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taken-in-kind or any other payments, fees, or assessments that a lessee/operator/permittee/payor/or purchaser of royalty taken-in-kind is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 36588, Aug. 12, 1983. Redesignated at 51 FR 15212, Apr. 22, 1986]

Group 3600—Mineral Materials Disposal

NOTE: The information collection requirements contained in parts 3600, 3610 and 3620 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0103. The information is being collected to allow the authorized officer to determine if the applicant is qualified to purchase or have free use of mineral materials on the public lands. The obligation to respond is required to obtain a benefit.

PART 3600—MINERAL MATERIALS DISPOSAL: GENERAL

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

SOURCE: 48 FR 27011, June 10, 1983, unless otherwise noted.

Subpart 3600—General

§ 3600.0-1 Purpose.

The regulations in this part establish procedures for the exploration, development and disposal of mineral material resources as well as the protection of the environment of the public lands under permit or contract for sale or free use.

§ 3600.0-3 Authority.

(a) The Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*) provides:

(1) Authority for the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public lands of the United States, and from lands on which the mineral rights have been reserved to the United States, if the disposal of these materials (i) is not otherwise expressly authorized by law, including, but not limited to the Act of June 28, 1934, as amended (43 U.S.C. 315 *et seq.*) and the United States mining laws, (ii) is not expressly prohibited by the laws of the United States, and (iii) would not be detrimental to the public interest.

(2) That where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only with the consent of such Federal department or agency or of such State or local governmental unit;

(3) That disposal of mineral materials under the Materials Act may not

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be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(4) Authority for the Secretary of the Interior, in his discretion to permit the free use of mineral materials by any Federal or State government agency, unit or subdivision, including municipalities, or any nonprofit association or corporation. The Materials Act *does not* permit these materials to be used for commercial or industrial purposes, resale or barter.

(b) Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) directs the Secretary:

(1) To manage public lands under the principles of multiple use and sustained yield in accordance with the land use plans developed under the Act (see subpart 1601 of this title).

(2) To regulate, through easements, permits, leases, licenses, published rules or other instruments deemed appropriate, the use, occupancy and development of public lands.

(3) To prevent unnecessary and undue degradation of the public lands.

(c) Section 2 of the Act of September 28, 1962 (76 Stat. 652) requires the Secretary of the Interior to provide by regulation that limited quantities of petrified wood may be removed without charges from public lands which he shall specify. Section 2 of the above Act applies to the same public lands as the Act of July 31, 1947, as amended (30 U.S.C. 601, 602). Specifically excluded are lands in any national park, or national monument, or any Indian lands.

(d) Section 304(b) of the Federal Land Policy and Management Act of 1975 (43 U.S.C. 1734) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a) provide authorities for the collection of fees and the reimbursement of costs by the government.

§ 3600.0-4 Policy.

It is the policy of the Bureau of Land Management to permit the disposal of mineral material resources under the Bureau's jurisdiction at fair market value while ensuring that adequate

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measures are taken to protect the environment and minimize damage to public health and safety during the authorized exploration for and the removal of such minerals. No mineral material shall be disposed of if the Secretary determines that the aggregate damage to public lands and resources would exceed the benefits to be derived from the proposed sale or free use.

§ 3600.0-5 Definitions.

As used in this group, the term:

(a) *Bureau* means Bureau of Land Management, Department of the Interior.

(b) *Director* means the Director of the Bureau of Land Management.

(c) *Permittee* means any person, corporation, partnership and association, Federal, or State agency, unit, or subdivision, including municipalities, and non-profit organization or corporation or other entity that has been issued a contract or a free-use permit for the removal of mineral materials from the public lands.

(d) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(e) *Mineral material* includes, but is not limited to, *common varieties* of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials and petrified wood.

(f) *Public lands* means any lands and interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership, except lands held for the benefit of Indians, Aleuts, and Eskimos.

(g) *Community pit* means a site from which nonexclusive disposals of mineral materials can be made. The establishment of a community pit, when noted on the appropriate Bureau of Land Management records or posted on the ground, constitutes a superior right to remove material as against any subsequent claim or entry of the lands.

