DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3120, 3130, 3150, 3160, 3200, 3470, 3500, 3600, 3800, 3830, 3833, 3835, 3836, 3860, and 3870

[WO–610–4111–02–24 1A]

RIN 1004–AC64

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental notice of proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is again proposing to amend its mineral resources regulations to increase many fees and to impose new fees to cover BLM's costs of processing certain documents relating to its minerals programs. This would include costs for actions such as environmental studies, monitoring activities, and other processing-related costs. The BLM would establish some fixed fees and some fees on a case-by-case basis. The proposed fee changes are based on statutory authorities, which authorize BLM to charge for its processing costs, and on policy guidance from the Office of Management and Budget (OMB) and the Department of the Interior (DOI) requiring BLM to charge these fees. The fee changes also respond to recommendations issued in audit reports by the DOI's Office of Inspector General (OIG).

DATES: You should submit your comments on or before August 18, 2005. The BLM may or may not consider comments postmarked or received by messenger or electronic mail after the above date in the decision-making process on the final rule.

ADDRESSES: Mail Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153. Personal or messenger delivery: 1620 L Street NW., Suite 401, Washington, DC 20036. Email: *Comments_washington@blm.gov.*

FOR FURTHER INFORMATION CONTACT: For issues related to BLM's Minerals Program contact Tim Spisak, Fluid Minerals Group Manager (202) 452–5061 or Ted Murphy, Solid Minerals Division Manager (202) 452–0351. Contact Cynthia Ellis (202) 452–5012 for issues relating to BLM's regulatory matters. Individuals who use a telecommunications device for the deaf may contact these individuals through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I File Comments?

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

- *Mail:* Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia, 22153.
- *Personal or messenger delivery:* 1620 L Street NW., Suite 401, Washington, DC 20036.
- *Comments_washington@blm.gov.*

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. Please include a reference to ''RIN 1004–AC64'' in your comments.

The DOI may or may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). BLM has set the comment period for this proposed rule at 30 days. We believe this provides sufficient time for public comment because most of this rule was proposed in nearly identical form on December 15, 2000 (65 FR 78440–78455). BLM extended the original comment period to over six months, until July 2, 2001 (66 FR 19413, April 16, 2001). We believe that 30 days allows sufficient time to comment on the fees that are new in this proposed rule. Moreover, this rule is necessary to implement the cost recovery fee collection provisions included in the President's 2006 Budget, as passed by Congress. Because the revenue is needed to cover BLM's operating expenses in FY 2006, it was determined that BLM could not provide a longer comment period without jeopardizing the government's ability to implement these fees in a timely manner.

B. May I Review Comments Others Submit?

If you want your comments to remain confidential, do not send us your comments at the e-mail address. In addition, all comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES:** Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

If you provide comments on company or institutional letterhead, we will assume those comments were given with the approval of the organization and may identify them as such.

BLM received 135 comments in response to the original proposed rule published on December 15, 2000, in the **Federal Register** (65 FR 78440–78455). This reproposed rule has updated fees and clarifies several issues that were in the 2000 proposed rule. If you provided comments in response to the December 15, 2000, proposed rule you need not submit those comments again. We will address those comments in any final rule.

II. Background

Federal agencies are authorized to charge processing costs by the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. The BLM also has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. Public lands in FLPMA means all lands or interests in land owned by the United States and administered by BLM, excluding outer continental shelf lands and Native American lands (43 U.S.C. 1702(e)). This applies to Federal mineral lands with private or state surface as well as to lands where the United States owns both the surface and mineral rights. The BLM interprets this definition to mean that a mineral lease or mineral materials disposal administered by BLM, or a mining claim

(for which BLM determines validity), even in land where another agency administers the surface, is an ''interest in land'' for the purposes of FLPMA. BLM is not proposing in this rule to recover costs for work we perform in administering Indian leases.

Before BLM disposes of mineral materials or issues a mineral lease on these lands, if the surface managing agency also exercises any responsibility relating to disposal of the minerals, the mineral estate may not be sufficiently under the administrative control of BLM to qualify as public lands for purposes such as exchanges. However, once BLM issues a mineral lease or proceeds with a mineral materials disposal, we are administering an interest in the lands, and that interest now falls under the FLPMA definition of public lands. Because the Secretary of the Interior has primary jurisdiction over determining the validity of mining claims, and BLM administers the mineral estate covered by those claims, mining claims also qualify as public lands under FLPMA. Of course, BLM also has authority under the IOAA to collect fees for processing documents related to its administration of the mineral estate in these instances.

The IOAA and section 304 of FLPMA authorize BLM to charge applicants for the cost of processing documents through the rulemaking process, which BLM is proposing to do through this rule. The IOAA also states that these charges should pay for the agency services, as much as possible.

Cost recovery policies are explained in OMB Circular No. A–25 (Revised) entitled ''User Charges.'' Part 346 of the Departmental Manual (DM) also provides guidance. The general Federal policy is that a charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the public. (OMB Circular A–25.) The Circular establishes Federal policy regarding fees assessed for government services and for sales or use of government goods or resources. It provides information on the scope and types of activities subject to user charges and the basis upon which agencies set user charges. Finally, the Circular provides guidance for agency implementation of charges and the disposition of collections.

The DOI Manual provides guidance and reflects the OMB cost recovery policy at 346 DM 1.2 A. Under that section, unless prohibited or limited by statute or other authority, BLM must impose a charge that:

1. Recovers the bureau or office costs; and

2. Recovers costs for all categories of service that provide special benefits to an identifiable recipient beyond those which accrue to the public at large.

Certain activities may be exempted from these fees under conditions set out at 346 DM 1.2 C.

In 1996, the Solicitor issued an M Opinion, entitled ''BLM's Authority to Recover Costs of Minerals Document Processing'' (M–36987, December 5, 1996), which analyzed the law related to BLM's cost recovery authority. In considering how BLM could structure its cost recovery, the Opinion noted, ''BLM could decide in certain instances to structure a rule so that a new fee is phased in over a period of time.'' M–36987 at page 36. This is based on the provision in Section 304(b) of FLPMA (43 U.S.C. 1734 (b)) that the Secretary may consider other factors relevant to determining reasonable costs. (See ''*What are the FLPMA Factors BLM Must Consider?*'' below.) In this proposed rule, BLM is proposing to phase in certain fees to give companies adequate time to include all costs in their planning processes.

On December 15, 2000, BLM proposed a rule to amend our mineral resource regulations to increase many fees and to impose new fees to cover our costs of processing certain documents relating to our mineral programs (65 FR 78440). The December 2000 proposed fee changes were BLM's response to recommendations made in a 1988 OIG report (No. 89–25). This report was part of a 1980s presidential initiative that called for all Federal agencies to charge appropriate user fees, consistent with the law, for agency services. The OIG recommended that BLM collect fees for processing mineral-related documents whenever possible.

In this proposed rule, we are reproposing the 2000 fees, and adding the following fees that were not included in the 2000 proposed rule:

1. A processing fee for oil and gas applications for permit to drill (APDs),

2. A processing fee for geothermal permits to drill (GPDs),

3. A processing fee for geothermal exploration permits, and

4. A processing fee for renewal of mineral materials competitive contracts.

We are also proposing to charge a fixed fee for the processing of oil and gas geophysical exploration applications, instead of the case-by-case fee that we proposed in 2000.

For both the 2000 proposed rule and this proposed rule, we updated existing fees. This proposed rule covers only some of the documents for which BLM has the authority to recover processing costs. The BLM intends to continue to work on establishing and collecting fees for other documents including those addressed in the Solicitor's December 5, 1996, M Opinion on this subject (M–36987). In the future, we expect to identify and propose fees for additional processing activities.

III. Discussion of the Proposed Rule

What Does ''Cost Recovery'' Mean in This Rulemaking?

''Cost Recovery'' means reimbursing BLM for the costs of processing applications and other documents relating to the public lands by charging a fee to the applicant or beneficiary.

What Is the Office of Inspector General (OIG)?

This office, within the DOI, studies Departmental economy and efficiency and makes recommendations for improvement.

What OIG Reports Affected This Rulemaking?

The OIG reports No. 89–25 (1988), No. 92–I–828 (1992), 95–I–379 (1995) and No. 97–I–1300 (1997).

What Did the 1988 OIG Report (No. 89–25) Recommend?

The report recommended that BLM:

1. List all the mineral-related document types for which it had authority to charge BLM processing costs to the applicant;

2. Determine the BLM processing costs for each type of document and count how many were processed;

3. Establish exemption standards and apply them to each type of document on the list;

4. Prepare and maintain exemption documentation for exempted document types; and

5. Establish and collect processing cost fees for all non-exempt types of documents.

How Did BLM Gather Data for Cost Recovery in Response to the 1988 OIG Report?

The BLM first conducted an inventory of about 130 types of documents in all onshore energy and mineral program areas: fluid minerals (including geothermal resources) leasing and operations; solid leasable minerals (coal and non-energy minerals) leasing and operations; mining law administration (locatable minerals); and mineral materials (saleable minerals such as sand and gravel). The BLM used this inventory to determine the types of documents for which it appeared we had authority to collect processing costs.

How Did BLM Analyze Its Costs for Types of Documents That Appeared To Be Eligible for Processing Fees?

We started with a pilot analysis in the BLM Montana State Office and then surveyed all BLM State Offices in 1990. To ensure that the State Offices used the same data-gathering approach, the BLM Washington Office gave all State Offices a copy of Part 346 of the DM, three types of standard forms to record the data, and detailed instructions previously tested for clarity in the Montana Pilot Analysis.

Were There Differences in the Processing Costs and Number of Document Filings Processed for Each State Office?

Yes. The BLM's preliminary review of the data showed large cost differences among offices for processing certain types of documents, as well as big differences in the numbers of documents filed and processed. For example, office processing costs for a mineral materials noncompetitive sale application ranged from $234 to $4,773. As discussed below, BLM reconsidered the State Offices' estimated costs for noncompetitive sales applications and determined that the differences in estimates were attributable to unique site- or sale-specific factors.

Similarly, the number of mining law affidavits of assessment filed in State Offices for Fiscal Years (FY) 1988–1990 varied from about 2,761 to 251,564. For certain mineral-related document types, some offices had no activity during the three years sampled.

What Did BLM Do To Reconcile the Differences in the Data?

The BLM decided to use a weighted average rather than a simple average to determine a BLM-wide processing cost for each type of document. This method gave greater weight to the processing cost data from State Offices having a heavy workload, and thus more expertise, in processing a particular type of document.

Between 1995 and 1999, we re-analyzed much of the data, conducted spot checks to verify its continued validity, and adjusted it to current prices. In 2003, we reviewed the processing details for the different types of documents dating from 1995 and determined that the information was current.

What Did the OIG's Follow-Up Report Find?

The report (No. 95–I–379, January 1995) found that, of the five recommendations in the 1988 OIG report, BLM had:

- Implemented the first, third, and fourth recommendations,
- Partially implemented the second recommendation to determine the cost and number of each document filing processed, and
- Not yet implemented the fifth recommendation to establish and collect BLM processing cost fees for non-exempt types of documents.

The OIG sent BLM a draft of this report to which we responded in August 1994. We met with the OIG and discussed issues raised by the report, including the issue of guidance and standards in data gathering. We also provided supplemental information to the OIG in December 1994 to resolve the issue.

What Observations and Recommendations Did the 1995 OIG Report Make?

The OIG noted the wide variations in estimates of the time and cost needed to process types of documents among various BLM State Offices, and made two recommendations to BLM from the draft report. First, BLM should develop document processing standards, request cost information from State Offices based on these standards and analyze and resolve significant differences in the collected data, particularly for types of documents which have major impacts on the total amount of money that BLM can recover. Next, BLM should expedite the establishment and collection of fees for processing types of documents which have major impacts on the total amount of money that BLM can recover, and continue efforts to establish and collect fees for other types of documents.

The report noted that in the supplemental information provided in December 1994, BLM told the OIG that it had developed guidance/standards that were used by all State Offices to achieve uniformity in data gathering and reporting. It pointed out that BLM said we would establish a multi-program team to continue examining fees to establish a consistent cost recovery program. Based on our responses to the draft report, the final 1995 OIG report concluded that both recommendations were resolved but not implemented.

