



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[WO-620-1990-00-24 1A]

RIN: 1004-AE27

Administration of Mining Claims and Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this rule to amend regulations on locating, recording, and maintaining mining claims or sites. In this rule, the BLM amends its regulations to respond to a recent law that changes the way the maintenance fee is calculated for unpatented placer mining claims. The law specifies that the holder of an unpatented placer mining claim must pay the initial and annual maintenance fee for each 20 acres or portion thereof contained in the claim; and reiterates that an initial maintenance fee payment is due at the time of recording the claim with the BLM and that the annual maintenance fee is due on or before September 1 of each year.

DATES: The interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

If you wish to comment on the interim final rule, you should submit your comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Mail: Director (630), Bureau of Land Management, U.S. Department of

the Interior, 1849 C St., NW., Washington, DC 20240, Attention: 1004-AE27.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M St., SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan at 202-912-7123, in the Solid Minerals Group as to program matters or the substance of the interim final rule or Ian Senio in the Division of Regulatory Affairs at 202-912-7440 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, 7 days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Interim Final Rule
- IV. Procedural Matters

I. Public Comment Procedures

If you wish to comment, you may submit your comments by one of several methods:

You may mail comments to Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C St., NW., Washington, DC 20240, Attention: 1004-AE27;

You may deliver comments to U.S. Department of the Interior, Bureau of Land

Management, 20 M St., SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003; or

You may access and comment on the interim final rule at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Written comments on the interim final rule should be specific, should be confined to issues pertinent to the interim final rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing.

The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or comments delivered to an address other than those listed above.

Public Availability of Comments

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at BLM's offices at the U.S. Department of the Interior, Bureau of Land Management, 20 M St., SE., Room 2134LM, Washington, DC 20003, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. They will also be available at the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions at this Website.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

II. Background

The BLM has responsibility for the collection of fees for placer and lode mining claims and mill and tunnel sites on Federal lands. During fiscal year (FY) 2011, claimants recorded 58,775 new claims and sites with the BLM. In addition, the BLM processed maintenance fee payments for 375,958 claims and sites. The BLM deposits the collected fees into a special fund, and Congress appropriates money to the BLM from the fund to pay for the administration of the Mining Law program, which includes mining claim recording and fee collection, processing grandfathered patent applications, processing applications for plans of operations, inspecting operations, and enforcing the regulations.

Since 1992, Congress has passed several laws requiring claimants to pay various fees when locating, recording, and maintaining mining claims or sites on Federal lands. This rule implements Section 430 of the Consolidated Appropriations Act, 2012 (the FY2012 Appropriations Act), Pub. L. 112-74, 125 Stat. 786, enacted on December 23, 2011, which amended 30 U.S.C. 28f.

III. Discussion of Interim Final Rule

Why the Rule Is Being Published on an Interim Final Basis

The BLM is adopting this interim final rule solely to implement the requirements of Section 430 of the FY2012 Appropriations Act, which amended 30 U.S.C. 28f. The BLM is not making any other changes to the regulations at 43 CFR part 3830.

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 and that this rule may properly take effect upon publication. The reasons are as follows:

- This rule merely codifies statutorily imposed procedural changes;
- The law precludes the BLM from exercising discretion as to the level of fees or when they are due;
- Publishing the regulations in final form gives the public notification of the change so that placer mining claim holders can correctly calculate the amount of the maintenance fee based on the acreage in their existing placer mining claims or when they locate new placer mining claims; and
- Publishing the regulations in final form gives time to placer mining claim holders whose claims are greater than 20 acres to reduce the size of their claims before September 1, 2012, if they do not wish to pay the adjusted fees.

The Department also determines that the exceptions under 5 U.S.C. 553(d) apply and there is good cause to place the rule into effect on the date of publication. First, the matters addressed in the rule are statutorily required. Second, the payments this rule affects are payable to the BLM at the time of initial recording and annually thereafter. Because claims and sites are continuously being recorded with the BLM, this interim final rule serves as notification to all placer mining claim holders that they must begin paying the newly established fees upon recordation.

How the rule operates

Under previous law, initial and annual maintenance fee payments were the same amount for all placer claims, whether the placer mining claim was 20 acres or 160 acres

(the maximum size allowed). This interim final rule specifies that for placer mining claims greater than 20 acres in size, the claimant must pay an additional fee for each 20 acres or portion thereof.

