

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Parts 3600, 3610, and 3620****[WO-620-1430-PB-24 1A]****RIN 1004-AD29****Mineral Materials Disposal; Sales; Free Use****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its mineral materials regulations by adding or amending provisions on inspection of operations, production verification, contract renewal, procedures for cancellation, bonding, and appeals. The proposed rule also addresses the rights of purchasers and permittees versus subsequent users of the same land. BLM proposes to amend the regulations in part because notices of intended sale of mineral materials have inspired speculative entries conflicting with the proposed sale, and because BLM has encountered difficulties in verifying production. These amendments are necessary to prevent entries and uses begun after a planned sale has been announced from interfering with the sale. BLM also proposes to reorganize and simplify the regulations on mineral materials disposal.

DATES: You must submit your comments to BLM at the appropriate address below on or before November 13, 2000. BLM will not necessarily consider any comments received after the above date in making its decisions on the final rule.

ADDRESSES:

Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: WComment@blm.gov. (Include "Attn: AD29").

FOR FURTHER INFORMATION CONTACT: Dr. Durga N. Rimal, Solid Minerals Group, at (202) 452-0350. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. Background

III. The Rule as Proposed

IV. Section-by-Section Analysis
V. Procedural Matters**I. Public Comment Procedures***A. How Do I Comment on the Proposed Rule?*

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

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.

- You may also comment via the Internet to WComment@blm.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AD29" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 452-5030.

Please make your written 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.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

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 comment. 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.

II. Background

Under the mineral materials program, BLM manages the exploration, development, and disposal of materials such as sand, stone, gravel, and other common rocks. Our primary goal is to make Federal mineral materials available by sale or free use permit when it will not be detrimental to the public interest. BLM is also responsible for the planning and inventory of mineral materials on the public lands, and prevention and abatement of their unauthorized use. BLM monitors sites, and inspects and verifies production to ensure compliance with the terms of the contract or permit. This proposal does not address vegetative materials, such as timber.

A. Authorities

The general authority for the Mineral Materials Program is the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), commonly referred to as the Materials Act. This Act authorizes the Secretary of the Interior to dispose of mineral and vegetative materials from public lands.

B. How Does BLM Dispose of Mineral Materials?

BLM disposes of mineral materials from public lands by selling them and, under some circumstances, giving them away. We dispose of materials from exclusive sites used by one operator or nonexclusive sites (community pits or common use areas) used by more than one operator. Under current regulations in 43 CFR parts 3600, 3610, and 3620, and BLM policies, disposal methods are as follows:

1. Negotiated Sales

BLM will negotiate a sale contract for quantities of materials less than 100,000 cubic yards, with certain exceptions detailed in the regulations. The price will be fair market value of the minerals as BLM determines through an appraisal. Contracts have a maximum term of 5 years, with a possible one-time, one-year extension.

2. Competitive Sales

For quantities of materials greater than 100,000 cubic yards, or if BLM is aware that there is competitive interest in the materials site, we advertise the availability of the material at the particular site and sell it to the highest bidder. Contracts issued through this process have a term of no more than 10 years, but BLM may allow a one-time, one-year extension.

3. Free Use Permits

BLM issues free use permits for sand and gravel and other materials to government agencies and to non-profit organizations. A large part of mineral materials produced under the program is disposed of under free use permits to local, state, and other Federal Government agencies, including State and county highway departments, cities, and municipalities. As a government agency, you may obtain free use permits to extract specified quantities of material for public works projects. BLM may specify the amount you may extract under a government agency free use permit, and may allow your operation to continue for up to 10 years. You may not barter or sell the material.

BLM also issues free use permits to non-profit organizations for up to 5,000 cubic yards for any 12 consecutive months. These permits have a one-year term. If there is additional need, you must apply for a new permit. You also may not barter or sell this material.

C. Surface Management Operations

BLM is responsible for monitoring the sites, inspection, and production verification to ensure compliance with the terms of the contract or permit. BLM seeks (1) accurate accounting for materials you remove, (2) proper compensation to the Federal Government, and (3) protection of the environment, public health, and safety. We may use field inspections and site surveys, or high-tech methods, such as aerial surveys or computer modeling, that quantify the volume of material removed. We generally base the frequency of inspections and the choice of verification method on the size and type of disposal.

III. The Rule as Proposed

The proposed rule would substantially reorganize parts 3600, 3610, and 3620. We are reorganizing the regulations for two reasons: (1) To make them read more logically and clearly; and (2) to conform more closely to Office of the Federal Register numbering conventions. The following table shows how numbers would be changed from the existing regulations to the proposed rule.