How Did BLM Respond to the 1995 Report?

After the OIG issued the 1995 report BLM created a multi-program team to update its processing cost data, with priority given to establishing and collecting fees for types of documents with a significant impact on the total amount of money that we can recover. To update the existing data and verify its accuracy, the team gathered new estimates of the number of annual filings, updated processing cost estimates, and assigned BLM mineral experts to review the data in their specialties.

How Did BLM Analyze the 1990 Cost Data for Oil, Gas, and Geothermal in Response to the 1995 OIG Report?

BLM's fluid minerals program re-analyzed this data, comparing the data and identifying the appropriate job position, salary level, and time needed for each step indicated in BLM oil, gas, and geothermal Handbooks to process each type of document. The 1990 data was also based on the steps in the Handbooks. Based on this analysis, we calculated a direct cost (see discussion of direct/indirect costs below) for each step of the process, which was then adjusted to 1995 salary rates without a locality factor. BLM later added indirect costs. We used these cost figures in this proposed rule as the actual cost estimates for oil and gas and geothermal document types, from which the fees were determined. The BLM relied on this method for oil and gas and geothermal because the assigned program expert believed it would yield accurate cost estimates.

How Did BLM Update the 1990 Cost Data for Mineral Materials, Coal, Nonenergy Leasable Minerals, and Mining Law in Response to the 1995 OIG Report?

We spot-checked the data by resubmitting it to selected BLM State Offices that often process these particular categories of documents. We also sent each of these offices a summary of the cost data that the office had previously submitted for these types of documents, along with the BLM-wide weighted average cost for each of them. We requested that the State Offices review the cost data and report whether that data, adjusted to current prices, remained reasonable. We requested that the State Office re-estimate costs for that state if it found the re-examined adjusted cost data to be unreasonable for that point in time. Our re-examination verified that BLM's data continued to be valid and ensured that figures, which varied significantly among offices, had not been submitted in error. We used this method for these programs because our program experts believed it would yield accurate data and be cost-effective. In addition, for mineral materials, the team reconsidered the State Offices' estimated costs for noncompetitive sale applications that the 1995 report had

highlighted. The team determined that the differences among State Offices were largely caused by unique site- or sale-specific factors. BLM considered the amount and nature of surface disturbance, for example, whether the sales are from existing or new pits, and how much material is to be removed; the impact on other surface resources (which may vary even within the same area); and National Environmental Policy Act (NEPA) analysis.

To bring the figures in line with 1999 prices, in preparation for the 2000 proposed rulemaking, BLM adjusted them to the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) for 1998 (the most recent year then available) published by the U.S. Department of Commerce, which economists generally consider to be the most reliable general price index.

How Has BLM Implemented the 1995 OIG Recommendations?

As explained above, BLM resolved the first part of the OIG's first recommendation about what standards we used by sending the OIG information in response to the draft report about our use of concrete standards in data collection. The BLM updated the proposed fees and updated, analyzed, and verified the data, which responded to the second part of the OIG's first recommendation. This rule proposes to implement the first part of the second 1995 OIG recommendation: BLM would collect fees for types of documents that have a significant impact on the amount of money BLM can recover. This proposed rule covers only some of the documents for which BLM has the authority to recover costs. BLM intends to continue our work to establish and collect fees for other documents as well, including those addressed in the Solicitor's December 5, 1996 M Opinion on this subject (M–36987). This satisfies the second part of the OIG's second recommendation.

The 2000 Proposal and This Proposed Rule

The BLM decided to propose the entire rulemaking again because we are proposing a different type of processing fee for oil and gas geophysical exploration applications, and new processing fees for APDs, GPDs, geothermal exploration permits, and mineral materials competitive contract renewals.

BLM has also determined it is appropriate to include an initial fee schedule in the regulations. Fee revisions adjusted for inflation will take place by way of publication in the **Federal Register**, with subsequent posting on our Web site. For an explanation of how BLM proposes to adjust fees in the future, see ''How Did BLM Address Increased Costs Due to Inflation?'' below.

What Is the Proposed Processing Fee for Oil and Gas Geophysical Exploration Applications?

In the 2000 proposed rule, we included a case-by-case processing fee for geophysical exploration applications. Since that time, we have implemented an activity-based coding system that allows us to better track such costs. In reviewing the 2000 proposed fees in preparation for this proposed rulemaking, we determined that the costs of processing oil and gas geophysical exploration applications are quite high, averaging approximately $8,000 to $10,000.

The BLM determined these amounts by analyzing data we collected for two years (2002 and 2003) through the Management Information System (MIS), BLM's activity-based coding system. One program element in MIS (added in 2001) is dedicated to oil and gas geophysical exploration applications. To determine our costs for oil and gas geophysical exploration applications, we first considered the total cost to a Field Office for processing these applications and divided that number by the total number of geophysical exploration applications processed by that Field Office. We repeated the procedure for each Field Office. However, because we did not receive a significant number of geophysical exploration applications in the two-year period analyzed, we have not determined a final estimated average cost. We will continue to collect and analyze cost data for geophysical exploration applications. At this time we have decided to set a target fee of $2,500, which we are confident is well below what the final estimated average cost will be, based on the time it takes to complete an environmental assessment and the fieldwork required. Because we propose to phase in this initial fee over several years, as discussed below, we expect to be able to propose a fee based on our final estimated average cost in a new rulemaking by the end of the phase-in period. We considered the other FLPMA factors and determined that the factors would not cause a reasonable fee to be reduced below actual costs except as noted below. (See ''*How Did BLM Consider the ''FLPMA Factors?''* and the discussion following it regarding each factor, below.)

As explained earlier, based on the ''other relevant factors'' criterion, in order to allow companies to plan for these potentially significant new costs, we propose to phase in this fee, beginning with a fixed fee of $500. The geophysical exploration application fee will be raised $500 each year until it reaches $2,500 (as adjusted by the IPD–GDP). The base fee will be adjusted for inflation every year by applying the IPD–GDP. The new fee will apply to all applications filed on or after October 1 each year. Further cost analysis will determine the final estimated average cost that will be set through future rulemaking. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower.

What Is the Proposed Processing Fee for Applications for Geothermal Exploration (e.g., Temperature Gradient Wells)?

The BLM determined the cost of processing geothermal exploration applications by analyzing data we collected for two years (2002 and 2003) through the MIS. One project code (added in 2001) used in conjunction with the program element in MIS (added in 2001) is dedicated to geothermal exploration applications. To determine our costs, we first considered the total cost to a Field Office for processing geothermal exploration applications and divided that number by the total number of geothermal exploration applications processed by that Field Office. We repeated the process for each Field Office. Over those two years, the average cost of processing a geothermal exploration permit application was $3,200. However, we received only three applications during the two-year period analyzed. Because we believe additional data is required to come up with an accurate cost, we have not determined a final estimated average cost. We will continue to collect and analyze cost data for geothermal exploration applications. At this time we have decided to set a target fee of $2500, which we are confident is below what the final estimated average cost will be based on the time required to complete an environmental assessment. Because we propose to phase in this initial fee over several years, as discussed below, we expect to be able to propose a fee based on our final estimated average cost in a new rulemaking by the end of the phase-in period. We considered the other FLPMA factors and determined that the factors would not cause a reasonable fee to be reduced below actual costs except as noted below. (See ''*How Did BLM Consider the ''FLPMA Factors?''* and the

discussion following it regarding each factor, below.)

As explained earlier, based on the ''other relevant factors'' criterion, in order to allow companies to plan for these potentially significant new costs, we propose to phase in these fees, beginning with a fixed fee of $500. The geothermal exploration application fee will be raised $500 each year until it reaches $2,500 (as adjusted by the IPD–GDP). The base fee will be adjusted for inflation every year by applying the IPD–GDP. The new fee will apply to all applications filed on or after October 1 each year. Further cost analysis will determine the final estimated average cost that will be set through future rulemaking. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower.

What Is the Proposed Processing Fee for Oil and Gas Applications for Permit To Drill (APDs)?

To determine BLM's costs to process APDs, we analyzed the data we collected for that activity for four years (2001 through 2004) through the MIS. One program element in MIS (added in 2000) is dedicated to processing APDs.

To determine our costs for APDs, we first considered the total cost to a Field Office of processing APDs and divided that number by the total number of APDs processed by that Field Office. We repeated this procedure for each Field Office. We determined that the average cost for Field Offices that process more APDs did not vary significantly from costs for other Field Offices. Therefore, we decided to use the average cost from all field offices as our actual cost figure. Over the four year-year period analyzed, we found that the average cost of processing an APD was about $4,000.

We considered the other FLPMA factors, and determined that the factors would not cause a reasonable fee for APDs to be reduced below actual costs, except as noted below. (See *''How Did BLM Consider the FLPMA Factors?''* based on the ''other relevant factors'' criterion explained earlier, and the discussion following each factor, below.) As with oil and gas geophysical exploration, and geothermal exploration, we propose to phase in these fees, beginning with a fixed fee of $1600, to give companies adequate time to include these potentially significant new costs in their planning processes. The APD fee will be raised $500 each year until it reaches $4,000 (as adjusted by the IPD–GDP). The base fee will be adjusted for inflation every year by applying the IPD–GDP. The new fee will apply to all applications filed on or after October 1 each year. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower. We also invite comment on what impacts, if any the proposed APD fee could have on the level of a company's operations on Federal lands. In particular, we are interested in how the proposed fee might affect the competitiveness of Federal oil and gas leases as compared to non-Federal leases.

What Is the Proposed Processing Fee for Geothermal Permits To Drill (GPDs)?

We used the same process to determine BLM's costs to process GPDs. We analyzed the data we collected for this activity for three years (2001 through 2003) through the MIS. A project code in MIS (added in 2000) is also dedicated to processing GPDs. We followed the same procedure that we did for APDs and determined that the average cost to process a GPD over the past three years was $3,500. We considered the other FLPMA factors, and determined that the factors would not cause a reasonable fee for GPDs to be reduced below actual costs, except as noted below. (See *''How Did BLM Consider the FLPMA Factors?''* based on the ''other relevant factors'' criterion explained earlier and the discussion following each factor, below.) As with oil and gas geophysical exploration and geothermal exploration, we propose to phase in these fees, beginning with a fixed fee of $1600, to give companies adequate time to include these potentially significant new costs in their planning processes. The GPD fee will be raised $500 each year until it reaches $3,500 (as adjusted by the IPD–GDP). The base fee will be adjusted for inflation every year by applying the IPD–GDP. The new fee will apply to all applications filed on or after October 1 each year. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower.

What Is the Proposed Processing Fee for Mineral Materials Competitive Contracts?

We are proposing to charge a case-by-case fee for applications to renew mineral materials competitive contracts, consistent with the proposed case-by-case fees for mineral materials competitive and noncompetitive sales applications. The option to renew a mineral materials competitive contract was added to the regulations in the final rule that became effective on December 24, 2001 (66 FR 58892).

What Kinds of Fees Would This Rule Create?

This rule would establish fixed fees and fees based on BLM's case-by-case processing costs. A fixed fee remains the same for each document of a particular type. How BLM set these fixed fees is explained below. A fee based on BLM's case-by-case processing costs would be calculated by tracking the ongoing costs of processing an individual document.

As this proposed rule was being prepared for publication, BLM became aware that the case-by-case procedures outlined in proposed section 3000.11 are not appropriate for fees charged to the successful bidder in a lease sale or mineral materials sale context, because in those situations BLM has already performed the work and has tracked its costs for that work. We therefore intend to include in the final rule a different set of procedures for charging a case-by-case fee to the successful bidder in a lease sale or mineral materials sale, which will include a provision allowing the successful bidder to comment on the proposed fee before the fee is made final. These different procedures would apply to the successful applicant for a competitive coal lease (*see* proposed § 3473.2(f)), a competitive solid minerals lease (*see* proposed § 33508.21(c)), and a competitive mineral materials sale (*see* proposed § 3602.44(f)). BLM solicits comments on how it should draft the procedures for charging case-by-case fees to successful bidders.

Are Fixed Fees Appealable?

No. The amount of a fixed fee is not appealable to the Interior Board of Land Appeals because it is set by regulation. There is no discretion to change it.

Does this Proposed Rule Contain Waivers or Reduction of Fixed Fees?