The fees under this rule are due for all existing placer mining claims, starting with the maintenance fee payment due on or before September 1, 2012, for the 2013 assessment year. For new placer mining claims, the rule is effective immediately and the fees under this rule are due when the placer claim is first recorded with the BLM as well as annually thereafter on or before September 1. For example, under this regulation, a claimant who records a new 66-acre placer mining claim must pay an initial maintenance fee of \$560 (\$140 for each of the first three 20-acre portions of the claim, plus \$140 for the additional 6-acre portion thereof), as well as the \$34 location fee (see 43 CFR 3830.21(a)(2)), and \$15 processing fee (see 43 CFR 3000.12), for a total of \$609. Each year, the annual maintenance fee for this hypothetical 66-acre placer claim would be \$560.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866 and Executive Order 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. This interim final rule will not meet any of Executive Order 12866 criteria for significance as follows:

(a) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The economic analysis accompanying this rule indicates that the increase in fees for placer mining claims in excess of 20 acres will be approximately \$8 million

per year. The BLM makes this estimate on the basis of approximately 35,000 placer mining claims for which claimants paid maintenance fees at the end of FY 2011. Of these, approximately 21,000 placer mining claims exceeded 20 acres.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule only impacts the BLM's regulatory program by implementing a law that gives the BLM no discretion as to how to apply new fees for placer mining claims and will not affect actions taken or planned by another agency.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(d) This rule does not raise novel legal or policy issues. The rule simply implements a statute requiring fees for placer mining claims.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This interim final rule has been developed in a manner consistent with these requirements

Regulatory Flexibility Act

The BLM certifies that this interim final 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 sufficiently to cause a significant economic impact. Using Internal Revenue Service data from 2008, the BLM estimates that the average placer claimant that will be affected by this rulemaking will pay an extra \$800 annually. This amount equals about one per cent of a claimant's average annual income in 2008, which was \$77,311. Moreover, this rule does not change the small miner maintenance fee waiver program, which further reduces any potential impact on small miners. 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 is consistent with Small Business Administration regulations at 13 CFR 121.201. Please see the economic analysis at the address in the **ADDRESSES** section of this rule for additional information.

Small Business Regulatory Enforcement Fairness Act

This interim final 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.

The maintenance fee for placer mining claims is changing and will now be calculated

based on the acreage of the claim. However, even with the additional maintenance fees collected for placer mining claims containing more than 20 acres, the annual effect on the economy will not meet or exceed \$100 million. The total maintenance fee collected for placer mining claims that exceed 20 acres is being adjusted so that placer mining claims containing more acreage will bear a proportional amount of the administrative costs associated with the administration of all claims and sites;

- This rule does 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 the BLM Mining Law program unaffected; and

- This rule 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.), the BLM finds that:

- This interim final rule does not "significantly or uniquely" affect small governments and does not impact small government entities in any regard. A Small Government Agency Plan is unnecessary.

- This rule does not produce a Federal mandate of \$100 million or greater in any year.

The rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes in this rule would 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.

Executive Order 13132, Federalism

In accordance with Executive Order 12612, the BLM finds that this interim final rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role of or responsibilities among 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 Executive Order 13175, the BLM finds that this interim 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 12988, Civil Justice Reform

In accordance with Executive Order 12988, the BLM finds that this interim 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 throughout the drafting process.

Paperwork Reduction Act

The BLM has determined this interim final rule does not contain any new 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.). The OMB has approved the information collection requirements in the regulations under OMB control number 1004-0114 that pertain to the payment of mining claim recordation and maintenance fees.

National Environmental Policy Act (NEPA)

This interim 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 administrative in nature 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 policies and procedures of the Department, the term “categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by a Federal agency and for which, therefore, neither an

environmental assessment nor an environmental impact statement is required.

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

This interim final 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, and does not impose requirements that are not statutory or impose new requirements.

Clarity of this regulation

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this interim final rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the regulations clearly stated?
2. Do the regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Author

The principal author of this interim final rule is Sonia Santillan in the Solid Minerals Group assisted by the Division of Regulatory Affairs, Washington Office, BLM.

List of Subjects in 43 CFR Part 3830

Mineral royalties; Mines; Public lands--mineral resources; Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authorities stated below, the BLM amends 43 CFR part 3830 as follows:

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

1. Revise the authority citation for part 3830 to read as follows:

Authority: 18 U.S.C 1001, 3571; 30 U.S.C. 22, 28, 28k, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1740, 1744; 115 Stat. 414; Pub. L. No. 112-74, 125 Stat. 786.

Subpart D—BLM Service Charge and Fee Requirements

2. Amend § 3830.21 by revising paragraphs (a) and (d) of the table to read as follows:

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

* * * * *

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833).	A total sum which includes: (1) The processing fee for notices of location found in the fee schedule in § 3000.12 of this chapter; (2) A one-time \$34 location fee; and	No.

<p style="text-align: center;">* * * * *</p> <p>(d) Maintaining a mining claim or site for one assessment year (part 3834).</p> <p style="text-align: center;">* * * * *</p>	<p>(3)(i) For lode claims, mill sites and tunnel sites, an initial \$140 maintenance fee; or</p> <p>(ii) For placer claims, an initial \$140 maintenance fee for each 20 acres of the placer claim or portion thereof.</p> <p>(1) For lode claims, mill sites and tunnel sites, an annual maintenance fee of \$140 must be paid on or before September 1 each year.</p> <p>(2) For placer claims, a \$140 annual maintenance fee for each 20 acres of the placer claim or portion thereof must be paid on or before September 1 each year.</p>	<p>Yes. See part 3835.</p>
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Marcilynn A. Burke
Acting Assistant Secretary, Land and
Minerals Management

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