

Subparts 3826-3827 [Reserved]

Subpart 3831—Rights to Mineral Lands

PART 3830—LOCATION OF MINING CLAIMS

§3831.1 Manner of initiating rights under locations.

Subpart 3831—Rights to Mineral Lands

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of minerals, by locating the lands upon which such discovery has been made. A location is made by (a) staking the corners of the claim, except placer claims described by legal subdivision where State law permits locations without marking the boundaries of the claims on the ground, (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

Sec.

3831.1 Manner of initiating rights under locations.

(See 38 FR 24650, Sept. 10, 1973)

Subpart 3832—Who May Make Locations

Subpart 3832—Who May Make Locations

3832.1 Qualifications.

§3832.1 Qualifications.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

3833.0-1 Purpose.

3833.0-2 Objectives.

3833.0-3 Authority.

3833.0-5 Definitions.

3833.0-9 Information collection.

3833.1 Recordation of mining claims.

3833.1-1 Refundability of service charges, location fees, rental and maintenance fees.

3833.1-2 Recordation of mining claims, mill sites and tunnel sites located after October 21, 1976.

3833.1-3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance.

3833.1-4 Service charges and location fees.

3833.1-5 Maintenance fees.

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.

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

3833.2 Annual filings.

3833.2-1 National Park System lands.

3833.2-2 Other Federal lands.

3833.2-3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of August 10, 1993.

3833.2-4 Contents for evidence of assessment work.

3833.2-5 Contents for a notice of intention to hold claim or site.

3833.2-6 When evidence or notice is not required.

3833.3 Notice of transfer of interest.

3833.4 Failure to file, or to pay maintenance or location fees.

3833.5 Effect of recording and filing.

[35 FR 9750, June 13, 1970]

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

§3833.0-1 Purpose.

The purpose of the regulations is to establish procedures for:

AUTHORITY: 30 U.S.C. 22 and 28; 43 U.S.C. 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; 107 Stat. 60; 107 Stat. 405.

(a) The recordation in the proper BLM office of unpatented mining

claims, mill sites, or tunnel sites on Federal lands;

(b) The filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim;

(c) The payment in the same office of an annual maintenance fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

(d) Notifying the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites, or tunnel sites.

(e) These regulations are not intended to supersede or replace existing recording requirements under state law except when specifically changed by the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701), and are not intended to make the Bureau office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

[47 FR 56304, Dec. 15, 1982, as amended at 58 FR 38197, July 15, 1993; 59 FR 44857, Aug. 30, 1994]

§ 3833.0-2 Objectives.

The objectives of these regulations are:

(a) To determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands in order to assist in the surface management of those lands and the mineral resources therein;

(b) To remove any cloud on the title to those lands that may exist because they are subject to mining claims that may have been abandoned;

(c) To provide the BLM with information as to the location of active mining claims;

(d) To keep the BLM informed of transfers of interest in unpatented mining claims, mill sites, or tunnel sites.

[47 FR 56304, Dec. 15, 1982]

§ 3833.0-3 Authority.

(a) Sections 314(a) and (b) of the Federal Land Policy and Management Act (43 U.S.C. 1744), as amended by the Act of August 10, 1993 (30 U.S.C. 28f-k, 107

Stat. 405), require the recordation of unpatented mining claims, mill sites, and tunnel sites, and the filing of information concerning annual assessment work performed on unpatented mining claims in the proper BLM office within specified time periods. Section 314(c) of FLPMA provides that a failure to record the required documents within the time limits imposed by the statute constitutes a conclusive abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(b) The Secretary has the general responsibility and authority for the management of Federal lands under 43 U.S.C. 2, 43 U.S.C. 1212, and 43 U.S.C. 1457, and section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

(c) The General Mining Law of May 10, 1872, section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Act of August 31, 1951 (31 U.S.C. 9701) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

(e) Sections 10101-10106 of the Act of August 10, 1993 (Pub. L. 103-66, 107 Stat. 405), require an annual maintenance fee of \$100 to be paid to the proper State Office of the Bureau of Land Management for each non-waived mining claim, mill site, or tunnel site. With certain exceptions provided in § 3833.1-6, this fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28-28e and section 314(a) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of August 10, 1993, constitutes a statutory abandonment and forfeiture of the non-waived mining claim, mill site, or tunnel site. Provisions relating to maintenance fees and waivers are contained in §§ 3833.0-3(f), 3833.1-5, 3833.1-6, and 3833.1-7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242) requires oil shale claim holders to pay an annual fee of \$550 per oil shale claim, notwithstanding any other provision of

law. The Act of August 10, 1993, specifically states that the maintenance fee provision shall not apply to any oil shale claims for which a fee is required to be paid under Section 2511(e)(2) of the Energy Policy Act of 1992. The \$550 fee requirement for oil shale claims remains in effect. The \$550 fee is first payable on or before December 31, 1993, and on or before each December 31st thereafter.