No. We have not included provisions in this proposed rule for waiver or reduction of fixed fees because we believe that such provisions are neither appropriate nor necessary for a rule that would impose fees only on for-profit commercial enterprises. While payment of the proposed fee could reduce an entity's profit level, waiving or reducing the fee for that entity would simply mean that United States taxpayers would bear the costs that the for-profit entity was not bearing. However, we welcome comments on this issue and we will consider further whether to include provisions for waiver or reduction of fixed fees in the final rule.

Are Case-by-Case Fees Appealable?

Yes. Applicants may appeal case-by-case fees to the Interior Board of Land

Appeals in accordance with the Department's appeals rules at 43 CFR part 4, subpart E.

What Are the FLPMA Factors BLM Must Consider?

Section 304(b) of FLPMA lists six factors (known as the FLPMA reasonableness factors) that BLM must consider in deciding what is a reasonable processing fee. They are:

(1) BLM's actual costs to process a document. This does not include management overhead, which means costs of BLM State Directors and Washington Office staff, except when a member of this group works on a specific authorization such as a lease. Actual costs include (but are not limited to) funds spent on special studies, environmental impact statements and other analyses, and monitoring of exploration activities and development, and of construction, operation, maintenance, or termination of an authorized facility.

(2) The monetary value, or objective worth, of the right or privilege that the applicant seeks.

(3) The efficiency with which BLM processes a document, meaning with a minimum of waste by carefully managing agency expenses and time.

(4) Whether any of BLM's processing costs, for actions such as studies or data collection, benefit the general public or the Federal Government, rather than just the applicant. This is referred to in the statute as ''benefit of the general public interest.''

(5) Whether the project provides any significantly tangible improvement, such as a road, or other direct service to the public. Occasionally, a negative factor, such as an adverse impact on wildlife or surface drainage, may prevent an improvement from being regarded as a public service. Data collection that we need you to perform so we can monitor an activity is not a public service.

(6) Other relevant factors.

How Did BLM Consider the FLPMA Factors for Fees?

We considered each of the FLPMA factors for each type of document for which we are proposing a fixed fee in this rule. The BLM first estimated the actual cost to process a type of document and then considered each of the other FLPMA factors to see if any of them might cause a fee to be set at less than actual cost. If so, we then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fee at less than actual cost. We then decided the amount of the fee, which cannot be more than our processing cost. For most minerals actions in this proposal, this method resulted in fees set at our actual processing cost.

BLM would also weigh the FLPMA factors to determine case-by-case fees. For those fees, BLM would give the applicant an estimate of the proposed fee after estimating the actual cost of processing the individual document and considering the other FLPMA factors. The applicant could then comment on the proposed fee. We would consider the applicant's comments and any work to be performed by the applicant, and give the applicant a final fee estimate. We could re-estimate reasonable costs whenever necessary. If the established fee you would pay is less than our actual costs because of one of the FLPMA factors, and we are not able to process the document promptly because of the unavailability of funding or other resources, you would have the option to pay BLM's actual costs to process your document.

In cases (including many environmental impact statements) where BLM might hire a third-party contractor to perform part of the processing, your payment of actual costs would allow BLM to hire the contractor without waiting for the availability of funding. If all processing of your document were to be done by BLM personnel, your place in the queue of documents would not be affected by whether you paid actual (as opposed to reasonable) costs.

In considering the FLPMA factors, we found several trends. First, the monetary value of the right or privilege was much greater than the processing cost. Next, our document processing procedures, which are based on standard steps in internal BLM handbooks, are reasonably efficient.

We also found that none of the studies or data collection performed as part of BLM's document processing significantly benefits the public. The courts have held that processing which an agency is required to perform in connection with a specific request (for example, before approving a permit) provides a special benefit to an applicant, even if it also provides some benefit to the public. See, e.g., *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980). BLM found that any small benefit to the public provided by the processing of fixed-fee documents in this rulemaking is speculative and outweighed by the monetary value to the applicant of the right or privilege.

In addition, the applicant's project usually provides little or no service to the public. Even if a project provides a small public service, it usually is outweighed by the monetary value to the applicant of the right or privilege. Finally, there rarely are other relevant factors present. Our consideration of the FLPMA factors is explained below:

Actual Costs

Did BLM Consider Figuring and Charging Processing Costs on a Case-by-Case Basis for Every Type of Document?

Yes. We decided not to charge processing costs on a case-by-case basis for every type of document because it would require enormous effort and expense. In addition, when we can reliably estimate costs for routine services, we believe applicants benefit from knowing fees in advance. We would determine costs on a case-by-case basis only for types of documents where the average processing cost may not be a reasonably accurate estimate because costs may differ significantly in each case.

How Does BLM Figure Its Costs To Process a Document?

Actual costs are the sum of both direct and indirect costs. Direct costs include such things as labor, material, and equipment; BLM's measurement of direct costs is explained below. Indirect costs include items such as rent and overhead, excluding State Director and Washington Office management overhead.

For an example of how BLM would determine the sum of direct and indirect costs, assume the measured direct cost of processing a document is $200. To estimate the indirect cost for processing that document, the BLM office would use a ratio already determined in its accounting system—perhaps, ten to one, meaning for every $10 of direct costs there would be $1 of indirect costs. BLM would then estimate the indirect cost using the ratio and direct cost figures. In this example, since the direct cost was $200 and the ratio is ten to one, the indirect cost is $20. BLM then would add the direct and indirect cost figures to arrive at the actual cost figure of $220 to process the document. This method is generally accepted in the private and public sectors.

For What Types of Documents Would BLM Measure Actual Costs on a Case-by-Case Basis?

- Competitive lease applications for coal;
- Royalty rate reduction applications for coal;

- Logical mining unit (LMU) applications and applications for LMU modifications for coal;
- Applications for lease modifications for coal;
- Prospecting permit applications for non-energy leasable minerals;
- Preference right lease applications for non-energy leasable minerals;
- Competitive lease applications for non-energy leasable minerals;
- Royalty rate reduction applications for non-energy leasable minerals;
- Noncompetitive sale applications for mineral materials;
- Competitive sale applications for mineral materials;
- Competitive contract renewal applications for mineral materials;
- Lease or sales applications when an Environmental Impact Statement (EIS) is required;
- Mining plans of operations when an EIS is required; and
- Mineral validity examinations/reports (includes field mapping, field sampling, assays, determination of reserves and marketability, etc.).

What Would Case-by-Case Fee Calculations Include?

They would include all costs we incur while processing your document, such as the costs of studies BLM conducts to comply with legal requirements like environmental laws, the mineral leasing laws, or the Mining Law of 1872. When we conduct a mineral validity examination/report as a result of your application for a plan of operations or mineral patent, or your notice under 43 CFR 3809.301, the mineral examiner would consider the cost to you for the examination and report along with other costs of doing business in evaluating whether you have made a valuable discovery of minerals on the claim. This is because the cost of a mineral exam/report is a business cost similar to the cost of complying with environmental requirements, which may be significant in deciding whether there has been a discovery. See *United States* v. *Pittsburgh Pacific Co.*, 30 IBLA 388, 84 I.D. 282, 290 (1977); *United States* v. *Kosanke Sand Corp.*, 12 IBLA 282, 298–99, 80 I.D. 538, 546–47 (1973) (on reconsideration).

Also, although current proposed section 3800.5 refers to applicants for a plan of operations or a mineral patent ''under this part,'' *i.e.*, 43 CFR part 3800, BLM may provide in the final rule that BLM will also recover costs of validity examinations and reports performed in connection with plan of operation applications that are submitted under other parts of the CFR as well, such as 36 CFR part 9 (which implements the Mining in the Parks Act).

How Would BLM Apply the Proposed Fees to Documents That BLM Is Already Processing?

The BLM would not charge a fixed fee under this rule for processing a document BLM accepted before the effective date of a final rule with the appropriate fees under then-existing rules. Also, if we began processing a document before the effective date of this rule that would be subject to a case-by-case fee, we would charge fees under this rule only for costs incurred after the rule's effective date.

How Did BLM Measure Its Direct Actual Costs for Types of Documents It Proposes Not To Measure on a Case-by-Case Basis?

We used an agency-wide average cost figure for each type of document. This is a reasonable approximation of our actual processing cost for that document type, as well as an efficient method of measuring the cost.

What Data Did BLM Use to Calculate the Average Cost?

Except for new fees, we used the data collected from State Offices in 1990, as analyzed and updated in 1995–1996 and in 1999. In the areas of oil and gas and geothermal, with the exception of oil and gas geophysical exploration, geothermal exploration, APDs, and GPDs, explained above, we used our re-analyzed direct cost estimate, to which indirect costs were added, as the average cost figure. In other areas, we used the weighted average cost, which included indirect costs, as the average cost figure. As explained above, we adjusted the average cost figures to account for inflation before proposing the rule in 2000. In this proposed rule, we again adjusted the fees to account for inflation, using the IPD–GDP. (See ''*How Did BLM Address Increased Costs Due to Inflation*?'' below.)

What Processing Steps Are Included in the Fixed Fees?

Oil and Gas

For applications for permit to drill (APDs), fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a Wilderness Study Area (WSA) or an Area of Critical Environmental Concern (ACEC); ascertaining the nature and extent of proposed activity, and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For applications for oil and gas geophysical exploration permits, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a WSA or an ACEC; ascertaining the nature and extent of proposed activity, and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For noncompetitive lease applications, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining land availability; sorting parcels (*i.e.*, developing parcel configuration/acreage); preparing stipulations; preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates.

For competitive lease applications, fixed fees would include, but not be limited to, costs for preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates. At this point, this fee does not include steps leading to sorting parcels, *i.e.*, developing parcel configuration/acreage, and preparing stipulations.

For assignments and transfers, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining assignment and transfer forms; reviewing leases and bonds; and approving, entering, and transmitting updates.

For assignments and transfers due to name changes, corporate mergers, or transfer to an heir or devisee, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests; determining successors-in-interest or other special requirements; reviewing leases and bonds; preparing decisions; and entering and transmitting updates.

For transfers of overriding royalties or payments out of production, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

For lease consolidations, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests, lease term conditions and production; preparing new leases and decisions; and entering and transmitting updates.

For lease renewals, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests and lease forms for compliance; preparing decisions; and entering and transmitting updates.

For Class 1 lease reinstatements, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining eligibility; preparing decisions; and entering and transmitting updates.

Geothermal

For applications for GPDs, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a WSA or an ACEC; ascertaining the nature and extent of proposed activity and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For applications for geothermal exploration permits, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a WSA or an ACEC; ascertaining the nature and extent of proposed activity and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For noncompetitive lease applications, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining land availability; sorting parcels (*i.e.*, developing parcel configuration/acreage); preparing stipulations; preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates.

For competitive lease applications, fixed fees would include, but not be limited to, costs for preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates. At this point, this fee does not include steps leading to sorting parcels, *i.e.*, developing parcel configuration/acreage, and preparing stipulations.

For assignments and transfers, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining assignment and transfer forms; reviewing leases and bonds; and approving, entering, and transmitting updates. For assignments and transfers due to name changes, corporate mergers, or transfer to an heir or devisee, fixed fees would include receiving, validating, and entering data; examining requests; determining successors-in-interest or other special requirements; reviewing leases and bonds; preparing decisions; and entering and transmitting updates.

For lease reinstatements, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining eligibility; preparing decisions; and entering and transmitting updates.

Non-Energy Leasable Minerals

For prospecting permit application amendments, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests and rental payments; and entering and transmitting updates.

For prospecting permit extensions, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests and diligence; and approving, entering, and transmitting updates.

For lease renewals, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests; determining changes in bonds and stipulations; preparing decisions; and entering and transmitting updates.

Mining Law Administration

For notices of location, fixed fees would include, but not be limited to, costs for receiving data and validating land status; collecting statutory fees; and entering data. For amendments to a location, fixed fees would include costs for receiving, validating, and entering data.

For a mineral patent adjudication, fixed fees would include, but not be limited to, costs for receiving and entering data; examining mineral surveys, statements required by statute, initial descriptions of geology and mineral evidence, and status of adverse claims; ensuring sufficiency of title evidence (title opinion or abstract with certified copies of location certificates and all amendments); publishing legal notices; receiving and examining final proofs and statements for sufficiency; accepting purchase monies; forwarding the application to the Secretary for review; and issuing decisions. Fixed fees would not include the cost of a mineral examination and report, which would be covered by a case-by-case fee.