SECTION CONVERSION TABLE

Old section	Proposed new section
Group 3600	None.
Group 3600 Note	§ 3601.9.
Part 3600	Part 3600.
Subpart 3600	Subpart 3601.
§ 3600.0-1	§ 3601.1.

SECTION CONVERSION TABLE—
Continued

Old section	Proposed new section
§ 3600.0-3	§ 3601.3.
§ 3600.0-3(a)(3)	§ 3601.12.
§ 3600.0-4	§ 3601.6.
§ 3600.0-5	§ 3601.5.
§ 3600.0-8	§ 3601.8.
Subpart 3601	None.
§ 3601.1	§ 3601.10.
§ 3601.1-1(a)(1)	§ 3601.14.
§ 3601.1-1(a)(2)	§ 3601.12.
§ 3601.1-2(a), (c)	§ 3601.21.
§ 3601.1-2(b)	§ 3601.22.
§ 3600.0-3(a)(2)	§ 3601.13.
§ 3601.1-3	§ 3601.11.
Subpart 3602	None.
§ 3602.1	§ 3601.40.
§ 3602.1-1	§ 3601.41.
§ 3602.1-2	§ 3601.42.
§ 3602.1-3(a), (b)	§ 3601.43.
§ 3602.1-3(c), (d)	§ 3601.44.
§ 3602.2	§ 3601.30.
§ 3602.3	§ 3601.52.
None	§ 3601.51.
None	§ 3601.60.
None	§ 3601.61.
None	§ 3601.62.
Subpart 3603	None.
§ 3603.1	§§ 3601.70 through 3601.72.
None	§ 3601.80.
Subpart 3604	Subpart 3603.
§ 3604.1(a)	§ 3603.10.
§ 3604.1(b)	§ 3603.11.
§ 3604.1(c)	§ 3603.12.
§ 3604.1(d) (first sentence)	§ 3603.13.
§ 3604.1(d) (second sentence)	§ 3603.14.
§ 3604.2	§ 3603.20.
§ 3604.2(a)	§§ 3603.21 and 3603.22(b).
§ 3604.2(b)	§ 3603.22(a).
Part 3610	None.
Subpart 3610	Subpart 3602.
§ 3610.1	§ 3602.10.
§ 3610.1-1	§ 3602.11.
None	§ 3602.12.
§ 3610.1-2	§ 3602.13.
§ 3610.1-3(a)(1)-(5)	§ 3602.21(a).
§ 3610.1-3(a)(6)	§§ 3602.21(b), 3602.22(a).
§ 3610.1-3(b)	§ 3602.22(b).
§ 3610.1-4	§ 3602.23.
§ 3610.1-5	§ 3602.14.
None	§ 3602.15.
§ 3610.1-6(a), (b)	§ 3602.24.
§ 3610.1-6(c)	§§ 3602.25, 3602.26.
§ 3610.1-7	§ 3602.27.
None	§ 3602.28.
§ 3610.1-3(a)(7)	§ 3602.29.
§ 3610.2	§ 3602.30.
§ 3610.2-1	§ 3602.31.
§ 3610.2-2	§ 3602.32.
§ 3610.2-3	§ 3602.33.
§ 3610.2-4	§ 3602.34.
§ 3610.3	§ 3602.40.
§ 3610.3-1(a)	§ 3602.41.
§ 3610.3-1(b)	§ 3602.42(c).
§ 3610.3-2	§ 3602.42(a), (b).
§ 3610.3-3	§ 3602.43.
§ 3610.3-4	§ 3602.44.

SECTION CONVERSION TABLE—
Continued

Old section	Proposed new section
§ 3610.3-5	§ 3602.45.
§ 3610.3-6	§ 3602.46.
None	§ 3602.47.
None	§ 3602.48.
None	§ 3602.49.
Part 3620	None.
Subpart 3621	Subpart 3604.
§ 3621.1	§ 3604.10.
§ 3621.1-1	§ 3604.11.
§ 3621.1-2	§ 3604.21.
§ 3621.1-3	§ 3604.23.
§ 3621.1-4(a), (c)-(d)	§ 3604.22.
§ 3621.1-4(b)	§ 3604.13.
§ 3621.1-5	§ 3604.24.
§ 3621.1-6	§ 3604.25.
§ 3621.1-7	§ 3604.26.
§ 3621.2(a)	§ 3604.12(a).
§ 3621.2(b)	§ 3604.12(b).
§ 3621.2(c)	§ 3604.27.
Subpart 3622	Subpart 3622.

This proposed rule also incorporates material from a proposed rule published August 2, 1996 (61 FR 40373). That rule proposed to amend the bonding requirements for mineral material sales by accepting qualified certificates of deposit as surety bonds, and by changing bonding requirements for sales of \$2,000 or more. As in the earlier proposed rule, bonds would be set at more realistic levels, and would ensure that amounts needed to cover the cost of reclamation will be available.