(g) The Stockraising Homestead Act of December 29, 1916 (SRHA) (43 U.S.C. 299), as amended by the Act of April 16, 1993 (107 Stat. 60), provides that no person other than the surface owner may locate a mining claim on SRHA lands after October 13, 1993, until a notice of intent to locate has been filed with the proper BLM State Office and the surface owner is notified of the filing.

(1)(i) When a notice of intent to locate a mining claim has been properly filed by a mining claimant, no other person may, until 90 days after the date the notice of intent is filed:

(A) File such a notice with respect to any portions of the lands covered by the first notice;

(B) Explore for minerals or locate a mining claim on any portion of such lands; or

(C) File an application to acquire any interest in any portion of such lands pursuant to Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(ii) The 90-day exclusive right may be extended by filing a Plan of Operations pursuant to subpart 3809 of this title. The extension runs until the BLM has approved or denied the Plan of Operations.

(2) The mining claimant may not locate mining claims on the lands encompassed by a notice under the Act of April 16, 1993, until at least 30 days after he or she has properly notified the surface owner by registered or certified mail, return receipt requested.

(3) The Act of April 16, 1993, contains numerous other requirements prerequisite to a claimant engaging in mineral exploration and development activities on SRHA lands. These requirements are administered pursuant to subpart 3814 of this title.

(h) The Soldiers' and Sailors' Relief Act of 1940 (50 U.S.C. appendix 565) ex-

cuses performance of assessment work by military personnel while they are on active duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries. The procedures for obtaining a waiver from the performance of assessment work may be found in subpart 3851 of this title.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56304, Dec. 15, 1982; 53 FR 48881, Dec. 2, 1988; 58 FR 38197, July 15, 1993; 59 FR 44857, Aug. 30, 1994]

§ 3833.0-5 Definitions.

As used in this subpart:

(a) *FLPMA* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701) *et seq.*

(b) *Unpatented mining claim* means a lode mining claim or a placer mining claim located and held under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and 43 CFR part 3860 has not been issued.

(c) *Mill site* means any land located under 30 U.S.C. 42 for which patent under 30 U.S.C. 42 and 43 CFR part 3860 has not been issued.

(d) *Tunnel site* means a tunnel located pursuant to 30 U.S.C. 27.

(e) *Owner or claimant* means the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim, mill site, or tunnel site. The name of the owner and his or her current address shall be identified on all instruments required to be recorded or filed by the regulations in this subpart.

(f) *Federal lands* means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, *supra*, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) *Proper BLM office* means the Bureau of Land Management State Office listed in §1821.2-1(d) of this title having jurisdiction over the land in which the claims or sites are located. In Alaska, the Northern District Office's Records

and Public Information Unit, located in Fairbanks, may also receive and record documents, filings, and fees for all mining claims, mill sites, and tunnel sites located in the State of Alaska.

(h) *Date of location* or *located* means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) *Copy of the official record* means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed under state law in the local jurisdiction where the claim or site is located. It also includes and exact reproduction, duplicate, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

(j) *Affidavit of assessment work* means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an instrument, an affidavit evidencing the performance of such assessment work; and

(k) *Notice of intention to hold a mining claim* means an instrument containing the information required in §3833.2-5 of this title which has been or will be filed under state law in the local jurisdiction indicating that the owner continues to have an interest in the claim.

(l) *Notice of intention to hold a mill or tunnel site* means an instrument containing the information in the form required in §3833.2-5 of this title indicating that the owner continues to hold an interest in the site.

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1-2, 3833.1-3, 3833.1-5, 3833.1-6, 3833.1-7, or 3833.2, a filing or fee required by any of these sections is timely if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period, except as provided in §1821.2-2(e) of this title if the last day falls on a day the office is closed.

(n) *Assessment year* is defined in 30 U.S.C. 28 and commences at 12 o'clock noon on September 1st of each year. For the purpose of complying with the requirements of section 314(a) of the Act, the calendar year in which the assessment year ends is the year for which the evidence of annual assessment work shall be filed.

(o) *Filing period* means the time period during which documents and fees are required to be provided to the proper BLM office. Except for filings and recordings required of a small miner qualifying for a waiver under §3833.1-7 of this title, filings under FLPMA that would have been due on December 30, 1994, and each December 30 through and including December 30, 1999, are waived effective January 1, 1994, and so long thereafter as the Act of August 10, 1993, is in effect.

(p) *Amended location* means a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

(1) Correct or clarify defects or omissions in the original notice or certificate of location; or

(2) Change the legal description, mining claim name, position of discovery or boundary monuments, or similar items.

An amended location notice relates back to the original location notice date. No amendment is possible if the original location is void. An amendment to a notice or certificate of location shall not be used to effect a transfer of ownership of interest or to add owners. Such transfers or additions shall only be filed with the proper State Office of the BLM pursuant to §3833.3.

