

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

43 CFR Parts 3710, 3730, 3810, 3820, 3830–3840, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Locating, Recording, and Maintaining Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is publishing this rule to streamline the regulations on locating, filing, and maintaining mining claims or sites by consolidating provisions that were scattered in various portions of Groups 3700 and 3800 into ten consecutive parts placing the provisions in logical order, clarifying conflicting language, eliminating duplication, and removing obsolete provisions. These revisions are part of BLM's overall effort to rewrite regulations in plain language to make them easier for the public to use and understand and to provide better customer service.

DATES: This final rule is effective November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355 or Ted Hudson in the Regulatory Affairs Group at (202) 452–5042. For assistance in reaching the above contacts, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1 (800) 877–8339 at any time.

SUPPLEMENTARY INFORMATION:

I. Background

BLM has primary responsibility for the administration of mining claims and sites on Federal lands. At the end of fiscal year (FY) 2002, there were 198,029 mining claims and sites maintained on the Federal lands. During FY 2002, claimants recorded 15,407 new mining claims and sites. In addition, BLM processed 6,249 waiver documents containing 21,334 mining claims and sites and processed 174,845 annual maintenance fee transactions. BLM also collected a total of \$19,410,375 in location and maintenance fees. BLM pays these collected fees into a special fund, and Congress appropriates the money to BLM to pay for the personnel and operations of the Mining Law

Administration program, which includes, among other things—

- Recording and adjudicating mining claims and sites located on the public lands,
- Processing patent applications, plans of operations and notices,
- Inspecting operations, and
- generally enforcing the regulations.

A. Mining Claims or Sites

A mining claim, which can be either lode or placer, may be located on Federal land and must contain a valuable mineral deposit. In contrast, a mill site may be located on nonmineral land and must be used to support a lode or placer mining claim operation or support itself independent of a particular claim. A tunnel site contains a tunnel to a lode mine or is used to discover previously unknown lode mineral deposits.

B. Current Regulations

How Are Current Regulations Organized?

Regulations on locating, recording, and maintaining mining claims or sites are currently scattered throughout 43 CFR Groups 3700 and 3800. BLM and the General Land Office (GLO), BLM's predecessor agency, created them piece by piece since 1939, when the first Code of Federal Regulations (CFR) was issued. Past practice of BLM and GLO was to create a new subpart in the CFR if Congress amended the General Mining Law or passed new laws affecting mining claims or sites. For this reason, the regulations that this final rule replaces were disjointed and contained conflicting, obsolete, expired, and duplicative information. This rule is BLM's first attempt to consolidate, clarify, and eliminate duplications in these regulations.

What Other Regulations Are Related to This Rule?

This rule concerns the location, recording, and maintenance of mining claims and associated mineral rights on the Federal lands of the United States that are subject to the General Mining Law. In order to obtain permission to occupy or disturb the surface or subsurface of your mining claims or sites, you must follow the Surface Management regulations of the surface management agency.

- For BLM-administered lands, you must follow 43 CFR 3715, 3802, 3809, or 3814 as applicable.
- On National Forest lands, you must follow 36 CFR part 228.
- On National Park System lands, you must follow 36 CFR parts 6 and 9.

- In addition, most States require you to obtain mining and reclamation permits before beginning surface disturbing operations on Federal lands.

To apply for a mineral patent for your mining claim or mill site, you must follow the regulations at 43 CFR parts 3860 and 3870. However, due to a Congressional budget moratorium in effect since October 1, 1994, BLM will not accept any new mineral patent applications unless and until Congress removes the moratorium.

What Previously Proposed Rules Relate to This Rule?

Since 1992, Congress has passed four short-term laws requiring claimants to pay various fees when locating, recording, and maintaining mining claims or sites. As the designated fee collector, BLM has implemented each of these laws by amending its regulations. An administrative final rule dated June 3, 2002 (67 FR 38203) implemented the fourth of these short-term laws—the Interior and Related Agencies Appropriation Act of November 5, 2001, for Fiscal Year 2001 (the Act) (Title I of Pub. L. 107–63, 115 Stat. 414; 30 U.S.C. 28–28k) by continuing to require claimants to pay location and maintenance fees on unpatented mining claims or sites and to make annual maintenance fee waivers available to small miners until September 30, 2003. BLM collected these fees and provided for waivers under the existing regulations based on a previous law that expired on September 30, 2001. To implement the earlier Acts, BLM published rules amending 43 CFR parts 3730, 3821, 3833, and 3850 at 59 FR 44857 and 64 FR 47201. This final rule retains the changes made in the June 2002 administrative final rule.

Statutory History

Originally, all commercially valuable minerals were locatable under the General Mining Law. Congress has, over time, added minerals to or removed them from the General Mining Law through amendments and the enactment of laws such as the Mineral Leasing Act, the Geothermal Steam Act, and the Surface Resources Act. As a result, whether minerals are locatable is defined by the intersection of these statutes with the General Mining Law. The Federal Land Policy and Management Act (FLPMA) affects location, recording, and maintenance of mining claims or sites through its broad directive to the Secretary of the Interior to manage all public lands. In addition, Congress requires special procedures for locating or maintaining claims or sites that fall under the Stockraising

Homestead Act, the Mining Claim Rights Restoration Act, or the Energy Policy Act.

1. The Federal Land Policy and Management Act

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary to manage all public lands under broad-ranging authority. This Act resulted from Congress completely overhauling the entire public land management system of the United States. Relevant sections in FLPMA:

- Require recording and maintenance of all mining claims or sites with BLM or they are forfeited (section 314, 43 U.S.C. 1744);
- Make knowing disregard or circumvention of any regulation issued under the authority of FLPMA a Federal criminal offense (section 303, 43 U.S.C. 1733).

2. The General Mining Law

How Do I Locate Minerals Under the General Mining Laws?

The General Mining Laws, *as amended*, which generally comprise chapters 2, 11, 12, 12A, 15, 16, and 20, and section 161 of title 30 of the United States Code, are the primary statutes governing disposition of minerals on Federal lands by location. Locating claims or sites has four elements:

- Discovering a valuable mineral deposit (for claims)
- Locating mining claims or sites
- Recording mining claims or sites
- Maintaining mining claims or sites

Claimants who comply with these four elements gain a right of possession to the deposit and a right to extract and develop the minerals. This right includes the use of the surface for exploration, mineral development, mineral extraction, and uses reasonably incident to exploration, extraction, and development. This right is a real property interest and may be bought, sold, transferred, leased, rented, devised, or inherited. The United States retains ownership and title to the land, even while a claimant is developing the mineral deposit. On lands where the United States is not the owner of the surface estate, which is the situation on Stockraising Homestead Act and Taylor Grazing Act lands, the surface owner retains title to the surface of the land and BLM administers the mineral estate reserved to the United States.

3. Mineral Leasing Act

The Mineral Leasing Act allows you to lease the Federal lands for development of certain types of mineral.

The Mineral Leasing Act made several minerals that were once locatable and are now not available under the General Mining Law leaseable after February 25, 1920, including:

- Oil and gas
- Coal
- Potassium, sodium, and phosphate
- Oil shale, tar sands, native asphalt, solid and semisolid bitumen
- Oil recovered from oil sands after the deposit is mined or quarried
- Sulphur in Louisiana and New Mexico that belongs to the United States

These minerals are administered under 43 CFR Groups 3100, 3200, 3400, and 3500.

4. Mineral Materials Act and Surface Resources Act

The Mineral Materials Act and the Surface Resources Act govern sales of mineral materials on Federal land. These mineral materials include petrified wood and common variety mineral materials. Common variety mineral materials were locatable until July 23, 1955, when the Surface Resources Act (30 U.S.C. 611–615) made all deposits of common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay salable and therefore no longer locatable. Uncommon varieties of mineral materials, which have distinct and special value, are still locatable under the General Mining Law. BLM administers mineral materials under 43 CFR part 3600.

5. Stockraising Homestead Act and the Homestead Act

Claimants must follow additional procedures when seeking to locate mining claims or sites on lands patented under the Stockraising Homestead Act (SRHA) of 1916 (43 U.S.C. 291–299) or, in some instances, the Homestead Act of 1862, as amended (43 U.S.C. 161–284). The United States owns only the mineral estate in these lands.

Under the Homestead Act, the United States granted land patents (or title) to homesteaders who wanted to enter and cultivate the land. However, in some situations, particularly in the arid West, some land was not suitable for traditional crop farming. The SRHA allowed homesteaders to use the land for grazing, instead of traditional farming. For those who already had an application (entry) under the Homestead Act but could not meet the cultivation and irrigation requirements, the SRHA permitted conversion of the Homestead entry into an SRHA entry. The Government issued these converted patents under the Homestead Act.

However, unlike other Homestead Act patents that granted title to both the surface and mineral estates, the converted entries and patents conveyed title to the surface estate only and reserved the mineral estate to the United States under the SRHA.

Thus, certain lands that appear to have been patented under the authority of the Homestead Act after December 29, 1916, were patented under the SRHA with a Federal mineral estate reservation. You may locate mining claims or tunnel sites (but not mill sites) on these reserved mineral estates under certain conditions. Congress enacted amendments to the Stockraising Homestead Act in 1993 that impose notification requirements on mining claimants other than the surface owner who wants to enter Stockraising Homestead Act lands to explore for minerals and locate mining claims. Act of April 16, 1993; Pub. L. 103–23; 43 U.S.C. 299(b); 43 CFR part 3838.

6. Energy Policy Act

The Energy Policy Act (30 U.S.C. 242) no longer requires assessment work for oil shale placer claims, and instead requires payment of an annual \$550 fee for most oil shale claims, and also requires an annual filing of a notice of intent to hold. In cases where \$550 is due, the claimant is not required to pay an additional maintenance fee.

7. Federal Oil and Gas Royalty Management Act

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that a mining claimant may seek to convert an oil placer mining claim that was validly located before February 24, 1920, to a non-competitive oil and gas lease as of the date the claimant fails to comply with section 314 of FLPMA and the mining claim is deemed abandoned and void. The claimant's failure must be inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the claimant.

8. State Laws

Most states have passed their own laws about mining claim location, recording, and annual maintenance as authorized by the General Mining Law. In addition to following Federal regulations, each claimant must follow all applicable state law requirements not in conflict with these rules.

II. Discussion of Public Comments

A. General Discussion

We received 103 documents commenting on the proposed rule published August 27, 1999 (64 FR

47023). These consisted of post cards, e-mail, regular mail, and legal briefs. Several duplicates were received, as several persons sent us both an e-mail and followed up with a paper copy by regular mail. In terms of source, 62 documents were submitted by individuals, 13 by businesses, 11 by industrial or trade associations, 15 by environmental groups, and 2 by agencies of the Federal Government. Most documents had more than one comment or suggestion concerning these regulations. We will address the general comments here. Those that are specific to a particular part or section will be discussed under the heading for the appropriate part or section further below.

Legislative Repeal

Nine comments suggested we repeal the General Mining Law of 1872. Laws may not be changed by rulemaking, but only by Act of Congress. Therefore we cannot act upon this suggestion.

Waste on Mill Sites

Many comments requested that we not allow the dumping of mining "waste" on the public land upon mill sites. This is for the most part an operational issue that is regulated by BLM under 43 CFR subparts 3715 and 3809 and not under these regulations, which only cover locating, recording, and maintaining mining claims and sites. Nevertheless, we have addressed this concern by requiring claimants to locate only that amount of mill site acreage that is necessary to be used or occupied for efficient and reasonably compact mining or milling operations.

Mill Site Opinion

The Solicitor's Opinion of November 12, 1997, concerning the allowable amount of mill site acreage per mining claim location received 49 adverse comments, as did part 3832.32, in which we proposed to implement the 1997 Opinion's conclusions. Deputy Solicitor Roderick E. Walston issued a new opinion on October 7, 2003, that supercedes the 1997 Opinion. We discuss this further in the section-by-section analysis below.

Scope, Form and Intent of This Final Rule

This rule is intended to:

(1) Consolidate in one series of parts (parts 3830–3839) all rules and regulations concerning the location, holding, maintenance, transfer, amendment, and recording of mining claims and sites that are currently scattered in various parts of Groups 3700 and 3800;

(2) Remove all obsolete and expired provisions that have legislatively sunset or that courts have rendered ineffective;

(3) Place into regulation the long standing case law elements of the Department that affect the items in (2) above; and

(4) Complete the consolidation in plain language for ease of understanding by our customers and the BLM staff.

"Revising the Mining Law by Regulation"

Several comments objected to BLM placing longstanding administrative practice and rules established by case law into this regulation and declared that this was essentially an attempt to revise the law administratively to suit our purposes. BLM's position is that by placing these longstanding administrative practices and judicial holdings into these regulations, we are clarifying the applicable requirements for our customers and our own personnel, thereby reducing misunderstanding. We have modified the language in some sections from the proposed rule so that they more closely match the language and intent of applicable case law. For example, to define uncommon varieties of mineral materials, we rely on the court's decision in *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1969).

B. Section-by-Section Analysis

This section-by-section analysis will briefly outline how the final regulations are organized and highlight any substantive changes. We will also discuss comments we received addressing each section and our responses.

The chart below provides a map of the final numbering changes to help guide you through the new consolidated part. The column on the left shows the section numbers in this rule, and the column on the right shows the sections in the old regulations from which the provisions are derived, or states that they are new. Sections ending in "0" are generally introductory sections leading into a series of related substantive sections, and may not have equivalent sections shown in the Existing Regulations column. Also, the final regulations have more numbered parts, which did not have part equivalents in the existing regulations. The table, modified from the table published in the proposed rule of August 27, 1999 (64 FR 47023), shows both the "cross walk" of existing CFR sections and parts into the new part 3830 and the new language development for some of those proposed sections.

Final regulations	Existing regulations
Part 3830	
3830.1	New; 3833.0–1
3830.2	New; 3833.0–1;
3830.3	New; 3832
3830.5	New; 3833.0–5
3830.8	3833.0–9
3830.9	3833.5(g)
3830.10	
3830.11	3812.1
3830.12	New; 3711.1; 3811.1; 3812.1
3830.20	
3830.21	New; 3833.1–1; 3833.1–4;
	3833.1–5; 3852.2
3830.22	3833.1–1
3830.23	3833.1–3(a); 3833.1–4(f)–(g)
3830.24	3833.1–3(a); 3833.0–5(m);
	3833.1–4(f)–(g)
3830.25	3833.1–3(a); 3833.1–4(a)–(b)
3830.90	
3830.91	New; 3833.4(a)–(b)
3830.92	3833.4(f)
3830.93	New; 3833.4(b)
3830.94	New; 3833.4(b); 3833.4(c);
	3833.5(d); 3833.5(f)
3830.95	New; 3833.1–3(b); 3833.4(a)
3830.96	3833.1–3(b); 3833.4(b)
3830.97	3833.1–2(c)(3)
3830.100	3833.5(h)
Part 3832	
3832.1	New; 3831.1
3832.10	
3832.11	3831.1; 3833.1–2(b); 3841.4–4;
	3841.4–5; 3841.4–6
3832.12	3833.1–2(a)–(b); 3842.1–1
	through 3842.1–5; 3841.4
3832.20	
3832.21	3812.1; 3841.3; 3841.4;
	3842.2; 3842.4
3832.22	3841.4–1; 3841.4–2; 3842.1–2
3832.30	
3832.31	New; 3844
3832.32	New; 3844
3832.33	New; 3844
3832.34	New; 3844
3832.40	
3832.41	New; 3843
3832.42	3843
3832.43	3843
3832.44	3843.1
3832.45	New; 3843
3832.90	
3832.91	New; 3833.0–5(p) & (r)
Part 3833	
3833.1	New; 3833.4(a); 3833.4(d);
	3833.5(a)–(c) & (e)
3833.10	
3833.11	3833.1–2(a); 3833.1–2(b)(1)–
	(4); 3833.5(c)
3833.20	
3833.21	New; 3833.0–5(p)
3833.22	New; 3833.0–5(p)
3833.30	
3833.31	3833.3
3833.32	New; 3833.3(c)
3833.33	3833.3(a); 3842.1–1
3833.90	
3833.91	New; 3833.4(a); 3833.5(a) &
	(f); 3811.1

Final regulations	Existing regulations
3833.92	New; 3833.4(c); 3833.5(d)
Part 3834	
3834.10	3833.1–5(b) & (e); 3833.1–4(b)
3834.11	3833.1–5(a), (b), & (e)
3834.12	3833.1–5(c)
3834.13	New; 3833.1–5(a) & (d); 3833.1–6
3834.14	3833.1–5(h)
3834.20	3833.1–5(h)(1)
3834.21	New; 3833.1–5(h)(2)
3834.22	
3834.23	
Part 3835	
3835.1	New; 3833.1–5 & 3833.1–6
3835.10	3833.1–6; 3833.1–7
3835.11	New; 3833.1–7(d)–(e); 3833.1–6(b) & (d)
3835.12	New
3835.13	3833.1–6(a)–(f); 3851.5; 3851.6(a)–(b);
3835.14	New; 3833.1–6; 3833.1–7(d); 3833.2–5; 3833.2–6; 3851.1(b)
3835.15	New; 3833.1–7(d); 3833.2–5; 3833.2–6; 3851.1(b)
3835.16	New; 3833.1–6(b); 3833.2–2(c); 3851.1; 3851.3
3835.17	New; 3833.1–6(d); 3833.1–7; 3833.2
3835.17	3833.2–1
3835.20	New; 3833.1–5(g)
3835.30	
3835.31	New; 3833.0–5(n); 3833.2–3(c); 3851.1
3835.32	3833.2–4
3835.33	3833.2–5;
3835.90	
3835.91	3833.2–3(a) and (b); 3833.4(a)
3835.92	3833.4(a)
3835.93	New; 3833.4–1
Part 3836	
3836.10	3851.1(b)–(c)
3836.11	New; 3851.1
3836.12	3851.2
3836.13	New; 3851.2
3836.14	3833.4(a); 3851.3
3836.15	New; 3852.5
3836.20	3852.1; 3833.1–6(d)
3836.21	3852.1; 3833.1–6(d); 3833.2–1
3836.22	3852.2; 3852.3
3836.23	3852.3
3836.24	3833.1–6(e); 3852.5
3836.25	3852.4
3836.26	3852.5
3836.27	
Part 3837	
3837.10	3851.4(a) and (d)
3837.11	
3837.20	New; 3851.4(b)
3837.21	3851.4(a)
3837.22	New; 3851.4(b)
3837.23	New; 3851.4
3837.24	New
3837.30	

Final regulations	Existing regulations
Part 3838	
3838.1	New
3838.2	New
3838.3	New
3838.10	
3838.11	New; 3833.0–3(g); 3833.1–2(c)&(d)
3838.12	New; 3833.1–2(c)–(d)
3838.13	New; 3833.1–2(c)–(d)
3838.14	3833.0–3(g); 3833.1–2(c)
3838.15	3833.0–3(g); 3833.1–2(c)
3838.16	3833.1–2(d)(6)
3838.90	
3838.91	New; 3833.4(a)

Part 3710—Public Law 167; Act of July 23, 1955

Subpart 3711—Common Varieties

In the proposed rule, the contents of this section were shown in the “crosswalk table” as being moved to new part 3830, section 3830.12. However, in the proposed rule, we inadvertently neglected to remove the old subpart 3711 from the text of the regulations. Since we have moved all of the substantive material defining uncommon varieties of mineral materials to the proposed and final section 3830.12, we are removing the heading of subpart 3711 in this final rule as redundant.

Part 3730—Public Law 359; Mining in Powersite Withdrawals: General

We amended cross references in section 3734.1 to reflect the reorganization of part 3830. No public comments addressed this part.

Part 3810—Lands and Minerals Subject to Location

Subpart 3812—Minerals Under the Mining Law

In the proposed rule, we removed this subpart describing minerals that are subject to location. You will find this information in section 3830.11 “Which minerals are locatable under the mining law?” in the final rule. A number of comments addressed this subject, but they were directed at new section 3830.12. We will address them under that heading.

Part 3820—Areas Subject to Special Mining Laws

Subpart 3821—O and C Lands

We amended cross references in sections 3821.2 and 3821.3 to reflect the reorganization of part 3830. No comments addressed this subpart.

Part 3830—Locating, Recording, and Maintaining Mining Claims or Sites; General Provisions

Sections 3830.1 through 3830.94 of this final rule contain provisions that generally apply to all the regulations in parts 3830 through 3839. You should refer back to these sections on general policies and procedures when you follow regulations in the subsequent parts.

Sections 3830.1, 3830.2, and 3830.3 outline the purpose, scope, and authority for this part. Section 3830.5 contains definitions that are important to understand in this series of parts. Section 3830.8 discusses information collection requirements. Section 3830.9 describes the penalties for submitting a document to BLM that you know contains false, erroneous, or fictitious information or statements.

Section 3830.11 and 3830.12 describe which minerals are locatable under the mining law and subject to these regulations.

Sections 3830.20 through 3830.25 explain payment procedures for various fees and service charges required in part 3830. Section 3830.21 contains a table describing the fees and service charges and when they are due. Section 3830.22 describes when BLM will refund fees you have paid. Section 3830.23 explains the forms of payment BLM will accept. Section 3830.24 tells you how you can get your payments to BLM. Section 3830.25 explains when you should pay for a new location.

Sections 3830.91 through 3830.96 describe what happens if you fail to comply with the regulations, the types of defects that may affect claims and sites, and the procedures you must follow if you want to cure defects. Section 3830.97 describes appeal procedures and includes cross references to other regulations, including appeals regulations found in parts 4 and 1840 of this title, that state procedures for appealing to the Interior Board of Land Appeals.

In addition to this general section on defects, most parts also contain sections xxxx.90 through xxxx.9x, which identify the types of common errors that are specific to that part, and tell you whether you can correct them and how to do so.

Subpart A—Introduction

Section 3830.1 What Is The Purpose of These Regulations?

We added language to paragraph (b) in the final rule to remind you that to the extent a state law conflicts with these regulations, you must comply with these regulations. We also recast

the opening paragraphs of this section in list form with handy cross-references.

Section 3830.2 What Is The Scope of These Regulations?

We added paragraph (c) in the final rule, derived from old section 3833.0–1(e). It reminds you that BLM is not the official recording office for ancillary documents related to mining claims, such as liens, wills, judgments, grubstake contracts, or leases. You should file such documents locally according to state law.

One comment suggested removing reference to units of the National Park System, since National Park lands are included in Federal lands. In response to the comment, we have amended the provision to make it clear that these regulations do not authorize location of new mining claims on any Federal lands withdrawn from the operation of the General Mining Law.

Section 3830.3 Who May Locate Mining Claims?

One comment suggested combining proposed paragraphs (a) and (b). We did not adopt the proposal, because we felt the section was clear as written. Two comments suggested changes to clarify proposed paragraph (c). We rewrote the paragraph to make it clear that various kinds of business entities that have been organized under the laws of any state may locate claims and sites.