(h) *Common use area* means a generally broad geographic area from

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which nonexclusive disposals of mineral materials can be made, with only negligible surface disturbance. The establishment of a common use area does not create a superior right to remove material as against any subsequent claim or entry of the lands.

(i) *Performance bond* means a bond to ensure compliance with the terms of the contract and reclamation of the site as required by the authorized officer.

(j) *Act* means the Material Act of July 31, 1947, as amended, (30 U.S.C. 601, *et seq.*).

(k) *Unnecessary or undue degradation* means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Unnecessary and undue degradation may involve failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed area; creation of a nuisance; or failure to comply with applicable environmental protection statutes and regulations.

§ 3600.0-8 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3600 and parts 3610 and 3620 of this chapter are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3600 and parts 3610 and 3620 of this chapter that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential

to the extent allowed by § 2.13(c) of this title.

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

[63 FR 52954, Oct. 1, 1998]

Subpart 3601—Limitations

§ 3601.1 Limitations; disposal of mineral materials.

§ 3601.1-1 Valid existing rights and unpatented mining claims.

(a) Mineral material disposals may not be made by the authorized officer from public lands where:

- (1) There are any unpatented mining claims which have not been cancelled by appropriate legal proceeding;
- (2) Expressly prohibited by law.

§ 3601.1-2 Authorization to use lands subject to material sales contracts and free use permits.

(a) The permittee under contract of sale or permit for free use shall, unless otherwise provided, have the right to:

- (1) Extract, remove, process and stockpile the material until the termination of the contract regardless of any subsequent appropriation under the provisions of the general land laws; and
- (2) Use and occupy the described lands if it is determined by the authorized officer to be necessary for fulfillment of the contract until termination of that contract.

(b) The permittee shall be subject to the continuing rights of the United States to issue leases, permits and licenses for the use and occupancy of the lands, provided that this authorized use does not endanger or materially interfere with the production or removal of materials under contract.

(c) Any person that has a subsequent settlement, location, lease, sale or other appropriation under the general land laws, including the mineral leasing and mining law on lands covered by a material sale contract or free use permit shall be subject to the existing use authorization.

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§ 3601.1-3 Environmental protection and planning.

The authorized officer shall not dispose of mineral material under this part where he/she determines that the proposed operation will cause unnecessary or undue degradation. Upon receipt of an application for sale or free use of mineral materials, the authorized officer shall complete an environmental review to ensure that unnecessary or undue degradation is prevented. Disposal actions which are categorically excluded from the NEPA process can be found in the Departmental manual. See 516 DM 6, Appendix 5. Decisions to authorize the disposal of mineral materials shall conform to approved land use plans, when available, in accordance with § 1610.5-3 of this title.

Subpart 3602—Disposal of Mineral Materials: General

§ 3602.1 Mining and reclamation plans.

The authorized officer may require the applicant to submit mining and reclamation plans prior to environmental review or issuance of a contract or permit. The mining plan and reclamation plan may be combined into one document.

§ 3602.1-1 Mining plans.

The applicant, when required by the authorized officer, shall prepare a mining plan that includes, but is not limited to:

(a) A map, sketch or aerial photograph showing the area applied for, the area to be disturbed, existing and proposed access and the names and locations of major topographic and known cultural features;

(b) A description of the proposed methods of operation and the periods during which the proposed activities will take place;

(c) A description of measures to be taken to prevent hazards to public health and safety and to prevent unnecessary and undue degradation.

§ 3602.1-2 Reclamation plans.

The applicant, when required by the authorized officer, shall submit a rec-

lamation plan that includes, but is not limited to:

(a) A statement of the proposed manner and time for completion of the reclamation of the areas disturbed by the permittee's operations;

(b) A map or sketch which delineates the location and area to be reclaimed.

§ 3602.1-3 Approval and modification of mining and reclamation plans.