For transfers, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data. BLM's costs are calculated for each transferee if a mining claim or site is transferred to more than one person. It has been BLM's policy to charge this fee for each transferee. We propose to clarify this in § 3833.32(c) by changing the wording from ''You as transferee'' to ''Each transferee.''

For affidavits of assessment work, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

For notices of intent to hold, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

For deferments of assessment work, fixed fees would include, but not be limited to, costs for receiving and entering data; examining requests; determining eligibility; approving or rejecting requests; entering and transmitting updates; and issuing decisions.

For adverse claims, fixed fees would include, but not be limited to, costs for receiving and entering data; examining evidence; accepting or denying claims; and issuing decisions.

For protests, fixed fees would include, but not be limited to, costs for receiving and entering data; examining evidence; and issuing decisions to either dismiss or accept a protest. Fixed fees would not include costs associated with adjudications to correct errors or omissions uncovered by a protest.

How Did BLM Address Increased Costs Due to Inflation?

For this proposed rule we applied the IPD–GDP, discussed above, for the fourth quarter of 2003 to the fees in the 2000 proposed rule to account for inflation. At the time, we began preparing this proposed rule, that information was the most recent data available. Because we did not know when the proposed rule would be published, we did not update the fees again before publication. We will again adjust the fees in this proposed rule by using the IDP–GDP for the fourth quarter of the most recent year available before issuing the final rule.

The BLM proposes to adjust the fees annually to the IPD–GDP, to bring them in line with current costs. We chose this method because the alternative is to collect data periodically to adjust fees to inflation, which is inefficient, costly, and impractical. BLM proposes that it amend the fees by publication in the **Federal Register** and post the adjusted fees on its Web site prior to October 1 each year, and that the posted fees would become effective each year on October 1. BLM selected October 1 as the appropriate date to increase fees and

service charges in the fee schedule because it is the beginning of the fiscal year for government agencies and is the common implementation date for various fees. Because we are proposing to establish the process for changing fees in this rule, and the application of that process is simply a mathematical calculation, a new rulemaking will not be necessary. If we decide to amend fees based on something other than the IPD–GDP, we would do so through proposed notice and comment rulemaking.

We note that some fees for documents in the 2000 proposed rule were not processing fees, but were already-existing filing fees that we did not propose to change. They were included in that proposed rule, and we are proposing to retain them in this proposed rule, because they are part of the section under revision that addresses fees. We also are proposing to adjust the existing filing fees at this time. The Solicitor's Opinion on cost recovery explains, ''[n]ominal 'filing' fees * * * serve to limit filings to serious applicants [and] are not intended to reimburse the United States for its processing costs.'' (M–36987 at p.4) It makes sense to adjust these filing fees periodically to account for inflation as well, so we have applied the IPD–GDP to the filing fees that were included in the 2000 proposed rule. These filing fees will also be adjusted annually using the IPD–GDP, as explained above.

How Did BLM Round Fees?

Although in this proposed rule, we have rounded estimated costs to the nearest dollar, in the final rule we propose to round fees down or up to the nearest $5, for ease of payment and administration. This is consistent with general business practices.

Might BLM Adjust Its Average Cost Figures and Revise Fees in the Future for Reasons Other Than Inflation?

Yes. The fees in this rule do not include certain internal steps for which we believed costs could not be recovered when we initially collected data. For example, the costs for processing an oil and gas or geothermal competitive lease sale parcel do not include the steps required to prepare an individual sale parcel prior to preparing the sale notice, because we assumed those costs were not recoverable. However, the Solicitor's December 5, 1996 Opinion on cost recovery concluded that we can recover costs for those steps, so in future rules we will propose fees that attempt to capture these costs and other costs not captured here so that fees will accurately reflect our reasonable costs. We may also amend fees in future rulemakings when we receive new data or have another reason to believe that fees do not accurately reflect reasonable costs. As opposed to simple adjustments for inflation based on the IPD–GDP, any such changes to the fees would be through a notice and comment rulemaking process.

Monetary Value of the Right or Privilege

Did BLM Calculate Exact Figures for the Monetary Value to the Applicant in Setting the Proposed Fixed Fees?

No. We decided not to try to calculate precise dollar values to the applicant of receiving the benefit applied for, either by document type or on a case-by-case basis, because that would involve extensive time and resources. Instead, we made an effort to judge the magnitude of these values. We have used this approach before. For example, in the preamble to the 1986 rights-of-way regulations (51 FR 26836), we considered monetary value in a general sense rather than precise figures.

How Did BLM Consider the Monetary Value of the Right or Privilege Granted by a Fixed Fee Document?

To gauge the monetary value, BLM considered the monetary value of similar rights or privileges, granted to applicants historically. We reviewed each type of document and compared the proposed processing fee for a given type of document with our sense of the historical values of rights or privileges we have granted that are similar to those sought by the applicant. In each case, we believe the value of the right or privilege is clearly so much greater than the processing cost that a fee set at the average actual cost would not significantly affect the proposed action. This is not surprising considering that the costs pertain to documents related to the development of commercial minerals. We did not reduce any fees because of this factor. We would consider the monetary value of the benefit to the applicant for case-by-case fees in a similar manner.

Do Fees Change if Leases Are Found After Exploration To Have Less Value Than Previously Thought?

No. BLM bases its decision about the monetary value of the benefit to the applicant on the value at the time the applicant submits its lease application. All leases have relatively large monetary value before exploration compared to the proposed fees. The basic value of the opportunity provided by a lease to explore for minerals is shown by the willingness of applicants to pay large sums before exploration for bonus bids, for lease transfers, and for exploration activities such as drilling. We therefore decided that it is reasonable to charge a fee equal to our processing costs for all lease applications.

How Did BLM Consider the Value of Requests for Lease Sales, Requests for Sales, or Expressions of Interest?

In accordance with the Solicitor's December 5, 1996, Opinion on cost recovery, BLM considers that its processing costs to prepare parcels for sale or lease sale benefit three classes of beneficiaries: the party who requests that the parcel be included in the sale or lease sale; all parties who bid on the parcel; and the successful bidder.

While the party who requests that a parcel be included in a sale or lease sale benefits by influencing the selection of parcels offered, BLM believes this benefit is greatly outweighed by the benefit to the bidder who ultimately obtains the lease or sales contract and can develop the minerals on the parcel. Similarly, while all bidders receive the benefit of being considered for a lease or sales contract, BLM believes this benefit is greatly outweighed by the benefits to the bidder who obtains the lease or sales contract. We would therefore charge all processing costs to prepare a parcel for lease or sale to the successful bidder.

The Efficiency Factor

What Did BLM Consider When It Looked at Efficiency in Relation to the Proposed Fixed Fees?

We wanted to ensure that the process of collecting fees is not itself overly costly. For example, we would not collect cost data on a case-by-case basis for each document we process because that kind of cost tracking is simply inefficient—employee tracking time spent on each document just adds to the processing costs. We looked for other ways to establish fees and decided that for most documents in this rulemaking, it was more efficient and sufficiently reliable to set a fixed fee based on our average costs. However, as discussed above, when fixed fees would be unreliable, we would track costs on a case-by-case basis.

Did BLM Determine That the Documents for Which Fees Are Charged in This Rulemaking Are Processed Efficiently?

Yes. BLM based the processing procedures on standardized steps in BLM Handbooks in order to eliminate duplication and extraneous procedures. We developed these detailed and

measurable processing steps to be efficient.

Public Benefit Factor

Are There Some BLM Activities That Only Benefit the Public and Do Not Benefit Any Particular Applicant?

Yes. Activities that only benefit the public are those that are not done in connection with processing a particular document. These would include studies that BLM must perform whether or not it receives an application or other document-processing request, such as land use planning studies and programmatic environmental analyses prepared by an agency at its own instigation. We would not recover the costs of such studies from applicants. Therefore, BLM did not consider studies or data that only benefit the public when it considered the public benefit factor in establishing the fixed fees proposed in this rule.

If Processing a Document Requires That a Study Be Done, Does That Study Always Benefit the Applicant?

Yes. Courts have held that when processing an application requires a study, then the performance of that study necessarily benefits the applicant. See, e.g., *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980). The most obvious benefit is that the agency may approve the application, allowing the applicant to operate. That is, if a study is required, we cannot approve an application unless the study is performed, and if we do not approve an application, the applicant cannot take the action for which it seeks approval.

Such studies can provide other potential benefits to an applicant, as the preamble to BLM's 1986 rights-of-way regulations pointed out:

> Public comment on environmental issues often helps to [defuse] political opposition to a project. An environmental impact statement may uncover an environmentally acceptable alternative which may allow an otherwise unacceptable project to be built. Special studies of seismic and climatic conditions sometimes reveal that the applicant's original proposal would not meet necessary engineering standards or is otherwise flawed. When an accident is prevented or money saved because higher standards are used, an applicant benefits because the [project] is not interrupted. These types of benefits are difficult to measure and may not be apparent until after a project has been completed and has operated for many years (51 FR 26836, 26837–38).

These benefits of environmental studies are also applicable to minerals actions. Although they are speculative, substantial benefits such as these can exist.

How Did BLM Consider the Public Benefit From Its Document Processing?

Possible public benefits from BLM processing activities such as studies or data collection are also speculative. For example, studies related to document processing often provide information about an area's natural resources, and this is sometimes a public benefit, but the value of the information, or whether there will be a benefit at all, is not predictable. BLM concluded that document processing for types of fixed fee documents in this rulemaking does not usually produce studies or data significantly beneficial to the public.

In addition, except for fees determined on a case-by-case basis, BLM determined that for each type of document in this rulemaking the monetary value to the applicant outweighs the possible benefit of such studies to the public. The BLM analysts used their knowledge of the historical values of such cases to make these determinations. We have therefore decided that this factor does not warrant setting any fee in this rulemaking at less than its actual processing cost.

Public Service Factor

How Is a Project's Service to the Public (Public Service) Different From Benefits the General Public Derives From BLM's Processing (Public Benefit)?

A project's service to the public concerns whether the applicant's project itself, as opposed to BLM's processing the related documents, provides some significant direct service or benefit to the general public. This is referred to in the statute as public service. Examples would be improvements such as roads, trails, or recreation facilities. Occasionally, a negative factor, such as an adverse impact on wildlife or surface drainage, may prevent BLM from regarding an improvement as a public service.

Does Exploration Data Shared With the Government for Purposes Other Than Monitoring Constitute a Public Service?

Yes. Applicants for prospecting permits for non-energy minerals are required to share with the government the mineral resource data they derive from exploration. However, if the information is valuable for mineral development, we expect the prospecting permit holder would use it. In that case, the monetary value of the information to the permittee would outweigh its value to the public.

We considered the suggestion that even information that is not valuable to the prospecting permit holder for mineral development might still provide some geological or geophysical information of value to the government, which BLM could sometimes use for some types of resource management such as land classifications. However, because there is very little information obtained in this way and because its use is unpredictable, the potential benefits of the information to the public are too small to warrant an adjustment to the proposed fee.

Do Projects in This Proposed Rule Subject to a Fixed Fee Generally Provide a Public Service?

No. Large projects could include road construction, but such roads are rarely open to the public or built to public safety standards. In addition, they eventually must be removed. Consequently, for fixed fee documents, the likelihood of providing such a public service is too remote and speculative to warrant charging a fee less than actual costs. If any projects do provide such a public service, it is more likely to be those that require an environmental impact statement. For those projects, we will consider all of the reasonableness factors, including public service, on a case-by-case basis.

Other Factors

Are There Any Other Factors That Made It Reasonable To Set a Fee in This Proposed Rulemaking at Less Than Actual Cost?

Yes. Protests of mineral patent applications provide a benefit to BLM by affording us an opportunity to review the protestor's concerns and ensure that the applicant has complied with the law. Therefore, BLM proposes to set the fee for processing patent protests at $53, which is less than BLM's actual processing cost of $271. In addition, as explained above, BLM decided to phase in the fees for APDs and GPDs, as well as for geothermal and oil and gas geophysical exploration applications to allow the industry time to include these costs in their planning process.