Section 3830.5 Definitions.

Many comments addressed this section. The majority of them suggested language changes in the proposed definitions. We adopted some of these suggestions in order to clarify the meaning and intent of certain definitions. Other suggestions we rejected, because the definitions at issue have been established by longstanding practice and case law. Several comments requested that we add new definitions to the section. After careful consideration, we agreed to add several definitions that we felt were necessary to the proper administration of these regulations or to clarify certain concepts or requirements that occur in these regulations. We added definitions for “discovery,” “final certificate,” “nonmineral land,” and “recording.”

One comment questioned the meaning of the term “holder” as used in various provisions in the proposed rule. To avoid confusion, we have substituted the defined term “claimant” in each such instance.

One comment suggested amending the definition of “Federal lands” by removing the exclusion of National Park System lands. We have removed the

exclusion, but have added a sentence to section 3830.3 stating that these regulations do not authorize the location of any mining claims or sites on Federal lands that are closed to mineral entry, including units of the National Park System.

One comment suggested that we add a provision to the definition of “mineral materials” to make it clear “that mineral materials cannot be sold from NPS lands” by adding the phrase “* * * from Forest Service and BLM lands * * *” to the definition. The change is not necessary. The phrase “sold under the Mineral Materials Act” is itself limiting, since that Act says that nothing in the Act applies to lands in any national park or national monument. Further, expressly stating such a limitation here would go beyond the scope of a definition by including regulatory requirements.

One comment stated that we should amend the definition of “patent” as proposed to make it clear that issuing a patent does not always convey full fee simple title. We agree that Congress requires the surface of some lands to be reserved in mineral patents and have revised the definition to reflect this possibility.

One comment suggested that we add a definition for “withdrawn lands” to this section. The writer stated that such a definition would be helpful because the term appears so often in the regulations, and offered a definition. We have not adopted the suggestion in this final rule because the rule text does not use the term. Instead, the rule uses the phrase “closed to mineral entry,” which is defined.

One comment suggested adding definitions for “monument” and “discovery monument,” saying that the physical process of staking a claim is not sufficiently described in these regulations. We have not added this definition because the term “discovery monument” is used only once in the rule and refers to a type of monument that may be used to anchor metes and bounds descriptions of mining claims. Discovery monuments are no longer required by many states to mark the position of a claimant’s discovery point. Parties who are interested in learning more about the physical process for staking mining claims or sites should consult applicable state law and may visit or contact a local BLM office for further information.

One comment addressed the definitions of “filed” and “filing period,” stating that they were internally inconsistent. We have revised the definition of “filed” to include a postmark rule under which BLM will

accept a document as timely filed if the document you mailed was postmarked before the due date and BLM received the document within 15 days after the due date. Another comment questioned the effect if a document is postmarked on time, but still not received by 15 days after you posted it because the BLM office was not open on the 15th day because of a holiday or other circumstance. In this case, under 43 CFR 1822.14, the grace period ends on the next official business day.

Several comments suggested removing the definition of “filing period” because the term does not appear in the regulations. We have removed the definition in the final rule, but explained the 15-day grace period or postmark rule in the definition of “filed.”

Several comments addressed the definition of “segregation.” One suggested that we add that segregation ends when the land becomes open to mineral entry. We have not adopted this change. Doing so would merely describe the effect of ending segregation, not the event that ends segregation. Another comment stated that the definition conflicts with the regulations on segregating and opening public lands. We have amended the definition to make it clear that segregation ends when the statutory period of segregation ends or when BLM causes an administrative segregation to end under section 2091.2–2. However, in the case of Stockraising Homestead Act lands, we still use the notation rule and so mark the official records as to when the land is closed and opened.

One comment suggested that we amend the definition of “control” by removing language allowing BLM to consider facts other than whether a person is an officer, director, or majority shareholder in determining control. We have not adopted this recommendation. This definition tracks the statutory definition in 30 U.S.C. 28f(d)(2). We have removed from the definition of “control” the reference to publicly traded companies or corporations (which did not appear in the previous definition). The same principles of control apply to all companies, whether publicly traded or not.

One comment recommended changes in the definition of “copy of the official record” to make it cover documents that have not yet been recorded in the local jurisdiction recording office. Other comments preferred to remove the definition altogether, because the term appears only once in the regulations and could be explained thoroughly in that context. We have adopted this latter suggestion in the final rule. Our

rewritten version of section 3833.11(a) in fact does not use the term at all, and we have removed the definition from the final rule.

Several comments criticized the definition of "local recording office" for including the notion that claimants need to record documents in the local recording office to make them effective. These comments noted that such documents are binding between the parties regardless of whether they are recorded. State law governs whether documents must be recorded with the state in order to be effective.

Consequently, we have removed any reference to the legal effect of recording with state offices from this definition.

Subpart B—Providing Information to BLM

Section 3830.8 How Will BLM Use the Information it Collects and What Does it Estimate the Burden Is On the Public?

One comment stated that our estimate that a customer needs 8 minutes of time per document was low, but offered no explanation or time estimate for BLM to work with. We have not made a change in the final rule.

Subpart C—Mining Law Minerals

Section 3830.12 What Are Characteristics of a Locatable Mineral Deposit?

We received a large number of comments adverse to proposed paragraph 3830.12(a)(2), which stated that a characteristic of a locatable mineral is that the mineral is found in a quantity and quality to constitute a valuable mineral deposit. Paragraph 3830.12(a)(2) also defined "valuable mineral deposit." Some of the comments stated that our language imprecisely paraphrased the prudent person test and that we proposed to change the law by saying that in order for a mineral to be locatable it must first be found in quantities and qualities to support a valuable or profitable mine. We removed paragraph 3830.12(a)(2). The purpose of this section is to describe characteristics of locatable minerals, not characteristics of a validly-located mining claim. By removing this paragraph, we are not suggesting that a discovery of a valuable mineral deposit is not necessary to locate a valid mining claim.

In a similar manner, a number of comments opposed paragraph 3830.12(b), which we proposed to move from subpart 3711 and rewrote in plain language. This section concerns the definition of an uncommon variety of a mineral material under the Surface Resources Act (30 U.S.C. 611), subject to

location under the General Mining Law. The Federal 9th Circuit Court of Appeals in 1969 laid out five tests that a mineral material must meet in order to qualify as uncommon and therefore subject to location. See *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1969). In the final rule, we replaced the original language of proposed section 3830.12(b) paraphrasing the holding of the *McClarty* Court with the five tests directly from the decision to avoid ambiguity.

Subpart D—BLM Service Charge and Fee Requirements

Section 3830.21 What Are the Different Types of Service Charges and Fees?

One comment, repeated by several others, stated that it was hard to tell whether some of the charges and fees shown in the table in this section applied on a per claim basis or per filing. It is not necessary to amend the table in response to these comments. The column heading in the table clearly says "Amount due per mining claim or site."

Section 3830.22 Will BLM Refund Service Charges or Fees?

One comment asked why oil shale claims are excluded from this section. The Mineral Leasing Act prohibits locating oil shale claims after February 25, 1920. Therefore, the location fees discussed in this section do not apply to oil shale claims, and there is no need to provide for their refund. Also, the Energy Policy Act of 1992 established separate fees for oil shale placer claims.

Another comment asked why we removed the previous provision on applying overpayments of maintenance fees to years ahead. You may still apply an overpayment to future fee requirements. We have restored this provision in the final rule.

One comment stated that not refunding service charges is a change from the existing regulations and suggested that the final rule allow for refund of service charges. The previous regulations did provide for service charge refunds if BLM found the claim to be void. However, BLM has changed this practice because BLM spends the service charge funds it receives in order to process the documents, even if the claim for which the documents were filed turns out to be void. Therefore, the final rule allows refunds of overpayments only.

Subpart E—Failure To Comply With These Regulations

Section 3830.91 What Happens if I Fail To Comply With These Regulations?

Several comments addressed this section. One said the use of the word "defect" was too broad. The term "defect" is intended to cover a broad range of circumstances. BLM receives many documents and payments that are incomplete in various ways. The purpose of this regulation is to explain how claimants will be able to fix defects, to the extent they are curable, and to caution claimants about defects that cannot be cured.

Another questioned the Secretary's authority to cancel claims if cancellation is not expressly provided for by statute. We have added a list of ways in which you could forfeit your claims or sites by law or regulation. In addition, under the authority of 43 U.S.C. 1201, you may forfeit a claim or site if there is a defect in your compliance with the regulations and you fail to remedy the defect after BLM notifies you.

Another comment stated that an owner of a forfeited or canceled claim should not be held responsible for reclamation of the claim. A reclamation requirement is not new. Under the Federal Land Policy and Management Act, the Secretary has the responsibility to prevent unnecessary or undue degradation of the public lands. 43 U.S.C. 1732(b). You may learn more about your reclamation responsibilities in 43 CFR subpart 3809. You remain responsible for reclamation if you forfeit a claim or site, regardless of the reason for the forfeiture.

Several comments stated that most of the language of proposed part 3830 is explanatory or factual, and did not impose requirements on miners, and therefore that it would not be appropriate to impose penalties, including forfeiture of mining claims, on persons who violate the regulations in "this part," part 3830. We have amended the heading to make it clear that this section depicts the consequences for failing to comply with the regulations in all the parts and subparts from part 3830 through 3839.

Section 3830.93 When Are Defects Curable?

One comment specifically addressed paragraph (b) and asked for examples of requirements imposed by regulation (curable) and not by statute (incurable). We have added a list of the requirements that are statutory in section 3830.91. The ways in which

claimants may fail to comply with regulatory requirements are innumerable. BLM will notify you when they have determined that a filing or payment you have submitted is defective, but curable. For example, when recording a mining claim with BLM, FLPMA requires claimants to include a description of the claim that allows BLM to find the claim on the ground. 43 U.S.C. 1744(b). When you record a claim with BLM, the regulations require that you file a map showing where the claim is situated. If you omit a description altogether, you have failed to record the claim as required by statute, so the failure to include it is not curable, and BLM will reject the document. (In such a case, you may re-file, but your claim will be subject to location by other locators until you provide the description required by law. However, if you include a description that is inadequate, BLM will allow you to cure the defect, just as we would if you failed to provide material required by regulation but not statute, without losing your time advantage over competitors.) On the other hand, if you fail to include a map as required by regulation, BLM will send a decision to you, allowing you 30 days to send in the missing map. We encourage you to contact the BLM State Office if you have questions about filing requirements.

One comment suggested cross-referencing the sections of this rule into two groups, one for curable defects and one for incurable defects. We believe the existing organization is sufficiently clear. Another comment suggested that we should provide a listing of the common errors and defects a locator or claimant should avoid. We decline to do this, because such a list would be extremely lengthy and, even then, likely to have omissions. Such defects will become apparent if you read the individual regulations pertaining to your specific activity.

Section 3830.95 What if I Pay Only Part of the Service Charges, Location Fees, or First Year Maintenance Fees for Newly Filed Claims or Sites?

and

Section 3830.96 What if I Pay Only Part of The Service Charges and Fees for Oil Shale Claims or Previously-Filed Mining Claims or Sites?

Several comments said these sections proposed no cure for defects in complying with requirements that are not statutory, a result they say is inconsistent with section 3830.91. Section 3830.91 provides that defects in

complying with statutory requirements are not curable, while defects in complying with regulatory requirements are curable. In fact, sections 3830.95 and 3830.96 provide a means by which claimants may cure defects in complying with regulatory requirements. Both sections provide that BLM will notify you of such defects and give you 60 days from the date you receive notification to remedy curable defects in small miner waiver filings and 30 days from the date you receive notification to remedy all other curable defects. The comments said that the old regulations at section 3833.1–3 allowed claimants to cure defective service charge payments when recording a new claim within 90 days of the location of the claim, but that the proposed rule allowed no such cure. We reorganized sections 3830.95 and 3830.96 to make clear that you may still cure defective fees and charges by resubmitting the location with a complete payment of fees and charges within the 90-day period that FLPMA provides for you to record a new mining claim or site.

Also, in section 3830.96 in the proposed rule we inadvertently omitted a provision that would allow claimants who own existing claims or sites, including oil shale claims, to cure an incomplete service charge payment by submitting the complete payment within 30 days after receiving notice of the defect from BLM. We have corrected this oversight in the final rule.

Part 3831—Mineral Lands Available for Locating Mining Claims or Sites

This part is reserved so that BLM may, at some future time, consolidate the available information describing the public lands that are open to mineral entry. This information is currently found in 43 CFR Group 2000, parts 3730, 3740, 3809, 3810, and 3820.

Part 3832—Locating Mining Claims or Sites

This part consolidates location requirements for lode and placer mining claims and mill and tunnel sites, which were in 43 CFR subpart 3831 and part 3840 of the previous regulations.

Section 3832.1 describes what location is. Sections 3832.10 through 3832.12 describe general procedures for locating mining claims or sites. Sections 3832.20 through 3832.22 provide specific requirements for lode and placer mining claims.

Sections 3832.30 through 3832.34 contain specific requirements for dependent and independent or custom mill sites (these terms are explained in section 3832.31). Sections 3832.40 through 3832.45 contain specific

requirements for tunnel sites. Sections 3832.90 and 3832.91 specify when and how you can correct defects in your location of claims or sites.

Subpart A—Locating Mining Claims and Sites

Section 3832.1 What Does It Mean To Locate Mining Claims or Sites?

Several comments asked whether a claimant must discover a valuable mineral deposit before locating a mining claim or a mill site. While you may locate and record a mining claim before discovering a valuable mineral, your mining claim is not valid until you have made such a discovery. In addition, you may locate and record mill sites only on nonmineral lands. Therefore, in this final rule, we have removed discovery as an element of locating mining claims.

Section 3832.11 How do I locate mining claims or sites? One comment stated that the law does not require discovery before location and that our regulations need to reflect this. We have amended this section to recognize that claimants may locate mining claims before discovering a valuable mineral deposit. However, we have added a provision that states that the location is not valid until the claimant has discovered a valuable mineral deposit. As the U.S. Supreme Court has recognized:

[I]t has come to be generally recognized that while discovery is the indispensable fact and the marking and recording of the claim dependent upon it, yet the order of time in which these acts occur is not essential to the acquisition from the United States of the exclusive right of possession of the discovered minerals or the obtaining of a patent therefor, but that discovery may follow after location and give validity to the claim as of the time of discovery, provided no rights of third parties have intervened.

Union Oil Co. v. Smith, 249 U.S. 337, 347 (1919).

Several comments noted some lack of clarity in some of the language in this section. We have made editorial changes to the text to clarify our intent and the requirements in this section.

One comment suggested several additions to paragraph (b), stating that we needed to emphasize that you can locate mining claims and sites only on Federal lands, that you must comply with applicable state monumenting requirements, and that the requirement for posting public notice of the claim should include a statement of the name of the claim. We have placed the necessary language to effect the first addition in paragraph (b)(1) in the final rule. We believe that paragraph (b)(5), which requires claimants to follow all relevant state law requirements, would

include any applicable state monumenting requirements. We also added paragraph (b)(3)(iv), which requires the posting to include the name or number of the claim or site, or both, if the claim or site has both.

Another comment stated that the word "public" in section 3832.11(a)(3) did not properly describe "notice of location on the claim or site." We agree and have removed this word in the final rule.

Section 3832.12 When I File a Mining Claim or Site, How Do I Describe the Lands I Have Claimed?

Several comments focused on the need to use the legal subdivision (aliquot part) and lots in claim descriptions, and noted that they do not apply *per se* to lode claims. Another comment asked about protracted (unsurveyed) sections and their proper use for descriptive purposes.

We have amended section 3832.12 to clarify these issues and help you describe your claim or site properly. Also, you may correct erroneous descriptions. You may do this by filing an amended location notice or certificate, regardless of who finds the error. Paragraph (a) gives the general rule that you must follow in order for BLM to enter the essential data into our computerized mining claim recording system. Paragraph (b) expands on the specific descriptive requirements for lode claims, and paragraph (c) does the same for placer mining claims.

Several comments objected to the requirement for a metes and bounds description of a lode claim, saying that it would be unnecessary, not required by law, and burdensome, especially if it made a survey necessary. We have not changed the regulations in the final rule in response to these comments. This is not a new requirement. Lode claims cannot be described by aliquot part because of their parallelogram shape. We have retained in paragraph (a)(2)(iv) the provision that professional surveys are not necessary. We do not believe that it is burdensome to provide a metes and bounds description. The previous regulations at section 3841.4–5 required descriptions by courses and distances from the discovery monument. Courses and distances are part of a metes and bounds description, so we are merely correcting our terminology. Since the monuments on the ground govern, the courses and distances in the metes and bounds description need not be derived from a professional survey, but must be sufficient to allow a surveyor to identify the tract unambiguously on the ground if at some time in the future you seek

a patent. Of course, a mineral survey is a prerequisite for a patent.

Several comments criticized section 3832.12(a) for requiring claim descriptions to follow the public land survey system "as much as possible." They pointed out that lode claims are required by law to follow the mineral vein, which usually does not follow surveyed section lines. We have not made a substantive change in the final rule in response to these comments. As paragraph (b), which specifically covers lode claims, provides, you must describe your lode claims by metes and bounds. Paragraph (a) is of general applicability, and you must follow it unless paragraph (b) on lode claims or paragraph (c) on placer claims provides differently. Paragraph (a) allows for this by saying "as much as possible." We never intended that lode claims must follow the rectangular survey system. However, since this provision caused so much confusion on the part of knowledgeable readers, we added an introductory phrase to paragraph (a) in the final rule clarifying this intent.

A couple of comments pointed out a typographical error in the first sentence of paragraph (a)(1). As the comment suggested, we added the word "and" to show that aliquot parts are used to describe land within quarter sections.

Section 3832.21 How do I Locate a Lode or Placer Mining Claim?

Several comments addressed this section, especially the descriptions of what minerals are generally locatable as lode deposits and which are locatable as placer deposits. Some comments asked for more extensive lists of minerals that are locatable. In both cases, lode and placer, the lists are not comprehensive. We have taken them from the general case law and the statute itself. BLM recognizes that there are always exceptions to the general rule, but we will decide these on a case-by-case basis through a mineral examination and/or contest action as necessary.

One comment asked for a definition of "mineral-bearing brine" as used in paragraph (b)(3)(v), stating that we need to differentiate brine or saline water from "fresh water and the minerals therein." We have added explanation of what is a mineral-bearing brine in this section. The principal distinction is that a mineral-bearing brine is locatable if it contains an extractable locatable mineral that is the principal object of the mining operation. However, if you are mining the brine primarily for the leasable salt(s) content, and are also extracting locatable minerals, BLM considers those minerals co-products under the Mineral Leasing Act, and you

must obtain a lease and pay royalties under 43 CFR part 3500.

Some comments raised the issue of discovery, that is, whether the miner needs to discover a valuable mineral deposit before locating a claim. We moved the discovery reference to a separate paragraph that states that your lode claim is not valid until you discover a valuable mineral deposit. In this way, the discovery requirement is not among the location requirements but the regulation nevertheless makes clear that the location is not a valid mining claim until you make a discovery.

One comment objected to the word "similar" in the phrase "gold, silver, cinnabar, lead, tin, copper, zinc, fluorite, barite, or other similar valuable mineral" in paragraph (a)(2)(ii). It stated that there is no justification for limiting the types of minerals that are subject to location under the Mining Law to those minerals that are similar to the minerals listed in this paragraph. We have amended this paragraph by removing the word "similar" and conforming the provision more closely with the Mining Law and case law.

Some comments stated that paragraph (a)(3) misstates the requirements for establishing extralateral rights to a lode. We have revised the paragraph to correct a drafting error and clarify the requirements. This paragraph describes how your claim must be situated for you to follow a vein, lode, or ledge underground beyond the long-side boundaries of your rectangular lode claim:

- The top of the deposit must be within your claim, whether on the surface or below it;
- The long-side boundaries of your claim must be substantially parallel to the direction of the lode, vein, or ledge deposit.

You do not have extralateral rights to follow a deposit beyond the end lines of your lode claim.

Several comments addressed paragraph (a)(4), questioning the requirement in this paragraph of the proposed rule that you expose the vein, lode, or ledge by tracing the vein or lode on the surface or by drilling or tunneling to a sufficient depth. The comments stated that this should not be a requirement for locating a lode, but only a requirement for claiming the full extent of extralateral rights. The comments are correct. We have amended this provision in the final rule to clarify what you have to do to establish extralateral rights.

Another group of comments stated that the language in this section was ambiguous and could lead to multiple interpretations. We have amended the

language to clarify areas that we agree seemed ambiguous.

Section 3832.22 How Much Land May I Include in My Mining Claim?

One comment stated that a lode claim may only extend the exposed length of the lode or vein claimed, or 1,500 feet, whichever comes first. If the exposed vein is 1,000 feet long, and you have reason to believe, from the geology, that the vein or lode is 1,500 feet or longer, you may take up the entire 1,500 allowed by law. The comment urged that this section be amended to provide that lode claims may extend to 1,500 feet along the course of the vein, lode, or ledge only if the lode, vein, or ledge also extends that far. The comment said that there is no guaranteed right to possession of the statutorily defined maximum size lode claim without proof of valuable mineralization underlying the entire length of the claim, and that to the extent the land covered by the claim does not also contain valuable minerals or lie within 300 feet on either side of a vein or lode, the Mining Law grants no rights to make use of those lands for any purpose. The question is whether the statutory language "along the vein or lode" means that the center line of the claim must track the vein or lode precisely, and if the lode stops the claim must also stop. We have found no case law that supports this interpretation. The common definition of "along" is "in a line parallel with the length or direction of." We have not adopted the comment in the final rule.

Several comments stated that this section, in providing that the claim is limited to 300 feet on either side of the middle of a vein, lode, or ledge, follows an obsolete 1879 regulation that has since been modified by Solicitor's Opinions and court decisions. The comments said that there is no requirement in the Mining Law that a claim be laid along the course of the vein. The Mining Law at 30 U.S.C. 23 limits the claim to "three hundred feet on each side of the middle of the vein at the surface." The comment is correct. However, to protect your extralateral rights, you should lay out your claim along the course of the lode, vein, or ledge. We have amended this provision in the final rule to make this clear.

Section 3832.30 Mill Sites

During the comment period, we received 49 comments addressing the series of mill site sections beginning with section 3832.30. Since the comment period closed, the Secretary and the Solicitor have continued to receive correspondence regarding these sections, including from Congress.

The General Mining Law allows miners to locate and patent nonmineral lands in association with mining claims. However, under the 5-acre mill site provision, 30 U.S.C. 42, no location of these nonmineral lands, called mill sites, may exceed 5 acres.