(q) *Relocation* means the establishment of a new mining claim, mill site, or tunnel site. A relocation may not be established by the use of an *amended location notice*, but requires a new original location notice or certificate as prescribed by state law.

(r) *Annual filing* means either an affidavit of assessment work or a notice of intention to hold the mining claim, mill site, or tunnel site.

(s) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(t) *Small miner* means a claimant/owner of a mining claim(s), that meets the requirements of §§3833.1-6 and 3833.1-7.

(u) *Age of discretion* means that age at which, pursuant to State law, an individual is legally entitled to manage his or her own affairs, and to enjoy civic rights.

(v) *Maintenance fee* means the annual \$100 payment required by the Act of August 10, 1993 (Pub.L. 103-66, 107 Stat. 312), to hold and maintain a mining claim, mill site, or tunnel site. The requirement to pay a maintenance fee does not apply to any claim located after September 29, 1998.

(w) *Location fee* means the one time \$25 payment required by the Act of August 10, 1993, for all new mining claims and mill and tunnel sites located upon the public lands on or after August 11, 1993, and before September 30, 1998. The location fee shall be paid at the time the mining claim or site is recorded with the proper BLM office.

(x) *Related party* means:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

(y) *Control* means, as defined in the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(z) *Forfeiture* means the consequences of an act or failure to act that results in an unpatented mining claim, mill, or tunnel site being deemed to be by operation of law abandoned or null and void. The term has the same meaning whether it is used in the noun form or in the verb form "forfeit" or "forfeited."

(aa) *Returnable* means that a check or negotiable instrument, including a valid credit card order, is received by the authorized officer but not yet proc-

essed through the accounting system of the Bureau of Land Management, and can be returned to the originator without processing of a refund check through the United States Treasury pursuant to §3833.1-1.

(bb) *Refundable* means that a check or negotiable instrument, including a valid credit card order, has been processed through the accounting system of the Bureau of Land Management, and cannot be returned to the originator without the processing of a refund check through the United States Treasury or the crediting to a credit card account pursuant to §3833.1-1.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56304, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 53 FR 48881, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990; 58 FR 38197, July 15, 1993; 59 FR 44858, Aug. 30, 1994]

§3833.0-9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0114. The information will be used to enable BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites their owner(s) wish to continue to hold under applicable Federal statute. A response is required to obtain a benefit in accordance with Section 314 of FLPMA, as amended, the Act of April 16, 1993 (Public Law 103-23, 107 Stat. 60), and the Act of August 10, 1993 (Public Law 103-66, 30 U.S.C. 28f-k, 107 Stat. 405).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land

§ 3833.1

43 CFR Ch. II (10–1–97 Edition)

Management, 1849 C St. NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004-0114, Washington, DC 20503.

[58 FR 38198, July 15, 1993, as amended at 59 FR 44858, Aug. 30, 1994]

§ 3833.1 Recordation of mining claims.

§ 3833.1-1 Refundability of service charges, location fees, rental and maintenance fees.

(a) Service charges submitted for new recordings under § 3833.1-2 are not returnable or refundable after the document has received the processing for which the service charges were paid.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 and 3833.3 are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned by operation of law.

(c) Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited.

(d) Maintenance fees, location fees, or service charges made in duplicate for the same claim or site or otherwise overpaid are returnable or refundable. The money will be returned or refunded to the party who submitted it. The authorized officer may apply the fee to a future year if so instructed by the payor.

(e) Voluntary actions such as relinquishment of claims or sites, or payment of maintenance fees by a qualified small miner, shall not be a qualifying reason for obtaining a refund of such fees previously paid.

[59 FR 44858, Aug. 30, 1994]

§ 3833.1-2 Recordation of mining claims, mill sites and tunnel sites located after October 21, 1976.

(a) The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal lands, excluding lands within units of the National Park System shall file within 90 days after the date of location of that claim or site in the proper

BLM office, a copy of the official record of the notice or certificate of location of that claim or site that was or will be filed under state law. If state law does not require the recordation of a notice or certificate of location of a claim or site, a notice or certificate of location containing the information in paragraph (b) of this section shall be filed. (See § 3734.1(a) of this title for mining claims and sites filed under Pub. L. 84-359 (69 Stat. 681) and § 3821.2 of this title for mining claims and sites filed on O and C lands).

(b) The copy of the notice or certificates filed in accordance with paragraph (a) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites a description shall be furnished.

(i) This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (quarter section), or sections, if more than one is involved, and the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

(iii) More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified;

(6) In place of the requirements of paragraph (b)(5) of this section, an approved mineral survey may be supplied. A mining claim described by legal subdivisions, section, township, range, meridian and State fulfills the requirements of paragraph (b)(5) of this section.