The BLM did not find other factors that made it reasonable to adjust fees in this proposed rulemaking. When BLM charges fees on a case-by-case basis, applicants could raise other factors during the fee-setting process.

TABLE 1.—PROPOSED FEES FOR FY 2006

[Note that fees will be adjusted annually by publication in the FEDERAL REGISTER for inflation according to the IPD–GDP and posted on BLM's Web site. Revised fees are effective each October 1]

Document/action	Existing fee	Proposed fees in 2000 rule	Fees based on implicit price deflator 4th Qtr 2003 (106.244) indexed to 2000	Proposed fee
Oil and Gas (Group 3100)				
Noncompetitive lease application	$75	$305	$324.04	$324
Competitive lease application	75	120	127.49	127
Assignment and transfer	25	70	74.37	74
Overriding royalty transfer, payment out of production	25	9	9.56	10
Name change, corporate merger or transfer to heir/devisee	0	160	169.99	170
Leases consolidation	0	335	355.92	356
Lease renewal or exchange	75	305	324.04	324
Lease reinstatement, Class I	25	60	63.75	64
Leasing under right-of-way	75	305	324.04	324
Geophysical exploration notice of intent—outside Alaska	0	Case-by-case	N/A	500
Geophysical exploration permit application—Alaska	25	Case-by-case	N/A	500
Application for Permit to Drill APD)	0	Not included ..	N/A	1600
Geothermal (Group 3200)				
Noncompetitive lease application	75	305	324.04	324
Competitive lease application	0	120	127.49	127
Assignment and transfer of record title or operating right	50	70	74.37	74
Name change, corporate merger or transfer to heir/devisee	0	160	169.99	170
Lease consolidation	0	335	355.92	356
Lease reinstatement	0	60	63.75	64
Exploration operations permit application	0	Not included ..	N/A	500
Geothermal Permit to Drill (GPD)	0	Not included ..	N/A	1600
Coal (Group 3400)				
License to mine application	10	10	10.62	11
Exploration license application	250	250	265.68	266
Lease or lease interest transfer	50	50	53.12	53
Competitive coal lease	250	Case-by-case	N/A	Case-by-case
Coal lease modification	250	Case-by-case	N/A	Case-by-case
Logical mining unit formation or modification	0	Case-by-case	N/A	Case-by-case
Royalty reduction application	0	Case-by-case	N/A	Case-by-case
Nonenergy Leasable (Group 3500)				
Applications other than those listed below	25	25	26.57	27
Prospecting permit application amendment	0	50	53.12	53
Extension of prospecting permit	25	80	85.00	85
Lease renewal	25	390	414.35	414
Prospecting permit application	25	Case-by-case	N/A	Case-by-case
Preference right lease application	0	Case-by-case	N/A	Case-by-case
Successful competitive lease	0	Case-by-case	N/A	Case-by-case
Application to suspend, waive or reduce your rental, minimum royalty, production royalty or royalty rate.	0	Case-by-case	N/A	Case-by-case
Future or fractional interest lease application	25	Case-by-case	N/A	Case-by-case
Mineral Materials Disposal (Group 3600)				
Noncompetitive sale (excluding sales from community pits or common use areas).	0	Case-by-case	N/A	Case-by-case
Competitive sale	0	Case-by-case	N/A	Case-by-case
Competitive contract renewal	0	N/A	N/A	Case-by-case
Mining Law Administration (Group 3800)				
Notice of Location [1]	10	15	15.94	16
Amendment of location	5	10	10.62	11
Transfer of mining claim/site	5	10	10.62	11
Recording an annual FLPMA filing (§ 3835.30)	5	10	10.62	11
Deferment of Assessment	25	80	85	85
Mineral Patent Adjudication	1st claim—$250; Each additional claim—$50.	2,290	2,433.00	2,433
Adverse claim	10	80	85	85

TABLE 1.—PROPOSED FEES FOR FY 2006—Continued

[Note that fees will be adjusted annually by publication in the FEDERAL REGISTER for inflation according to the IPD–GDP and posted on BLM's Web site. Revised fees are effective each October 1]

Document/action	Existing fee	Proposed fees in 2000 rule	Fees based on implicit price deflator 4th Qtr 2003 (106.244) indexed to 2000	Proposed fee
Protest	10	50	53.12	53
Mineral Patent Exam Report Requiring an EIS	0	Case-by-case	N/A	Case-by-case
3809 Plan of Operations or Notice with EIS	0	Case-by-case	N/A	Case-by-case
3809 Plan of Operations, Notice of Mineral Patent with Validity Exams	0	Case-by-case	N/A	Case-by-case

[1] The existing fee for recording a mining claim or site location (43 CFR 3833) is a total of $165. This includes the initial maintenance fee of $125 and one time $30 location fee required by Statute and a $10 service charge. The service charge would become a processing fee and would increase to $16 under the proposed rule making the total fee $171. In the 2005 Department of the Interior Related Agencies Appropriations Act, Congress required that the $125 maintenance fee be lowered to $100 for mining claims or sites that are recorded with BLM on or after December 8, 2004 until BLM establishes a nationwide permit tracking system and files a report with Congress, at which point the fee will revert to $125.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

OMB has determined that this proposed rule is a significant regulatory action under Executive Order 12866. BLM has determined that the proposed rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This determination is based on the analysis that BLM prepared in conjunction with this proposed rule. Please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT:** section above for instructions on how to view a copy of the analysis.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This proposed rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this proposed rule.

In addition, this proposed rule would not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients. However, this rule does propose to increase existing fees, and create new fees, for processing documents associated with the onshore minerals programs because of recommendations made by the OIG (Report Nos. 89–25, 92–I–828, 95–I–379, and 97–I–1300) as well as the IOAA of 1952, 31 U.S.C. 9701, and FLPMA, 43 U.S.C. 1734. As stated earlier in this preamble, the IOAA and section 304 of FLPMA authorize BLM to charge applicants the cost of processing documents. In addition, the IOAA states that these charges should cover the agency's costs for these services to the degree practicable. OMB Circular A–25 and the Department Manual require the collection of processing fees.

The OIG reports documented the budgetary impact of delaying collection of fees to reimburse agency costs and strongly admonished BLM to collect the fees proposed in this rule. Finally, although this rule will not raise novel legal issues, it may raise novel policy issues because under this rule we would charge processing fees that we do not currently impose.

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining: a coal lessor is a small entity if it employs not more than 250 people, including people working for its affiliates. The SBA would consider many of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this proposed rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The proposed rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. As presented in the analysis prepared by BLM, and available as an attachment to the Record of Compliance for this proposed rule, except for mineral materials, when the total fees paid by these entities are expressed as a percentage of their sales value it is clear that the relative size and effect of the fees are very small and that they will have no measurable effect on these entities. We completed a threshold analysis which is available for public review in the administrative record for the rule. Please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT:** section above for instructions on how to view a copy of the analysis.

For example, when the total fee increases are compared to the oil and gas receipt data, the fee increases are 0.34 percent of receipts from Federal lands. Assuming the burden of the fee increases are distributed evenly among all firms operating on Federal lands the fee increases would be 1.50 percent of receipts attributable to small entities. The proposed fee increases for oil and gas filings range from $39 to $4000 (when fees are fully phased-in). These fee increases will not cause a significant impact on the small entities working in the oil and gas industry on Federal lands.

In the area of mineral materials, the proposed fee increases only apply to exclusive mineral materials sales. The proposed fee increases do not apply to nonexclusive sale applications (community pits and common use areas) or to free use permit applications. The proposed fee increases are estimated to

be 25.65 percent of the reported production value for exclusive mineral materials sales. Assuming the burden of the fee increases is distributed evenly among all firms operating on Federal lands, the fee increases for exclusive mineral materials sales would be 48.4 percent of receipts attributable to small entities. Without further analysis, these percentages would suggest the potential of a significant impact on operators, including small entities, operating on Federal lands. However, a number of factors mitigate this potential impact.

The most significant factor in mitigating the potential impact of the proposed fee increases is that mineral materials are sold for fair market value. To the extent the proposed fee increases the cost of obtaining mineral materials from BLM, the appraised value will reflect these higher costs. Any fee increases will be offset by lower appraised values resulting in no effect on operators, including small entities, on Federal lands.

Additionally, for mineral materials, based on data for Fiscal Years 96, 97, and 98 (the most recent data available), this proposed rule would affect on average only about 13.5 percent of the disposals on public lands. The rule would not affect the remaining 86.5 percent of disposals, consisting of non-exclusive sales. Although exclusive sales applications account for only about 13.5 percent of all filings, the value of the material sold to the operators was 57 percent of all mineral materials sold by BLM. In short, these exclusive sales are generally for larger, high value operations.

Finally, all proposed fee increases for mineral materials filings are to be determined on a case-by-case basis. The applicant/operator has the opportunity to present data to BLM on the reasonableness of the fees. For exclusive sale applications involving a small operation, the monetary value factor (FLPMA factor 2—''the monetary value of the rights or privileges sought'') may affect the amount of the fee. In addition, non-exclusive sales continue to be an option for small entities that wish to obtain mineral materials while avoiding the fees associated with exclusive sales.

We note that in all areas, most of the proposed fees are charged only once and, therefore, generally the impact is spread over several years of industry production. This has the effect of lessening the impact even further. In addition, as with mineral materials, lease sales are for fair market value, so we can expect bonus bids to decline in response to the new or increased costs.

The amount of the proposed fee increases calls for a discussion about mineral patent adjudication and associated mineral examination fees and their possible effect on small entities. These fees apply to hardrock mineral patent applications under the Mining Law of 1872, which, when approved, result in a transfer of title from the United States to the mining claimant. Patenting is a voluntary process and is not required under the law. Mining claimants who have found a valuable mineral discovery on the public lands and properly located a claim may mine and market the minerals on the claim without a patent and without paying any royalties to the United States.

Fixed fees for mineral patent applications are set in this proposed rule at $2,433 for adjudication of title and sufficiency of the application, plus a case-by-case fee for the actual mineral examination of the mining claims or sites in the application. Although this is an appreciable increase, it is not significant compared to the capital expenditures associated with many hardrock mining ventures, which may range from hundreds of thousands of dollars for small operations to hundreds of millions of dollars for large ventures. The smaller the entity, the more likely it is that the application will seek to patent fewer mining claims, reducing the time needed for BLM's mineral examination. Because fees for the mineral examination are based largely on a case-by-case tracking of our actual time and the costs to us, applications with fewer claims will generally be charged fees at the low end of the possible range.

Since 1994, every Interior Appropriations Act has contained a moratorium for processing any new mineral patent applications. Because of the patenting moratorium, future activity in the adjudication and mineral examination of mineral patent applications is expected to decline significantly in the near future. Therefore, these fees will be applied rarely. Moreover, because claimants have a recognized property interest in a valid unpatented mining claim and can enjoy the benefits of mining and marketing from their claims without ever applying for a patent, a claimant could avoid these fees simply by not filing a patent application even if future appropriation acts did not contain a moratorium.

For many document types, BLM will establish charges on a case-by-case basis. In these situations, the applicant/operator has the opportunity to present data to BLM on the reasonableness of the fees using the FLPMA factors. If, for example, the entity is small and has a small operation, the monetary value factor may cause BLM to reduce the fee(s). When the entity is small but has large operations that are high in monetary value, it must have access to large amounts of capital and the increased fees will not have a significant detrimental effect. In any case, the entities may appeal case-by-case fees if they believe BLM is being unreasonable in its calculations.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The proposed rule would not have an annual effect on the economy greater than $100 million; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would 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. We completed a threshold analysis, which is available for public review in the administrative record for the rule.

Unfunded Mandates Reform Act

The BLM has determined that this proposed rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Section 1532, because it will not result in state, local, private sector, or tribal government expenditures of $100 million or more in any one year. This proposed rule will not significantly or uniquely affect small governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule has no bearing on property rights, but only concerns recovery of government processing costs for actions that benefit certain entities that acquire rights and extract publicly owned resources. Therefore, the DOI has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant effects on federalism, and

therefore a federalism assessment is not required. The proposed rule does not change the role or responsibilities between Federal, state, and local government entities. The rule does not relate to the structure and role of states and will not have substantial, direct effects on states. It may result in a slight decrease in bonus bids, which BLM shares with the states and other revenue recipients. However, the effect would be negligible over the life of a lease.