In 1997, former Solicitor John Leshy issued an opinion entitled "Limitations on Patenting Millsites under the Mining Law of 1872," M-36988 ("1997 Opinion"). The opinion stated that under the 5-acre mill site provision of the Mining Law, an applicant may patent only up to 5 mill site acres per mining claim. In addition, the opinion stated that BLM should not "approve plans of operations which rely on a greater number of mill sites than the number of associated claims being developed unless the use of additional lands is obtained through other means." As a consequence, the proposed rule that BLM published in 1999 sought to limit the amount of mill site acreage claimants could locate per mining claim, in a manner that also sought to prevent claimants from subdividing their mining claims to obtain the rights to more mill sites.

Deputy Solicitor Roderick E. Walston has reviewed the Mining Law, its legislative history, pertinent case law, and the Department's prior written guidance and prevalent practice regarding the 5-acre mill site provision. On October 7, 2003, Deputy Solicitor Walston issued an opinion entitled "Mill Site Location and Patenting under the 1872 Mining Law," M-37010. ("2003 Opinion"). In the 2003 Opinion, the Deputy Solicitor determined that:

- Before the 1997 Opinion, Interior's prevalent practice and interpretation was to view the 5-acre mill site provision as limiting the size of individual mill sites, not the number of mill sites per mining claim.
- Interior consistently followed this practice and interpretation for at least 50 years immediately preceding the 1997 Opinion under the pre-existing regulations.
- The 1997 Opinion significantly departed from this 50-year practice and interpretation.
- Interior's pre-1997 practice and interpretation was consistent with Supreme Court precedent interpreting the statutory size limitations for lode and placer claims.
- Interior's pre-1997 practice and interpretation was consistent with Congress's goal in the Mining Law to promote mineral development on the public lands.
- Another clause of the mill site provision effectively limits the mill sites a claimant may locate and patent to the

number used or occupied for mining or milling purposes.

Congress twice prohibited by law the Department from applying the 1997 Opinion. The conference report for the first law stated that the 1997 Opinion was "particularly troubling because both the Bureau of Land Management and the Forest Service have been approving patents with more than one 5-acre millsite per patent based on procedures outlined in their operations manuals." H.R. Conf. Rep. No. 106-143, at 90 (1999).

Therefore, instead of changing the Department's past prevalent practice and interpretation of the mill site provision, BLM has decided to withdraw the proposed amendment to the mill site regulations and continue its prevailing practice and interpretation that the Department followed for a half century before the 1997 Opinion. That practice and interpretation, as described by the 2003 Opinion, is set forth in section 3832.32. This action does not change BLM's practice regarding mill site locations. Before former Solicitor Leshy issued his 1997 mill site opinion, BLM viewed the 5-acre mill site provision as a limit on the size of individual mill sites, not a limit on the allowable mill site acreage per mining claim. Deputy Solicitor Walston describes BLM's consistently-held written guidance in this way:

For nearly a half century, the BLM's written guidance has reflected the view that the mill site provision does not categorically limit the number of mill sites that may be located and patented for each mining claim. The BLM Manual, adopted in 1954, sets forth three requirements for mill sites to qualify for patenting: (1) the lands must be nonmineral in character, (2) the mill site cannot be contiguous to a vein or lode, and (3) "[t]he mill site does not include an area exceeding 5 acres." BLM Manual, ch. 3.3.2 (Apr. 20, 1954). The 1954 BLM Manual contained no restriction on the number of mill sites that may be located for a mining claim. Additionally, the BLM in 1954 issued a document entitled "Mining Locations, Entries and Patents," which stated, on page 28, that "[i]t has been held that more than one mill site may be embraced in an application for a patent, provided each such tracts [sic] keep within the restriction of 5 acres of non-mineral land and that each is needed and used for mill site purposes." Similarly, a BLM Manual issued in 1958 stated, "More than one millsite may be located, provided each tract is of no more than 5 acres of nonmineral land and that each is needed and used for millsite purposes." Id. ch. 5.2.15 B. (Nov. 19, 1958). Thus, the BLM guidance and accompanying documents made clear that the Mining Law imposes no categorical restrictions on the number of mill sites that may be located and patented for each mining claim.

The BLM continued to adhere to this view. In 1966, a BLM minerals specialist prepared a summary of mill site requirements. Under the topic heading "Number of Millsites," the minerals specialist stated, "Although there is no number specified, it has been held that as many millsites as are actually needed for the operation can be located. There must be a clear showing of need and use if more than one millsite is taken. This also applies to custom mills." Memorandum from Minerals Specialist, PSC, to Chief, Mining Staff, Washington Office, BLM 1 (May 11, 1966). In another 1966 document entitled "Mineral Patents—Information Relative to the Procedure for Obtaining Patent to a Mining Claim," the BLM stated, "Lands entered as mill sites may be for an area of not more than 5 acres for each mill site and must be shown to be nonmineral in character and not contiguous to a vein, lode, or placer." Mineral Patents—Information Relative to the Procedure for Obtaining Patent to a Mining Claim 13 (1966). These documents support the view that the five-acre mill site provision defines the size of individual mill sites but does not limit their number.

In 1976, the BLM Manual stated that a mineral examiner, in conducting a field examination, must make certain determinations regarding mill sites: (1) the lands must be nonmineral in character, (2) the claim must be occupied and used for mining or milling purposes; and (3) there must be a quartz mill or reduction works on the claim if for custom mill. BLM Manual § 3930.14 C (Oct. 8, 1976). The BLM Manual also stated, "The maximum size of a mill site claim is 5 acres. However, several mill site claims may be embraced in a single application, provided the total acreage does not exceed 5 acres per mill site." Id. § 3864.11 B (Oct. 6, 1976). Again, the BLM Manual articulated limitations on the size of mill sites but not their number, except to the extent it applied the use-or-occupancy requirement.

In 1980, the BLM Washington Office issued a "Mineral Survey Procedures Guide" that stated, on page 26, "There is no limit to the number of mill sites that may be located, so long as they are necessary for the operation of a mine or mill." Today, BLM's Handbook for Mineral Examiners provides that "[a]ny number of millsites may be located but each must be used in connection with the mining or milling operation." BLM Handbook for Mineral Examiners, H-3890-1, Ch. III § 8 (Mar. 17, 1989). Additionally, the BLM Manual states that "[a] mill site cannot exceed 5 acres in size. There is no limit to the number of mill sites that can be held by a single claimant." BLM Manual § 3864.11 B (1991).

Thus, the BLM has, through its written guidance, consistently interpreted the five-acre mill site provision as limiting the size of individual mill sites but not as precluding claimants from locating and patenting multiple mill sites in association with a single mining claim.

2003 Opinion, at 24–25.

In addition, in 1996, BLM's Deputy Director asked all BLM State Offices to describe state office practice regarding

patenting and approving plans of operations involving more than one 5-acre mill site per mining claim. Memorandum from Mat Millenbach, Deputy Director, BLM, to Assistant Directors and State Directors, BLM (Mar. 5, 1996). The state office responses support the conclusion that BLM's consistently-held practice was to treat the 5-acre mill site provision as a limit on the size of individual mill sites. The survey responses also show that BLM's primary determination regarding mill site validity is to determine whether claimants are using or occupying each mill site for mining or milling purposes. See 2003 Opinion Appendix.

After former Solicitor Leshy issued his mill site opinion in 1997, BLM's practice effectively did not change. The Department of the Interior attempted to deny a proposed plan of operations for the Crown Jewel mine in Washington State, in part, based on the interpretation of the 5-acre mill site provision described in the 1997 Opinion. However, Congress quickly enacted a provision disallowing the Department from applying the 1997 Opinion to the Crown Jewel mine or any other patent or proposed plan of operations that was filed before the provision's date of enactment. Pub. L. 106–31, 113 Stat. 90–91 (1999).

Thereafter, Congress enacted a second law, the FY 2001 Appropriations Act for the Department of the Interior and Related Agencies, prohibiting the Department from applying the 1997 mill site opinion. Pub. L. 106–291, 144 Stat. 922 (Oct. 11, 2000). As a consequence, beyond the unsuccessful denial of the Crown Jewel plan of operations, the Department has not applied the 1997 Opinion to any other proposed plans of operations or patents. Because of these intervening laws, the Department effectively has not departed in practice from its earlier consistently-held interpretation of the 5-acre mill site provision. In addition, because the proposed rule published on August 27, 1999, was never finalized, the Department has not departed by regulation from its earlier interpretation of the 5-acre mill site provision. Thus, the language of this rule does not change BLM's prevalent practice and interpretation regarding mill site locations; rather, it confirms the practice and interpretation that existed before Solicitor Leshy's 1997 Opinion, as well as the effective practice following the 1997 Opinion.

In response to comments on the initial proposed rule and in accordance with the 2003 Opinion, we are adopting mill site regulations that continue the Department's past prevalent practice

and interpretation under the pre-existing regulations and that make clear that the 5-acre mill site provision in the Mining Law is a limit on the size of individual mill sites and not a limit on the allowable mill site acreage per mining claim. That is, the final rule maintains BLM's past practice regarding the 5-acre mill site provision.

Section 3832.31 What Is a Mill Site?

One comment recommended that we state the limitation, if any, on the acreage of independent or custom mill sites that you can locate. Section 3832.32 addresses the size limitations of all mill sites, including independent or custom mill sites. The maximum size of individual mill sites is 5 acres.

Section 3832.32 How Much Land May I Include In My Mill Site?

As discussed above, we have withdrawn the proposed amendment to this section in response to comments and the 2003 Opinion and have conformed the rule to the Department's prevalent practice under the pre-existing regulations as described in the 2003 Opinion.

Comments from various mining industry groups and mining companies stated that the Department's prevalent practice for at least the past fifty years has not required a one-to-one ratio between mill sites and lode (or placer) claims, let alone a 5-to-20 acre ratio, as provided in the proposed rule.

Comments from environmental interests supported the limits on mill sites in the proposed rule, saying they were necessary to prevent improper waste dumping on the public lands. We have addressed this concern by requiring claimants to locate only that amount of mill site acreage that is necessary to be used or occupied for efficient and reasonably compact mining or milling operations. This is a new regulatory requirement, which BLM will implement by applying this standard in its review of proposed plans of operations under 43 CFR subpart 3809. In addition, the regulations at 43 CFR subparts 3715 and 3809 prohibit the unauthorized placement of waste rock, tailings, or other mining materials.

Section 3832.34 How May I Use My Mill Site?

Several comments addressed permitting requirements for mill site use. One comment asked for language limiting the use of National Park System lands for rock and soil dumps. In response to this comment, we added language to advise a mill site owner to comply with the regulations of the

surface management agency before beginning operations.

One comment suggested that we remove paragraph (a)(6), because miners should be able to use mill sites for mine closure operations. The case law rejects this idea. Mill sites may not be located or patented for closure operations alone. You may only locate or patent mill sites for the support of a mining operation. You may use a mill site for the storage of top soil and materials that you removed in initial mine stripping that you will later replace on the mine site for reclamation. Of course, you may reclaim a mill site and, indeed, must do so upon termination of your operation. See *United States v. Utah International, Inc.*, 45 IBLA 73 (1980).

We have amended this section to describe separately the types of uses allowed for independent or custom mill sites.

Section 3832.44 What Rights do I Have to Minerals Within my Tunnel Site?

We revised paragraph (c) of this section for the sake of clarity. Although no one commented on this provision, on reviewing it while drafting the final rule, we found its wording in the proposed rule somewhat inaccurate. The intent of this paragraph is that, to maintain your right to possess all unknown, undiscovered veins, lodes, or ledges that your tunnel may intersect as you develop it, you must perform at least some work on the tunnel within every consecutive 6-month period.

Subpart E—Defective Locations

Section 3832.91 How Do I Amend a Mining Claim or Site Location if it Exceeds the Size Limitations?

Numerous industry comments objected to the provision in paragraph (a) that you would forfeit a claim or site if it were oversized by more than 10 percent, and said that any forfeiture should only cover the excess acreage. After further consideration, BLM agrees and has removed the language in the final rule. If a claim is oversized, BLM will issue a decision, notify you, and direct you to file an amended location certificate correcting the matter within 30 days.

Part 3833—Recording Mining Claims or Sites [Added]

This part walks you through the Federal process for recording a mining claim or site.

Section 3833.1 describes what it means to record mining claims and sites and why you must record your mining claims and sites. The recording process provides BLM with a record of claims and sites, as required by FLPMA.

Sections 3833.10 and 3833.11 outline the procedures for recording mining claims and sites. Specifically, section 3833.11 describes how you record mining claims and sites. Some of this information may be the same information that you used to locate your claim under part 3832.

Sections 3833.20 through 3833.23 describe when and how you may amend the record of a previously located mining claim or site. Sections 3833.30 through 3833.35 cover transfers of mining claims or sites.

Finally, sections 3833.90 through 3833.93 describe how to cure certain defects in your recording of mining claims or sites.

Section 3833.1 Why Must I Record Mining Claims and Sites?

A comment suggested that BLM use the term “record” in these regulations to refer to the county recorder’s office and the term “file or filing” to refer to documents given to BLM. We did not adopt this comment because the term file or filing as applied to a notice of location can be confused with the other types of filings claimants make with BLM. In addition, the heading for the section in FLPMA that requires claimants to file a copy of the notice of location with the state and BLM is “Recordation of Mining Claims and Abandonment.” We have added a definition of the term “recording” to make clear that recording applies only to filing of notices or certificates of location.

A comment, repeated in numerous letters, stated that we should add language to the rule at this point requiring demonstration of discovery before mining activity can occur, saying that staking a claim does not guarantee discovery. We have addressed this concern in earlier sections in which we state that a mining claim is not valid until the claimant discovers a valuable mineral deposit.

Another comment noted we did not state that the 90-day recording requirement of section 314(b) of FLPMA also applies to county recordings. We have added language to paragraph (a) to correct this oversight.

For paragraph (b), another comment requested that this section include a list of items that would cause a claim to become invalid, void, or without effect. We have provided a list of defects that are not curable in section 3830.91 and will lead to a forfeiture of your claim. Other failures may mean that you have not established a valid mining claim. For example, your mining claim is not valid if you have not discovered a valuable mineral deposit. Because

overall mining claim validity depends on so many factors that are case specific, we have not adopted this suggestion in the final rule.

We also removed from the final rule the last sentence of paragraph (b) as proposed, which provided that recording a claim does not in and of itself establish property rights in the land. That sentence was redundant to the first sentence in paragraph (b).

Section 3833.11 How Do I Record Mining Claims and Sites?

One comment asked for an explanation of “O and C Lands” as used in paragraph (d). “O and C Lands” refers to Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon. These are explained in 43 CFR subpart 3821.

Several comments stated that the wording of paragraph (a) was internally inconsistent, requiring the claimant to record with the county a copy of the document he or she already recorded with the county. We have corrected this problem in the final rule.

One comment asked that we identify which among those items that paragraph (b) requires to be in the notice or certificate of location, if omitted, would be—

- A curable defect, or
- An incurable defect causing forfeiture of the mining claim.

We believe that such a list is unnecessary in light of the explanation of when and how to amend locations in section 3833.20 *et seq.*

Subpart B—Amending Mining Claims and Sites

Section 3833.21 When May I Amend a Notice or Certificate of Location?

Several comments disputed paragraph (b)(4) of this section, which provides that you cannot enlarge a claim by amendment. The comments stated that state laws and case law allow enlargement of undersized claims so long as there are no intervening rights. The cases and other authorities cited in the comments do not support this position.

The general rule is that you may not enlarge an existing mining claim or site by amendment. The Interior Board of Land Appeals (IBLA) has held that such an attempted amendment is a re-location of the original claim (see *Junior L. Dennis*, 133 IBLA 239 (1995) and cases cited therein).

You may reposition lode claims at a later date, in the absence of intervening rights, by amendment for proper alignment along a vein or lode as work progresses, in order to secure your

extralateral rights. See II *Lindley on Mines* § 339, 3rd ed. 1916. The cases cited in the comments also state this rule, but do not address the issue of enlargement of claims by amendment.

Several comments suggested that the regulations should allow other amendments after land is withdrawn other than reducing acreage. The available case law does not permit other kinds of amendments of the claim itself. We have amended this section to make it clear that you may correct clerical errors in your filings, such as mistakes in your land descriptions or in other filing documentation, but that you may change the actual boundaries or move the monuments of your claim on withdrawn land only to reduce the size of the claim or site.

Section 3833.22 *How Do I Amend My Location?*

Several comments questioned BLM's authority to void claims if the claimants did not record completed amendments within 90 days after recording the amendment in the local recording office. Upon reconsideration, we have removed this provision and restored the provision from the old regulations, which says that we will not recognize the changes in your claim (just the original location documents) until you file them properly.

Subpart C—Filing Transfers of Interest

Section 3833.31 *What Is a Transfer of Interest?*

Several comments addressed the applicability of community property rights to unpatented mining claims. Upon further analysis, we have removed this provision; as proposed, it only applied to the patenting process, which is not the subject of this regulation.

Another comment asked if we intended this section to apply to mortgages, liens, leases, etc. The answer is no, as explained previously in the preamble discussion of section 3830.2.

Section 3833.32 *How Do I Transfer a Mining Claim or Site?*

Several comments noted that the legal effects of recordings and filings of legal documents (deed, grants, etc.) are a state law issue. We agree and have rewritten this section (as paragraph (a) of a section combining sections 3833.32 and 3833.33 of the proposed rule) to provide that state law governs transfers of mining claims and sites and determines the effective date of a transfer.

Subpart D—Defective Filings

Section 3833.91 *What Defects Cannot Be Cured Under This Part?*

We removed paragraph (d), which provided that you cannot forfeit a claim already void or forfeited, because it merely repeated section 3833.21(b)(2).

Several comments objected to paragraph (e), which would void a claim that is more than 10 percent larger than the statutory maximum size. We have removed this provision from the final rule.

Part 3834—Required Fees for Mining Claims or Sites

This part guides you through annual maintenance of your claims or sites. It describes what you must do each year to maintain your mining claims or sites properly to avoid forfeiting them. Section 3834.11 describes the location fee, initial maintenance fee, annual \$100 maintenance fee, and oil shale placer claim fee.

Sections 3834.12 through 3834.14 go through the procedures for and effects of paying the maintenance fee.

Sections 3834.20 through 3834.23 outline when and how the Secretary may adjust the amount of the maintenance and location fees.

Subpart A—Fee Payment

Section 3834.11 *Which Fees Must I Pay to Maintain a Mining Claim or Site and When Do I Pay Them?*

Several comments found the language in paragraphs (a) and (b) to be imprecise and ambiguous, especially as to what period of time the annual maintenance fee covers. They suggested alternative phrasing in some places. After careful analysis, BLM has amended paragraphs (a) and (b), in some cases adopting the suggested phrasing, to make this section more clear.

Section 3834.12 *How Will BLM Know Which Mining Claims or Sites I am Paying the Fees For?*

Several comments pointed out that the claimant does not always have the serial number when it is time to pay the annual maintenance fee. We amended this provision to say that your list of claims for which you are paying must include the serial numbers of the claims if BLM has informed you that we have assigned serial numbers.

Section 3834.13 *Will BLM Prorate Annual Maintenance or Oil Shale Fees?*

One comment suggested rephrasing this provision to emphasize that the full annual maintenance fee is required even if the claimant held the claim for only

one day in the assessment year. We adopted this suggestion in the final rule.

Section 3834.14 *May I Obtain a Waiver From These Fees?*

One comment objected to a lack of waiver rights for oil shale mining claims. This is a statutory requirement over which BLM has no discretion. Unless you filed a patent application and received a first half of mineral entry final certificate before October 24, 1992, the Energy Policy Act of 1992 (30 U.S.C. 242) requires the payment of an annual \$550 fee and a FLPMA filing of a notice of intent to hold. The comment also asked whether, after a mineral patent is issued, an oil shale mining claim is still subject to the annual fee. The answer is no.

Section 3834.23 *When Do I Start Paying The Adjusted Fees?*

One comment addressed the timing of fee adjustments. We have not made any changes to this section because it reflects the statutory language.

Part 3835—Waivers From Annual Maintenance Fees

Section 3835.1 provides general information about fee waivers and their applicability. Sections 3835.10 through 3835.11 address general filing requirements for waivers, while section 3835.13 lists specific types of waivers, their duration, and how you should renew them. Five types of waivers are available to claimants who are—

- Small miners,
- Military personnel under the Soldiers and Sailors' Relief Act,
- Performing reclamation,
- Denied access, or
- Mineral patent applicants, under certain circumstances.

Sections 3835.14 through 3835.17 establish the conditions and the process—

- For obtaining a small miner waiver in the assessment year following the assessment year of location,
- For filing a waiver one year and paying the maintenance fee the next,
- For paying the maintenance fee one year and filing a waiver the next assessment year, and
- For obtaining a waiver for claims or sites on National Park System lands.

Section 3835.20 addresses whether waivers continue when a claim is transferred. It explains that a waiver is still effective if the transferee also qualifies for the waiver. If not, the required maintenance fees are due by the September 1st following the date of transfer.

Sections 3835.30 through 3835.34 describe annual FLPMA documents and

when they are required to be filed. Annual FLPMA documents include affidavits of assessment work when required as a condition of a waiver, or notices of intent to hold the claim when an affidavit of assessment work cannot be filed.

As in the earlier parts, sections 3835.90 through 3835.93 describe the procedures to cure certain defects if you have any in your waiver request.

Subpart A—Filing Requirements

Upon reviewing the public comments, and after carefully reviewing this subpart, we reorganized it somewhat in the final rule, and replaced proposed section 3835.1 with the table explaining waiver qualification requirements from proposed section 3835.12.

Section 3835.10 How Do I File for a Waiver?

This section appeared as section 3835.11 in the proposed rule. Comments suggested modifications in this section to make it read more clearly, particularly as to what assessment year is covered by a waiver request, and who must sign the request if an agent submits it. BLM has amended this section by adding language making it clear that the waiver request maintains the claim for the assessment year that begins on the date the waiver request is due and stating that a request submitted by an agent must include the agent's original signature, not necessarily that of the claimant.

Another comment asked whether BLM would provide forms that claimants must use to request a waiver. BLM makes BLM form number 3830-2 (Small Miner Waivers) available in all of its state offices, and its use is required in order to request a waiver from payment of annual maintenance fees.

Sections 3835.11 What Special Filing and Reporting Requirements Pertain to the Different Types of Waivers?

This section appeared as section 3835.12 in the proposed rule, in tabular form. In the final rule, we present this provision in the form of text; the table added little to aid understanding. Several comments addressed this section, seeking clarity as to what year the waiver request must cover, and stating that assessment work is not

required in every year of the life of a mining claim. For example, assessment work is not required in the year of location. We have amended the language in light of these suggestions, using the term “the applicable assessment year” and adding the qualification “required by the Mining Law of 1872” to the provision for what assessment work must be certified in your small miner waiver request.

