(d) Indirect or inadvertent residues. [Reserved]

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DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 3830

[LLWO320000–L1999000.PP0000]

Required Fees for Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this final rule to make statutorily required adjustments to its location and maintenance fees for unpatented mining claims, mill sites, and tunnel sites. These adjustments reflect changes in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics (BLS), which is published by the Bureau of Labor Statistics.

DATES: The final rule is effective July 1, 2019.

ADDRESSES:
Mail: Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW, Washington, DC 20240, Attention: “RIN 1004–AE64”.


FOR FURTHER INFORMATION CONTACT:
Elaine Guenaga at (775) 861–6539 in the Solid Minerals Group as to program matters or the substance of the final rule, or Chandra Little in the Division of Regulatory Affairs at (202) 912–7403 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:
I. Background
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I. Background

The Mining Law of 1872 allows individuals and corporations to stake (or “locate”) a claim on the deposits discovered. Historically, annual assessment work and related filings have been required by statute in order to maintain an unpatented mining claim or site. 30 U.S.C. 28–28e; 43 U.S.C. 1744(a) and (c).

Beginning in fiscal year 1993, mining claimants have been required to pay an annual fee in lieu of performing annual assessment work and making annual filings. Mining claimants locating new claims or sites must pay an initial “maintenance” fee for the assessment year in which the mining claim was located, and also pay a one-time location fee. See 30 U.S.C. 28f–28i.

This rule implements 30 U.S.C. 28(c), which requires adjustments to the location and maintenance fees “to reflect changes in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.” Section 28(c) also requires that mining claimants be provided “notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made,” and that any fee adjustment “shall begin to apply the first assessment year which begins after adjustment is made.”

As enacted in 1993, the one-time location fee was $25, and the annual maintenance fee was $100 per mining claim or site. In 2004, the BLM increased the amount of the location and maintenance fees to $30 and $125 respectively, based on the change in the CPI from September 1, 1993 to December 31, 2003. (69 FR 40294–40296 (July 1, 2004)). In 2009, the BLM increased the amount of the location and maintenance fees to $34 and $140, respectively, based on the change in the CPI from December 31, 2003, to December 31, 2008. (74 FR 30959). On July 27, 2012, the BLM issued a rule (77 FR 44155 (July 27, 2012)), that also amended 43 CFR 3830.21, based on a law that changed the way the maintenance fee is calculated for unpatented placer mining claims. Then in 2014, the BLM increased the amount of the location fee to $37, and increased the maintenance fee to $155 for lode mining claims or sites, and $155 for each 20 acres or portion thereof for placer mining claims, based on the change in the CPI from December 31, 2008, to December 31, 2013. (79 FR 36662).

The adjustments made in this rule are based upon the change in the CPI from December 31, 2013, to December 31, 2018, as reported by the Bureau of Labor Statistics (BLS) in the “CPI Databases” (https://www.bls.gov/cpi/data.htm). The particular series used for this update is the “All Urban Consumers (Current Series) (Consumer Price Index—CPI–U).” This is a change from the last adjustment to these fees, made in 2014.

The BLM decided to use the CPI–U series as the basis for this update (instead of the Chain CPI for All Urban Consumers (C–CPI–U)), because the release of the CPI–U data is final and timely and because it is the more common series used by Federal agencies for this type of exercise. By contrast, using the C–CPI–U series would necessitate the use of preliminary data. See the Economic and Threshold Analysis for this rule for further explanation of this change.

The calculated change is 7.80 percent from December 31, 2013, through December 31, 2018. A calculated value for the fees was obtained by inflating the location and maintenance fees established in the 2014 rulemaking by 7.80 percent. The new location fee is $40, and the new maintenance fee is $165 per lode mining claim or site and $165 for each 20 acres or portion thereof for placer mining claims. The new location fee is based on rounding the calculated value to the nearest $1. The maintenance fee is based on rounding the calculated value to the nearest $5.

Mining claimants must pay the new location fee and maintenance fee for any mining claim or site located on or after September 1, 2019. Mining claimants must pay the new maintenance fee to maintain existing mining claims and sites beginning with the 2020 maintenance year. The maintenance fee is due on or before September 1, 2019. Under 43 CFR 3834.23(d), mining claimants who have already submitted maintenance fees for the 2020 assessment year, and those who timely pay the 2020 assessment year maintenance fee based on the fee in effect immediately before the adjustment was made, will be given an opportunity to pay the additional amount without penalty upon notice from the BLM. The BLM will also give claimants the opportunity to cure deficient maintenance and location fee payments for new claims or sites located on or after September 1, 2019, and timely received on or before December 31, 2019.