(7) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(c)(1) Beginning on October 13, 1993, mining claims cannot be located on lands patented under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993 (107 Stat 60); until the claimant has first filed a notice of intent to locate with the proper BLM State Office and has served a copy of the notice upon the surface owner(s) of record, by registered or certified mail, return receipt requested. Such notice shall be in the form and contain the information required in paragraph (d) of this section.

(2) The claimant shall wait 30 days after such service before entering the lands to locate any mining claims on the Stockraising Homestead Act lands.

(3) The authorized officer will not record any mining claim located on lands patented under the Stockraising Homestead Act, as amended, unless the claimant has complied with the requirements of this section, and all certificates or notices of location will be returned to the claimant without further action.

(4) The surface owner of land patented under the Stockraising Homestead Act, as amended, is exempt from the requirements of this section.

(5) All mining claims located on Stockraising Homestead lands are subject to the requirements of the Act of April 16, 1993. These additional requirements are found in subpart 3814 of this title.

(d) A separate notice of intent shall be filed and recorded in the appropriate

BLM State Office for each separate surface ownership in an individual State.

(1) Each notice of intent submitted shall be accompanied by evidence of title of the surface owner(s). Evidence of title shall be either a certificate of title or abstract of title certified by a person, association, or corporation authorized by State law to execute such a certificate within that State, and acceptable to the Bureau of Land Management.

(2) The notice of intent shall contain:

(i) The names(s), mailing address(es), and telephone number(s) of the person(s) filing the notice;

(ii) The names(s), mailing address(es), and telephone number(s) of the surface owner(s);

(iii) The legal description of the lands to which the notice applies, to the nearest 5-acre subdivision or lot;

(iv) The total number of acres under the specific notice of intent filed to the nearest whole acre;

(v) A brief description of the proposed mineral activities;

(vi) A map and legal description of the lands to be subject to mineral exploration, including access route(s);

(vii) The name, mailing address, and telephone number of the person managing such activities; and

(viii) A statement of the dates on which such activities will take place.

(3) The legal description shall be based on the public land survey or on such other description as is sufficient to permit the authorized officer accurately to record the notice on the BLM land status records (i.e., to the nearest 5-acre subdivision or lot).

(4) Upon acceptance of a notice of intent by the authorized officer, the notice of intent will be entered upon the official land status records of the Bureau of Land Management.

(5) The total acreage covered at any time by notices of intent filed by any person and by affiliates of such person may not exceed 6,400 acres of such lands in any one State and 1,280 acres of such lands nationwide for a single surface owner.

(6) If the surface owner(s) sells all or part of the surface during the authorized exploration period, the person who filed the notice of intent is not required to notify the new surface

owner(s) prior to entry during the authorized exploration period.

[42 FR 5300, Jan 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56305, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 55 FR 17754, Apr. 27, 1990; 58 FR 38198, July 15, 1993; 59 FR 44859, Aug. 30, 1994]

§3833.1-3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance.

(a) *Payment and acceptance policy.* All service charges, maintenance fees, and location fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency, and shall be made payable to the Department of the Interior—Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management. A check or negotiable instrument, including credit cards submitted for payment of charges and/or fees, for which payment is not honored by the issuing authority, and such refusal is not an error of the issuing authority, will be deemed to be a nonpayment of the charges or fees for which the check or negotiable instrument, including a credit card order, was tendered. See §3833.1-4 (f) and (g) for payments made by credit cards or from Declining Deposit Accounts.

(b) *Recordation of new mining claims, mill sites, or tunnel sites with the Bureau of Land Management.* (1) New location notices or certificates submitted for recording pursuant to §3833.1-2 that are not accompanied by full payment of the maintenance and location fees required by §3833.1-4 or 3833.1-5 will not be accepted, and the submittal will be returned without further action by the authorized officer. The claimant may resubmit the filings with the proper payment of service charges and fees within the same 90-day filing period referred to in §3833.1-2(a).

(2) Failure to provide full payment of service charges set forth in §3833.1-4 will be curable for new location notices or certificates submitted for recording pursuant to §3833.1-2 when the proper maintenance and location fees have been submitted. Such documents will be noted as being recorded on the date received provided that the claimant submits the proper service charge ei-

ther within 30 days of receipt of a deficiency notice sent by the authorized officer, or on or before the 90th day of the filing period referred to in 3833.1-2(a), whichever date is later.

(3) If the proper service charges have not been tendered pursuant to paragraph (b)(2), and if the claimant has not provided written instructions regarding the application of the funds received with the original filing, the authorized officer will apply such funds and serialize the claims in the order received. All notices or certificates for which there are insufficient funds to cover all service charges and maintenance and location fees will be returned to the claimant.