Section 3835.12 What Are My Obligations Once I Receive a Waiver?

This section is new in the final rule, based on comments that the FLPMA filing requirements are very confusing and should not be summarily dealt with in a section on waiver requirements. This section provides the necessary cross-references to the annual filing procedures you must follow to maintain claims for which you have a waiver from the maintenance fee.

The waiver qualification table in this section in the proposed rule now appears in section 3835.1 in the final rule.

Section 3835.13 How Long Do the Waivers Last and How do I Renew Them?

One comment pointed out a drafting error in the table in this section, where we inadvertently switched the renewal requirements for two of the waiver types. We have corrected the error in the final rule.

Section 3835.14 How Do I File for a Small Miner Waiver for Newly-Recorded Mining Claims?

Comments found this section confusing, especially in light of provisions later in this subpart. We have removed redundant provisions from this section, and added a cross-reference to sections 3835.31 through 3835.34, to make it clear when you must make filings under Section 314 of FLPMA for a newly-located claim or site if you have also submitted a waiver request at the time of recording the claim or site.

Section 3835.15 If I Qualify as a Small Miner, How Do I Apply for a Waiver if I Paid the Maintenance Fee in the Last Assessment Year?

Some of the comments on this section betrayed such a lack of understanding of

its meaning that it became clear to us that it was confusing and we needed to clarify the section. Following a suggestion in one comment, we added introductory text (1) telling you that you must submit a waiver request, and (2) cross-referring to the appropriate regulatory guidance for doing so. We also reworded the rest of the section to try to make it clearer. The section should not be read, as one comment interpreted it (perhaps with tongue in cheek), to require you to do “twice the normal amount of assessment work during the first assessment year for which your maintenance fee was waived.”

Section 3835.16 If I Am a Qualified Small Miner, and I Obtained a Waiver in One Assessment Year, What Must I Do if I Want To Pay the Maintenance Fee for the Following Assessment Year?

One comment said that this section was incorrect, that it should have required you to do the assessment work for the year before the year for which you obtained a waiver, rather than the year for which you obtained a waiver. While it is true that you must do assessment work for the year before you obtain a waiver, you must obtain a new waiver each year, having done the assessment work during each preceding assessment year as you go along. Of course, this amounts to a requirement that during every year covered by a waiver you must do assessment work, plus the year before your initial waiver request. Thus, if, for whatever reason, you wish to or are required to pay the maintenance fee in a subsequent year, the present year must necessarily be covered by a waiver, and you must do the assessment work for that year, “the assessment year for which the fee was waived.” We made no substantive change in this provision. The following table shows how the provision works, based on four possible scenarios that may describe the affected miner's situation; in the table, “xx” refers to the current calendar year:

Assessment year end 9/1/xx	FLPMA filing due 12/30/xx	Assessment year end 9/1/xx+1	FLPMA filing due 12/30/xx+1	Assessment year end 9/1/xx+2	FLPMA filing due 12/30/xx+2	Assessment year end 9/1/xx+3	FLPMA filing due 12/30/xx+3
If you paid the maintenance fee.	No FLPMA filing necessary.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.	If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx+1 to Sept. xx+2.	If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx+2 to Sept. xx+3.
If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx – 1 to Sept. xx.	If you paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx to Sept. xx+1.	If you paid the maintenance fee.	No FLPMA filing necessary.	If you paid the maintenance fee.	No FLPMA filing necessary.

Assessment year end 9/1/xx	FLPMA filing due 12/30/xx	Assessment year end 9/1/xx+1	FLPMA filing due 12/30/xx+1	Assessment year end 9/1/xx+2	FLPMA filing due 12/30/xx+2	Assessment year end 9/1/xx+3	FLPMA filing due 12/30/xx+3
If you paid the maintenance fee.	No FLPMA filing necessary.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.	If you paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx+1 to Sept. xx+2.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.
If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx – 1 to Sept. xx.	If you paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx to Sept. xx+1.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.	If you the paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx+2 to Sept. xx+3.

Section 3835.17 What Additional Requirements Must I Fulfill To Obtain a Small Miner Waiver for My Mining Claims or Sites on National Park System Lands?

A comment from the National Park Service asked that we add provisions instructing miners how to comply with waiver and assessment work requirements for mining claims on NPS lands, and provided language to serve that purpose. We have substantially adopted the recommended language. Your plan of operations must be approved by the NPS before you can begin, and your assessment work must further the goal of developing the mineral deposit. If NPS does not approve the plan in time to qualify for a small miner waiver, the final rule gives you three options: pay the maintenance fees; petition for a deferment of assessment work; or file for a lack of access waiver.

Subpart B—Conveying Mining Claims or Sites Under Waiver

Section 3835.20 Transferring, Selling, Inheriting, or Otherwise Conveying Mining Claims or Sites Already Subject to a Waiver.

This section explains whether BLM will continue to apply a waiver to a mining claim after the person who first qualified for the waiver transfers it to another claimant. One comment stated that if a miner with a small miner waiver performs the required assessment work and then transfers a claim to a miner who does not qualify for a waiver, the second miner should not have to pay the maintenance fee. The argument is that the work done on the claim should have been effective for the whole assessment year and therefore should have excused the claim from the maintenance fee requirement.

When a small miner conveys a claim to a claimant who does not qualify for a small miner waiver, the status of the claim changes immediately upon the transfer, and the waiver no longer applies. To retain the claim for the current assessment year, the transferee must pay the maintenance fee for the newly acquired claim. Under this scenario, assessment work previously

done to hold the claim is not an acceptable alternative to paying the maintenance fee, as the comment seems to be saying. Doing assessment work is never an optional alternative to paying the maintenance fee for claimants who own more than 10 claims or sites.

Another comment found paragraph (b) as proposed to be confusing. We have amended the paragraph to explain to claimants who do not qualify for a waiver what they must do to maintain a claim that they obtain from someone who did qualify for a waiver.

Subpart C—Annual FLPMA Filings

Section 3835.31 When Do I File an Annual FLPMA Document?

Several comments stated that the proposed language of sections 3835.31 and 3835.32 was ambiguous and confusing. Some offered substitute language. They stated that we omitted crucial information that claims could be forfeited if the claimant did not record an affidavit of assessment work or notice of intention to hold in the local recording office before the statutory deadline. They also criticized some imprecise wording as to where annual FLPMA filings must be filed, and what year is meant by “December 30th of the calendar year in which the assessment year ends.” They questioned the meaning of “current assessment year” in paragraph (c). They disputed a statement in paragraph (a) that you must submit a FLPMA filing by December 30th of the calendar year in which the assessment year ends, saying that this contradicted the statutory provision that paying the maintenance fee satisfies the FLPMA filing requirement.

We have combined sections 3835.31 and 3835.32 in the final rule to clarify when you must make filings and what filing is required under various circumstances. We have also amended the table that describes the filing requirements and deadlines.

One comment suggested adding a “situation” to the table now in paragraph (d) of this section. It would describe what happens if you have a deferment of assessment work: the regulations would not require an affidavit of assessment work, but you would have to file a notice of intent to

hold. We have added this situation to the table, with a reference to paragraph (c) of this section, which describes this situation and the actions you must take.

One comment stated that paragraph (h) in the table was inaccurate because it did not account for the fact that most claimants would be paying the maintenance fee. The comment suggested that the provision should merely state BLM does not require an affidavit or notice after you obtain the mineral entry final certificate. We have amended paragraph (h) as suggested by the comment.

Section 3835.32 What Should I Include When I Submit an Affidavit of Assessment Work?

This section appeared as section 3835.33 in the proposed rule. Several comments stated that the regulatory text was not specific and clear enough in this section as to what form and type of assessment work documents have to be filed. The comments focused on what we meant by evidence of assessment work, by a copy of the surveys that you must file with BLM, and what documents need to be recorded in the local recording office, and offered alternative language. We have revised the section to be even more specific. We make it clear that FLPMA allows you to submit a detailed report of geological, geochemical, and geophysical surveys and reports, as provided in 30 U.S.C. 28–1, in lieu of an affidavit of assessment work.

Section 3835.33 What Should I Include When I Submit a Notice of Intent To Hold?

This section appeared as section 3835.34 in the proposed rule. Two comments addressing the section noted that FLPMA does not require the signatures of all claim holders on a Notice of Intent to Hold (NOI), as required in the proposed rule. The comment is correct and the language has been revised to require that one or more co-owners must sign the NOI to make it effective.

The comments also stated that the regulations did not clearly include the FLPMA requirement that the document you file with BLM must be a copy of the

document you filed with the local recording office. We have amended paragraph (a) of this section to make it clear that you must file with BLM a copy of the notice of intent to hold that you have recorded or will record with the county.

Subpart D—Defective Waivers and FLPMA Filings

Sections 3835.91–3835.93.

Numerous Comments stated that some provisions in these sections were ambiguous as proposed. Some comments included alternative language. After a careful analysis, BLM has amended these sections to include plainer identification of the possible defects, the penalties, and the remedies available.

Section 3835.91 What If I Fail To File Annual FLPMA Documents?

One comment stated that “on time” was insufficiently specific as a standard for making annual FLPMA filings, and requested a specific date instead. We amended this section to provide the specific annual deadline of December 30.

Section 3835.92 What If I Fail To Submit a Qualified Waiver Request?

One comment asked that we amend this section to—

- Define the term “qualified waiver request”;
- Define “on time”; and
- Clarify the difference between “defective waiver” and “non-qualified waiver.”

We amended this section in the final rule by adding a cross-reference to an explanation of qualifying for a waiver, and by stating the actual deadline rather than saying “on time.” In this section, we no longer refer to “qualified waiver requests” or “qualified waivers.”

These comments also stated that paragraph (d) must be amended to make it clear that it is only in the case where a miner has filed a waiver request but does not pay the maintenance fee that a co-owner’s failure to qualify as a small miner will invalidate the claim. We have amended paragraph (d) to clarify that if you, a co-claimant, or any related parties file small miner waivers for more than 10 mining claims or sites and also fail to pay the maintenance fee for each claim or site, the claims and sites will be forfeited. We have also added language that states that you may be subject to criminal penalties if you attempt to obtain a small miner waiver for more than 10 mining claims or sites.

Part 3836—Annual Assessment Work Requirements for Mining Claims

This part consolidates the provisions of current part 3851 on performing and recording assessment work, which is sometimes a condition for a maintenance fee waiver. Sections 3836.10 through 3836.15 identify the types of work that qualify as assessment work, and tell you how to record the work. Section 3836.16 discusses what happens if you fail to perform assessment work. If you are a qualified small miner, and you have been denied access to your claims, you may petition BLM to defer assessment work as outlined in sections 3836.20 through 3836.25.

Subpart A—Performing Assessment Work

Section 3836.11 What Are the General Requirements for Performing Assessment Work?

Several comments addressed this section. One comment stated that paragraph (a) should say that assessment work must be done before the small miner waiver deadline in order to qualify for the waiver. The comment is correct. We have amended the rule accordingly.

Another comment pointed out that the requirement in paragraph (a) to do assessment work for every claim every year does not recognize that you need not perform assessment work in the assessment year during which you locate a new claim. We have amended this provision in light of the comment.

Several comments stated that our interpretation in paragraph (b) of the assessment provision of the General Mining Law is erroneous. A comment also challenged the “on claim” provision, stating that some work can be performed off site and still qualify. We are not aware of any case law that would disallow BLM’s longstanding practice of allowing claimants to comply with the assessment work requirement by conducting work on a group of contiguous claims that cover the same deposit. In addition, the Supreme Court in *St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636 (1881), held that off site work qualifies as assessment work so long as it supports development of the claim. BLM therefore has amended this provision in the final rule accordingly.

Some of these comments said that this paragraph was not clearly worded. We have amended the language to try to make it more clear.

Section 3836.14 What Other Requirements Must Geological, Geochemical, or Geophysical Surveys Meet to Qualify As Assessment Work?

One comment questioned the term “local district recording office”, which was a typographical error in the proposed rule. The term “local recording office” replaces it in the final rule.

Subpart B—Deferment of Assessment Work

Section 3836.21 How Do I Qualify for a Deferment of Assessment Work on My Mining Claims?

One comment stated that this provision in the proposed rule seemed garbled, and left incomplete the reasons allowed for obtaining a deferment of assessment work. The comment stated that it did not specifically allow for deferment when a unit of government has issued a declaration of taking. We have revised this paragraph in light of the comment.

Section 3836.22 How Do I Qualify for a Deferment of Assessment Work on My Mining Claims That Are on National Park System (NPS) Lands?

We have added this section in the final rule in response to a public comment. A comment addressed the issue of deferments and documentation on Nation Park System lands, stating that the rule should explain the procedure for obtaining a deferment of assessment work for claims situated on National Park System land. The comment suggested language to fix the problem. We accepted this recommendation and created a new section 3836.22, renumbering proposed section 3836.22 as 3836.23.

Section 3836.23 How Do I Petition for Deferment?

Several comments asked why a petition for deferment must be submitted in duplicate. The requirement is obsolete, a holdover from old General Land Office regulations promulgated when photocopy machines could have appeared only in science fiction. It is clearly no longer necessary, and we have removed it in the final rule.

These comments also suggested the following amendments to clarify this section—

- Amend paragraph (a)(4) to make it clear that you must meet its requirements only if the provisions of the paragraph apply to your situation. We have amended the paragraph to make clear that you must file a statement that you plan to submit a small miner waiver form on or before

September 1st, since you need not conduct assessment work unless you are going to file for a small miner waiver from the \$100 maintenance fee;

- In paragraph (b)(1), clarify the meaning of “nature of the land” (which must be described by applicants for a right-of-way to a claim). We have added words to clarify what you must describe in your petition;

- In paragraph (c), add references to declarations and notices of taking. We have added a provision at section 3836.21(b) in the final rule adding these to the circumstances qualifying you for a deferment of assessment work.

Part 3837—Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

This part consolidates the procedures in current subpart 3851 and 30 U.S.C. 28 for acquiring the interests of a delinquent co-claimant in a mining claim or site when the co-claimant has failed to contribute a proportionate share of the assessment work, expenditures, or maintenance fees. Sections 3837.10 and 3837.11 state the conditions for acquisition and sections 3837.20 through 3837.24 lay out the steps for acquisition. Section 3837.30 provides guidance in the event of a dispute between co-claimants.

Subpart A—Conditions for Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

Section 3737.11 When May I Acquire a Delinquent Co-Claimant's Interests In a Mining Claim Or Site?

One comment found the opening sentence of paragraph (a)(4) somewhat unclear and suggested that we lay out the timing of the notice and the co-claimants' acquisition of the delinquent's rights more clearly. We have adopted language suggested in the comment. The delinquent co-claimant has 90 days from the date the claimant received actual notice or 90 days from the date the publication period ended in which to carry out a proportionate share of the assessment work or to pay a proportionate share of expenditures or maintenance fees or forfeit all interest in the claim to the other co-claimants.

In this final rule, we amended the title of this section by changing the first word from “how” to “when.”

Subpart B—Acquisition Procedures

Section 3737.21 How Do I Notify the Delinquent Co-Claimant That I Want To Acquire His or Her Interests?

and

Section 3737.23 How Do I Notify BLM That I Have Acquired a Delinquent Co-Claimant's Interests In a Mining Claim or Site?

Several comments objected to the requirement that a co-claimant conduct a diligent search to locate a missing co-locator before we allow publication of a notice and potential loss of ownership interest. The comments questioned our authority to require this procedure, saying that 30 U.S.C. 28 “simply give the option of personal notice in writing or notice by publication.” The Secretary has such authority under 43 U.S.C. 1201 to establish, by regulation, such rules and procedures as she deems necessary for the orderly conduct of business on the public lands. Over the last 10 years, BLM has seen instances in which this provision is used inequitably. For example, some claimants who know how to contact a co-claimant have instead published notice in a newspaper, hoping that the co-claimant would not see the notice. In order to protect the rights of all claimants, we have amended the regulations to establish a simple sequence of steps that the other co-claimants must follow before being allowed to deprive a delinquent co-claimant of an interest in the claim or site.

Part 3838—Special Procedures for Locating and Recording Mining Claims and Tunnel Sites on Stockraising Homestead Act Lands

This part contains special procedures for exploring for minerals and locating, recording, and maintaining mining claims or tunnel sites located on or under Stockraising Homestead Act (SRHA) lands. If you want to locate mining claims on SRHA lands, you must take these special steps before locating, recording, and maintaining mining claims or tunnel sites under this part. These procedures are required by the Act of April 16, 1993; Public Law 103–23; 43 U.S.C. 299(b). The Act took effect on October 13, 1993.

Sections 3838.1 and 3838.2 describe what SRHA lands are, and why claims or sites on them require special procedures. Sections 3838.10 through 3838.14 and section 3838.16 discuss the procedures for exploring for minerals and locating mining claims on SRHA lands. Specifically, you must record a notice of intent to locate mining claims (NOITL) with BLM, and serve a copy of the NOITL on the surface owners. You must then wait 30 days before entering the lands to explore for minerals or locate any mining claims. Section 3838.15 describes the benefits you receive when you file a NOITL, while

sections 3838.90 and 3838.91 state the consequences of failing to file a NOITL.

Subpart B—Locating and Recording Mining Claims and Tunnel Sites on SRHA Lands

Section 3838.12 What Must I Include In a NOITL on SRHA Lands?

We revised this section to improve clarity, based on our own review of the proposed rule. We have made it clear that a duly-authorized agent may file the NOITL on behalf of claimants. We have also expanded the list of evidence that you may submit to show surface ownership to include tax assessments and receipts, and title insurance documentation.

Section 3838.13 What Restrictions Are There On Recording a NOITL on SRHA Lands?

One comment, supported by two others, stated that BLM lacked statutory authority, in paragraph (d), to impose a 30 day waiting period after the expiration of a NOITL before the same claimant may file a new NOITL. As noted above, under 43 U.S.C. 1201, BLM has such authority. We drafted this provision to correct abuses of the system whereby certain individuals were filing a new NOITL every 90 days over the same land and never locating mining claims. Their purpose was to keep other potential claimants out.

Section 3838.15 How Do I Benefit From Properly Filing a NOITL on SRHA Lands?

One comment, supported by two others, stated that the period during which a claimant may enter lands covered by a NOITL does not begin when BLM accepts the NOITL, but 30 days after notice is provided under 43 U.S.C. 299(b)(3). It went on to state that the exploration period “ends 90 days after the NOITL was filed with BLM.” The comment correctly states the law and we have revised the introductory text of paragraph (a) accordingly. In order to maximize the 90-day time period after you file a NOITL with BLM, you may give the surface owner notice 30 days before you plan to file the NOITL with BLM. If you give the surface owner notice at the same time you file a NOITL with BLM, the 90-day exploration and location period will be effectively diminished by the 30 days you must wait after you give the surface owner notice.

Part 3839—Special Laws, in Addition to FLPMA, That Require Recording or Notice

We are reserving this part for future consolidation of regulations about

recording and notice requirements and contest procedures under certain special laws. The current regulations are found in 43 CFR parts 3710, 3730, 3740, 3810, and 3820. These parts cover surface rights determinations under the Surface Resources Act of 1955; permission to use or occupy placer mining claims located in power site withdrawals under the Mining Claim Rights Restoration Act of 1955; conflict resolution between mining claims and mineral leases under the Multiple Mineral Development Act of 1954; and timber use on O. and C. lands (Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands) in Oregon by mining claimants.

Part 3840—Nature and Classes of Mining Claims

BLM has moved the provisions of part 3840, which describes the types of claims or sites and how to locate and record them, to parts 3832 and 3833. See the conversion chart earlier in this preamble.

Part 3850—Assessment Work

BLM has moved the provisions of part 3850, which describes assessment work requirements, to part 3836.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These changes do not significantly change the substance of current mining claim administration within BLM. The annual revenue received from the collection of the congressionally mandated oil shale, maintenance, and location fees has averaged \$24 million since 1999. This rule does not change the fee amounts and thus will not have a significant impact on fees collected.

- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of BLM to other agencies and their actions.

- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their

recipients. The rule does not address any of these programs.

- This rule will not raise novel legal issues. It makes no major substantive changes in the regulations. The Constitutionality of the rental and maintenance fees has been challenged in the Federal Courts. The Courts have consistently upheld the previous 1992, 1993, and 1998 Acts, which provided for the maintenance and location fees, and their implementing regulations.

- The proposed rule raised a novel policy issue regarding the number of millsites that the Mining Law allows per mining claim. This final rule, although it reverses this policy proposal from the proposed rule, will likely continue to be controversial as to this matter. We have amended the final rule, as discussed earlier in this Preamble, to adopt previous prevalent practice as the standard in this connection.

Regulatory Flexibility Act

We certify 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.*). The rule will not have an impact because the fees paid by small entities will not change. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 500 employees or less than \$5 million in revenue. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

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. This rule:

- Does not have an annual effect on the economy of \$100 million or more. As explained in section 1 above, the revised regulations will not materially alter current BLM policy or the fees paid by mining claimants. Under this rule claimants will pay about \$20 million annually.

- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The changes implemented by this rule are likely to leave all other economic aspects of BLM unaffected.

- 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.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

- This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.

- This rule will not produce a Federal mandate of \$100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal Courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The Courts have upheld the previous 1992, 1993, and 1998 Acts and the BLM rules thereunder as a proper exercise of Congressional and Executive authorities.

Executive Order 13132, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role or responsibilities between Federal, state, and local governmental entities, nor does it relate to the structure and role of states or have direct, substantive, or significant effects on states.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this final rule does not include policies that have tribal implications. Because this rule does not specifically involve Indian reservation lands (which are closed to the operation of the general mining law), we believe that relations with Indians, Indian tribes, and tribal governments will remain unaffected.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not

unduly burden the judicial system and therefore 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.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004-0114.

This rule does not require a new information collection under the Paperwork Reduction Act. This rule makes no changes to the approved information collection required to implement the Act other than conforming section numbers where necessary.

The existing approval pertains to the current edition of these regulations at 43 CFR parts 3730, 3820, 3830, and 3850. This final rule consolidates these parts into 43 CFR part 3830. The information to be collected remains the same. There are no changes in the form or types of information to be collected, or in the amounts of fees required to be paid by the mining claimants. The BLM will continue to use form 3830-2 "Maintenance Fee Payment Waiver Certification" and form 3830-3 "Notice of Intent to Locate a Lode or Placer Mining Claim and/or a Tunnel Site(s) on Lands Patented Under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993."

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have conducted an environmental assessment and have concluded that this rule would not have a significant impact on the quality of the human environment under Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(c), and therefore an Environmental Impact Statement is not required.