Executive Order 13175, Consultation, and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM has determined that this proposed rule would not include policies that have tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian tribes. The BLM has not found any substantial direct effects. Consequently, BLM did not utilize the consultation process set forth in section 5 of the Executive Order.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with DOI's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

This rule does not contain information collection requirements that the OMB must approve at this time under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This rule potentially affects the following information requirements approved under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.:*

1004–0025, Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests;

1003–0034, Oil and Gas Lease Transfers;

1004–0073, Coal Management;

1004–0074, Oil and Gas and Geothermal Resources Leasing;

1004–0103, Mineral Materials Disposal;

1004–0114, Payment and Recordation of Location Notices and Annual Filings for Mining Claims, Mill Sites, Tunnel Sites;

1004–0121, Leasing of Solid Minerals Other Than Coal and Oil Shale;

1004–0132, Geothermal Leasing Reports and Resources Leasing and Drilling Operations;

1004–0137, Requirements for Operating Rights Owners and Operators;

1004–0145, Oil and Gas Exploration and Leasing;

1004–0162, Oil and Gas Geophysical Exploration Operations;

1004–0169, Use and Occupancy under the Mining Laws;

1004–0185, Onshore Oil and Gas Exploration, Leasing and Drainage Operations;

1004–0194, Surface Management Activities Under the General Mining Law.

This rule affects the information collections just listed not by decreasing or increasing the information requirements described in these collections but by establishing or changing the costs of filing the applications and reports included in these collections. When this rule becomes final, BLM will file change notices with the OMB, Form 83c, to reflect the new or changed fees established by the final rule.

National Environmental Policy Act

The BLM has determined that this proposed rule is administrative and involves only procedural changes addressing fee requirements. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Item 1.10.

In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term 'categorical exclusions' means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have no such effect in procedures adopted by a Federal agency and therefore require neither an environmental assessment nor an environmental impact statement.

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

In accordance with Executive Order 13211, BLM finds that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this proposed rule.

Clarity of the Regulations

Executive Order No. 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: Are the requirements in the proposed regulations clearly stated? Do the proposed regulations contain technical language or jargon that interferes with their clarity?

Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading, for example: **§ 3000.10 What do I need to know about fees in general?**

Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

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

Authors

The principal authors of this rule are Tim Spisak from the Fluid Minerals Group, and the Solid Minerals Group. They were assisted by the Office of the Solicitor and Cynthia Ellis of the Regulatory Affairs Group, Bureau of Land Management, Department of the Interior, 1620 L Street NW., Room 401 Washington, DC 20036; Telephone (202) 452–5030.

Dated: June 28, 2005.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Government contracts, Oil and gas exploration, Public lands—mineral

resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Administrative practice and procedures, Alaska, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, reporting and recordkeeping requirements.

43 CFR Part 3200

Environmental protection, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Hydrocarbons, Mineral royalties, Mines, Phosphate, Potassium, Public lands—mineral resources, Reporting and recordkeeping requirements, Sodium, Sulfur, Surety bonds.

43 CFR Part 3600

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3800

Administrative practices, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, and Wilderness areas.

43 CFR Part 3830

Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3833

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3835

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3836

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3860

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3870

Public lands—mineral resources, Adverse claims, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble and the authorities stated below BLM amends parts 3000, 3100, 3120, 3130, 3150, 3160, 3200, 3470, 3500, 3600, 3800, 3830, 3833, 3835, 3836, 3860, and 3870 of Title 43 of the Code of Federal Regulations (Groups 3000, 3100, 3200, 3400, 3500, 3600, 3800) as set forth below:

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3000—MINERALS MANAGEMENT GENERAL

1. The authority citation for part 3000 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, and 351–359; 30 U.S.C. 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat., 357.

Subpart 3000—General

2. Add § 3000.10 to read as follows:

§ 3000.10 What do I need to know about fees in general?

(a) You must include the required fees with documents you file under this subchapter. Fees may be statutorily set fees, relatively nominal filing fees, or processing fees intended to reimburse BLM for its reasonable processing costs. For processing fees, BLM takes into account the factors in section 304 (b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. The BLM considers the factors for each type of document when the processing fee is a fixed fee and for each individual document when the fee is decided on a case-by-case basis, as explained in 43 CFR 3000.11.

(b) BLM will not accept a document that you submit without the proper filing or processing fee amounts except for documents where BLM sets the fee on a case-by-case basis. Fees are not refundable except as provided for case-by-case fees in 43 CFR 3000.11. BLM will keep your fixed filing or processing fee as a service charge even if we do not approve your application or you withdraw it completely or partially.

(c) We will periodically adjust fees established in this subchapter according to the Implicit Price Deflator for Gross Domestic Product, which is published annually by the U.S. Department of Commerce for the previous year. Because the fee recalculations are simply based on a mathematical formula, we will change the fees in final rules without opportunity for notice and comment.

(d) We will not charge a fixed fee under this rule for processing a document BLM accepted before the effective date of this final rule with the appropriate fees under then-existing rules.

3. Add § 3000.11 to read as follows:

§ 3000.11 When and how does BLM charge me processing fees on a case-by-case basis?

(a) Fees in this subchapter are designated either as case-by-case fees or as fixed fees. The fixed fees are established in this subchapter for specified types of documents. However, if BLM decides at any time that a particular document designated for a fixed fee will have a unique processing cost, such as the preparation of an Environmental Impact Statement, we may set the fee under the case-by-case procedures in this section.

(b) For case-by-case fees, BLM measures the ongoing processing cost for each individual document and considers the factors in section 304(b) of FLPMA on a case-by-case basis according to the following procedures:

(1) You may ask BLM's approval to do all or part of any study or other activity according to standards BLM specifies, thereby reducing BLM's costs for processing your document.

(2) Before performing any case processing, we will give you a written estimate of the proposed fee for reasonable processing costs after we consider the FLPMA section 304(b) factors.

(3) You may comment on the proposed fee.

(4) We will then give you the final estimate of the processing fee amount after considering your comments and any BLM-approved work you will do.

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedure in paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this section.

(ii) If the established fee you would pay is less than BLM's actual costs as a result of consideration of the FLPMA section 304(b) factors, and we are not able to process your document promptly because of the unavailability of funding or other resources, you will have the option to pay BLM's actual costs to process your document. This will enable BLM to process your document sooner. Once processing is complete, we will refund to you any money that we did not spend on processing costs.

(5) (i) We will periodically estimate what our reasonable processing costs will be for a specific period and will bill you for that period. Payment is due to BLM 30 days after you receive your bill. BLM will stop processing your document if you do not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than BLM's reasonable processing costs for the period, we will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without our prior written approval.

(6) You must pay the entire fee before we will issue the final document.

(7) You may appeal BLM's estimated processing costs in accordance with 43 CFR part 4. We will not process the document further until the appeal is resolved, in accordance with paragraph (b)(5)(i) of this section, unless you pay the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, we will adjust the fee in accordance with paragraph (b)(5)(ii) of this section.

(c) If we began processing a document subject to a case-by-case fee before the effective date of this rule, we will charge fees only for costs we incur after the effective date.

4. Add § 3000.12 to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to BLM for the services listed for Fiscal Year 2006. These fees are nonrefundable. Fees will be adjusted annually for inflation according to the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a document in the **Federal Register** and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

FY 2006 PROCESSING FEE TABLE

Document/action	Fee
Oil and Gas (Parts 3100, 3100, 3110, 3120, 3130, 3150, 3160)	
Noncompetitive lease application	$324
Competitive lease application	127
Assignment and transfer	74
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	170
Leases consolidation	356
Lease renewal or exchange	324
Lease reinstatement, Class I	64
Leasing under right-of-way	324
Geophysical exploration notice of intent—outside Alaska	500
Geophysical exploration permit application—Alaska	500
Application for Permit to Drill (APD)	1,600
Geothermal (Part 3200)	
Noncompetitive lease application	324
Competitive lease application	127
Assignment and transfer of record title or operating right	74
Name change, corporate merger or transfer to heir/devisee	170
Lease consolidation	356
Lease reinstatement	64
Exploration operations permit application	500
Geothermal Permit to Drill (GPD)	1,600
Coal (Parts 3400, 3470)	
License to mine application	11
Exploration license application	266
Lease or lease interest transfer	53
Leasing of Solid Minerals Other Than Coal and Oil Shale (Part 3500)	
Applications other than those listed below	27
Prospecting permit application amendment	53
Extension of prospecting permit	85
Lease renewal	414
Mining Law Administration (Parts 3800, 3830, 3850, 3860, 3870)	
Notice of Location *	16
Amendment of location	11
Transfer of mining claim/ site	11

FY 2006 PROCESSING FEE TABLE—Continued

Document/action	Fee
Recording an annual FLPMA filing (§ 3835.30)	11
Deferment of Assessment	85
Mineral Patent Adjudication	2,433
Adverse claim	85
Protest	53

* The existing fee for recording a mining claim or site location (43 CFR 3833) is a total of $165. This includes the initial maintenance fee of $125 and one-time $30 location fee required by Statute and a $10 service charge. The service charge would become a processing fee and would increase to $16 under the proposed rule making the total fee $171. In the 2005 Department of the Interior Related Agencies Appropriations Act, Congress required that the $125 maintenance fee be lowered to $100 for mining claims or sites that are recorded with BLM on or after December 8, 2004 until BLM establishes a nationwide permit tracking system and files a report with Congress, at which point the fee will revert to $125.

(b) The fee schedule will be posted on the BLM Web site (*http://www.blm.gov*). It will also be available at BLM State and field offices.

(c) The amount of a fixed fee is not subject to appeal to the Interior Board of Land Appeals pursuant to 43 CFR part 4, subpart E.

PART 3100—OIL AND GAS LEASING

5. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.* and 351–359; and 43 U.S.C. 1701 *et seq.*

Subpart 3105—Cooperative Conservation Provisions

6. Amend § 3105.6 by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 3105.6 Consolidation of leases.

BLM may approve consolidation of leases if it determines that there is sufficient justification and it is in the public interest. Each application for a consolidation of leases must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12.
* * *

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

7. Revise § 3106.3 to read as follows:

§ 3106.3 Fees.

Each transfer of record title or of operating rights (sublease) for each lease must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12. Each request for a transfer to an heir or devisee, request for a change of name, or notification of a corporate merger under 43 CFR 3106.8, must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12. Each transfer of overriding royalty or payment out of production must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12 for each lease to which it applies.

8. Amend § 3106.4–3 by revising paragraph (d) to read as follows:

§ 3106.4–3 Mass transfers.

* * * * *

(d) Include with your mass transfer the processing fee payment found in the fee schedule in 43 CFR 3000.12 for each such interest transferred for each lease.

9. Amend § 3106.8–1(a) by removing the sentence ''No filing fee is required.'' and adding in its place a new sentence to read as follows:

§ 3106.8–1 Heirs and devisees.

(a) * * * Include the processing fee payment found in the fee schedule in 43 CFR 3000.12 with your request to transfer lease rights. * * *

* * * * *

10. Amend § 3106.8–2 by removing the sentence ''No filing fee is required.'' and adding in its place a new sentence to read as follows:

§ 3106.8–2 Change of name.

* * * Include the processing fee payment found in the fee schedule in 43 CFR 3000.12 with your notice of name change. * * *

11. Amend § 3106.8–3 by removing the sentence ''No filing fee is required.'' and adding in its place a new sentence to read as follows:

§ 3106.8–3 Corporate merger.

* * * Include the processing fee payment found in the fee schedule in 43 CFR 3000.12 with your notification of a corporate merger. * * *

Subpart 3107—Continuation, Extension or Renewal

12. Amend § 3107.7 by removing the next to the last sentence and adding in its place two new sentences to read as follows:

§ 3107.7 Exchange leases: 20-year term.

* * * The lessee must file an application to exchange a lease for a new lease, in triplicate, at the proper BLM office. The application must show full compliance by the applicant with the terms of the lease and applicable regulations, and must include a payment of the processing fee found in the fee schedule in 43 CFR 3000.12.
* * *

13. Revise § 3107.8–2 to read as follows:

§ 3107.8–2 Application.