(c) *Mining claims, mill sites, and tunnel sites recorded and serialized by the Bureau of Land Management.* (1) Failure to provide full payment of service charges set forth in §3833.1-4 will be curable for documents and filings made pursuant to §§3833.2 and 3833.3 and amended locations filed under §3833.1. Such documents and filings will be noted as being recorded on the date initially received, provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge as required by this paragraph will cause filings made pursuant to §§3833.2 and 3833.3 and amended locations filed under §3833.1 to be rejected and returned to the claimant/owner. If a payment is received that partially covers the claims submitted, the payment shall be applied to mining claims and sites in ascending numerical order of serialization.

(2) If a claimant fails to submit the proper maintenance fees on or before each August 31, the authorized officer will apply the fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant. The authorized officer will note the deficient fees as being paid on the original date received, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer, if that much time remains before August 31. If there are less than 30 days before August 31, the

Bureau of Land Management, Interior

§ 3833.1-5

correct fees shall be filed (see §3833.0-5(m)) by such claimant on or before the August 31 deadline. Failure to submit the proper fees will cause the forfeiture of remaining claims or sites by the claimant/owner.

[59 FR 44859, Aug. 30, 1994]

§3833.1-4 Service charges and location fees.

(a) Each notice or certificate of location of a mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a non-refundable service charge of \$10.00.

(b) Each notice or certificate of location of a mining claim, mill site, or tunnel site that is located on or after August 11, 1993, and before September 30, 1998, shall, when filed with BLM, be accompanied by a one time nonrefundable location fee of \$25.

(c) Annual filings submitted pursuant to §3833.2 shall be accompanied by a nonrefundable service charge of \$5.00 for each mining claim, mill site, or tunnel site. A service charge is not required to accompany the rental fee submitted in lieu of assessment work or Notice of Intent to Hold as required by §3833.1-5 or the certified statement of exemption required to be filed by §3833.1-7.

(d) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of \$5.00 for each mining claim, mill site, or tunnel site.

(e) Each transfer of interest document filed pursuant to §3833.3 shall be accompanied by a nonrefundable service charge of \$5.00 for each mining claim, mill site, or tunnel site affected.

(f) The claimant/owner may authorize the BLM to charge payment of service charges, maintenance fees, and location fees to his or her credit card under §3833.1-3(a) by transmitting a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization by telephone if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(g) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are re-

corded for the payment of service charges, maintenance fees, and location fees. The authorized officer may deduct the necessary service charges and fees from or add overpayments to such account only at the direction of the claimant/owner.

[58 FR 38198, July 15, 1993, as amended at 59 FR 44860, Aug. 30, 1994]

§3833.1-5 Maintenance fees.

Except as provided in §§3833.0-3(f), 3833.1-6, and 3833.1-1 (d) and (e), each claimant shall pay a nonrefundable maintenance fee of \$100 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Act of August 10, 1993, begin at 12 o'clock noon on September 1, 1994, and end at 12 o'clock noon on September 1, 1999.

(a)(1) The initial \$100 nonrefundable maintenance fee for the assessment year in which the mining claim or site is located shall be paid for each mining claim, mill site, or tunnel site at the time of its filing with BLM pursuant to section 314(b) of FLPMA and §3833.1-2. If such claims or sites are located prior to an August 31, and the notice of location is properly filed within the FLPMA time frame but after August 31, then the \$100 fee that was due on August 31 for the succeeding assessment year shall be paid at the time of filing the location notice along with the initial \$100 fee.

(2) The initial maintenance fee described in paragraph (1) is not subject to the waiver provisions contained in §§3833.1-6 and 3833.1-7.

(b) Under the Act of August 10, 1993, a nonrefundable maintenance fee of \$100.00 for each mining claim, mill site, or tunnel site shall be paid annually on or before August 31 for the subsequent assessment year beginning at 12 o'clock noon on September 1 of that year. The first payment will be due on or before August 31, 1994, with payments due for each August 31 through August 31, 1998. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim

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 waiver of payment of the maintenance fee due on August 31, 1994.

(b) The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to § 3833.2 and shall meet the requirements of § 3833.2-4.

(c) For mining claims and sites covered by a waiver, the filing of a waiver certification pursuant to any of paragraphs (a), (d), (e), or (f) of this section will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2-5, when such notice of intention to hold is otherwise required. In such a case the payment of the \$5 service charge per claim/site for processing the notice of intention to hold is due upon filing of the waiver statement.

(d) In order to hold mining claims or sites for the assessment year beginning at 12 o'clock noon on September 1, 1994, each small miner shall file a waiver certification on or before August 31, 1994. Each small miner shall file a waiver certification on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through August 31, 1998. The small miner shall document, as provided in this paragraph (d), the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001. The statement shall contain:

(1) The mining claim and site names and BLM serial numbers assigned to the mining claims and sites held by the small miner;

(2) A declaration by the claimant and all related parties that they own no more than 10 mining claims and sites in total nationwide on the date the waiver statement is due;

(3) A declaration that specifies that the assessment work requirements have been or will be completed by the date the payment is due, which is each August 31, for the assessment year just ending;

(4) The names and addresses of all owners maintaining an interest in the mining claims and sites; and

(5) The signatures of all the owners of the mining claims and sites for which a waiver is claimed.