(a) Upon review of the mining and reclamation plans, the authorized officer shall promptly notify the applicant of any deficiencies in the plan and of changes needed to prevent undue and unnecessary degradation of the lands, and hazards to public health and safety. Necessary changes shall be made as agreed by the authorized officer and the applicant.

(b) The permittee's operation shall not deviate from the plan approved by the authorized officer.

(c) An approved mining or reclamation plan may be modified by mutual agreement of the authorized officer and permittee at any time to adjust to changed conditions, or correct any oversight potentially resulting in undue or unnecessary degradation. Any change shall be consistent with the requirements under § 3601.1-3 of this title.

(d) The authorized officer shall review the proposed plan modification and within 30 days notify the permittee of its approval or needed changes.

§ 3602.2 Sampling and testing.

(a) Sampling and testing of mineral materials may be done pursuant to a letter of authorization issued by the authorized officer. These activities may be authorized prior to issuance of a sales contract or free use permit. The permittee shall submit his findings to the authorized officer. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided under this part at § 3600.0-8.

(b) A letter of authorization to sample and test mineral materials does not give the applicant a preference right to a sales contract or free use permit.

(c) The authorized officer may impose bonding and reclamation requirements on sampling and testing activities conducted pursuant to a letter of authorization.

[48 FR 27011, June 10, 1983, as amended at 63 FR 52954, Oct. 1, 1998]

§ 3602.3 Removal of improvements.

After the permit period expires, the authorized officer may grant the permittee no more than 90 days, excluding periods of inclement weather, to remove the equipment, personal property and any other improvements placed on the public lands by the permittee. Improvements such as roads, culverts and bridges may remain in place with the consent of the authorized officer. If the permittee fails to remove such equipment, personal property or any other improvements, they shall become the property of the United States but the permittee shall remain liable for the cost of removal of such equipment, personal property and any other improvements and for restoration of the site.

Subpart 3603—Unauthorized Use

§ 3603.1 Unauthorized use.

Except when authorized by sale or permit under law and the regulations of the Department of the Interior, the extraction, severance or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. Unauthorized users shall be liable for damages to the United States, and shall be subject to prosecution for such unlawful acts (see subpart 9239 of this title).

Subpart 3604—Community Pits and Common Use Areas

§ 3604.1 Non-exclusive disposal.

(a) Non-exclusive mineral material sales and free use under permit may be made from the same deposit within areas designated by the authorized officer, and consistent with other provisions under this part. These designated community pit sites or common use areas are not limited in size.

(b) The designation of a community pit site constitutes a superior right to

remove the material as against any subsequent claim or entry of the lands.

(c) The designation of a common use area does not establish a superior right to remove the material as against any subsequent claim or entry of the land; however, a person authorized by permit or sale to remove mineral materials from a common use area has a superior right to remove the material as against any subsequent claim or entry on the lands.

(d) Sales from community pit sites or common use areas shall be made at fair market value. No mining or reclamation plan shall be required, but the permittee shall comply with the terms of the contract or permit to protect health and safety and prevent undue or unnecessary degradation of the public lands.

§ 3604.2 Reclamation.

(a) Permits or contracts for the extraction of mineral materials from community pits or common use areas shall not require reclamation but shall require payment of costs of reclamation, as provided in paragraph (b) of this section. However, the authorized officer may allow qualified permittees to perform interim or final reclamation, where needed, in lieu of paying reclamation charges.

(b) The reimbursement cost of reclamation shall be a proportionate share of the total estimated cost of reclamation, determined by using a ratio of the material extracted under the permit or contract to the total estimated volume of the material to be extracted from the site.

PART 3610—SALES

Subpart 3610—Mineral Material Sales

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- 3610.1 Procedures: General.
- 3610.1-1 Request for sale.
- 3610.1-2 Appraisal, reappraisal and measurements.
- 3610.1-3 Payments and termination by agreement.
- 3610.1-4 Refunds or credits.
- 3610.1-5 Performance and reclamation bonds.
- 3610.1-6 Assignments.
- 3610.1-7 Extension of time.
- 3610.2 Noncompetitive sales.
- 3610.2-1 Limitations in volume.