Because this rule would have no significant impacts on the environment, it will not significantly impact any of the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H-1790-1): air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and

scenic rivers, environmental justice, and wilderness.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule pertains primarily to non-energy minerals (exceptions being uranium and other locatable fissionable minerals), and does not impose requirements that are not statutory and imposes no new requirements. It relaxes some paperwork requirements that have long been in the regulations, removing minor burdens like required notarizations and multiple copies of filings. To this extent, the rule may have some insignificant positive effect on energy production.

Author

The principal author of this proposed rule is Roger Haskins in the Solid Minerals Group, assisted by Mrs. Pamela Stiles of the BLM Cheyenne Office, Mrs. Connie Schaff of the BLM Billings Office, and Ted Hudson in the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects

43 CFR Part 3710

Administrative practice and procedure; Mines; Public lands—mineral resources.

43 CFR Part 3730

Administrative practice and procedure; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

43 CFR Part 3810

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

43 CFR Part 3820

Mines; Monuments and memorials; National forests; National parks; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

43 CFR Part 3830

Maintenance fees; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3831

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

43 CFR Part 3832

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

43 CFR Part 3833

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

43 CFR Part 3834

Maintenance fees; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3835

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

43 CFR Part 3836

Assessment work; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3837

Assessment work; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3838

Homesteads; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3839

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

43 CFR Part 3840

Mines; Public lands—mineral resources.

43 CFR Part 3850

Mines; Public lands—mineral resources.

■ For the reasons stated in the preamble, and under the authority of section (e) of the Act of October 21, 1998 (Pub. L. 105-277; 112 Stat. 2681-232, 2681-235); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740 and 1744); and the Act of April 16, 1993 (43 U.S.C. 299(b)); parts 3730, 3810, 3820, 3830 through 3840, and 3850, Groups 3700 and 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as follows:

Dated: October 9, 2003.

Rebecca W. Watson,

Assistant Secretary of the Interior.

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

- 1. Add an authority citation for part 3710 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 611–615; 43 U.S.C. 1201; 43 U.S.C. 1740.

- 2. Remove subpart 3711 in its entirety.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

- 3. Revise the authority citation for part 3730 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28f–k; 30 U.S.C. 621–625; 43 U.S.C. 1201; 43 U.S.C. 1740; 43 U.S.C. 1744.

Subpart 3734—Location and Assessment Work

- 4. Amend § 3734.1 as follows:
 - a. By removing in the first sentence of paragraph (a) the citation “§§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title” and adding in its place the citation “part 3833 of this chapter”;
 - b. By removing in the first sentence of paragraph (a) the citation “subpart 3833” and substituting the citation “part 3830”;
 - c. By removing in the second sentence of paragraph (a) the citation “§ 3833.5(c)” and adding in its place the words “part 3833”;
 - d. By revising paragraph (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 of this chapter may either:

(1) Perform and record annual assessment work if the owner qualifies as a small miner under part 3835 of this chapter; or

(2) Pay an annual maintenance fee of \$100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or notice of intention to hold, under subpart 3834 of this chapter.

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

- 5. The authority citation for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201; 43 U.S.C. 1740.

Subpart 3812—Minerals Under the Mining Laws [Removed]

- 6. Remove subpart 3812 in its entirety.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

- 7. Revise the authority citation for part 3820 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201; 43 U.S.C. 1740; 62 Stat. 162.

Subpart 3821—O and C Lands

§ 3821.2 [Amended]

- 8. Amend § 3821.2 as follows:
 - a. By removing in the first sentence the citations “§§ 3833.1, 3833.3, 3833.4, and 3833.5” and adding in their place the citation “part 3833 of this chapter”;
 - b. By removing from the first sentence the citation “subpart 3833 of this title” and adding in its place the citation “parts 3830 through 3839 of this chapter”; and
 - c. By removing from the second sentence the phrase “3833.5 of this title” and adding in its place the phrase “part 3833 of this chapter.”
- 9. Revise § 3821.3 to read as follows:

§ 3821.3 Requirement for filing statement of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O and C lands may either:

(a) Perform and record proof of annual assessment work if qualified as a small miner under part 3835 of this chapter; or

(b) Pay an annual maintenance fee of \$100 per unpatented mining claim, mill site, or tunnel site under part 3834 of this chapter.

- 10. Revise part 3830 to read as follows:

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

Subpart A—Introduction

Sec.

3830.1 What is the purpose of parts 3830–3839?

3830.2 What is the scope of parts 3830–3839?

3830.3 Who may locate mining claims?

3830.5 Definitions.

Subpart B—Providing Information to BLM

3830.8 How will BLM use the information it collects and what does it estimate the burden is on the public?

3830.9 What will happen if I record a document with BLM that I know contains false, erroneous, or fictitious information or statements?

Subpart C—Mining Law Minerals

3830.10 Locatable minerals.

3830.11 Which minerals are locatable under the General Mining Law?

3830.12 What are the characteristics of a locatable mineral?

Subpart D—BLM Service Charge and Fee Requirements

3830.20 Payment of service charges, location fees, initial maintenance fees, annual maintenance fees, and oil shale fees.

3830.21 What are the different types of service charges and fees?

3830.22 Will BLM refund service charges or fees?

3830.23 What types of payment will BLM accept?

3830.24 How do I make payments?

3830.25 When do I pay for recording a new notice or certificate of location for a mining claim or site?

Subpart E—Failure To Comply With These Regulations

3830.90 Failure to comply with these regulations.

3830.91 What happens if I fail to comply with these regulations?

3830.92 What special provisions apply to oil placer mining claims?

3830.93 When are defects curable?

3830.94 How do I cure a defect in my compliance with parts 3830–3839?

3830.95 What if I pay only part of the service charges, location fees, or first-year maintenance fees for newly-recorded claims or sites?

3830.96 What if I pay only part of the service charges and fees for oil shale claims or previously-recorded mining claims or sites?

3830.97 What if I pay only part of the service charges for a notice of intent to locate mining claims on SRHA lands?

Subpart F—Appeals

3830.100 How do I appeal a final decision by BLM?

Authority: 43 U.S.C. 2, 1201, 1740, 1744; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 611; 31 U.S.C. 9701; 43 U.S.C. 1457, 1474; 18 U.S.C. 1001, 3571; 43 U.S.C. 1212; 115 Stat 414; 44 U.S.C. 3501 *et seq.*; 30 U.S.C. 242.

Subpart A—Introduction

§ 3830.1 What is the purpose of parts 3830–3839?

In this part 3830, references to “these regulations” are references to parts 3830 through 3839 of this chapter.

(a) These regulations describe the steps you, as a mining claimant, must take regarding mining claims or sites on the Federal lands under Federal law, to—

(1) Locate (see part 3832 of this chapter);

(2) Maintain (see parts 3834 through 3836 of this chapter);

(3) Amend (see part 3833, subpart B, of this chapter); and

(4) Transfer (see part 3833, subpart C, and part 3835, subpart B, of this chapter) mining claims or sites on the Federal lands under Federal law.

(b) These regulations apply to—

(1) Lode and placer mining claims (see part 3832, subpart B, of this chapter);

(2) Mill sites (see part 3832, subpart C, of this chapter);

(3) Tunnel sites (see part 3832, subpart D, of this chapter);

(4) Oil shale claims (see § 3830.92);

(5) Location of uncommon varieties of mineral materials (see § 3830.12(b));

(6) Delinquent co-claimants (see part 3837 of this chapter); and

(7) Mining claims and tunnel sites on Stockraising Homestead Act lands (see part 3838 of this chapter).

(c) In addition to these regulations, there are State law requirements that apply to you. If any State law conflicts with the requirements in these regulations, you must still comply with these regulations. These regulations do not describe State law requirements.

§ 3830.2 What is the scope of these regulations?

These regulations govern locating, recording, and maintaining mining claims, mill sites, and tunnel sites on all Federal lands. These regulations do not authorize locating any new mining claims on Federal lands closed to mineral entry, including units of the National Park Service.

(a) You must follow the recording and maintenance requirements in this part even if BLM has actual knowledge of the existence of your mining claims or sites through other means.

(b) Part 3838 of this chapter describes supplemental procedures for locating mining claims or sites on land subject to the Stockraising Homestead Act, 43 U.S.C. 291–299.

(c) BLM is not the official recording office for ancillary documents concerning mining claims or sites, including but not limited to, leases, wills, judgments, liens, option agreements, and grubstake contracts.

§ 3830.3 Who may locate mining claims?

Persons qualified to locate mining claims or sites under this part include:

(a) United States citizens who have reached the age of discretion under the law of their State of residence;

(b) Legal immigrants who have filed an application for citizenship with the proper Federal agency;

(c) Business entities organized under the laws of any state, including but not limited to corporations and partnerships; or

(d) Duly constituted and appointed agents acting on behalf of locators qualified under paragraph (a), (b), or (c) of this section.

§ 3830.5 Definitions.

Aliquot part means a legal subdivision of a section of a township and range, except fractional lots, by division into halves or quarters.

Amendment means the act of making a change in a previously recorded mining claim or site as described in § 3833.21 of this chapter.

Annual FLPMA documents means either a notice of intent to hold, or an affidavit of assessment work, as prescribed in section 314(a) of FLPMA (43 U.S.C. 1744(a)). The term “proof of labor” (commonly used to describe this document) means the same as “affidavit of assessment work” as used in this part. See parts 3835 and 3836 of this chapter for further information.

Assessment year means a period of 12 consecutive months beginning at 12 noon on September 1 each year. See part 3836 of this chapter for further information.

Bench placer claim means a placer mining claim located on terraces or former floodplains made of gravel or sediment or both on the valley wall or slope above the current riverbed, and created when the river previously was at a higher topographic level than now.

BLM State Office means the Bureau of Land Management State Office listed in § 1821.10 of this chapter having jurisdiction over the land in which the mining claims or sites are situated. The Northern District Office in Fairbanks may also receive and accept documents, filings, and fees for mining claims or sites in Alaska.

Claimant means the person under state or Federal law who is the owner of all or any part of an unpatented mining claim or site.

Closed to mineral entry means the land is not available for the location of mining claims or sites because Congress, BLM, or another surface managing agency has withdrawn or otherwise segregated the lands from the operation of the General Mining Law, often subject to valid existing rights.

Control means actual control, legal control, or the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means. BLM may determine, based on evidence that we find adequate, that a stockholder who is not an officer or director, or who is not a majority shareholder, of a company or corporation exercises control as defined in these regulations.

Discovery means that a mining claimant has found a valuable mineral deposit.

Federal lands means any lands or interest in lands owned by the United

States, subject to location under the General Mining Law, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

Filed means a document is—

(a) Received by BLM on or before the due date; or

(b)(1) Postmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service, and

(2) Received by the appropriate BLM state office either:

(i) Within 15 calendar days after the due date; or

(ii) On the next business day after the 15th day, if the 15th day is not a business day (see subpart 1822 of this chapter).

Final certificate means a form that BLM issues during its processing of a mineral patent application. (In 1999, BLM changed this form from two-part form to a single form that BLM completes toward the end of the patenting process.) The form indicates that BLM has reviewed the mineral patent application and conducted a validity determination and concluded that the applicant has:

(a) Met all of the paperwork requirements;

(b) Published notice of the patent application and received no adverse claims;

(c) Paid the purchase price; and

(d) Discovered a valuable mineral deposit on mining claims or located mill sites on lands that are not mineral-in-character and are properly used or occupied.

FLPMA means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

Forfeit or forfeiture means the voidance or invalidation of an unpatented mining claim or site. The terms “abandoned and void”, “null and void,” “void ab initio” and “forfeited” have the same effect in these regulations.

General Mining Law means the Act of May 10, 1872, as amended, (codified as 30 U.S.C. 22–54).

Gulch placer claim means a placer claim located on the bed of a river contained within steep, nonmineral canyon walls. The form of the river valley and nonmineral character of the valley walls preclude the location of the claim by aliquot parts and a metes and bounds description is necessary.

Local recording office means the county or state government office established under state law where you are usually required to record all legal documents including, but not limited to, deeds and wills.

Location fee means the one-time fee that 30 U.S.C. 28g requires you to pay for all new mining claims and sites at the time you record them with BLM. See § 3830.21 for the table of fees.

Maintenance fee means the initial or annual fee that 30 U.S.C. 28f requires you to pay to hold and maintain mining claims or sites. See § 3830.21 for the table of fees.

Metes and bounds means a method of describing a parcel of land that does not conform to the rectangular U.S. Public Land Survey System, using compass bearings and distances from a known point to a specified point on the parcel and then by using a continuous and sequential set of compass bearings and distances beginning at the point of beginning, continuing along and between the corners or boundary markers of the parcel's outer perimeter, until returning to the point of beginning.

Mineral-in-character means land that is known, or can reasonably be inferred from the available geologic evidence, to contain:

(a) Valuable minerals subject to location under the general mining law for purpose of locating mining claims or sites;

(b) Mineral materials for purposes of disposal under part 3600 of this chapter.

Mineral Leasing Acts means the Mineral Leasing Act of [February 25,] 1920, as amended (30 U.S.C. 181 *et seq.*); the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended, (30 U.S.C. 351 *et seq.*); and including all Acts referenced in 30 U.S.C. 505. The definition pertains to all minerals that BLM administers under Groups 3100, 3200, 3400, and 3500 of this chapter.

Mineral materials means those materials that—

(a) BLM may sell under the Mineral Materials Act of July 31, 1947 (30 U.S.C. 601–604), as amended by the Surface Resources Act of 1955 (30 U.S.C. 601, 603, and 611–615); and

(b) BLM administers under part 3600 of this chapter.

Multiple Mineral Development Act means the Act of August 13, 1954, as amended (30 U.S.C. 521–531).

Nonmineral land means land that is not mineral-in-character.

Open to mineral entry means that the land is open to the location of mining claims or sites under the General Mining Law.

Patent means a document conveying title to Federal surface and/or minerals.

Recording means the act of filing a notice or certificate of location with the local recording office and BLM, as required by FLPMA.

Related party means:

(a) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986; or

(b) A person who controls, is controlled by, or is under common control with the claimant.

Segregate or segregation means the Department of the Interior has closed the affected lands to mineral entry or withdrawn the affected lands from mining claim location, land transactions, or other uses as specified in a statute, regulation, or public land order affecting the land in question. The land remains segregated until the statutory period has expired, BLM ends the segregation under § 2091.2–2 of this chapter, or the Department of the Interior removes the notation of segregation from its records, whichever occurs first.

Service charge means an administrative fee that BLM assesses under this part to cover the cost of processing documents.

Site means either an unpatented mill site authorized under 30 U.S.C. 42 or a tunnel site authorized under 30 U.S.C. 27.

Small miner means a claimant who, along with all related parties, holds no more than 10 mining claims or sites on Federal lands on the date annual maintenance fees are due, and meets the additional requirements of part 3835 of this chapter.

Split estate lands means that lands where United States owns the mineral estate as part of the public domain, but not the surface.

Surface Resources Act means the Act of July 23, 1955 (30 U.S.C. 601, 603, and 611–615).

Unpatented mining claim means a lode mining claim or a placer mining claim located and maintained under the General Mining Law for which BLM has not issued a mineral patent under 30 U.S.C. 29.

Subpart B—Providing Information to BLM

§ 3830.8 How will BLM use the information it collects and what does it estimate the burden is on the public?

(a) The Office of Management and Budget has approved the collections of information contained in parts 3830–3838 of this chapter under 44 U.S.C. 3501 *et seq.* and has assigned clearance number 1004–0114.

(b) BLM will use the information collected to:

(1) Keep records of mining claims or sites;

(2) Maintain ownership records to those mining claims or sites;

(3) Determine the geographic location of the mining claims or sites recorded for proper land management purposes; and

(4) Determine which mining claims or sites the claimant wishes to continue to hold under applicable Federal statutes.

(c) BLM estimates that the public reporting burden for this information averages 8 minutes per response. This burden includes time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected.

(d) Send any comments on information collection, including your views on the burden estimate and how to reduce the burden, to: the Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, D.C. 20503.

§ 3830.9 What will happen if I file a document with BLM that I know contains false, erroneous, or fictitious information or statements?

If you file a document that you know contains false, erroneous, or fictitious information or statements, you may be subject to criminal penalties under 18 U.S.C. 1001 and 43 U.S.C. 1212. The maximum penalty is 5 years in prison and/or a fine of \$250,000.

Subpart C—Mining Law Minerals

§ 3830.10 Locatable minerals.

§ 3830.11 Which minerals are locatable under the General Mining Law?

Minerals are locatable if they are:

(a) Subject to the General Mining Law;

(b) Not leasable under the Mineral Leasing Acts; and

(c) Not salable under the Mineral Materials Act of 1947 and Surface Resources Act of 1955, 30 U.S.C. 601–615 (see parts 3600 through 3620 of this chapter).

§ 3830.12 What are the characteristics of a locatable mineral?

(a) Minerals are locatable if they meet the requirements in § 3830.11 and are:

(1) Recognized as a mineral by the scientific community; and

(2) Found on Federal lands open to mineral entry.

(b) Under the Surface Resources Act, certain varieties of mineral materials are locatable if they are uncommon because they possess a distinct and special value. As provided in *McClarty v. Secretary of the Interior*, 408 F.2d 907

(9th Cir. 1969), we determine whether mineral materials have a distinct and special value by:

(1) Comparing the mineral deposit in question with other deposits of such minerals generally;

(2) Determining whether the mineral deposit in question has a unique physical property;

(3) Determining whether the unique property gives the deposit a distinct and special value;

(4) Determining whether, if the special value is for uses to which ordinary varieties of the mineral are put, the deposit has some distinct and special value for such use; and

(5) Determining whether the distinct and special value is reflected by the higher price that the material commands in the market place.

(c) Block pumice having one dimension of 2 or more inches is an uncommon variety of mineral material under the Surface Resources Act, and is subject to location under the mining laws.

(d) Limestone of chemical or metallurgical grade, or that is suitable for making cement, is subject to location under the mining laws.

(e) Gypsum suitable for the manufacture of wall board or plaster, or

uses requiring a high state of purity, is subject to location under the mining laws.

Subpart D—BLM Service Charge and Fee Requirements

§ 3830.20 Payment of service charges, location fees, initial maintenance fees, annual maintenance fees and oil shale fees.

§ 3830.21 What are the different types of service charges and fees?

The following table lists service charges, maintenance fees, location fees, and oil shale fees (all cross-references refer to this chapter):

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833)	(1) A total of \$135, which includes: (i) A \$10 service charge. (ii) A one-time \$25 location fee. (iii) An initial \$100 maintenance fee.	No.
(b) Amending a mining claim or site location (§ 3833.20)	A \$5 service charge	No.
(c) Transferring a mining claim or site (§ 3833.30)	A \$5 service charge	No.
(d) Maintaining a mining claim or site for one assessment year (part 3834).	A \$100 annual maintenance fee	Yes, see part 3835.
(e) Recording an annual FLPMA filing (§ 3835.30)	A \$5 service charge	No.
(f) Submitting a petition for deferment of assessment work (§ 3836.30)	A \$25 service charge	No.
(g) Maintaining an oil shale placer mining claim (§ 3834.11(b))	An annual \$550 fee	No.
(h) Recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands (part 3838).	A \$25 service charge	No.

§ 3830.22 Will BLM refund service charges or fees?

(a) BLM will not refund service charges, except for overpayments.

(b) BLM will refund maintenance and location fees if:

(1) At the time you or your predecessor in interest located the mining claim or site, the location was on land not open to mineral entry or otherwise not available for mining claim or site location; or

(2) At the time you paid the fees, the mining claim or site was void.

(c) BLM will apply maintenance and location fee overpayments to future years if you so request.

§ 3830.23 What types of payment will BLM accept?

(a) BLM will accept the following types of payments:

(1) U.S. currency;

(2) Postal money order payable in U.S. dollars to the Department of the Interior—Bureau of Land Management;

(3) Check or other negotiable instrument payable in U.S. dollars to the Department of the Interior—Bureau of Land Management;

(4) Valid credit card that is acceptable to the BLM; or

(5) An authorized debit from a declining deposit account with BLM.

(i) You may maintain a declining deposit account with the BLM State

Office where your mining claims or sites are recorded.

(ii) BLM will deduct service charges and fees or add overpayments to the account only when you authorize us to do so.

(b) If the issuing institution of your check, negotiable instrument, or credit card refuses to pay and it is not because the institution made a mistake, BLM will treat the service charges and fees as unpaid.

§ 3830.24 How do I make payments?

(a) You or your representative may bring payments to the BLM State Office by close of business on or before the due date.

(b) If you use a credit card—

(1) On or before the due date, you must send or fax a written authorization, bearing your signature; or

(2) You may authorize BLM to use your credit card by telephone if you can satisfactorily establish your identity.

(c) You may send payments using a *bona fide* mail delivery service.

(1) The payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date; and

(2) The BLM State Office must receive the payment no later than 15 calendar days after the due date.

§ 3830.25 When do I pay for recording a new notice or certificate of location for a mining claim or site?

You must pay the service charge, location fee, and initial maintenance fee, in full, as provided in § 3830.21 of this chapter, at the time you record new notices or certificates of location with BLM.

Subpart E—Failure To Comply With These Regulations

§ 3830.90 Failure to comply with these regulations.

§ 3830.91 What happens if I fail to comply with these regulations?

(a) You will forfeit your mining claims or sites if you fail to—

(1) Record a mining claim or site within 90 days after you locate it;

(2) Pay the location fee or initial maintenance fee within 90 days after you locate it;

(3) Pay the annual maintenance fee on or before the due date;

(4) Submit a small miner waiver request on or before the due date (see § 3835.1) and also fail to pay the annual maintenance fee on or before the due date;

(5) List any claims or sites that you own on your small miner waiver request and fail to pay an annual maintenance

fee for the missing claims or sites on or before the due date;

(6) Cure any defects in your timely small miner waiver request or pay the maintenance fee within the allowed time after BLM notifies you of the defects;

(7) File an annual FLPMA filing on or before the due date, as applicable; or

(8) Submit missing documentation or a complete payment after BLM notifies you that a filing or payment you made was defective, within the time allowed in the BLM notice.

(b) You will forfeit your mining claim or site if you locate your mining claim or site on lands closed to mineral entry at the time you locate it.

(c) Even if you forfeit your mining claims or sites, you remain responsible for—

(1) All reclamation and performance requirements imposed by subparts 3802, 3809, or 3814 of this chapter; and

(2) All other legal responsibilities imposed by other agencies or parties who have management authority over surface or subsurface operations.

(d) Under the circumstances described in §§ 3830.93 through 3830.97, you may cure a failure to comply with these regulations.

§ 3830.92 What special provisions apply to oil placer mining claims?