(e) Pursuant to the Soldiers' and Sailors' Relief Act, and § 3851.6 of this title, a military person entering active service may file, or cause to be filed, in the proper BLM office, a notice of his or her entry into active military service.

(1) The filing of the notice excuses the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed after release from a military hospital, whichever is later. To be excused from paying the maintenance fee, the person cannot hold the subject claim or site with a related party, as defined in paragraph 3833.0-5(x), who does not also qualify under the Soldiers' and Sailors' Relief Act.

(2) The notice must be filed in the assessment year that the person entered active duty status, or if active duty began prior to August 30, 1994, the notice must be filed in the assessment year that he or she wishes the benefits provided in paragraph (e)(1) of this section to take effect. If the person previously filed a notice under the Soldiers' and Sailors' Relief Act to be excused from performing assessment work, and remains qualified under that Act, he or she will automatically be exempt from paying the maintenance fee.

(3) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year next following the assessment year during which the person was released from active duty or a military hospital, whichever is later.

(4) The notice shall be filed as a certified statement pursuant to paragraph (d) of this section, and shall list all mining claims and sites affected by claim/site name and BLM serial number.

[59 FR 44861, Aug. 30, 1994; 59 FR 47815, Sept. 19, 1994]

§ 3833.2 Annual filings.**§ 3833.2-1 National Park System lands.**

(a) For all mining claims, mill sites, and tunnel sites located within a unit of the National Park System that was recorded on or before September 28, 1977, except as provided under the Act of October 5, 1992, an annual filing shall be submitted to the proper BLM office on or before December 30 of each succeeding calendar year thereafter.

(b) Even though the National Park Service, except under certain limited circumstances described in 36 CFR part 9, subpart A, does not permit surface disturbing actions to occur in units of the National Park System, a notice of intent to hold should be filed for mining claims and sites located within these units. If the owner has received National Park Service approval for surface disturbing actions under 36 CFR part 9, subpart A, either a notice of intent or an affidavit of assessment work, as appropriate, should be filed.

(c) The provisions of this section shall apply to all mining claims, mill sites, and tunnel sites included in a unit of the National Park System because of an enlargement of the said unit after September 28, 1976.

(d) Evidence of annual assessment work for mining claims, mill sites, and tunnel sites located in a unit of the National Park System shall be in the form prescribed by § 3833.2-4 of this Title. A notice of intention to hold such a claim or site shall be in the form prescribed in § 3833.2-5 of this title.

(e) The authorized officer will forward copies of annual filings on, and will periodically provide the status of, mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

[53 FR 48881, Dec. 2, 1988, as amended at 58 FR 38201, July 15, 1993]

§ 3833.2-2 Other Federal lands.

Unpatented mining claims, mill sites, and tunnel sites located on Federal lands which are not within a unit of the National Park System except as provided in §§ 3833.1-5 through 3833.1-7, are subject to the following annual filing requirements:

(a) If a mining claim, mill site, or tunnel site located on or before October 20, 1976, was recorded in the proper BLM office prior to January 1, 1978, a notice of intention to hold or evidence of annual assessment work shall be filed in the proper BLM office on or before December 30, of the calendar year following the calendar year of its recordation, and of each calendar year thereafter.

(b) All owners of mining claims, mill sites, or tunnel sites located on or before October 20, 1976, and recorded in the proper BLM office on or after January 1, 1978, and on or before October 22, 1979, shall have filed a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before October 22, 1979, and on or before December 30 of each calendar year after 1979.

(c) Owners of mining claims, mill sites, and tunnel sites located on or after October 21, 1976, shall file a notice of intention to hold or evidence of annual assessment work in the proper BLM office on or before December 30 of the calendar year following the calendar year of the location of the mining claims, mill site, or tunnel site.

(d) Evidence of annual assessment work shall be in the form prescribed in § 3833.2-4 of this title. A notice of intention to hold shall be in the form prescribed in § 3833.2-5 of this title.

[53 FR 48881, Dec. 2, 1988, as amended at 58 FR 38201, July 15, 1993]

§ 3833.2-3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of August 10, 1993.

(a) The Federal Land Policy and Management Act requires that a notice of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year following the calendar year in which the mining claim, mill site, or tunnel site was located. To comply with the requirements of the Act for mining claims, mill sites, or tunnel sites located between September 1 and December 31 of a given calendar year, the claimant shall submit an annual filing on or before December 30, of the following calendar year for each location to

prevent the mining claim, mill site, or tunnel site from being declared abandoned and void by operation of law.