Other substantive changes in the proposed rule include the following:

(1) The rule would strengthen and clarify provisions allowing BLM to require purchasers of mineral materials to keep records to verify production and to make them available to BLM. BLM would use these records to ascertain whether purchasers have complied with regulations and contract terms. To allow BLM to verify production, the rule would require purchasers to submit production reports at least annually. It would allow BLM to require purchasers to conduct volumetric surveys of the operation site as well. See §§ 3602.28 and 3602.29.

(2) The rule would require permittees and purchasers to allow BLM to inspect their operations, conduct surveys, and estimate the volume and type of production. See § 3601.51.

(3) The rule would allow BLM to cancel permits or sales contracts for failure of the purchaser or permittee to comply with the law, regulations, or contract or permit terms. It would require BLM to provide written notice of our intent to cancel, allowing time to correct performance problems, to request an extension, or to show why

the contract or permit should not be canceled. See §§ 3601.61 and 3601.62.

(4) The rule would add a provision that when BLM designates a tract for sale of mineral materials, subsequent contracts or permits on that tract will have priority over any subsequent conflicting mining claim, entry, or other use of the land. See § 3602.12.

(5) The rule would provide that BLM may dispose of mineral materials from unpatented mining claims in accordance with Solicitor's Opinion No. M-36998, Disposal of Mineral Materials from Unpatented Mining Claims, June 9, 1999. See § 3601.13.

(6) The rule would make the provisions for reappraisal clearer. BLM would not reappraise sooner than 2 years after we issue the contract or complete a previous reappraisal. See §§ 3602.13 and 3602.48.

(7) The rule would reduce the percentage amount BLM requires for the first installment payment and in lieu of production payments under a material sales contract. See § 3602.21.

(8) The rule would provide that you must make monthly installment payments in an amount equal to the value of the materials removed the previous month. See § 3602.21.

(9) The rule would allow purchasers with contract terms of 90 days or less to request contract extensions no later than 15 days instead of 30 days before the end of the contract. See § 3602.27.

(10) The rule would increase the volume limitation for noncompetitive sales from 100,000 to 200,000 cubic yards, and for noncompetitive sales in support of a public works improvement program from 200,000 to 400,000 cubic yards. See §§ 3602.31 and 3602.32.

(11) The rule would allow the successful bidder in a competitive sale 60 days instead of 30 days to ratify and execute the contract. See § 3602.45.

(12) The rule would add a provision for renewing contracts, under which a purchaser who has paid the full contract price for the purchased mineral material may apply for renewal of the contract to allow purchase of additional material from the same site. The maximum renewal term would be 10 years, but there would be no limit on the number of renewals allowed. However, each renewal would require a reappraisal, a new environmental analysis when we find it necessary, and a possible increase or decrease in the bond required. See § 3602.47.

(13) The rule would include a cross reference to the Department of the Interior appeals regulations in 43 CFR part 4. See § 3601.80.

These regulations would apply from the date of promulgation of the rule to

all future contracts and permits. They would also apply to existing contracts and permits to the extent—

- The contract or permit incorporates future regulations, and
- The regulations are not inconsistent with the express terms of the contract or permit. We solicit comments regarding whether incorporating any of the provisions of this proposed rule into existing contracts or permits would cause hardship or otherwise be inadvisable.

III. Section-by-Section Analysis

This portion of the preamble addresses only those parts of the regulations that we would reorganize or amend in a way that requires explanation.

Subpart 3601—Mineral Materials Disposal: General

This subpart would replace and combine existing subparts 3600, 3601, 3602, and 3603. It would contain the regulatory provisions common to both sales and free use of mineral materials, including definitions, limits on disposal of mineral materials, mining and reclamation plans, reclamation and removal of improvements, and unauthorized use. Part of the purpose of this rearrangement is to conform with Office of the Federal Register numbering conventions, which discourage use of “group”—which BLM has long used—as part of an organizational structure for regulations. The rearrangement also seeks to combine related functions within the same unit of the regulations.

Authority

Section 3601.3 would describe briefly the statutory authorities for BLM to sell or otherwise dispose of mineral and other materials, to manage the public lands generally, and to collect fees and require reimbursement of administrative costs. It would not contain the repetition of the statutory provisions themselves that appear in the existing regulations. It is unnecessary to repeat the statute in the regulatory text.

Definitions

While we have not proposed to amend the definition of “public lands” at this point, we are aware that the Department of Agriculture uses a definition that excludes acquired lands in its administration of the Materials Act. We are reviewing this issue and would welcome comments on whether we should amend our definition.

