

Final Action: Financial Responsibility Requirements Under CERCLA Section 108(b) For Classes of Facilities in the Hardrock Mining Industry

Basic Information

Legal Authorities:

- 42 U.S.C. §9601
- 42 U.S.C. §9604
- 42 U.S.C. §9608
- 42 U.S.C. §9615
- [Rule Summary](#)

Rule Summary

On December 1, 2017 the EPA Administrator signed a federal register notice to inform the public of EPA's decision on its proposed regulations for financial responsibility requirements applicable to hardrock mining facilities that were [published on January 11, 2017](#). EPA has decided not to issue final regulations because the Agency has determined that final regulations are not appropriate. This decision is based on EPA's interpretation of the statute and analysis of its record developed for this rulemaking. EPA has analyzed the need for financial responsibility based on risk of taxpayer funded cleanups at hardrock mining facilities operating under modern management practices and modern environmental regulations, i.e., the type of facilities to which financial responsibility regulations would apply. That risk is identified by examining the management of hazardous substances at such facilities, as well as by examining federal and state regulatory controls on that management and federal and state financial responsibility requirements. With that focus, the record demonstrates that, in the context of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) section 108(b), the degree and duration of risk associated with the modern production, transportation, treatment, storage or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of financial

responsibility requirements for this sector. This determination reflects EPA's interpretation of the statute, EPA's evaluation of the record for the proposed rule, and the public comment received by EPA.

The decision not to issue final regulations will address the concerns of those federal and state regulators and members of the regulated community who commented that the proposed requirements were unnecessary and would, therefore, impose an undue burden on the regulated community. This decision will provide assurance to state regulators who were concerned that the proposed requirements would be disruptive of state mining programs. This decision also will address the information provided by the insurance industry regarding the lack of availability of financial instruments that meet the requirements of CERCLA section 108(c)(2). This decision is based on the record for this rulemaking, and does not affect the process for site-specific risk determinations, or determinations of the need for a particular CERCLA response, at individual sites, nor does this decision affect EPA's authority to take appropriate CERCLA response actions. Decisions on risk under other environmental statutes would continue under those statutes. This final rule is the Agency's final action on the proposed rule.

[Read the prepublication version of the final action pending publication in the Federal Register.](#)
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