(b) Evidence of assessment work filed under this subpart between January 1 and the following December 30 of the same calendar year shall be deemed to have been filed during that calendar year, regardless of what assessment year that work fulfilled under State law.

(c) Notice of intention to hold a mining claim, mill site, or tunnel site may be filed at the election of the owner, regardless of whether the assessment work has been suspended, deferred, or not yet accrued. However, the owner shall have filed with the Bureau of Land Management the same documents which have been or will be recorded with the local recordation office. There is no requirement to file a notice of intent to hold for a mill site or a tunnel site with the local recordation office. A notice of intention to hold a mining claim, mill site, or tunnel site shall be effective only to satisfy the filing requirement for the calendar year in which the notice is filed. The filing of a notice of intention to hold with the Bureau of Land Management shall not relieve the owner of complying with Federal and State laws pertaining to the performance of assessment work.

(d) The Act of August 10, 1993, does not affect the requirements to do assessment work in the assessment year beginning at 12 o'clock noon on September 1, 1999, or to make annual filings on or before December 30, 2000, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1998, and on or before September 29, 1998, and for which the required \$100 maintenance fee was paid at the time of recording pursuant to § 314(b) of FLPMA and § 3833.1-2, payment of the maintenance fee holds the claims or sites through at least September 1, 1999.

[53 FR 48882, Dec. 2, 1988, as amended at 58 FR 38201, July 15, 1993; 59 FR 44862, Aug. 30, 1994]

§ 3833.2-4 Contents for evidence of assessment work.

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except microfilm of the evidence of assessment work which was performed under state law and was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the state where the claim or group of claims is located and recorded setting forth the additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing of the notice, certificate of location in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) which has been or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979; 47 FR 56306, Dec. 15, 1982. Redesignated at 53 FR 48881, Dec. 2, 1988]

§ 3833.2-5 Contents for a notice of intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims may be filed at the election of the owner, regardless of whether the assessment has been suspended, deferred or not yet accrued. However, the claimant shall file with the Bureau of Land Management the same documents which have been or will be recorded with the county or local office of recordation. A notice of intention to hold

Bureau of Land Management, Interior

§ 3833.3

a mining claim shall be effective only to satisfy the filing requirement for the year (as specified in §3833.0-5 of this title), in which the notice is filed. The filing of a notice with the Bureau of Land Management shall not relieve the owner of complying with Federal and state laws pertaining to the performance of annual assessment work.

(b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either:

(1) An exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim of his/her agent, which was or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the notice or certificate of location. Citing the serial number shall comply with the requirement in the Act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(2) A reference to the decision on file in the proper BLM office by date and serial number which granted a deferment of the annual assessment work.

(3) A reference to a pending petition for deferment of the annual assessment work required by 30 U.S.C. 28 by date of filing and serial number and with the proper BLM office.

(c) A notice of intention to hold a mill or tunnel site or group of mill or tunnel sites shall be in the form of a letter or other notice signed by the owner(s) of such sites or their agent(s) setting forth the following information:

(1) The Bureau of Land Management serial number assigned to each site upon filing in the proper BLM office of a copy of the official record of the notice or certification of location;

(2) Any change in the mailing address, if known, of the owner(s) of the site(s).

[47 FR 56306, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983. Redesignated at 53 FR 48881, Dec. 2, 1988]

§3833.2-6 When evidence or notice is not required.

Evidence of annual assessment work performed to hold a mining claim or a notice of intention to hold a mill site need not be filed on unpatented mining claims or mill sites if mineral entry under a mineral patent application has been allowed. The owner of that mining claim or mill site is exempt from the filing requirements of §3833.2 and the payment of maintenance fees under §3833.1-5 as of the date mineral entry is allowed.

[59 FR 44862, Aug. 30, 1994]

§3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with §3833.1, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office: and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(3) A copy of the legal instrument or document that operates under State law to transfer the interest in the claim being sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with §3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

(c) The filing of a transfer of interest, when properly executed and recorded under State law, is placed on the BLM record when it is filed with the proper BLM office. The transfer will be deemed to have taken place on its effective date under State law.

[42 FR 5300, Jan. 27, 1977, as amended at 55 FR 17754, Apr. 27, 1990; 58 FR 38201, July 15, 1993; 59 FR 44862, Aug. 30, 1994]

§ 3833.4 Failure to file, or to pay maintenance of location fees.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before the December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, shall conclusively constitute a forfeiture of the mining claim or site.

(2) Failure to record the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or failure to pay the maintenance or location fees required by §§ 3833.1–4, 3833.1–5, and 3833.1–7, or failure to file the documents required by § 3833.1–7 (b) through (d) within the time periods prescribed therein for claimants who also fail to pay the maintenance fee, shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site.

(3) Claimants who fail to pay the maintenance fee, but file a waiver certification under § 3833.1–7, shall perform the assessment work required by subpart 3851 of this title by the waiver statement filing deadline, or the mining claims under the invalid waiver certification will be conclusively deemed forfeited for failure to pay the maintenance fee on time.