File your application to renew your lease in triplicate in the proper BLM office at least 90 days, but not more than 6 months, before your lease expires. Include the processing fee payment found in the fee schedule in 43 CFR 3000.12.

Subpart 3108—Relinquishment, Termination, Cancellation

14. Amend § 3108.2–2(a) by revising the first sentence of paragraph (a) (3) to read as follows:

§ 3108.2–2 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) * * *

(3) A petition for reinstatement, the processing fee found in the fee schedule in 43 CFR 3000.12, and the required rental, including any back rental that has accrued from the date of the termination of the lease, are filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental.
* * *

* * * * *

Subpart 3109—Leasing Under Special Acts

15. Revise § 3109.1–2 by removing the first three sentences and adding in their place four new sentences to read as follows:

§ 3109.1–2 Application.

No approved form is required for an application to lease oil and gas deposits underlying a right-of-way. The right-of-way owner or his/her transferee must file the application in the proper BLM

office. Include the processing fee payment found in the fee schedule in 43 CFR 3000.12. If the transferee files an application, it must also include an executed transfer of the right to obtain a lease. * * *

PART 3110—NONCOMPETITIVE LEASES

16. The authority citation for part 3110 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 9701; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3110—Noncompetitive Leases

17. Amend § 3110.4(a) by revising the fourth and sixth sentences to read as follows:

§ 3110.4 Requirements for offer.

(a) * * * The original copy of each offer must be typed or printed plainly in ink, signed in ink and dated by the offeror or an authorized agent, and must include the payment of the first year's rental and the processing fee found in the fee schedule in 43 CFR 3000.12. * * * A noncompetitive offer to lease a future interest applied for under 43 CFR 3110.9 must include the processing fee payment found in the fee schedule in 43 CFR 3000.12. * * *

* * * * *

PART 3120—COMPETITIVE LEASES

18. The authority citation for part 3120 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 40 U.S.C. 471 *et seq.*; 43 U.S.C. 1701 *et seq.*; and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

19. Amend § 3120.5–2 by revising paragraph (b)(3) to read as follows:

§ 3120.5–2 Payments required.

* * * * *

(b) * * *

(3) The processing fee found in the fee schedule in 43 CFR 3000.12 for each parcel.

* * * * *

PART 3130—OIL AND GAS LEASING; NATIONAL PETROLEUM RESERVE, ALASKA

20. The authority citation for part 3130 is revised to read as follows:

Authority: 42 U.S.C. 6508 and 43 U.S.C.1701 *et seq.*

21. Amend § 3132.3(a) by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 3132.3 Payments.

(a) Make payments of bonuses including deferred bonuses, first year's rental, other payments due upon lease issuance, and fees to BLM's Alaska State Office. Before we issue a lease, the highest bidder must pay the processing fee for competitive lease application found in the fee schedule in 43 CFR 3000.12 in addition to other remaining bonus and rental payments. * * *

* * * * *

Subpart 3135—Transfers, Extensions, Consolidations, and Suspensions

22. Amend § 3135.1–2(a)(2) by revising the first two sentences to read as follows:

§ 3135.1–2 Requirements for filing of transfers.

* * * * *

(a) * * *

(2) An application for approval of any instrument that the regulations require you to file must include the processing fee payment found in the fee schedule in 43 CFR 3000.12. Any document that the regulations in this part do not require you to file, but which you submit for record purposes, must also include the processing fee payment for assignment and transfer found in the fee schedule in 43 CFR 3000.12 for each lease affected. * * *

* * * * *

23. Amend § 3135.1–6(a) by adding a sentence at the end as follows:

§ 3135.1–6 Consolidation of leases.

(a) * * * Include with each request for a consolidation of leases the processing fee found in the fee schedule in 43 CFR 3000.12.

* * * * *

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

24. The authority citation for part 3150 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 9701; 42 U.S.C. 6504 and 6508; and 43 U.S.C.1701 *et seq.*

Subpart 3151—Exploration Outside of Alaska

25. Amend § 3151.1 by revising the second sentence to read as follows:

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

* * * File the notice of intent with the Field Office Manager of the proper BLM office on the form approved by the Director along with the processing fee payment found in the fee schedule in 43 CFR 3000.12. On October 1 of each year, this processing fee will be raised by not more than $500 until it has reached $2,500 (as adjusted for the change in the IPD–GDP). * * *

Subpart 3152—Exploration in Alaska

26. Amend § 3152.1 by removing the undesignated sentence at the end of the section; redesignating paragraphs (a) through (f) as (1) through (6); redesignating introductory text as paragraph (a) introductory text; and adding new paragraph (b) to read as follows:

§ 3152.1 Application for oil and gas geophysical exploration permit.

* * * * *

(b) The applicant must submit an application, along with the processing fee found in the fee schedule in 43 CFR 3000.12, to the Field Office Manager of the proper BLM office. On October 1 of each year, this processing fee will be raised by not more than $500 until it has reached $2,500 (as adjusted for the change in the IPD–GDP).

PART 3160—ONSHORE OIL AND GAS OPERATIONS

27. The authority citation for part 3160 is revised to read as follows:

Authority: 25 U.S.C. 369d and 2107; 30 U.S.C. 181, 189 *et seq.*, 306, 359, 1751; 31 U.S.C 9701, and 43 U.S.C. 1701 *et seq.*

Subpart 3162—Requirements for Operating Rights Owners and Operators

28. Amend § 3162.3–1 by adding a new sentence at the end of paragraph (c) to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(c) * * * You must include a processing fee found in the fee schedule 43 CFR 3000.12 with your application for a permit to drill. On October 1 of each year, this processing fee will be raised by not more than $500 until it has reached $4,000 (as adjusted for the change in the IPD-GDP).

Group 3200—Geothermal Resources Leasing

PART 3200—GEOTHERMAL RESOURCE LEASING

29. The authority citation for part 3200 is revised to read as follows:

Authority: 30 U.S.C. 1001–1028; and 43 U.S.C. 1701 *et seq.*

Subpart 3204—Noncompetitive Leasing

30. Amend § 3204.12 by revising the first sentence to read as follows:

§ 3204.12 What fees must I pay with my lease offer?

Submit the processing fee found in the fee schedule in 43 CFR 3000.12 for each lease offer, and an advance rent in the amount of $1 per acre (or fraction of an acre). * * *

Subpart 3205—Competitive Leasing

31. Amend § 3205.16(a) by removing the word ''and'' at the end of paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(5), and adding a new paragraph (a) (4) to read as follows:

§ 3205.16 How will I know whether my bid is accepted?

(a) * * *

(3) The first year's advance rent;

(4) The processing fee found in the fee schedule in 43 CFR 3000.12 for competitive lease application; and

* * * * *

Subpart 3210—Additional Lease Information

32. Amend § 3210.12 by adding a new sentence at the end of the section to read as follows:

§ 3210.12 May I consolidate leases?

* * * You must include the payment found in the fee schedule in 43 CFR 3000.12 with your request to consolidate leases.

Subpart 3211—Fees, Rent, and Royalties

33. Amend § 3211.10 by:

A. Revising the section heading;

B. Revising paragraph (b) introductory text;

C. Revising paragraph (b) table heading and entries (1) and (3);

D. Redesignating paragraph (b) table entries (4) through (9) as (5) through (10); and

E. Adding a new paragraph (b) table entry (4).

The revisions and addition read as follows:

§ 3211.10 What are the fees, rent, and minimum royalties for leases?

* * * * *

(b) Use the following table to determine the fees, rents, and minimum royalties owed for your lease:

FEES, RENT, AND ROYALTIES

Type	Competitive leases	Noncompetitive leases
(1) Lease Application Processing fee	As found in the fee schedule in 43 CFR 3000.12.	As found in the fee schedule in 43 CFR 3000.12 (includes future interest leases).
* *	* * *	* *
(3) Transfer of Record Title or Operating Rights.	As found in the fee schedule in 43 CFR 3000.12.	As found in the fee schedule in 43 CFR 3000.12.
(4) Transfer of Interest to Heir or Devisee, Name Change, or Notification of Corporate Merger.	As found in the fee schedule in 43 CFR 3000.12.	As found in the fee schedule in 43 CFR 3000.12.

* * * * *

Subpart 3213—Relinquishment, Termination, Cancellation, and Expiration.

34. Revise § 3213.19 to read as follows:

§ 3213.19 What must I do to have my lease reinstated?

Send BLM a petition requesting reinstatement. Your petition must include the serial number for each lease and an explanation of why the delay in payment was justifiable. Lack of diligence on your part is not a justification for delaying payment. In addition to your petition, you must also include any past rent owed, any rent that has accrued from the termination date, and the processing fee found in the fee schedule in 43 CFR 3000.12.

Subpart 3216—Transfers

35. Revise § 3216.14 to read as follows:

§ 3216.14 What fees and forms does a transfer require?

With each transfer request send us the correct form, if required, and pay the transfer processing fee found in the fee schedule in 43 CFR 3000.12. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit three times the listed fee with the application. Use the following chart to determine forms and fees:

Type of form	Specific form required	Form No.	Number of copies	Transfer fee (per lease)
(a) Record title	Yes	3000–3	2 executed copies	As found in the fee schedule in 43 CFR 3000.12.
(b) Operating rights	Yes	3000–3(a)	2 executed copies	As found in the fee schedule in 43 CFR 3000.12.
(c) Estate transfers	No	N/A	1 List of Leases	As found in the fee schedule in 43 CFR 3000.12.
(d) Corporate mergers	No	N/A	1 List of Leases	As found in the fee schedule in 43 CFR 3000.12.
(e) Name changes	No	N/A	1 List of Leases	As found in the fee schedule in 43 CFR 3000.12.

Subpart 3251—Exploration Operations: Getting a Permit

36. Amend § 3251.12 by redesignating paragraphs (b) through (h) as paragraphs (c) through (i), and adding a new paragraph (b) to read as follows:

§ 3251.12 What does BLM need to approve my exploration permit?

* * * * *

(b) Include the processing fee found in the fee schedule in 43 CFR 3000.12.

On October 1 of each year, this processing fee will be raised by not more than $500 until it has reached $2,500 (as adjusted for the change in the IPD-GDP).

* * * * *

Subpart 3261—Drilling Operations: Getting a Permit

37. Amend § 3261.10(a) by adding two new sentences between the first and second sentences to read as follows:

§ 3261.10 How do I get approval to begin well pad construction?

(a) * * * You must submit the processing fee found in the fee schedule in 43 CFR 3000.12 with your sundry notice. On October 1 of each year, this processing fee will be raised by not more than $500 until it has reached $3,500 (as adjusted for the change in the IPD–GDP). * * *

* * * * *

Group 3400—Coal Management

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

38. The authority citation for part 3470 is revised to read as follows:

Authority: 30 U.S.C. 189 and 359; and 43 U.S.C. 1701 *et seq.*

Subpart 3473—Fees, Rentals, and Royalties

39a. Revise § 3473.2 to read as follows:

§ 3473.2 Fees.

(a) An application for a license to mine must include payment of the filing fee found in the fee schedule in 43 CFR 3000.12. BLM may waive the filing fee for applications filed by relief agencies as provided in § 3440.1–1(b) of this chapter.

(b) An application for an exploration license must include payment of the filing fee found in the fee schedule in 43 CFR 3000.12.

(c) An instrument of transfer of a lease or an interest in a lease must include payment of the filing fee found in the fee schedule in 43 CFR 3000.12.

(d) BLM will charge applicants for a royalty rate reduction a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

(e) BLM will charge applicants for logical mining unit formation or modification a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

(f) BLM will charge the successful applicant for a competitive coal lease a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

(g) BLM will charge applicants for modification of a coal lease a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

§§ 3473.2–1 and 3473.2–2 [Removed]

39b. Remove §§ 3473.2–1 and 3473.2–2.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

40. The authority citation for part 3500 is revised to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1733, 1734 and 1740; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

Subpart 3501—Leasing of Solid Minerals Other Than Coal and Oil Shale: General

41. Amend § 3501.1(e) by adding a new first sentence to read as follows:

§ 3501.1 What is the authority for this part?

* * * * *

(e) *Fees.* Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1734) authorizes the Secretary to establish reasonable filing and service fees for applications and other documents relating to the public lands. * * * * *

Subpart 3504—Fees, Rental, Royalty and Bonds

42. A new § 3504.10 is added to read as follows:

§ 3504.10 What fees must I pay?