II. Discussion of the Administrative Final Rule

Why the Rule Is Being Published on a Final Basis

The BLM is adopting this final rule solely to adjust the location and maintenance fee amounts in section
adjustment, is estimated to be $76
collected, including the effects of the
mining claim administration within the
Federal government. The fee adjustment
payments from mining claimants to the
location fees as provided for by statute.
The rule increases the maintenance and
or tribal governments or communities.
public health or safety, or State, local,
Federal lands. However, by reviewing
U.S. Census Bureau data on entities
involved in the development of
locatable type minerals, we can make a
reasonable conclusion about the extent
to which the rule will affect small
business as defined by the SBA.
Based on statistics from the U.S.
Census Bureau’s 2012 Economic
Census, all of the potentially affected
industries are overwhelmingly
comprised of small businesses, as
defined by the SBA. Based on this
information, the rule could impact a
substantial number of small entities.
In addition to determining if a
substantial number of small entities are
likely to be impacted by this small rule,
the BLM must also determine whether
the final rule is anticipated to have a
significant economic impact on those
small entities. The Regulatory
Flexibility Act (RFA) does not define
“significant.” Significance must be
determined on a case-by-case basis.
Significance should not be viewed in
absolute terms, but should be seen as
relative to the size of the business, the
size of the competitor’s business, and
the impact the regulation has on larger
competitors.
An analysis that looks at the
individual financial circumstances, i.e.,
profit margin, for each firm within an
industry would help in answering the
significance question. However, such
financial information on individual
claimants is not available. Even
assessing an individual entity’s ability
to pay is problematic as there is limited
information on most claimants. Most
entities holding mining claims or sites
are either individuals or privately held
companies.
At the end of Fiscal Year (FY) 2018,
there were approximately 27,800
claimants holding approximately
413,000 mining claims and sites. This
works out to be an average of 15 claims
or sites per claimant. Assuming that the
number of claims and sites, and the
number of claimants who do not file a
fee waiver, do not significantly change
because of the rule, we estimate a total
maintenance fee increase of about $5.34
million per year. This represents an
average maintenance fee increase of about
$192 per claimant. The actual
impact on an individual claimant will
depend on a number of factors.
including the number of claims or sites that are actually held. However, the average number of claims and sites actually held by individuals and companies that would be considered small entities by SBA would likely be significantly less than the 15 claims or sites per claimant figure. This average claims-per-claimant figure is skewed by the large number of claims and sites held by a few large mining companies. For example, the three companies holding the most mining claims or sites at the end of FY 2018 each held over 10,000 claims or sites. All three of those companies were large multi-national corporations.

For the location fee increase, we estimate a total annual fee increase of about $172,000. Assuming 57,000 new filings per year and using the average figure of 15 claims or sites per claimant, we estimate approximately 3,800 claimants will be impacted by the change in the location fee. The average location fee increase will be approximately $45 per claimant. As with the maintenance fee increase, the actual location fee increase per claimant that classifies as a small entity by SBA will likely be significantly less than this $45 figure.

Therefore, the BLM has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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:

- Will not have an annual effect on the economy of $100 million or more. The revised regulation will not materially alter current BLM policy. The fee adjustments are authorized by statute.
- The total amount of fees collected, including the effects of the adjustment, is estimated to be $76 million annually, of which $5.51 million is attributable to the adjustments made in this rule.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- Will 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 BLM finds that 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 tax of a right, or, alternatively, as an unconstitutional tax. The courts have upheld the fee legislation and the BLM regulations as a proper exercise of Congressional and Executive authorities.

Executive Order 13132, Federalism

The final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the final rule does not have significant Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM finds that the final rule does not include policies that have Tribal Implications. Because this rule does not make significant substantive changes in the regulations and does not specifically involve Indian reservation lands (which are closed to the operation of the Mining Law), the BLM finds that the rule will have no implications for Indians, Indian Tribes, and Tribal governments.

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

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs

This rule is not a significant regulatory action as defined by Section 3(f) of Executive Order 12866 and, therefore, is not a regulatory action under Executive Order 13711, per OMB issued guidance for implementing that executive order. As such, the BLM is not required to identify at least two existing regulations to be repealed, ensure that the costs of the rule are less than or equal to $0, or offset the costs of the rule by the elimination of existing costs associated with at least two prior regulations.

The BLM has complied with Executive Order 13711 and the OMB implementation guidance for that order.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the BLM finds that the final rule does not unduly burden the judicial system, and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with the Department of the Interior’s Office of the Solicitor during the drafting process.

Paperwork Reduction Act

The BLM has determined this final rule does not contain any information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

National Environmental Policy Act (NEPA)

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is part of the routine administration of the fee legislation and is covered by a categorical exclusion. This rule will result in no new surface disturbing activities and therefore will have no effect on ecological or cultural resources. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205. The rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Under Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental
The final rule implements the annual catch levels and reference points for the Pacific sardine for the fishing year from July 1, 2019, through June 30, 2020. This action prohibits directed commercial fishing for Pacific sardine off the U.S. Pacific Coast, except in the live bait or minor directed fisheries, or as part of exempted fishing permit activities, and establishes limits on the incidental harvest of Pacific sardine in other fisheries. This action is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2019, through June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, (562) 436–2462, lynn.massey@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific Coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq.

This final rule implements the annual catch levels and reference points for the 2019–2020 fishing year. The final rule...