(a) Under 30 U.S.C. 188(f), you, as an oil placer mining claimant, may seek to convert an oil placer mining claim to a noncompetitive oil and gas lease under section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)), if:

(1) BLM declared your oil placer mining claim abandoned and void under section 314 of FLPMA;

(2) Your failure to comply with section 314 of FLPMA was inadvertent, justifiable, or not due to lack of reasonable diligence;

(3) You or your predecessors in interest validly located the unpatented oil placer mining claim before February 25, 1920;

(4) The claim has been or is currently producing or is capable of producing oil or gas; and

(5) You have submitted a petition asking BLM to issue a noncompetitive oil and gas lease. Your petition must include the required rental and royalty payments, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim.

(b) If BLM chooses to issue a noncompetitive oil and gas lease, the lease will be effective on the date that BLM declared your unpatented oil placer mining claim abandoned and void.

§ 3830.93 When are defects curable?

(a) If there is a defect in your compliance with a statutory requirement, the defect is incurable if the statute does not give the Secretary authority to permit exceptions (see §§ 3930.91 and 3833.91 of this chapter). If your payment, recording, or filing has incurable defects, the affected mining claims or sites are statutorily forfeited.

(b) If there is a defect in your compliance with a regulatory, but not statutory, requirement, the defect is curable. You may correct curable defects when BLM gives you notice. If you fail to cure the defect within the time BLM allows, you will forfeit your mining claims or sites.

§ 3830.94 How may I cure a defect in my compliance with these regulations?

(a)(1) When BLM determines that you have filed any document that is defective or underpaid a fee or service charge, BLM will send a notice to you by certified mail-return receipt requested at the address you gave on:

(i) Your notice or certificate of location;

(ii) An address correction you have filed with BLM; or

(iii) A valid transfer document filed with BLM.

(2) The notice provided for in paragraph (a)(1) of this section constitutes legal service even if you do not actually receive the notice or decision. See § 1810.2 of this chapter.

(b) If you have filed any defective document other than a defective fee waiver request, you must cure the defects within 30 days of receiving BLM's notification of the defects.

(c) If you have submitted a defective fee waiver request, you must cure the defects or pay the annual maintenance fees within 60 days of receiving BLM's notification of the defects.

(d) If BLM does not receive the requested information in the time allowed, or if the matter is statutorily not curable, you will receive a final decision from BLM that you forfeited the affected mining claims or sites.

§ 3830.95 What if I pay only part of the service charges, location fees, or first year maintenance fees for newly-recorded claims or sites?

(a) If you pay only part of the service charges, maintenance fees, or location fees when recording new claims or sites, BLM will—

(1) Assign serial numbers to each mining claim or site;

(2) Treat the partial payment as payment of location and maintenance fees and apply the partial payment to the mining claims or sites in serial

number order until the money runs out; and

(3) Send a notice to you that you must pay any outstanding service charges as described in § 3830.94. For example, BLM will apply the money to cover the location and maintenance fees for as many mining claims or sites as possible. BLM will return any remaining certificates or notices for which we cannot apply full payment of location and maintenance fees. BLM will apply any remaining funds as service charges in serial number order until the money runs out. BLM will then notify you if you must pay any outstanding service charges for mining claims or sites for which you paid location and maintenance fees, as provided in § 3830.94.

(b) If you want to resubmit the new location notices or certificates that BLM returned to you, you must do so with the complete service charges, location fees and maintenance fees within 90 days of the original date of location of the claim or site as defined under state law, or you will forfeit the affected mining claims or sites.

(c) BLM will not record your mining claims or sites until you pay the full amount of all charges and fees for those claims or sites.

§ 3830.96 What if I pay only part of the service charges and fees for oil shale claims or previously-recorded mining claims or sites?

(a) If you pay only part of the service charges due for any document filings or only part of the annual maintenance fees, or oil shale fees, for previously-recorded mining claims or sites, or any combination of these fees and charges, absent other instructions from you, BLM will apply the partial payment in serial number order until the money runs out.

(b) For any claims or sites for which there are no funds in your partial payment to pay the maintenance fees, oil shale fees, or location fees, you will forfeit the mining claims or sites not covered by your partial payment unless you submit the additional funds necessary to complete the full payment by the due date.

(c) For any claims or sites for which there are no funds in your partial payment to pay the service charges, BLM will send a notice to you that you must pay the outstanding service charges as described in § 3830.94.

§ 3830.97 What if I pay only part of the service charges for a notice of intent to locate mining claims on SRHA lands?

For notices of intent to locate mining claims (NOITL) under the Stockraising Homestead Act (see part 3838 of this chapter for information regarding the

Stockraising Homestead Act and NOITLs), BLM will not accept a NOITL unless we receive your payment of the required service charges. BLM will return the NOITL to you without taking any further action. See § 3830.21 of this part for the amount of the service charge for a NOITL.

Subpart F—Appeals

§ 3830.100 How do I appeal a final decision by BLM?

If you are adversely affected by a BLM decision under parts 3830—3839, you may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 3831—MINERAL LANDS AVAILABLE FOR LOCATING MINING CLAIMS OR SITES [RESERVED]

- 11. Add and reserve part 3831.
- 12. Add part 3832 to read as follows:

PART 3832—LOCATING MINING CLAIMS OR SITES

Subpart A—Locating Mining Claims or Sites

Sec.

3832.1 What does it mean to locate mining claims or sites?

3832.10 Procedures for locating mining claims or sites.

3832.11 How do I locate mining claims or sites?

3832.12 When I record a mining claim or site, how do I describe the lands I have claimed?

Subpart B—Types of Mining Claims

3832.20 Lode and placer mining claims.

3832.21 How do I locate a lode or placer mining claim?

3832.22 How much land may I include in my mining claim?

Subpart C—Mill Sites

3832.30 Mill sites.

3832.31 What is a mill site?

3832.32 How much land may I include in my mill site?

3832.33 How do I locate a mill site?

3832.34 How may I use my mill site?

Subpart D—Tunnel Sites

3832.40 Tunnel sites.

3832.41 What is a tunnel site?

3832.42 How do I locate a tunnel site?

3832.43 How may I use a tunnel site?

3832.44 What rights do I have to minerals within my tunnel site?

3832.45 How do I obtain any minerals that I discover within my tunnel site?

Subpart E—Defective Locations

3832.90 Defects in the location of mining claims and sites.

3832.91 How do I amend a mining claim or site location if it exceeds the size limitations?

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 2, 1201, 1457, 1740, 1744.

PART 3832—LOCATING MINING CLAIMS OR SITES

Subpart A—Locating Mining Claims or Sites

§ 3832.1 What does it mean to locate mining claims or sites?

(a) Locating a mining claim or site means:

(1) Establishing the exterior lines of a mining claim or site on lands open to mineral entry to identify the exact land claimed; and

(2) Recording a notice or certificate of location as required by state and Federal law and by this part.

(b) You will find—

(1) Location requirements in this part;

(2) Recording requirements in part

3833 of this chapter;

(3) Requirements for transferring an interest in a mining claim or site in § 3833.30 of this chapter; and

(4) Annual fee requirements for mining claims and sites in parts 3834, 3835, and 3836 of this chapter.

§ 3832.10 Procedures for locating mining claims or sites.

§ 3832.11 How do I locate mining claims or sites?

(a) You must follow both state and Federal law.

(b) Your lode or placer claim is not valid until you make a discovery within the boundaries of the claim.

(c) To locate a claim or site, you must—

(1) Make certain that the land on which you are locating the claim or site is Federal land that is open to mineral entry

(2) Stake and monument the corners of a mining claim or site which meets applicable state monumenting requirements and the size limitations described in § 3832.22 for lode and placer claims, § 3832.32 for mill sites, and § 3832.42 for tunnel sites;

(3) Post the notice of location in a conspicuous place on the claim or site. The notice must include:

(i) The name or names of the locators;

(ii) The date of the location; and

(iii) A description of the claim or site;

(iv) The name or number of the claim or site, or both, if the claim or site has both;

(4) Record the notice or certificate of location in the local recording office and the BLM State Office with jurisdiction according to the procedures in part 3833;

(5) Follow all other relevant state law requirements; and

(6) Comply with the specific requirements for lode claims, placer claims, mill sites, or tunnel sites in this part.

§ 3832.12 When I record a mining claim or site, how do I describe the lands I have claimed?

(a) *General requirements.* (1) All claims and sites. You must describe the land by state, meridian, township, range, section and by aliquot part to the quarter section. To obtain the land description, you must use an official survey plat or other U.S. Government map that is based on the surveyed or protracted U.S. Public Land Survey System. If you cannot describe the land by aliquot part (*e.g.*, the land is unsurveyed), you must provide a metes and bounds description that fixes the position of the claim corners with respect to a specified claim corner, discovery monument, or official survey monument. In all cases, your description of the land must be as compact and regular in form as reasonably possible and should conform to the U.S. Public Land Survey System and its rectangular subdivisions as much as possible; and

(2)(i) You must file either—

(A) A topographical map published by the U.S. Geological Survey with a depiction of the claim or site; or

(B) A narrative or sketch describing the claim or site and tying the description to a natural object, permanent monument or topographic, hydrographic, or man-made feature.

(ii) You must show on a map or sketch the boundaries and position of the individual claim or site by aliquot part within the quarter section accurately enough for BLM to identify the mining claims or sites on the ground.

(iii) You may show more than one claim or site on a single map or describe more than one claim or site in a single sketch—

(A) If they are located in the same general area; and

(B) If the individual mining claims or sites are clearly identified.

(iv) You are not required to employ a professional surveyor or engineer to establish the location's position on the ground.

(b) *Lode claims.* You must describe lode claims by metes and bounds beginning at the discovery point on the claim and include a tie to natural objects or permanent monuments including:

(1) Township and section survey monuments;

(2) Official U.S. mineral survey monuments;

(3) Monuments of the National Geodetic Reference System;

(4) The confluence of streams or point of intersection of well-known gulches,

ravines, or roads, prominent buttes, and hills; or

(5) Adjoining claims or sites.

(c) *Placer claims.* (1) You must describe placer claims by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions except when placer claims are—

- (i) On unsurveyed Federal lands;
- (ii) Gulch or bench placer claims; or
- (iii) Bounded by other mining claims or nonmineral lands.

(2) For placer mining claims that are on unsurveyed Federal lands or are gulch or bench placer claims:

(i) You must describe the lands by protracted survey if the BLM has a protracted survey of record; or

(ii) You may describe the lands by metes and bounds, if a protracted survey is not available or if the land is not amenable to protraction.

(3) If you are describing an association placer claim by metes and bounds, you must meet the following requirements, according to the number of persons in your association, as described in *Snow Flake Fraction Placer*, 37 Pub. Lands Dec. 250 (1908), in order to keep your claim in compact form and not split Federal lands into narrow, long or irregular shapes:

(i) A location by 1 or 2 persons must fit within the exterior boundaries of a square 40-acre parcel;

(ii) A location by 3 or 4 persons must fit within the exterior boundaries of 2 square 40-acre contiguous parcels;

(iii) A location by 5 or 6 persons must fit within the exterior boundaries of 3 square 40-acre contiguous parcels; and

(iv) A location by 7 or 8 persons must fit within the exterior boundaries of 4 square 40-acre parcels.

Subpart B—Types of Mining Claims

§ 3832.20 Lode and placer mining claims.

§ 3832.21 How do I locate a lode or placer mining claim?

(a) *Lode claims.* (1) Your lode claim is not valid until you have made a discovery.

(2) *Locating a lode claim.* You may locate a lode claim for a mineral that:

- (i) Occurs as veins, lodes, ledges, or other rock in place;
- (ii) Contains base and precious metals, gems and semi-precious stones, and certain industrial minerals, including but not limited to gold, silver, cinnabar, lead, tin, copper, zinc, fluorite, barite, or other valuable deposits; and

(iii) Does not occur as bedded rock (stratiform deposits such as gypsum or limestone) or is not a deposit of placer, alluvial (deposited by water), eluvial

(deposited by wind), colluvial (deposited by gravity), or aqueous origin.

(3) *Establishing extralateral rights.* If the minerals are contained within a vein, lode, or ledge and the vein, lode, or ledge extends through the endlines of your lode claim, you have extra-lateral rights to pursue the down-dip extension of the vein, lode, or ledge to the point where the vein, lode, or ledge intersects a vertical plain projected parallel to the end lines and outside the sideline boundaries of your lode claim if—

(i) The top or apex of the vein, lode, or ledge lies on or under the surface within the interior boundaries of the lode claim; and

(ii) The long axis, and therefore the side lines, of the lode claim are substantially parallel to the course of the vein, lode, or ledge.

(4) *Preserving extralateral rights.* In order to preserve your extralateral rights, you should determine, if possible, the general course of the vein in either direction from the point of discovery in order to mark the correct boundaries of the claim. You should expose the vein, lode, or ledge by—

(i) Tracing the vein or lode on the surface; or

(ii) Drilling a hole, sinking a shaft, or running a tunnel or drift to a sufficient depth.

(b) *Placer claims.* (1) Your placer claim is not valid until you have made a discovery.

(2) Each 10-acre aliquot part of your placer claim must be mineral-in-character.

(3) You may locate a placer claim for minerals that are—

(i) River sands or gravels bearing gold or valuable detrital minerals;

(ii) Hosted in soils, alluvium (deposited by water), eluvium (deposited by wind), colluvium (deposited by gravity), talus, or other rock not in its original place;

(iii) Bedded gypsum, limestone, cinders, pumice, and similar mineral deposits; or

(iv) Mineral-bearing brine (water saturated or strongly impregnated with salts and containing ancillary locatable minerals) not subject to the mineral leasing acts where a mineral subject to the General Mining Law can be extracted as the primary valuable mineral.

(4) Building stone deposits must by law be located as placer mining claims (30 U.S.C. 161). If you have located a building stone placer claim, the lands on which you located the claim must be chiefly valuable for mining building stone.

§ 3832.22 How much land may I include in my mining claim?

(a) *Lode claims.* Lode claims must not exceed 1,500 by 600 feet. If there is a vein, lode, or ledge, each lode claim is limited to a maximum of 1,500 feet along the course of the vein, lode, or ledge and a maximum of 300 feet in width on each side of the middle of the vein, lode, or ledge.

(b) *Placer claims.* (1) An individual placer claim may not exceed 20 acres in size.

(2) An association placer claim may not exceed 160 acres. Within the association, each person or business entity may locate up to 20 acres. To obtain the full 160 acres, the association must consist of at least eight co-locators. You may locate smaller association claims. Thus, three co-locators may jointly locate an association placer claim no larger than 60 acres. You may not use the names of other persons as dummy locators (fictitious locators) to locate an association placer claim for your own benefit.

Subpart C—Mill Sites

§ 3832.30 Mill sites.

§ 3832.31 What is a mill site?

A mill site is a location of nonmineral land not contiguous to a vein or lode that you can use for activities reasonably incident to mineral development on, or production from, the unpatented or patented lode or placer claim with which it is associated.

(a) A dependent mill site is used for activities that support a particular patented or unpatented lode or placer mining claim or group of mining claims.

(b) An independent or custom mill site—

(1) Is not dependent on a particular mining claim but provides milling or reduction processing for nearby lode mines or a lode mining district;

(2) Is used to mill, process, and reduce either—

(i) Ores for other miners on a contractual basis; or

(ii) Ores that are purchased by the independent or custom mill site owner.

(3) You may not have a custom or independent mill site for processing materials from placer mining claims.

§ 3832.32 How much land may I include in my mill site?

The maximum size of an individual mill site is 5 acres. You may locate more than one mill site per mining claim if you use each site for at least one of the purposes described in § 3832.34 of this part. You may locate only that amount of mill site acreage that is reasonably necessary to be used or occupied for

efficient and reasonably compact mining or milling operations.

§ 3832.33 How do I locate a mill site?

(a) You may locate a mill site in the same manner as a lode or placer mining claim, except that—

(1) It must be on land that is not mineral-in-character; and

(2) You must use or occupy each two and a half acre portion of a mill site in order for that portion of the mill site to be valid.

(b) If the United States does not own the surface estate of a particular parcel of land, you may not locate a mill site on that land under the General Mining Law or the Stockraising Homestead Act (see part 3838 of this chapter).

§ 3832.34 How may I use my mill site?

(a) Upon obtaining authorization under the surface management regulations of the surface managing agency, you may use and occupy dependent mill sites for:

(1) Placement of grinding, crushing, or milling facilities (such as rod and ball mills, cone crushers, and floatation cells) and reduction facilities (such as smelting, electro-winning, roasters, autoclaves, and leachate recovery);

(2) Mine administrative and support buildings, warehouses and maintenance buildings, electrical plants and substations;

(3) Tailings ponds and leach pads;

(4) Rock and soil dumps;

(5) Water and process treatment plants; and

(6) Any other use that is reasonably incident to mine development and operation, except for uses exclusively supporting reclamation or mine closure.

(b) Upon obtaining authorization under the surface management regulations of the surface managing agency, you may use and occupy independent mill sites for processing metallic minerals from lode claims using:

(1) Quartz or stamp mills; or

(2) Reduction works, including placement of grinding, crushing, or milling facilities (such as rod and ball mills, cone crushers, and floatation cells), reduction facilities (such as smelting, electro-winning, roasters, autoclaves, and leachate recovery), tailings ponds, and leach pads.

Subpart D—Tunnel Sites

§ 3832.40 Tunnel sites.

§ 3832.41 What is a tunnel site?

A tunnel site is a subsurface right-of-way under Federal land open to mineral entry. It is used for access to lode mining claims or to explore for blind or

undiscovered veins, lodes, or ledges not currently claimed or known to exist on the surface.

§ 3832.42 How do I locate a tunnel site?

You may locate a tunnel site by:

(a) Erecting a substantial post, board, or monument at the face of the tunnel, which is the point where the tunnel enters cover;

(b) Placing a location notice or certificate on the post, board, or monument that includes:

(1) The names of the claimants;

(2) The actual or proposed course or direction of the tunnel;

(3) The height and width of the tunnel; and

(4) The course and distance from the face or starting point to some permanent well-known natural objects or permanent monuments, in the same manner as required to describe a lode claim (see § 3832.28(c) of this part); and

(c) Placing stakes or monuments on the surface along the boundary lines of the tunnel at proper intervals as required under state law from the face of the tunnel for 3,000 feet or to the end of the tunnel, whichever is shorter.

§ 3832.43 How may I use a tunnel site?

You may use the tunnel site for subsurface access to a lode claim or to explore for and acquire previously unknown lodes, veins, or ledges within the confines of the tunnel site.

§ 3832.44 What rights do I have to minerals within my tunnel site?

(a) If you located your tunnel site in good faith, you may acquire the right to any blind veins, ledges, or lodes cut, discovered, or intersected by your tunnel, by locating a lode claim, if they—

(1) Are located within a radius of 1,500 feet from the tunnel axis; and

(2) Were not previously known to exist on the surface and within the limits of your tunnel.

(b) Your site is protected from other parties making locations of lodes within the sidelines of the tunnel and within the 3,000-foot length of the tunnel, unless such lodes appear upon the surface or were previously known to exist.

(c) You must diligently work on the tunnel site. If you cease working on it for more than 6 consecutive months, you will lose your right to possess all unknown, undiscovered veins, lodes, or ledges that your tunnel may intersect.

§ 3832.45 How do I obtain any minerals that I discover within my tunnel site?

(a) Even if you have located the tunnel site, you must separately locate a lode claim to acquire the possessory

right to a blind vein, lode, or ledge you have discovered within the boundaries of the tunnel site sidelines.

(b) The date of location of your lode claim is retroactive to the date of location of your tunnel site.

Subpart E—Defective Locations

§ 3832.90 Defects in the location of mining claims and sites.

§ 3832.91 How do I amend a mining claim or site location if it exceeds the size limitations?

(a) You may correct defects in your location of a mining claim, mill site, or tunnel site by filing an amended notice of location (see § 3833.20 of this chapter on conditions allowing amendments and how to record them.)

(b) For placer claims or mill sites that you located using an irregular survey or lotting of irregular sections, you may use the “Rule of Approximation” to determine allowable acreage. The Rule of Approximation applies only to surveyed public lands. It was developed to determine maximum allowable acreage for land entries (placer claims in this part) where the excess acreage is less than the difference would be if the smallest legal subdivision is excluded from the location or entry. In no case may you use the rule to obtain more acreage than allowed under the applicable law. (See *Henry C. Tingley*, 8 Pub. Lands Dec. 205 (1889)).

■ 13. Add part 3833 to read as follows:

PART 3833—RECORDING MINING CLAIMS AND SITES

Sec.

Subpart A—Recording Process

3833.1 Why must I record mining claims and sites?

3833.10 Procedures for recording mining claims and sites.

3833.11 How do I record mining claims and sites?

Subpart B—Amending Mining Claims and Sites

3833.20 Amending mining claims and sites.

3833.21 When may I amend a notice or certificate of location?

3833.22 How do I amend my location?

Subpart C—Filing Transfers of Interest

3833.30 Filing transfers of interest in mining claims or sites.

3833.31 What is a transfer of interest?

3833.32 How do I transfer a mining claim or site?

3833.33 How may I transfer, sell, or otherwise convey an association placer mining claim?

Subpart D—Defective Filings

3833.90 Defects in recordings or filings for mining claims and sites.

3833.91 What defects cannot be cured under this part?

3833.92 What happens if I do not file a transfer of interest?

Authority: 43 U.S.C. 2, 1201, 1457, 1740, 1744; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 621–625; 62 Stat. 162; 115 Stat 414.

Subpart A—Recording Process

§ 3833.1 Why must I record mining claims and sites?

FLPMA requires you to record all mining claims and sites with BLM and the local recording office in order to maintain a mining claim or site under the General Mining Law.

(a) If you fail to record a mining claim or site with the BLM and the local recording office by the 90th day after the date of location, it is abandoned and void by operation of law.

(b) Recording a mining claim or site, filing any other documents with BLM, or paying fees or service charges, as this part requires, does not make a claim or site valid if it not otherwise valid under applicable law.

§ 3833.10 Procedures for recording mining claims and sites.

§ 3833.11 How do I record mining claims and sites?

(a) You must record in the proper BLM State Office a copy of the notice or certificate of location that you recorded or will record in the local recording office by the 90th day after the date of location. If there is no recording requirement under state law (as in Arkansas), you still must record a document with BLM and the local recording office that contains the information required by this part.

(b) Your notice or certificate of location must include:

- (1) The name or number, or both, of the claim or site;
- (2) The names and current mailing addresses of the locators of the claim;
- (3) The type of claim or site;
- (4) The date of location; and
- (5) A complete description of the lands you have claimed as required in part 3832 of this chapter.

(c) When you record a notice or certificate of location, you must pay a non-refundable service charge, location fee, and initial maintenance fee as provided in § 3830.21 of this chapter.

(d) When you record a mining claim or site under this part, you still must comply with any other separate recording requirements existing under other Federal law. However, notices or certificates of location that you mark as being recorded under the Act of April 8, 1948, or the Act of August 11, 1955, satisfy the additional filing

requirements of those Acts under subpart 3821 of this chapter for Oregon and California Revested Wagon Road Grant Lands (O & C Lands) and part 3730 of this chapter for Powersite Withdrawals.