(4) Failure to list the 10 or fewer mining claims and/or sites for which the fee is requested to be waived on the applicable certification document filed pursuant to 3833.1–6 or 3833.1–7 will result in the affected mining claims and/or sites being deemed abandoned by the owner or owners thereof.

(b) Failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7(d)–(f), 3833.2–4(a), 3833.2–4(b), 3833.2–5(b) and 3833.2–5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim

or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner.

(c) Failure to record a transfer of interest under § 3833.3 will result in the Bureau of Land Management refusing to recognize the interest acquired by the transferee or to serve notice of any action, decision, or contest on the unrecorded owner.

(d) The fact that an instrument is filed in accordance with other laws permitting filing for record thereof and is defective or not timely filed for record under those laws shall not be considered failure to file under this subpart. The fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill or tunnel site shall not affect the validity of this filing.

(e) Any mining claim deemed abandoned under section 314(c) of the Act for failure to file an instrument in the local jurisdiction of the State where the claim is located pursuant to section 314 (a)(1) and (b) of the Act, shall not be validated by filing the instrument with the BLM in accordance with § 3833.1, 3833.2–1, and 3833.2–2 of this title, and such instrument is ineffective even though the claim may currently be shown to exist in the BLM records.

(f) Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the authorized officer that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence

on the part of the owner, the authorized officer may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease consistent with the provisions of section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)) to be effective from the statutory date the claim was conclusively abandoned. The conditions and requirements for issuance of such leases are contained in § 3108.2-4 of this title.

[44 FR 9723, Feb. 14, 1979, as amended at 47 FR 56307, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 49 FR 30450, July 30, 1984; 53 FR 48882, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990; 58 FR 38201, July 15, 1993; 59 FR 44862, Aug. 30, 1994]

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the other requirements of Groups 3700 and 3800 of this title, and with laws and regulations issued by any State or other authority relating to locating, recording, and maintenance of mining claims, mill sites, and tunnel sites located, held, and maintained upon the public lands of the United States.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings required by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621-625), will satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Pub. L. 359 lands under 43 CFR part

3730, or as provided in § 3833.2 of this title.

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 and filed a notice of transfer of interest pursuant to § 3833.3 shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified and served by certified mail sent to their last address of record. As provided in subpart 1810 of this title, all owners of record with the Bureau of Land Management shall be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners shall be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The provisions of this subpart shall not be applicable to procedures for public notice required under part 3860 of this title with respect to mineral patent applications.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

(h) Any party adversely affected by a decision of the authorized officer made

pursuant to the provisions of this subpart shall have a right of appeal pursuant to part 4 of this title.

[42 FR 5200, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979; 47 FR 56307, Dec. 15, 1982; 53 FR 48882, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990; 58 FR 38201, July 15, 1993]

PART 3840—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3840—Types of Claims

Sec.

3840.1 Classes of mining claims.

Subpart 3841—Lode Claims

3841.1 Lodes located previous to May 10, 1872.

3841.2 Lodes must not have been adversely claimed.

3841.3 Discovery.

3841.3-1 Discovery required before location.

3841.3-2 Discovery work.

3841.4 Describing locations.

3841.4-1 Length of lode claims.

3841.4-2 Width of lode claims.

3841.4-3 Extent of surface ground.

3841.4-4 Defining of locations.

3841.4-5 Location notice; monumenting.

3841.4-6 Recording of location notice.

Subpart 3842—Placer Claims

3842.1 Placer claims: General.

3842.1-1 Discovery.

3842.1-2 Maximum allowable acreage.

3842.1-3 Locations authorized in 10-acre units.

3842.1-4 Manner of describing 10-acre units.

3842.1-5 Conformity of placer claims to the public land surveys.

3842.2 Building-stone placers.

3842.3 Saline placers.

3842.4 Petroleum placers.

Subpart 3843—Tunnel Sites

3843.1 Possessory right of tunnel proprietor.

3843.2 Location of tunnel claims.

3843.3 Recording of notices.

Subpart 3844—Millsites

3844.0-3 Authority.

3844.1 Required use.

Subpart 3840—Types of Claims

§ 3840.1 Classes of mining claims.

Mining claims are of two distinct classes: lode claims and placers.

[35 FR 9750, June 13, 1970]

Subpart 3841—Lode Claims

SOURCE: 35 FR 9750, June 13, 1970, unless otherwise noted.

§ 3841.1 Lodes located previous to May 10, 1872.

The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by 2322 and 2328, R.S. (30 U.S.C. 26, 33), by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 3841.2 Lodes must not have been adversely claimed.

It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 3841.3 Discovery.

§ 3841.3-1 Discovery required before location.

No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 3841.3-2 Discovery work.

The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible,