

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Parts 3830 and 3834**

[WO-320-1430-00-24 1A]

RIN 1004-AD62

Location, Recording, and Maintenance of Mining Claims or Sites**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

SUMMARY: The Bureau of Land Management (BLM or "we") is issuing this final rule to amend regulations on locating, recording, and maintaining mining claims or sites. In this rule, we are amending our regulations to respond to the law requiring that: BLM adjust the location and maintenance fees on unpatented mining claims or sites; adjust these fees every five years or sooner if conditions warrant; base the adjustment upon the change in the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics; and give notice of any fee adjustment in the **Federal Register** by July 1st of any given assessment year in order for such adjustment to be effective by the beginning of the following assessment year (*i.e.*, the September 1st immediately following the 1st of July in which the notice is given).

DATES: *Effective Date:* This rule is effective June 30, 2004.

ADDRESSES: You may mail suggestions or inquiries to Bureau of Land Management, Solid Minerals Group, Room 501 LS, 1849 C Street, NW., Washington, DC 20240-0001.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452-0355. For assistance in reaching Mr. Haskins, persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-(800) 877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Administrative Final Rule
- III. Procedural Matters

I. Background

On August 10, 1993, Congress enacted Public Law 103-66, 107 Stat. 405, 30 U.S.C. 28f-28k, which requires claimants to pay a \$25 one-time location fee and a \$100 annual maintenance fee per claim or site, and adds qualifiers for small miner waivers. The Act (30 U.S.C.

28j) also requires the periodic adjustment of the location and annual maintenance fees on a 5-year basis and the use of the CPI to form the basis of the fee adjustments. The BLM has not adjusted the fees since the Act was originally passed in 1993. The adjustment made in this rule is based upon the change in the CPI from September 1, 1993 through December 31, 2003. The calculated change is 125.6 percent from September 1, 1993 through December 31, 2003, reflecting a 25.6 percent increase in the CPI. We have rounded the resulting adjusted fees down to the nearest \$5.00, so that the fees are slightly lower than the percentage increase would indicate.

II. Discussion of the Final Rule*Why We Are Publishing This as a Final Rule*

BLM is adopting this final rule to amend our regulations to make adjustments in the mining law fees as required by 30 U.S.C. 28j(c).

The Department of the Interior for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and public procedure for this rule are unnecessary. The reason is that this rule implements a statutory requirement to adjust the location and annual maintenance fees. The statute specifies the method of calculation of the fee adjustments and prescribes the form and manner of notice of the fee adjustment.

We also determine under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because the fee adjustment is explicitly required by statute.

Organization of the Final Rule

This final rule amends the existing regulation. It contains amendments necessary to conform to the requirements of the statute. One of the amendments appears as a modification of the fee transaction table at 43 CFR 3830.21. We have amended the fee transaction table by changing the amounts of the location fee and the initial and annual maintenance fees required to be paid for each mining claim, mill, or tunnel site. In addition, we have amended § 3834.23 by adding a new paragraph (c) that states that in any year in which the fee is adjusted, BLM will give claimants an opportunity to cure a failure to pay the increased fee amounts if the claimant paid the pre-adjusted fee amount by the deadline.

The rule also adds a new paragraph (c) to § 3834.23 to allow a mining claimant who has paid the old \$100 maintenance fee before June 30, 2004, to pay the additional amount without

penalty upon notice from BLM. The current regulations make the failure to pay the maintenance fee by September 1st, or the location fee at the time of recording a fatal defect, and the claim or site becomes forfeit. This addition to § 3834.23 provides that whenever the BLM raises the maintenance or location fees as required by 30 U.S.C. 28(j), in the year of the fee adjustment BLM will allow the failure to pay the difference between the old fee and the amount required under the fee adjustment to be a curable defect.

III. Procedural Matters*Executive Order 12866, Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not 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. The fee adjustment does not change the substance of current mining claim administration within BLM.

- 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 or policy issues because it makes no major substantive changes in the regulations. The constitutionality of the location and maintenance fees has been challenged in the Federal courts. The courts have consistently upheld the 1993 and subsequent Acts and their implementing regulations.

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 have a minor impact because the fees paid by small entities will be adjusted. However, the fee adjustment is directed by statute and the BLM has no discretion in the timing, form, or manner of making the adjustments. 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 conforms 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. The fee adjustments are directed by statute. The total amount of fees collected, including the effects of the adjustment, is estimated to be \$38 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. This rule does affect the cost to locate, record, or maintain a mining claim or site.

- 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 1993 and subsequent Acts and the BLM rules as a proper exercise of congressional and executive authorities.

Executive Order 12612, 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 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 regulations that this administrative final rule is amending, under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004-0114.

National Environmental Policy Act

BLM has determined that this administrative final rule, which is required by an Act of Congress, and merely adjusts certain mining claim location and annual maintenance fees, is a regulation of an administrative, financial, legal, technical or procedural nature. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental

assessment nor an environmental impact statement is required. Further, the fee adjustment is directed by an Act of Congress and BLM has no discretion in this matter.

Because this rule does not substantially change BLM's overall management objectives or our environmental compliance requirements, it would have no impact on, or only marginally affect, 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 13175, Consultation and Coordination with Indian Tribal Governments.

In accordance with Executive Order 13175, we have considered the impact of this rule on the interests of Tribal governments. Because this rule does not specifically involve Indian reservation lands, government-to-government relationships are not affected and consultation is unnecessary.

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. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), the rule applies only a statutory adjustment of the mining claim location and maintenance fees that BLM has been collecting for many years. It will not change any other financial or other obligations of the mining industry.

Authors

The principal author of this administrative final rule is Roger Haskins in the Solid Minerals Group, assisted by Ted Hudson in the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects in 43 CFR Part 3830

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

Dated: June 24, 2004.

Chad Calvert,

Acting Assistant Secretary of the Interior.

■ For the reasons stated in the preamble, and under the authority of the Act of August 10, 1993, as amended (Pub. L. 103-66, 107 Stat. 405); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); and sections 2319 and 2324 of the Revised Statutes, as amended (30 U.S.C. 22 and 28); part 3830, group 3800, subchapter C, chapter

II of title 43 of the Code of Federal Regulations is amended as follows:

PART 3830—LOCATION OF MINING CLAIMS

Subpart D—BLM Service Charge and Fee Requirements

■ 1. The authority citation for part 3830 continues to read as follows:

Authority: 30 U.S.C. 22, 28, and 28f-28k; 43 U.S.C. 299 and 1201; 31 U.S.C. 9701; 16

U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. appendix 565; 112 Stat. 2861-235; 115 Stat 414.

■ 2. Revise § 3830.21 to read as follows:

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 \$165, which includes: (i) A \$10 service charge	No.
	(ii) A one-time \$30 location fee	No.
	(iii) An initial \$125 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 \$125 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.

PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES

Subpart B—Fee Adjustment

■ 3. Amend section 3834.23 by adding paragraph (c) to read as follows:

§ 3834.23 When do I start paying the adjusted fees?

* * * * *

(c) Notwithstanding §§ 3830.91(a)(3) and 3830.96, in any year in which BLM adjusts the maintenance and location fees, if you pay the fees on or before September 1 of that year, but pay an amount based on the fee in effect immediately before the adjustment was made, BLM will send you a notice, as provided in § 3830.94, giving you 30 days in which to pay the additional

amount required to meet the adjusted fees. If you do not pay the additional amount due within 30 days after the date you receive the notice, you will forfeit the affected mining claims or sites.

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