Subpart B—Amending Mining Claims and Sites

§ 3833.20 Amending mining claims and sites.

§ 3833.21 When may I amend a notice or certificate of location?

(a) You may amend a notice or certificate of location if—

(1) BLM recognizes the original location as a properly recorded and maintained mining claim or site; and

(2) There are omissions or other defects in the original notice or certificate of location that you need to correct or clarify; or

(3) You need to correct the legal land description of the claim or site, the mining claim name, or accurately describe the position of discovery or boundary monuments or similar items; or

(4) You need to reposition the sidelines of your lode claim so that they are parallel to the discovered lode, ledge, or vein, if there are no intervening rights to the land; or

(5) You are reducing the size of the mining claim or site.

(b) You may not amend a notice or certificate of location to—

(1) Transfer any interest or add owners;

(2) Relocate or re-establish mining claims or sites you previously forfeited or BLM declared void for any reason;

(3) Change the type of claim or site; or

(4) Enlarge the size of the mining claim or site.

(c) You may not amend legal descriptions of mining claims or sites after the land is closed to mineral entry, unless —

(1) You are reducing the size of the mining claim or site;

(2) You need to correct or clarify defects or omissions in the original notice or certificate of location;

(3) You need to correct the legal land description of the claim or site, the mining claim name; or

(4) You need to submit an accurate description of the position of discovery or boundary monuments or similar items.

§ 3833.22 How do I amend my location?

(a) You must record an amended location certificate or notice with BLM within 90 days after you record the amended notice or certificate in the

local recording office. BLM will not recognize any amendment to your mining claim until you file it properly.

(b) You must pay a non-refundable service charge for each claim or site you amend. See the table of fees and service charges in § 3830.21 of this chapter.

(c) An amended location notice or certificate relates back to the original location date. The amendment takes effect when you record it with the local recording office under state law or such other time as provided by state law.

Subpart C—Filing Transfers of Interest

§ 3833.30 Filing transfers of interest in mining claims or sites.

§ 3833.31 What is a transfer of interest?

A transfer of interest is a sale, assignment, transfer through inheritance, or conveyance of total or partial ownership or legal interest in a mining claim or site.

§ 3833.32 How do I transfer a mining claim or site?

(a) State law governs transferring mining claims or sites. A transfer is effective in the manner and on the date provided by state law, not the date you file it with BLM.

(b) You must file in the BLM State Office a notice of the transfer that includes:

(1) The name and, if available, the serial number BLM assigned to the claim or site when the notice or certificate of location was originally recorded (the person who transferred you ownership or legal interest should have this number);

(2) Your name and current mailing address; and

(3) A copy of the legal instrument or document that you used to transfer the interest in the claim or site under state law.

(c) You as transferee must pay a non-refundable service charge per mining claim or site you were transferred. See the table of fees and service charges in § 3830.21 of this chapter.

(d) BLM will notify the claimant of record with BLM of any action it takes regarding a mining claim or site. If BLM is required by law to give a claimant notice of any new legal requirements, BLM has properly given notice by sending the notice to the claimant of record with BLM.

§ 3833.33 How may I transfer, sell, or otherwise convey an association placer mining claim?

You may transfer, sell, or otherwise convey an association placer mining claim at any time to an equal or greater number of mining claimants. If you

want to transfer an association placer claim to an individual or an association that is smaller in number than the association that located the claim, you—

- (a) Must have discovered a valuable mineral deposit before the transfer; or
- (b) Upon notice from BLM, you must reduce the acreage of the claim, if necessary, so that you meet the 20-acre per locator limit.

Subpart D—Defective Filings

§ 3833.90 Defects in recordings or filings for mining claims and sites.

§ 3833.91 What defects cannot be cured under this part?

Defects or other problems that cannot be cured and therefore result in forfeiture of your mining claims or sites are:

- (a) Failing to record a mining claim or site within 90 days after you locate it;
- (b) Failing to pay the location fee or initial maintenance fee within 90 days after you locate it; and
- (c) Locating a mining claim or site on lands withdrawn from mineral entry at the time you locate it.

§ 3833.92 What happens if I do not file a transfer of interest?

Even if you record your transfer or amendment with the local recording office, BLM will not recognize the interest you acquire, or send you notice of any BLM action, decision, or contest, regarding the mining claim or site until you file the transfer with BLM (see § 1810.2 of this chapter). The Department will treat the last owner of record as the responsible party for maintaining the mining claim or site until you file a transfer notice. You cannot claim that BLM failed to give you notice of any BLM action, decision, or contest regarding a mining claim or site if you failed to file a transfer notice showing that you have an interest in the mining claim or site, before BLM took the action, made the decision, or issued a contest complaint.

■ 14. Add part 3834 to read as follows:

PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES

Subpart A—Fee Payment

Sec.

- 3834.10 Paying maintenance, location, and oil shale fees.
- 3834.11 Which fees must I pay to maintain a mining claim or site and when do I pay them?
- 3834.12 How will BLM know for which mining claims or sites I am paying the fees?
- 3834.13 Will BLM prorate annual maintenance or oil shale fees?
- 3834.14 May I obtain a waiver from these fees?

Subpart B—Fee Adjustment

- 3834.20 Adjusting location and maintenance fees.
- 3834.21 How will BLM adjust the location and maintenance fees?
- 3834.22 How will I know that BLM has adjusted location and maintenance fees?
- 3834.23 When do I start paying the adjusted fees?

Authority: 43 U.S.C. 1201, 1740; 30 U.S.C. 28f; 115 Stat 414; 30 U.S.C. 242.

Subpart A—Fee Payment

§ 3834.10 Paying maintenance, location, and oil shale fees.

§ 3834.11 Which fees must I pay to maintain a mining claim or site and when do I pay them?

(a) *All mining claims or sites (except oil shale placer claims).* Paying the maintenance fee(s) in lieu of performing assessment work satisfies the requirements of the mining law and FLPMA. See § 3830.21 for fee amounts.

(1) *Location fee and initial maintenance fee.* When you first record a mining claim or site with BLM, you must pay a location fee and an initial maintenance fee for the assessment year in which you located the mining claim or site.

(2) *Annual maintenance fee.* You must pay an annual maintenance fee on or before September 1st of each year in order to maintain a mining claim or site for the upcoming assessment year.

(b) *Oil shale placer claims.* (1) Under the Energy Policy Act of 1992, 30 U.S.C. 242, if you own an oil shale placer claim, you must pay an annual \$550 fee and file a notice of intent to hold, with the applicable service charge, each calendar year on or before December 30—

- (i) If you elected to maintain an oil shale placer claim;
- (ii) If you elected to apply for limited patent; or
- (iii) If you filed a patent application for an oil shale placer claim but did not receive a first half final certificate on or before October 24, 1992.

(2) See part 3835 of this chapter for notice of intent to hold requirements, and the table of fees and service charges in § 3830.21 of this chapter.

(3) You need not pay the annual \$550 fee, or file a notice of intent to hold, if you filed a patent application and received a first half of the mineral entry final certificate on or before October 24, 1992.

§ 3834.12 How will BLM know for which mining claims or sites I am paying the fees?

When you pay any fees to BLM, you must include a list of the mining claims or sites that you are paying for by claim

name, and by the BLM serial number if BLM has notified you what the serial numbers are.

§ 3834.13 Will BLM prorate annual maintenance or oil shale fees?

BLM will not prorate annual maintenance or oil shale fees if you hold a mining claim or site for only part of a year. You must pay the full annual fee even if you hold the claim or site for just one day in an assessment year.

§ 3834.14 May I obtain a waiver from these fees?

(a) No waivers are available for the initial maintenance fee or the annual \$550 oil shale fee.

(b) You may request a waiver from annual maintenance fees under certain circumstances. See part 3835 of this chapter.

Subpart B—Fee Adjustment

§ 3834.20 Adjusting location and maintenance fees.

§ 3834.21 How will BLM adjust the location and maintenance fees?

BLM will adjust the location and maintenance fees at least every 5 years, based upon the Consumer Price Index (CPI).

§ 3834.22 How will I know that BLM has adjusted location and maintenance fees?

BLM will publish a notice in the **Federal Register** about the adjustment on or before July 1st of a given year in order to make the adjusted fees due on September 1st of the same year.

§ 3834.23 When do I start paying the adjusted fees?

(a) You must pay the adjusted initial maintenance and location fees when you record a new mining claim or site located on or after the September 1st immediately following the date BLM published its notice about the adjustment.

(b) For previously recorded mining claims and sites, you must pay the adjusted maintenance fee on or before the September 1st immediately following the date BLM published its notice about the adjustment.

■ 15. Add part 3835 to read as follows:

PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES

Subpart A—Filing Requirements

Sec.

- 3835.1 How do I qualify for a waiver?
- 3835.10 How do I request a waiver?
- 3835.11 What special filing and reporting requirements pertain to the different types of waivers?
- 3835.12 What are my obligations once I receive a waiver?

- 3835.13 How long do the waivers last and how do I renew them?
- 3835.14 How do I submit a small miner waiver request for newly-recorded mining claims?
- 3835.15 If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?
- 3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?
- 3835.17 What additional requirements must I fulfill to obtain a small miner waiver for my mining claims or sites on National Park System lands?

Subpart B—Conveying Mining Claims or Sites Under Waiver

- 3835.20 Transferring, selling, inheriting, or otherwise conveying mining claims or sites already subject to a waiver.

Subpart C—Annual FLPMA Documents

- 3835.30 Annual FLPMA documents.
- 3835.31 When do I file an annual FLPMA document?
- 3835.32 What should I include when I submit an affidavit of assessment work?
- 3835.33 What should I include when I submit a notice of intent to hold?

Subpart D—Defective Waivers and FLPMA Filings

- 3835.90 Failure to comply with this part.
- 3835.91 What if I fail to file annual FLPMA documents?
- 3835.92 What if I fail to submit a timely waiver request?
- 3835.93 What happens if BLM finds a defect in my waiver request?

Authority: 115 Stat 414; 30 U.S.C. 22, 28, 28f-28k; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 50 U.S.C. App. 501, 565.

Subpart A—Filing Requirements

§ 3835.1 How do I qualify for a waiver?

(a) Under certain conditions, you may qualify for a waiver from the annual maintenance fee requirements. You cannot obtain a waiver from service charges, the location fee, the initial maintenance fee, or the \$550 oil shale fee.

(b) The following table lists the types of waivers available and how you qualify for them (detailed requirements for each category appear in § 3835.10):

Type of waiver	Qualifications
(a) Small Miner.	All related parties must hold no more than a total of 10 mining claims or sites nationwide, not including oil shale claims; and All co-claimants must qualify for the small miner waiver.
(b) Soldiers' and Sailor's Civil Relief Act.	You and all co-claimants must be military personnel on active duty status.

Type of waiver	Qualifications
(c) Reclamation.	Maintenance fees are waived for your mining claims or sites that are undergoing final reclamation under subparts 3802, 3809, or 3814, if you do not intend to continue mining, milling, or processing operations on those sites.
(d) Denial of Access.	You have received a declaration of taking or a notice of intent to take from the National Park Service (NPS) or other Federal agency; or the United States has otherwise denied you access to your mining claim or site.
(e) Mineral Patent Application.	You have submitted an application for a mineral patent under part 3860 and the Secretary has granted you a final certificate.

§ 3835.10 How do I request a waiver?

(a) You must submit BLM's waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver. You must submit your waiver on or before September 1 for BLM to exempt your claims or sites from the annual maintenance fee requirement that is due on the same date. You may have an agent submit a waiver form on your behalf if you file or have filed with BLM a power of attorney or other legal documentation which shows that the agent is acting on your behalf.

(b) All waiver requests must include:

(1) The names and addresses of all claimants who maintain an interest in the mining claims or sites listed on the waiver document;

(2) The original signatures of the claimants of the mining claims or sites who are requesting the waiver, or the original signature of the authorized agent of the owner or owners of those mining claims or sites;

(3) The names of the mining claims or sites for which you request a waiver;

(4) The serial numbers, if available, that BLM assigned to the mining claims or sites; and

(5) The date the maintenance fee was due from which you are seeking a waiver.

§ 3835.11 What special filing and reporting requirements pertain to the different types of waivers?

(a) *Small miner waivers.* Small miner waiver requests must include a declaration that:

(1) You and all related parties hold no more than a total of 10 mining claims and sites nationwide;

(2) You have completed or will complete all assessment work required by the General Mining Law and part 3836 of this chapter to maintain your claims by the end of the applicable assessment year.

(3) If you were not required to perform assessment work in the previous assessment year, you must include the reason why assessment work was not required in your certification, whether it is because:

(i) Your claim was located in that assessment year;

(ii) You paid a maintenance fee to maintain your claim during that assessment year;

(iii) Assessment work was deferred for that year; or

(iv) Any other reason recognized under Federal law.

(b) *Soldiers' and Sailors' Civil Relief Act waivers.* Your application for waiver must include a notice of active military service or entry into active military service. You must also notify BLM in writing when you leave active duty status.

(c) *Reclamation waivers.* Your application must include a certified and/or notarized statement that:

(1) States that you are reclaiming the mining claims or sites;

(2) States your intent to end mining operations on the claims or sites permanently; and

(3) References a reclamation plan that you submitted to BLM or that BLM approved; or references a reclamation plan approved by a surface managing agency other than BLM.

(d) *Denial-of-access waivers.* (1) Your application must include a statement that you have received a declaration of taking or a notice of intent to take from the National Park Service or other Federal agency or have otherwise been denied access to your mining claim or site in writing by the surface management agency or a court.

(2) You must submit copies of all official documents you have received that demonstrate the declaration of taking, notice of intent to take, or denial of access.

(3) Applying for National Park Service (NPS) approval of a complete plan of operations does not justify your denial-of-access waiver. While the NPS is reviewing your plan of operations, or if the NPS disapproves it but has not denied you access, or issued a declaration of taking or a notice of intent to take, you must pay the annual maintenance fee.

(e) *Contest actions.* If the Secretary contests your mining claim or site under part 4 of this title, you must maintain the mining claim or site until the

Department of the Interior issues a final decision.

(f) *Appeals.* If you forfeit your mining claim or site and you file an appeal under part 4 of this title and the Interior Board of Land Appeals stays BLM's avoidance decision, you must maintain your mining claim or site through the appeals process.

§ 3835.12 What are my obligations once I receive a waiver?

If BLM allows you the waiver, you must then perform annual assessment work on time and file annual FLPMA documents. You will find more information about annual FLPMA documents in § 3835.30 of this part, and

about assessment work in part 3836 of this chapter.

3835.13 How long do the waivers last and how do I renew them?

The following table states how long waivers last and explains how to renew them:

Type of waiver	Duration	Renewal requirements
(a) Small Miner	One assessment year	Apply for a small miner waiver by each September 1.
(b) Soldiers' and Sailors' Civil Relief Act.	Until six months after you are released from active duty status or from a military hospital, whichever is later.	Your waiver is automatically renewed if you continue to meet the qualifications. You must notify BLM when you leave active duty status.
(c) Reclamation	One assessment year	Apply for a reclamation waiver by each September 1.
(d) Denial of Access	One assessment year	Apply for waiver certification by each September 1.
(e) Mineral Patent Application with Final Certificate.	Until patent issues or the final certificate is canceled. BLM will not refund previously deposited annual maintenance fees to a mineral patent applicant.	None. If the final certificate is canceled, you must pay the required fees beginning on the September 1 immediately following the cancellation or file a different form of waiver if you qualify.

§ 3835.14 How do I submit a small miner waiver request for newly-recorded mining claims?

In order to obtain a small miner waiver for newly-recorded mining claims, you must—

(a)(1) Submit the waiver request on or before September 1; or

(2) If the mining claim or site was located before September 1 and recorded after September 1 in a timely manner, you must submit the waiver request at the time of recording the mining claim or site with BLM, and

(b) File on or before the December 30 immediately following the September 1st for which you applied for a waiver a notice of intent to hold the mining claim or site. The Mining Law does not require you to perform assessment work in the assessment year in which you locate a mining claim. The notice of intent to hold must conform to §§ 3835.31 through 3835.34.

§ 3835.15 If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?

You must submit a waiver request complying with § 3835.10 before the assessment year begins for which you wish to obtain a waiver. In addition, you must—

(a) Make a FLPMA filing, in the form of a notice of intent to hold under §§ 3835.31 and 3835.34 of this part on or before December 30th immediately following the submission of a waiver request;

(b) Perform your assessment work in the assessment year for which BLM waived the maintenance fee; and

(c) Make a FLPMA filing in the form of an affidavit of assessment work under

§§ 3835.31 and 3835.33 of this part on or before the December 30th immediately following the close of the assessment year in which you performed assessment work.

§ 3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?

(a) You must perform the required assessment work in the assessment year for which you obtained a waiver from payment of the annual maintenance fee, and file the annual FLPMA document required by the December 30th immediately following the payment of the maintenance fee; and

(b) You must pay the maintenance fee by the proper deadline for the following assessment year.

§ 3835.17 What additional requirements must I fulfill to obtain a small miner waiver for my mining claims or sites on National Park System lands?

(a) Before performing assessment work on National Park System lands, you must submit and obtain the National Park Service (NPS)'s approval of a complete plan of operations in compliance with regulations at 36 CFR parts 6 and 9. Your proposed activities must further the ultimate commercial mineral development of each claim, such as delineation of the mineral deposit or commencement of production. Once you submit a proposed plan, NPS will evaluate the plan, conduct a validity exam if necessary, and either approve or disapprove the plan.

(b)(1) If NPS approves your plan of operations, by the September 1 on

which you want to submit a small miner waiver request you must:

- (i) Post a reclamation bond with NPS;
- (ii) Begin the approved activity; and
- (iii) Submit a waiver request complying with § 3835.10 before the assessment year begins for which you wish to obtain a waiver.

(2) By December 30, you must file your affidavit of assessment work for the mining claims and a notice of intent to hold for your mill or tunnel sites.

(c) If NPS does not approve your proposed plan of operations by July 1, to allow you sufficient time to conduct assessment work before September 1, you may—

- (1) Pay BLM the maintenance fees by September 1;
- (2) Petition BLM before September 1 for a deferment of assessment work; or
- (3) Submit a request for a lack of access waiver.

Subpart B—Conveying Mining Claims or Sites Under Waiver

§ 3835.20 Transferring, selling, inheriting, or otherwise conveying mining claims or sites already subject to a waiver.

(a) If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver, you must also qualify for the waiver in order for BLM to continue to apply the waiver to the mining claims you have received in the transfer; or

(b) If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver and you do not qualify for the waiver, you must pay the annual maintenance fee by the September 1 following the date the transfer became effective under state law.

Subpart C—Annual FLPMA Documents**§ 3835.30 Annual FLPMA documents.****§ 3835.31 When do I file an annual FLPMA document?**

(a) If you must file an annual FLPMA document as required in paragraph (d) of this section, you must file your annual FLPMA documents with BLM on or before the December 30th of the calendar year in which the assessment year ends. (For example, if the assessment year ends on September 1, 2003, you must file your annual FLPMA

document no later than December 30, 2003.)

(b) If part 3836 of this chapter requires you to perform assessment work, you must file an affidavit of assessment work. You do not need to complete assessment work in the assessment year when you located your claim. (For example, if you locate a claim on September 2, 2002, you first need to perform assessment work sometime between September 2, 2003, and September 1, 2004.)

(c) If part 3836 of this chapter does not require you to perform assessment

work, either because you located the claim during the current assessment year or because BLM has deferred assessment work, you must submit a notice of intent to hold under §§ 3835.32 and 3835.34 of this part as an annual FLPMA document filing. You must state in the notice of intent to hold either that BLM has deferred the assessment work requirement or that you located the claim during the current assessment year.

(d) The following table describes the circumstances under which you must file annual FLPMA documents:

Your situation	Affidavit of assessment work required	Notice of intent to hold required
(1) You have paid annual maintenance fees	No	No.
(2) You have an oil shale placer claim	No	Yes, by December 30 of each year you must pay the \$550 oil shale fee.
(3) You have a small miner waiver that covers mining claims.	Yes, by December 30 for each assessment year you obtained a small miner waiver.	Yes, but only as described in paragraph (c) of this section.
(4) You have a small miner waiver that covers mill or tunnel sites.	No affidavit assessment work is required for mill or tunnel sites.	Yes, notices of intent to hold are required for mill and tunnel sites.
(5) You have a Soldiers and Sailor's Civil Relief Act Waiver.	No	No.
(6) You have a reclamation waiver	No	Yes.
(7) You have a waiver because you have been denied access.	No	Yes.
(8) You have a deferment of assessment work	No	Yes, but only as described in paragraph (c) of this section.
(9) You have applied for a mineral patent and BLM has issued a final certificate.	No	No.

§ 3835.32 What should I include when I submit an affidavit of assessment work?

When you submit an affidavit of assessment work as required in § 3835.31(d), you must include the following:

(a) The name and, if available, the BLM serial number of the claim for which you did assessment work;

(b) Any known changes in the mailing addresses of the claimants;

(c) A non-refundable service charge for each mining claim or site affected (see the table of charges in § 3830.21 of this chapter); and

(d) An exact legible reproduction or duplicate, other than microfilm or other electronic media, of either:

(1) The affidavit of assessment work that you filed or will file in the county where the claim is located; or

(2) The report of geological, geochemical, and geophysical surveys you filed in the county where the claim is located, as provided for in part 3836 of this chapter.

§ 3835.33 What should I include when I submit a notice of intent to hold?

When you submit a notice of intent to hold as required in § 3835.31(d), you must include the following:

(a) An exact legible reproduction or duplicate of a letter or other notice with

signatures of one or more of the claimants or their agent that states your intention to hold the mining claims or sites for the calendar year in which the assessment year ends, and that you filed or will file a notice of intent to hold in the county where the claim is located;

(b) If applicable:

(1) A copy of a BLM decision granting a deferment of the annual assessment work;

(2) A copy of a pending petition for deferment of the annual assessment work including the date you submitted the petition; or

(3) Any other documentation in the notice of intent to hold supporting why you are filing a notice of intent to hold instead of an assessment work filing;

(c) The name and, if available, the BLM serial number of the mining claim or site;

(d) Any known changes in the mailing addresses of the claimants; and

(e) A non-refundable service charge for each mining claim or site affected. (See the table of service charges in § 3830.21 of this chapter.)

Subpart D—Defective Waivers and FLPMA Filings**§ 3835.90 Failure to comply with this part.****§ 3835.91 What if I fail to file annual FLPMA documents?**

If you fail to file an annual FLPMA document by December 30, as required in § 3835.31(d), you forfeit the affected mining claims or sites.

§ 3835.92 What if I fail to submit a timely waiver request?

