 2 of this title requires any such data to be held confidential, BLM will not make it public.

PART 3540—SULPHUR

23. The authority citation for part 3540 is revised to read as follows:

Authority: 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2, 460mm–4; 30 U.S.C. 189, 359; 31 U.S.C. 9701; 43 U.S.C.1201, 1732(b), 1733, 1740; 47 Stat. 1487.

24. Section 3544.5 is revised to read as follows:

§ 3544.5 Submission of data.

The licensee must furnish to BLM copies of all data obtained during exploration. If part 2 of this title requires any such data to be held confidential, BLM will not make it public.

PART 3550—''GILSONITE'' (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)

25. The authority citation for part 3550 is revised to read as follows:

Authority: 30 U.S.C. 189, 359; 31 U.S.C. 9701; 43 U.S.C. 1201, 1732(b), 1733, 1740.

26. Section 3554.5 is revised to read as follows:

§ 3554.5 Submission of data.

The licensee must furnish to BLM copies of all data obtained during exploration. If part 2 of this title requires any such data to be held confidential, BLM will not make it public.

PART 3580—SPECIAL LEASING AREAS

27. The authority citation for part 3580 is revised to read as follows:

Authority: 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2, 460mm–4; 30 U.S.C. 189, 293, 359; 31 U.S.C. 9701; 43 U.S.C. 1201, 1732(b), 1733, 1740; 47 Stat. 1487.

28. Section 3585.5–9 is revised to read as follows:

§ 3585.5–9 Submission of data.

The licensee must furnish to BLM copies of all data obtained during exploration. If part 2 of this title requires any such data to be held confidential, BLM will not make it public.

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

29. The authority citation for part 3590 is revised to read as follows:

Authority: 5 U.S.C. Appendix; 16 U.S.C. 90c–1, 460n–5, 460q–5, 460dd–2 *et seq.*, 460mm–4, 508(b); 25 U.S.C. 396d, 2107; 30 U.S.C. 189, 192c, 293, 359; 31 U.S.C. 9701; 42 U.S.C. 4321 *et seq.*; 43 U.S.C. 1201, 1732(b), 1733, 1740; 35 Stat. 315; 47 Stat. 1487.

§ 3590.1 [Removed]

30. Section 3590.1 is removed.

PART 3600—MINERAL MATERIALS DISPOSAL: GENERAL

31. An authority citation for part 3600 is added to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 601; 43 U.S.C. 1201, 1732(b), 1733, 1740; Sec. 2, Act of September 28, 1962 (76 Stat. 652).

32. Section 3600.0–8 is added to read as follows:

§ 3600.0–8 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3600 and parts 3610 and 3620 of this chapter 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. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3600 and parts 3610 and 3620 of this chapter that you believe to be exempt from disclosure to the public, 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.

33. Section 3602.2 is amended by removing the last two sentences of paragraph (a), and adding a sentence in their place to read as follows:

§ 3602.2 Sampling and testing.

(a) * * * All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided under this part at § 3600.0–8.

* * * * *

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

34. The authority citation for part 3800 is revised to read as follows:

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

35. Section 3802.6 is revised to read as follows:

§ 3802.6 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this subpart 3802 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. Certain mineral information not protected from public disclosure under part 2 may of this title be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.

(b) When you submit data and information under this subpart 3802 that you believe to be exempt from disclosure to the public, 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.

PART 3860—MINERAL PATENT APPLICATIONS

36. The authority citation for part 3860 is revised to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 22 *et seq.*

37. Section 3862.9 is added to read as follows:

§ 3862.9 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3860 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. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3860 that you believe to be exempt from disclosure to the public, 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.

[FR Doc. 98–26294 Filed 9–30–98; 8:45 am]

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