(a) *Filing fees.* Include the filing fee for ''applications other than those listed below'' found in the fee schedule in 43 CFR 3000.12 with each application you submit to BLM that is not charged a processing fee as described in paragraph (b) of this section (for example, transfers, assignments, and subleases). Fees for exploration licenses are not administered under this section, but are administered under part 2920 of this chapter.

(b) *Processing fees.* The following table shows processing fees for various documents.

Document	Processing fee
(1) Prospecting permit application	Case-by-case basis as described in 43 CFR 3000.11.
(2) Prospecting permit application amendment	As found in the fee schedule in 43 CFR 3000.12.
(3) Prospecting permit extension	As found in the fee schedule in 43 CFR 3000.12.
(4) Preference right lease application	Case-by-case basis as described in 43 CFR 3000.11.
(5) Successful competitive lease application	Case-by-case basis as described in 43 CFR 3000.11.
(6) Lease renewal application	As found in the fee schedule in 43 CFR 3000.12.
(7) Application to waive, suspend, or reduce your rental, minimum royalty, or royalty rate.	Case-by-case basis as described in 43 CFR 3000.11.
(8) Future or fractional interest lease application	Case-by-case basis as described in 43 CFR 3000.11.

43. Revise § 3504.12(a) to read as follows:

§ 3504.12 What payments do I send to BLM and what payments do I send to MMS?

(a) *Fees and rentals.* (1) Pay all filing and processing fees, all first-year rentals, and all bonus bids for leases to the BLM State office that manages the lands you are interested in. Make your instruments payable to the Department of the Interior—Bureau of Land Management.

(2) Pay all second-year and subsequent rentals and all other payments for leases to the Minerals Management Service (MMS). See 30 CFR part 218 for MMS's payment procedures.

* * * * *

Subpart 3505—Prospecting Permits

44. Revise § 3505.12 to read as follows:

§ 3505.12 How do I obtain a prospecting permit?

Deliver three copies of the BLM application form to the BLM office with jurisdiction over the lands you are interested in. Include the first year's rental with your application. You will also be charged a processing fee, which BLM will determine on a case-by-case basis as described in 43 CFR 3000.11. For more information on fees and rentals, see subpart 3504 of this part.

45. Amend § 3505.30 by removing the last sentence and by revising the second full sentence to read as follows:

§ 3505.30 May I amend or change my application after I file it?

* * * You must include the rental for any added lands and the processing fee found in the fee schedule in 43 CFR 3000.12 with your amended application.

46. Amend § 3505.31 by revising the last sentence to read as follows:

§ 3505.31 May I withdraw my application after I file it?

* * * BLM will retain any fees already paid for processing the application.

47. Amend § 3505.50 by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively, redesignating the introductory text as paragraph (a), and adding paragraph (b) to read as follows:

§ 3505.50 How will I know if BLM has approved or rejected my application?

* * * * *

(b) If we do not accept your application, we will refund your rental payment. We will retain any fees already paid for processing the application.

§ 3505.51 [Removed]

48. Section 3505.51 is removed.

49. Amend § 3505.64 by revising the last sentence to read as follows:

§ 3505.64 How do I apply for an extension?

* * * Include the processing fee found in the fee schedule in 43 CFR 3000.12 and the first year's rental, in accordance with §§ 3504.10, 3504.15, and 3504.16 of this part.

Subpart 3507—Preference Right Lease Applications

50. Revise § 3507.16 to read as follows:

§ 3507.16 Is there a fee or payment required with my application?

Yes. You must submit the first year's rental with your application according to the provisions in § 3504.15 of this part. BLM will also charge a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

Subpart 3508—Competitive Lease Applications

51. Amend § 3508.21 by adding a new paragraph (c) to read as follows:

§ 3508.21 What happens if I am the successful bidder?

* * * * *

(c) BLM will charge you a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

Subpart 3509—Fractional and Future Interest Lease Applications

52. Amend § 3509.16 by removing the second sentence and adding a new last sentence to read as follows:

§ 3509.16 How do I apply for a future interest lease?

* * * BLM will charge you a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

53. Amend § 3509.30 by revising the last sentence to read as follows:

§ 3509.30 May I withdraw my application for a future interest lease?

* * * BLM will retain any fees already paid for processing the application.

54. Amend § 3509.46 by removing the second sentence and adding a new last sentence to read as follows:

§ 3509.46 How do I apply for a fractional interest prospecting permit or lease?

* * * BLM will charge you a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

55. Amend § 3509.51 by revising the last sentence to read as follows:

§ 3509.51 May I withdraw my application for a fractional interest prospecting permit or lease?

* * * BLM will retain any fees already paid for processing the application.

Subpart 3511—Lease Terms and Conditions

56. Amend § 3511.27 by revising the last sentence to read as follows:

§ 3511.27 How do I renew my lease?

* * * Send us three copies of your application together with the processing fee found in the fee schedule in 43 CFR 3000.12, and an advance rental payment of $1 per acre or fraction of an acre.

Subpart 3513—Waiver, Suspension or Reduction of Rental and Minimum Royalties

57. Add § 3513.16 to read as follows:

§ 3513.16 Do I have to pay a fee when I apply for a waiver, suspension, or reduction of rental, minimum royalty, production royalty, or minimum production?

Yes. BLM will charge you a processing fee on a case-by-case basis, as described in 43 CFR 3000.11.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL

58. The authority citation for part 3600 is revised to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1734, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

59. Amend § 3602.11 by adding paragraph (c) to read as follows:

§ 3602.11 How do I request a sale of mineral materials?

* * * * *

(c) You must pay a processing fee provided in 43 CFR 3602.31(a) and 3602.44(f). If the request is for mineral materials that are from a community pit or common use area, this requirement does not apply.

60. Amend § 3602.31 by revising the section heading and adding at the beginning of paragraph (a) introductory text a new sentence to read as follows:

§ 3602.31 What volume limitations and fees generally apply to noncompetitive mineral materials sales?

(a) BLM will charge the purchaser a processing fee on a case-by-case basis as described in 43 CFR 3000.11. * * *

* * * * *

61. Amend § 3602.44 by adding paragraph (f) to read as follows:

§ 3602.44 How do I make a bid deposit?

* * * * *

(f) BLM will charge the successful bidder a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

62. Amend § 3602.47 by revising the section heading and adding a new paragraph (e) to read as follows:

§ 3602.47 When and how may I renew my competitive contract and what is the fee?

* * * * *

(e) *Fee.* BLM will charge a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

Group 3800—Mining Claims Under the General Mining Laws

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

63. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 351 and 460y–4; 30 U.S.C. 22 and 28k; 31 U.S.C. 9701; and 43 U.S.C. 1201 and 1740.

64–65. Add a new Subpart 3800, consisting of § 3800.5, to read as follows:

Subpart 3800—General

§ 3800.5 Fees.

(a) An applicant for a plan of operations under this part must pay a processing fee on a case-by-case basis as described in 43 CFR 3000.11 whenever BLM decides that consideration of the plan of operations requires the preparation of an Environmental Impact Statement.

(b) An applicant for a plan of operations or a mineral patent under this part, or a notice operator who may not conduct operations under this part until a validity examination is performed, must pay a processing fee on a case-by-case basis as described in 43 CFR 3000.11 for any validity examination and report performed in connection with the application or notice.

(c) An applicant for a mineral patent also is required to pay a processing fee under § 3860.1.

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

66. The authority citation for part 3830 is revised to read as follows:

Authority: 18 U.S.C. 1001, 3571; 30 U.S.C. 22 *et seq.*, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1734, 1740, 1744; 44 U.S.C. 3501 *et seq.*, 115 Stat. 414.

67. Revise entries (a), (b), (c), (e), and (f) in the table at § 3830.21 to read as follows:

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

* * * * *

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833)	(1) A total sum which includes:	
	(i) The processing fee for notice of location found in the fee schedule in 43 CFR 3000.12.	No.
	(ii) A one-time $30 location fee	No.
	(iii) An initial $125 maintenance fee	No.
(b) Amending a mining claim or claim site location (§ 3833.20)	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
(c) Transferring a mining claim or site (§ 3833.30)	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
* * *	* * *	*
(e) Recording an annual FLPMA filing (§ 3835.30)	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
(f) Submitting a petition for deferment of assessment work (§ 3836.20).	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
* * *	* * *	*

PART 3833—RECORDING MINING CLAIMS AND SITES

68a. The authority citation for part 3833 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*, 621–625; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 62 Stat. 162; 115 Stat. 414.

68b. Revise § 3833.11(c) to read as follows:

§ 3833.11 How do I record mining claims and sites?

* * * * *

(c) When you record a notice or certificate of location, you must pay a processing fee, location fee, and initial maintenance fee as provided in § 3830.21 of this chapter.

* * * * *

69. Revise § 3833.22(b) to read as follows:

§ 3833.22 How do I amend my location?

* * * * *

(b) You must pay a processing fee for each claim or site you amend. See the table of fees and service charges in § 3830.21 of this chapter.

* * * * *

70. Revise § 3833.32(c) to read as follows:

§ 3833.32 How do I transfer a mining claim or site?

* * * * *

(c) Each transferee must pay a processing fee per mining claim or site you were transferred. See the table of fees and service charges in § 3830.21 of this chapter.

* * * * *

PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES

71a. The authority citation for part 3835 is revised to read as follows:

Authority: 30 U.S.C. 22, 28, 28f–28k; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 50 U.S.C. App. 501, 565; 115 Stat. 414.

71b. Revise § 3835.33(e) to read as follows:

* * * * *

§ 3835.33 What should I include when I submit a notice of Intent to Hold?

* * * * *

(e) A processing fee for each mining claim or site affected. (See the table of fees and service charges in § 3830.21 of this chapter.)

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

71a. The authority citation for part 3836 is revised to read as follows:

Authority: 30 U.S.C. 22, 28, 28b–28e; 43 U.S.C. 2, 1201, 1457; 50 U.S.C. App. 501, 565.

72b. Revise § 3836.23(g) to read as follows:

§ 3836.23 How do I petition for deferment of assessment work?

* * * * *

(g) You must pay a processing fee with each petition. (See the table of fees and service charges in § 3830.21 of this chapter.)

PART 3860—MINERAL PATENT APPLICATIONS

73. The authority citation for part 3860 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1701 *et seq.*

74–75. Amend part 3860 by adding new subpart 3860, consisting of § 3860.1, to read as follows:

Subpart 3860—General

§ 3860.1 Fees.

(a) Each mineral patent application must include the processing fee found in the fee schedule in 43 CFR 3000.12 to cover BLM's adjudication costs for the application.

(b) As provided at § 3800.5, BLM will charge a separate processing fee on a case-by-case basis as described in § 3000.11 to cover its costs for conducting the validity examination and report.

Subpart 3862—Lode Mining Claim Patent Applications

76. Revise § 3862.1–2 to read as follows:

§ 3862.1–2 Fees.

An applicant for a lode mining claim patent must pay fees as described in § 3860.1 of this part.

Subpart 3863—Placer Mining Claim Patent Applications

77. Amend § 3863.1 by adding new paragraph (c) to read as follows:

§ 3863.1 Placer mining claim patent applications: General.

* * * * *

(c) An applicant for a placer mining claim patent must pay fees as described in § 3860.1 of this part.

Subpart 3864—Millsite Patents

78. Add § 3864.1–5 to read as follows:

§ 3864.1–5 Fees.

An applicant for a millsite patent must pay fees as described in § 3860.1 of this part.

PART 3870—ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

79. The authority citation for part 3870 is revised to read as follows:

Authority: 30 U.S.C. 30; 43 U.S.C. 1201, 1457, 1701 *et seq.*

Subpart 3871—Adverse Claims

80. Amend § 3871.1 by revising paragraph (d) as follows:

§ 3871.1 Filing of claim.

* * * * *

(d) Each adverse claim filed must include the processing fee found in the fee schedule in 43 CFR 3000.12.

Subpart 3872—Protests, Contests, and Conflicts

81. Amend § 3872.1 by revising paragraph (b) to read as follows:

§ 3872.1 Protest against mineral applications.

* * * * *

(b) A protest by any party, except a Federal agency, must include the processing fee found in the fee schedule in 43 CFR 3000.12.

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