(a) If you fail to submit a qualified waiver request (see § 3835.1) and also fail to pay an annual maintenance fee by September 1st, you forfeit the affected mining claims or sites.

(b) If you fail to list any mining claims or sites that you and all related parties own on your small miner waiver request and fail to pay an annual maintenance fee by September 1st, you forfeit the unlisted mining claims or sites.

(c) If you fail to cure any defects in your timely waiver request or pay the maintenance fee within the allowed time after BLM notifies you of the defects, you forfeit the affected mining claims or sites.

(d) If you, a co-claimant, or any related parties, submit small miner waiver requests for more than 10 mining

claims or sites and fail to pay the \$100 maintenance fee for each claim on or before the due date, you forfeit the mining claims and sites and you may be subject to criminal penalties under 18 U.S.C. 1001.

§ 3835.93 What happens if BLM finds a defect in my waiver request?

(a) BLM will send you a notice describing the defect by certified mail-return receipt requested at the most recent address you gave us on—

(1) Your notice or certificate of location;

(2) An address correction you have filed with BLM;

(3) A valid transfer document filed with BLM; or

(4) The waiver request form.

(b) If the certified mail is delivered to your most recent address of record, this constitutes legal service even if you do not actually receive the notice or decision. (See 43 CFR 1810.2.)

(c) You must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects, or forfeit the claim or site.

■ 16. Add part 3836 to read as follows:

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

Subpart A—Performing Assessment Work
Sec.

3836.10 Performing assessment work.

3836.11 What are the general requirements for performing assessment work?

3836.12 What work qualifies as assessment work?

3836.13 What are geological, geochemical, or geophysical surveys?

3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?

3836.15 What happens if I fail to perform required assessment work?

Subpart B—Deferring Assessment Work

3836.20 Deferring assessment work.

3836.21 How do I qualify for a deferment of assessment work on my mining claims?

3836.22 How do I qualify for a deferment of assessment work on my mining claims that are on National Park System (NPS) lands?

3836.23 How do I petition for deferment of assessment work?

3836.24 If BLM approves my petition, what else must I do to obtain a deferment of assessment work?

3836.25 What if BLM denies my petition for deferment of assessment work?

3836.26 How long may a deferment of assessment work last?

3836.27 When must I complete my deferred assessment work?

Authority: 30 U.S.C. 22, 28, 28b–28e; 50 U.S.C. App. 501, 565; 43 U.S.C. 2, 1201, 1457, 1740.

Subpart A—Performing Assessment Work

§ 3836.10 Performing assessment work.

§ 3836.11 What are the general requirements for performing assessment work?

(a) Beginning in the assessment year that begins after you locate your mining claim, you must expend \$100 in labor or improvements for each claim for each assessment year preceding the date on which you file for a small miner waiver.

(b) You may perform assessment work on:

(1) Each individual claim;

(2) One or more claims in a group of contiguous lode or placer claims that you own or hold an interest in and that cover the same mineral deposit; or

(3) Adjacent or nearby lands if the work supports development of the minerals on the claim(s).

(c) Your total expenditure must equal at least \$100 per claim.

§ 3836.12 What work qualifies as assessment work?

Assessment work includes, but is not limited to—

(a) Drilling, excavations, driving shafts and tunnels, sampling (geochemical or bulk), road construction on or for the benefit of the mining claim; and

(b) Geological, geochemical, and geophysical surveys.

§ 3836.13 What are geological, geochemical, or geophysical surveys?

(a) Geological surveys are surveys of the geology of mineral deposits. These are done by, among other things, taking mineral samples, mapping rock units, mapping structures, and mapping mineralized zones.

(b) Geochemical surveys are surveys of the chemistry of mineral deposits. They are done by, among other things, sampling soils, waters, and bedrock to identify areas of anomalous mineral values and quantities that may in turn identify mineral deposits.

(c) Geophysical surveys are surveys of the physical characteristics of mineral deposits to measure physical differences between rock types or physical discontinuities in geological formations. These surveys include, among other things, magnetic and electromagnetic surveys, gravity surveys, seismic surveys, and multispectral surveys.

§ 3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?

(a) Qualified experts must conduct the surveys and verify the results in a detailed report filed in the county or recording district office where the claim is recorded. A qualified expert is a geologist or mining engineer qualified by education and experience to conduct geological, geochemical, or geophysical surveys.

(b) You must record the report on the surveys with BLM and the local recording office, as provided in part 3835 of this chapter. This report must set forth fully the following:

(1) The location of the work

performed in relation to the point of discovery and boundaries of the claim;

(2) The nature, extent, and cost of the work performed;

(3) The basic findings of the surveys; and

(4) The name, address, and professional background of persons conducting the work and analyzing the data.

(c) You may not count these surveys as assessment work for more than 2 consecutive years or for more than a total of 5 years on any one mining claim.

(d) No survey may repeat any previous survey of the same claim and still qualify as assessment work.

§ 3836.15 What happens if I fail to perform required assessment work?

If you are required to perform assessment work and—

(a) You fail to perform the assessment work as required in this part, your claim is open to relocation by a rival claimant as if no location had ever been made; or

(b) You fail substantially to perform the assessment work as required in this part and the land is withdrawn from mineral entry or the mineral for which the claim was located is no longer subject to the Mining Law, BLM may declare your claim forfeited.

Subpart B—Deferring Assessment Work

§ 3836.20 Deferring assessment work.

(a) Under some circumstances, you may obtain a temporary deferment that relieves you from performing annual assessment work on your mining claims. You may include more than one mining claim in one deferment petition if the claims are contiguous.

(b) If BLM grants you a deferment, you have merely deferred doing the assessment work. You still must complete that assessment work for that

assessment year after the deferment period ends, as provided in § 3836.27.

§ 3836.21 How do I qualify for a deferment of assessment work on my mining claims?

You qualify for a deferment of assessment work if—

(a) You have a mining claim or group of mining claims that you cannot enter or gain access to because—

(1) The claims are surrounded by lands owned by others, including BLM, and the land owner has refused to give you a right-of-way or you are in litigation regarding the right-of-way or in the process of acquiring the right-of-way under state law; or

(2) Some other legal impediment prevents your access.

(b) You have received a declaration of taking or notice of intent by the Federal Government to take the claim.

§ 3836.22 How do I qualify for a deferment of assessment work on my mining claims that are on National Park System (NPS) lands?

Correspondence from NPS merely denying your Plan of Operations for incompleteness or inadequacy will not suffice for a deferment of assessment work. To qualify for a deferment of assessment work on claims situated on NPS lands—

(a) You must obtain a letter from NPS stating that—

(1) NPS received and found your proposed Plan of Operations to be complete;

(2) NPS cannot act on the plan until it conducts a validity exam; and

(3) NPS anticipates completing the validity exam after the assessment year ends.

(b) You must send NPS's letter to BLM, along with other documents and information that BLM requires (see § 3836.23) to support your petition for deferment of assessment work.

§ 3836.23 How do I petition for deferment of assessment work?

In order to apply for deferment—

(a) You must submit a petition with the BLM State Office that includes:

(1) The names of the claims;

(2) The BLM serial numbers assigned to the claims;

(3) The starting date of the one-year period of the requested deferment; and

(4) A statement that you plan to file a small miner waiver form by September 1st.

(b) If you are submitting the petition because BLM or another party has denied you a right-of-way, you must also describe—

(1) The ownership and nature of the land, including topography, vegetation, surface water, and existing roads, over

which you were seeking a right-of-way to reach your claims;

(2) The land over which you are seeking a right-of-way by legal subdivision if the land is surveyed;

(3) Why present use of the right-of-way is denied or prevented;

(4) The steps you have taken to acquire the right to cross the lands; and

(5) Whether any other right-of-way is available and if so, why it is not feasible to use that right-of-way.

(c) If you are submitting the petition because of other legal impediments to your access to the claim, you must describe the legal impediments and submit copies of any documents you have that evidence the legal impediments.

(d) You must record in the local recording office a notice that you are petitioning BLM for a deferment of assessment work.

(e) You must attach a copy of the notice required by paragraph (d) of this section to the petition you submit to BLM.

(f) At least one of the claimants of each of the mining claims for which you request a deferment must sign:

(1) The petition you submit to BLM; and

(2) The original notice you record with the local recording office.

(g) You must pay a non-refundable service charge with each petition. (See the table of fees and charges in § 3830.21 of this chapter.)

§ 3836.24 If BLM approves my petition, what else must I do to obtain a deferment of assessment work?

You must record a copy of BLM's decision regarding your petition in the local recording office.

§ 3836.25 What if BLM denies my petition for deferment of assessment work?

If BLM denies your petition for deferment of assessment work, and the assessment year has ended, BLM will give you 60 days from the date you receive the BLM decision denying the petition in which to pay the maintenance fee to maintain your claim.

§ 3836.26 How long may a deferment of assessment work last?

(a) BLM may grant a deferment for up to one assessment year. However, the deferment ends automatically if the reason for the deferment ends.

(b) The deferment period will begin on the date you request in the petition unless BLM's approval sets a different date.

(c) You may petition to renew the deferment for one additional assessment year if a valid reason for a deferment continues. BLM cannot renew your

deferment of assessment work more than once.

§ 3836.27 When must I complete my deferred assessment work?

(a) You may begin the deferred assessment work any time after the deferment ends. However, you must complete it before the end of the following assessment year. For example, if your deferment ends on July 15, 2008, you must complete all the deferred assessment work by September 1, 2009, in addition to completing the regular assessment work due on that date.

(b) You may also choose to pay the annual maintenance fees for the years deferred instead of performing the deferred assessment work.

■ 17. Add part 3837 to read as follows:

PART 3837—ACQUIRING A DELINQUENT CO-CLAIMANT'S INTERESTS IN A MINING CLAIM OR SITE

Subpart A—Conditions for Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

Sec.

3837.10 Conditions for acquiring a delinquent co-claimant's interests.

3837.11 When may I acquire a delinquent co-claimant's interest in a mining claim or site?

Subpart B—Acquisition Procedures

3837.20 Acquisition.

3837.21 How do I notify the delinquent co-claimant that I want to acquire his or her interests?

3837.22 How long does a delinquent co-claimant have after notification to contribute a proportionate share of the assessment work, expenditures, or maintenance fees?

3837.23 How do I notify BLM that I have acquired a delinquent co-claimant's interests in a mining claim or site?

3837.24 What kind of evidence must I submit to BLM to show I have properly notified the delinquent co-claimant?

Subpart C—Resolving Co-Claimant Disputes About Acquiring a Delinquent Co-Claimant's Interests

3837.30 Disputes about acquiring a delinquent co-claimant's interests.

Authority: 43 U.S.C. 2, 1201, 1457; 50 U.S.C. App. 501, 565; 30 U.S.C. 28.

Subpart A—Conditions for Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

§ 3837.10 Conditions for acquiring a delinquent co-claimant's interests.

§ 3837.11 When may I acquire a delinquent co-claimant's interests in a mining claim or site?

(a) You may acquire a co-claimant's interest in a mining claim or site under the following circumstances:

(1) You are a co-claimant who has performed the assessment work, made improvements, or paid the maintenance fees required under parts 3834 and 3836 of this chapter;

(2) Your co-claimant fails to contribute a proportionate share of the assessment work, expenditures, or maintenance fees by the end of the assessment year concerned;

(3) You notify the delinquent co-claimant of the alleged delinquency as provided in § 3837.21; and

(4) If, within 90 days following the date the delinquent co-claimant received the notice provided for under § 3837.21 or 90 days following the end of the publication period described in § 3837.21, the delinquent co-claimant fails or refuses to contribute a proportionate share of the assessment work, expenditures, or maintenance fees, the remaining co-claimants acquire the delinquent co-claimant's share in the mining claim or site.

(b) You may not acquire a co-claimant's interest in a mining claim or site if the co-claimant is on active military duty.

Subpart B—Acquisition Procedures

§ 3837.20 Acquisition.

§ 3837.21 How do I notify the delinquent co-claimant that I want to acquire his or her interests?

(a) You must give the delinquent co-claimant written notice by mail using registered or certified mail, return receipt requested, or by personal service; or

(b) If, after diligent search, you cannot locate the delinquent co-claimant, you must publish notification in a newspaper nearest the location of the claims or sites at least once a week for 90 days.

§ 3837.22 How long does a delinquent co-claimant have after notification to contribute a proportionate share of the assessment work, expenditures, or maintenance fees?

The delinquent co-claimant must contribute a proportionate share of the assessment work, expenditures, or maintenance fees within 90 days after the date on which—

(a) The co-claimant received written notice by mail or personal service; or

(b) The 90-day newspaper publication period ended.

§ 3837.23 How do I notify BLM that I have acquired a delinquent co-claimant's interests in a mining claim or site?

If you acquire a delinquent co-claimant's interests in a mining claim or site, you must submit—

(a) Evidence that you properly notified the delinquent co-claimant;

(b) An originally signed and dated statement by all the compliant co-claimants that the delinquent co-claimant failed to contribute the proper proportion of assessment work, expenditures, or maintenance fees within the period fixed by the statute; and

(c) A non-refundable service charge for a transfer of interest, as found in the table of fees in § 3830.21 of this chapter.

§ 3837.24 What kind of evidence must I submit to BLM to show I have properly notified the delinquent co-claimant?

(a) If you gave written notice to the delinquent co-claimant by personal service, you must sign and submit a notarized affidavit explaining how and when you delivered the written notice to the delinquent co-claimant.

(b) If you gave written notice to the delinquent co-claimant by mail, you must submit:

(1) A copy of the notice you mailed to the delinquent co-claimant; and

(2) A copy of the signed U.S. Postal Service return receipt from the registered or certified envelope in which you sent the notice to the delinquent co-claimant.

(c) If you published the notice in a newspaper, you must submit:

(1) A statement from the newspaper publisher or the publisher's authorized representative describing the publication, including the beginning and ending dates of publication;

(2) A printed copy of the published notice; and

(3) A notarized affidavit attesting that you conducted a diligent search for the delinquent co-claimant, you could not locate the delinquent co-claimant, and therefore notification by publication was necessary.

Subpart C—Resolving Co-Claimant Disputes About Acquiring a Delinquent Co-Claimant's Interests

§ 3837.30 Disputes about acquiring a delinquent co-claimant's interests.

If co-claimants are engaged in a dispute regarding the acquisition of a delinquent co-claimant's interests—

(a) The co-claimants must resolve the dispute, without BLM involvement, in a court of competent jurisdiction or proceeding as permitted within the state where the disputed claims are located.

(b) The co-claimants must file with BLM a certified copy of the judgment, decree, or settlement agreement resolving the dispute before BLM will update its records.

■ 18. Add part 3838 to read as follows:

PART 3838—SPECIAL PROCEDURES FOR LOCATING AND RECORDING MINING CLAIMS AND TUNNEL SITES ON STOCKRAISING HOMESTEAD ACT (SRHA) LANDS

Subpart A—General Provisions

Sec.

3838.1 What are SRHA lands?

3838.2 How are SRHA lands different from other Federal lands?

3838.3 What rules must I follow to explore for minerals and locate mining claims on SRHA lands?

Subpart B—Locating and Recording Mining Claims and Tunnel Sites on SRHA Lands

3838.10 Procedures for locating and recording a mining claim or tunnel site on SRHA lands.

3838.11 How do I locate and record mining claims or tunnel sites on SRHA lands?

3838.12 What must I include in a NOITL on SRHA lands?

3838.13 What restrictions are there on submitting a NOITL on SRHA lands?

3838.14 What will BLM do when I submit a NOITL for SRHA lands?

3838.15 How do I benefit from properly submitting a NOITL on SRHA lands?

3838.16 What happens if the surface owner of the SRHA lands changes?

3838.17 How do I locate mining claims or tunnel sites after I follow the NOITL Procedures?

Subpart C—Compliance Problems

3838.90 Failure to comply with this part.

3838.91 What if I fail to comply with this part?

Authority: 43 U.S.C. 299(b), 1201, 1457, 1740, 1744; 30 U.S.C. 22 *et seq.*

Subpart A—General Provisions

§ 3838.1 What are SRHA lands?

SRHA lands are lands that were—

(a) Patented under the Stockraising Homestead Act of 1916, as amended (30 U.S.C. 54 and 43 U.S.C. 299); or

(b) Originally entered under the Homestead Act of 1862, as amended, and patented under the SRHA after December 29, 1916.

§ 3838.2 How are SRHA lands different from other Federal lands?

SRHA lands are different from other Federal lands in that the United States owns the mineral estate of SRHA lands, but not the surface estate. Patents issued under the SRHA, and Homestead Act entries patented under the SRHA, reserved the mineral estate to the United States along with the right to enter, mine, and remove any reserved minerals that may be present in the mineral estate.

§ 3838.3 What rules must I follow to explore for minerals and locate mining claims on SRHA lands?

(a) The regulations in this part describe how to notify the surface owner before exploring for minerals or locating a mining claim on the mineral estate of SRHA lands.

(b) If you own the surface estate of SRHA lands and want to explore for minerals or locate a mining claim on the Federally-reserved mineral estate, you do not need to follow the requirements in this part, but you must follow the requirements in parts 3832, 3833, 3834 and 3835 of this chapter.

Subpart B—Locating and Recording Mining Claims and Tunnel Sites on SRHA Lands

§ 3838.10 Procedures for locating and recording a mining claim or tunnel site on SRHA lands.

§ 3838.11 How do I locate and record mining claims or tunnel sites on SRHA lands?

(a) You must—

(1) Submit a notice of intent to locate mining claims form (NOITL), which you may obtain from BLM, with the proper BLM State Office and submit a non-refundable service charge for processing the NOITL (see the table of fees in § 3830.21 of this chapter);

(2) Serve a copy of the NOITL on the surface owner(s) of record, by registered or certified mail, return receipt requested; and

(3) Submit proof to BLM that you served a copy of the NOITL on the surface owner(s) to complete submission of a NOITL with BLM.

(b) You can submit the NOITL to BLM and serve a copy of the NOITL on the surface owner(s) at the same time.

(c) If you want to explore parcels of land that are owned by different people, you must submit a separate NOITL for each parcel of land.

(d) You must—

(1) Wait 30 days after you serve the surface owner(s) with the NOITL before entering the lands to explore for minerals or locate a mining claim or tunnel site; and

(2) Follow procedures for locating mining claims and tunnel sites in part 3832, recording mining claim and tunnel sites in part 3833, and annual maintenance of mining claims in parts 3834 and 3835 of this chapter.

§ 3838.12 What must I include in a NOITL on SRHA lands?

A NOITL must include:

(a) The names, mailing address, and telephone numbers of everyone who is filing the NOITL. An agent may file the

NOITL on behalf of others as long as the NOITL is accompanied with proof that the agent is authorized to act on behalf of the others.

(b) Information about the surface owners, including:

(1) The names, mailing addresses, and telephone numbers of all known surface owners of the parcel of land you want to enter;

(2) Evidence of surface ownership of all parcels covered by the NOITL obtained from the tax records of the local government. The evidence must show the name of the persons paying the taxes, and must contain a legal description of the taxed parcel.

(3) A description of the lands covered by the NOITL, including:

(i) The total number of acres to the nearest whole acre; and

(ii) A map and legal land description to the nearest 5-acre subdivision or lot based on a U.S. Public Land Survey of the lands covered by the NOITL, including access routes; and

(4) A brief description of the proposed mineral activities, including:

(i) The name, mailing address, and telephone number of the person who will be managing the activities, and

(ii) A list of the dates on which the activities will take place.

§ 3838.13 What restrictions are there on submitting a NOITL on SRHA lands?

(a) At any one time, you or your affiliates may not hold NOITLs for more than 1,280 acres of land owned by a single surface owner in any one state.

(b) At any one time, you or your affiliates may not hold NOITLs for more than 6,400 acres of land in any one state.

(c) Your NOITL will expire 90 days after you submit it with BLM, unless you submit to BLM a plan of operations that complies with part 3809 of this chapter within the 90-day period.

(d) After your NOITL expires, you are not allowed to submit another NOITL for the same lands until 30 days after the expiration of the previously-filed NOITL.

(e) Only those persons whose names are listed on the properly-submitted NOITL, or their agents, will be allowed to explore for minerals or locate mining claims or tunnel sites on the lands covered by the NOITL.

(f) For purposes of this section, the term “affiliates” means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

§ 3838.14 What will BLM do when I submit a NOITL for SRHA lands?

When BLM accepts a properly completed and executed NOITL, we will

note the official land status records. The 90-day segregation period begins the day we receive a complete NOITL.

§ 3838.15 How do I benefit from properly submitting a NOITL on SRHA lands?

(a) For a 90-day period after you submit a NOITL with BLM and 30 days after you give notice to the surface owner:

(1) You may enter the lands covered by the NOITL to explore for minerals and locate mining claims (see § 3838.10 for location procedures);

(2) You may cause only minimal disturbance of the surface resources on the lands covered by the NOITL;

(3) You must not use mechanized earthmoving equipment, explosives, or toxic or hazardous materials; and

(4) You must not construct roads or drill pads.

(b) For 90 days after BLM accepts your NOITL, no other person, including the surface owner, may—

(1) Submit a NOITL for any lands included in your NOITL;

(2) Explore for minerals or locate a mining claim on the lands included in your NOITL; or

(3) File an application to acquire any interest under section 209 of FLPMA and part 2720 of this chapter in the lands included in your NOITL.

(c) If you file a plan of operations under subpart 3809 of this chapter with BLM, as provided in Section 1 of the Act of April 16, 1993, 43 U.S.C. 299(b), within the 90-day period, BLM will extend the effects of the 90-day period until BLM approves or denies the plan of operations under subpart 3809.

(d) Before you conduct mineral activities, you must post a bond or other financial guarantee to cover completion of reclamation (see subpart 3809 of this chapter), compensation to the surface owner for permanent damages to the surface and loss or impairment of the surface, and to cover permanent loss of income due to reduction in the owner's use of the land.

§ 3838.16 What happens if the surface owner of the SRHA lands changes?

If the surface owner transfers all or part of the surface to a new owner after you have recorded a NOITL and served it on the surface owner, you do not have to serve a copy of the NOITL on the new surface owners.

Subpart C—Compliance Problems

§ 3838.90 Failure to comply with this part.

§ 3838.91 What if I fail to comply with this part?

If you fail to comply with the requirements in this part, the NOITL is

void. Mining claims or tunnel sites located under a void NOITL are null and void from the beginning and we will cancel them.

PART 3839—SPECIAL LAWS, IN ADDITION TO FLPMA, THAT REQUIRE RECORDING OR NOTICE [RESERVED]

- 19. Add and reserve part 3839.

PART 3840—NATURE AND CLASSES OF MINING CLAIMS [REMOVED]

- 20. Remove part 3840 in its entirety.

PART 3850—ASSESSMENT WORK [REMOVED]

- 21. Remove part 3850 in its entirety.

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