



**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3830**

**[LLWO320000-L1999000.PP0000]**

**RIN: 1004-AE64**

**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), which is published by the Bureau of Labor Statistics.

**DATES:** The final rule is effective [insert date of publication in the Federal Register].

**ADDRESSES:** Mail: Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C St., N.W., Washington, DC 20240, Attention: "RIN 1004-AE64".

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

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

**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–28l.

This rule implements 30 U.S.C. 28j(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 28j(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 3830.21. The BLM for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and an opportunity for public comment for this rule are unnecessary, and that this rule may properly take effect upon publication. The reason is that this rule implements a statutory requirement to adjust the location and annual maintenance fees at least every 5 years, and the last adjustment was made in 2014. The statute specifies the method of calculation of the fee adjustments and prescribes the form and manner of notice of the fee adjustment, and the BLM has no discretion in implementing the statute. The BLM also determines 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 adjustments made in the rule are explicitly authorized by statute.

#### Organization of the final rule.

This final rule contains only the specific amendments necessary to conform to the requirements of the statute. The amendments appear as modifications of the fee transaction table at 43 CFR 3830.21 to change the amount of the location and annual maintenance fees required to be paid for each lode mining claim, mill site, or tunnel site and for each 20 acres or portion thereof for a placer mining claim.

### **III. Procedural Matters**

#### Executive Order 12866, Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory

Affairs (OIRA) will review all significant rules. This rule is not significant and OIRA will not formally review it because it does not meet one or more of the 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 rule increases the maintenance and location fees as provided for by statute. We estimate that the rule will likely result in a small increase in transfer payments from mining claimants to the Federal government. The fee adjustment does not change the substance of current mining claim administration within the BLM. The total amount of fees to be collected, including the effects of the adjustment, is estimated to be \$76 million annually, of which approximately \$5.51 million will be attributable to the adjustments made in this rule.

(b) This rule will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. The rule affects only the BLM's administration of its minerals program and does not change the relationships of the BLM to other agencies and their actions.

(c) This rule does not change 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. It merely updates the maintenance and location fees that BLM assesses.

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 rule has been developed in a manner consistent with these requirements.

### Regulatory Flexibility Act

The rule would affect business entities across many industries. The BLM reviewed the potentially affected entities and determined the industries to which they identify. The BLM also evaluated the extent to which the proposed rule would affect entities that are small businesses, as defined by the Small Business Administration (SBA). See the Economic and Threshold Analysis for this rule for a discussion of SBA size standards.

The entities potentially affected by the rule locate mining claims or sites, and may be actively involved in the exploration and development of locatable minerals<sup>1</sup> on Federal lands. These entities are defined by the SBA as an individual, limited partnership, or small company considered being at “arm’s length” from the control of any parent companies. The BLM does not have the authority to collect information concerning the

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<sup>1</sup> Locatable minerals are minerals that may be “located” with a mining claim under the Mining Law of 1872, (Act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28)), as amended. Locatable minerals include, but are not limited to, gold, silver, platinum, precious gems, uranium, bentonite, chemical grade limestone, chemical grade silica sand and gypsum.

number of employees, whether for companies locating mining claims or sites, or for companies actively involved in the exploration and development of locatable minerals on 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 final 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 taking 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 sufficient 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 in 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 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 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 the BLM has been collecting for many years. It will not significantly change financial obligations of the mining industry.

Author

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

**List of Subjects in 43 CFR Part 3830**

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

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



<p>(d) Maintaining a mining claim or site for one assessment year (part 3834).</p> <p style="text-align: center;">*   *</p>	<p>(1) For lode claims, mill sites and tunnel sites, an annual maintenance fee of \$165 must be paid on or before September 1 each year.</p> <p>(2) For placer claims, a \$165 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 style="text-align: center;">*   *   *</p>	<p>Yes. See part 3835.</p> <p style="text-align: center;">*   *</p>
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Dated: June 24, 2019.

Joseph R. Balash  
Assistant Secretary  
Land and Minerals Management

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