

or site for which the maintenance fee is being paid.

(c) There will be no proration of rental or maintenance fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under the waiver provisions of §§3833.1-6 and 3833.1-7, perform assessment work and file the affidavit of labor pursuant to §3833.2 in lieu of paying the rental or maintenance fee.

(e) The owner of an oil shale placer claim shall pay the required \$550 annual rental fee to the proper BLM State Office on or before each December 31.

(f) The payment of the required maintenance fee for a mining claim, mill site, or tunnel site satisfies the requirement to file an affidavit of assessment work or a notice of intention to hold pursuant to §3833.2.

(g) If a waived mining claim or site is transferred in total or in part to a party not qualified for a waiver, the waiver is forfeited for the mining claim or site or portion of interest therein transferred to the unqualified party. The maintenance fee for the previously waived claim or site will be paid for the assessment year in which the transfer was effective under State law pursuant to §3833.3. The applicable deadline is the August 31 on or immediately after which the transfer is effective under State law.

(h) The Secretary will adjust the location and maintenance fees every 5 years, based upon the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics, Department of Labor. The Secretary may adjust the location and maintenance fees sooner, if he deems it reasonable, based upon changes in the CPI.

(1) Public notice of any adjustment of maintenance or location fees will be provided by July 1 of the assessment year prior to the assessment year to which the adjustment becomes effective.

(2) Any such adjustment of maintenance or location fees to reflect changes in the CPI will be payable no later than the second August 31 following the July 1 by which the notice of the adjustment was given.

[59 FR 44860, Aug. 30, 1994]

§3833.1-6 Maintenance fee waiver qualifications under the Act of August 10, 1993, and other exceptions—applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999.

A small miner may, under certain conditions described in this section and in §3833.1-7, perform the assessment work required under 30 U.S.C. 28-28e and record it pursuant to Section 314(a) of FLPMA and §3833.2 in lieu of paying the maintenance fee. Assessment work shall conform to the requirements contained in subpart 3851 of this title.

(a) In order to qualify for a waiver of the maintenance fee requirements, a small miner shall meet all of the following conditions:

(1) The claimant and all related parties shall hold no more than 10 mining claims, mill sites, and tunnel sites, or any combination thereof, on Federal lands in the United States on the date the payment is due, which is each August 31. For purposes of determining the small miner waiver, oil shale claims shall not be counted toward the 10 claim limitation for the small miner waiver of the \$100 maintenance fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the maintenance fee in addition to filing for a small miner waiver.

(2) All mining claims and sites held by a claimant and all related parties shall be counted toward the 10 claim and site limit.

(3) Mill and tunnel sites of a qualified small miner, if listed upon the exemption certificate along with the affected lode and placer mining claims, are waived from payment of the maintenance fee.

(b) Mining claims and sites that are undergoing final reclamation, as approved by the authorized officer pursuant to subparts 3802, 3809, or 3814 of this title, with no intent by the owner thereof to continue mining, milling, or processing operations upon or under the mining claims or sites, are excused from payment of the maintenance fees. The owner shall file a certified statement by August 31 in the proper BLM office attesting to the reclamation status of the affected mining claims and/

or sites, with reference to a reclamation plan approved by the authorized officer for plan-level activities or submitted in consultation with the authorized officer for notice-level activities, and to his or her intent to place them into permanent closure. If the surface is managed by an entity other than BLM, the claimant shall submit evidence of a final reclamation plan that conforms to the requirements of the managing entity. A certified statement of such intent and reclamation shall be filed pursuant to §3833.1-7. The number of mining claims or sites that may properly qualify for a reclamation waiver pursuant to this paragraph is not restricted to a 10-claim limit.

(c) Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), military personnel on active duty status may, under certain conditions, qualify for an exemption from the performance of assessment work and the payment of maintenance fees. See §§3833.1-7(e)(2) and 3851.6 of this title.

(d) Under the following circumstances, a waiver may be obtained from the payment of the maintenance fee for mining claims and sites:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to Sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906), or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites.

(2) The claimant shall file proof of the above conditions for exemption, attested to as a certified statement, pursuant to §3833.1-7, with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought.

(3) The certified statement required by paragraph (d)(2) of this section, serves as a notice of intention to hold as to mining claims and sites for which the exemption is sought. In such cases, the payment of the \$5 service charge per claim or site is due upon filing the certification statement.

(e) Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30

U.S.C. 28 (b)-(e) and subpart 3852 of this title may be deferred during the period for which the deferment is granted. Deferments are governed by the following rule. If a petition for a deferment of assessment work, as required by §3852.2 of this title, is filed with the proper BLM office on or before August 31 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

(1) If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment, all deferred fees shall be paid within 30 days of the end of the deferment, unless the claimant/owner qualifies as a small miner. If the claimant/owner qualifies as a small miner, all deferred assessment work shall be performed as provided in §3852.5 of this title upon expiration of the deferment.

(2) If the petition for deferment is denied by the authorized officer, the maintenance fees shall be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the maintenance fees owed will result in the forfeiture of the claims contained within the petition.

(f) On mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment years during which assessment work is not required pursuant to §3851.5 of this title. However, no refund of previously deposited maintenance fees will be made to the mineral patent applicant.

[59 FR 44861, Aug. 30, 1994]

§3833.1-7 Filing requirements for the maintenance fee waiver and other exceptions.

(a) If no change in status has occurred, a small miner exemption certification previously filed for the assessment year ending at noon on September 1, 1994, under the Act of October 5, 1992 (Pub. L. 102-381, 106 Stat. 1374), and the pertinent regulations in effect on August 31, 1993, will be considered a proper certification filing for a