We would add a definition for the term “purchaser” to distinguish a person holding a material sales contract from a free use permittee under these

regulations, and revise the definition of the term “permittee” to refer only to the holder of a free use permit. The rule would also revise the definitions of “community pit” and “common use area” to explain better the difference between them.

The proposed rule would also remove the definition of “unnecessary or undue degradation” because we found that reference to this standard is not needed in this rule. The Materials Act provides that the Secretary may dispose of mineral materials if the disposal is not otherwise expressly authorized or prohibited by law and would not be detrimental to the public interest. 30 U.S.C. 601. This standard gives the Secretary broad discretion, allowing him to consider not only whether a proposed disposal might cause unnecessary or undue degradation, but other factors that could affect the public interest as well. BLM's policy statement at proposed § 3601.6(d) and the provision at proposed § 3601.11 incorporate this standard by declaring that “BLM will not dispose of mineral materials if we determine that the aggregate damage to public lands and resources would exceed the public benefits that BLM expects to be derived from the proposed sale or free use.” Sections 3601.41(c) and 3602.48 also ensure that mineral materials operations will include measures to prevent hazards to public health and safety and to minimize and mitigate environmental damage. Accordingly, we would remove references in the rule to “unnecessary or undue degradation” as needless and possibly confusing.

Finally, the proposed rule would remove the definition for “authorized officer” in accordance with the now prevailing practice of using the term “BLM” instead of “authorized officer,” and rearrange the defined terms in alphabetical order.

Policy

Section 3601.6 would be amended by adding a policy statement authorizing government agencies and non-profit organizations free use of mineral materials. This policy statement is new in this proposed rule, but reflects existing regulations and policy. We have included “Territorial” government entities, as in the statute. 30 U.S.C. 601. We recognize that at the time the statute was enacted, Alaska was a Territory that could benefit from this provision. We invite comment on whether any current Territories could benefit and whether this inclusion is currently necessary or appropriate.

Public Availability of Information

Section 3601.8 was added to the mineral material disposal regulations (as § 3600.0–8) in a final rule published in the **Federal Register** on October 1, 1998 (63 FR 52946). It merely would be renumbered and not otherwise changed in this proposed rule.

Information Collection

Section 3601.9 would codify the “Note” on information collection requirements that currently appears at the beginning of 43 CFR Group 3600. The Note refers to information collection clearance numbers under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed rule would not amend this provision except to relocate it, conform the parts citation to the amendments in this proposed rule, and simplify the last sentence. This codification is in response to the style requirements of the Office of the Federal Register.

Limits on BLM’s Discretion to Dispose of Mineral Materials

The next group of sections, 3601.10 to 3601.14, would detail the effects of other uses and land designations on BLM’s ability to dispose of mineral materials from public lands.

Section 3601.13 How Can I Obtain Mineral Materials From Federal Lands Managed By Other Agencies?

Section 1 of the Materials Act (30 U.S.C. 601) allows the Secretary of the Interior to dispose of mineral materials from public lands. It also allows the Secretary to dispose of such materials from lands that have been withdrawn for the use of other Federal agencies and State and local government agencies, but only with the consent of that other governmental agency or unit. Under the proposed rule, BLM would dispose of mineral materials from such withdrawn lands only with the consent of the affected agency or governmental unit. BLM would not dispose of mineral materials from lands managed by the U.S. Forest Service or the National Park Service, or from Indian lands. This is not a change from current procedures, which are restated and relocated here from the Authority section of the existing regulations, 43 CFR 3600.0–3(a)(2) and (3).

Section 3601.14 When Can BLM Dispose of Mineral Materials From Unpatented Mining Claims?

A substantive change in these provisions is that § 3601.14 would recognize BLM’s authority to dispose of mineral materials from unpatented mining claims, unlike current § 3601.1–

1, which restricts such disposal. This change is based on Solicitor’s Opinion No. M–36998, issued on June 9, 1999, which sets out the authority for such disposal. Prior to issuance of this Opinion, the Department proposed language as part of the revision of 43 CFR subpart 3809 (64 FR 6421–6448 at proposed § 3809.101(d)) that would have authorized BLM’s disposal of mineral materials from unpatented mining claims where the mining claimant gave BLM a written waiver. Proposed § 3601.14 would broaden that authority consistent with the Opinion, which makes clear that BLM’s authority is not contingent on receiving a waiver from the claimant.

Rights of Parties

The next 2 sections, 3601.21 and 3601.22, describe the rights of the parties to a mineral materials disposal contract or permit. Section 3601.22 would be virtually unchanged from current § 3601.1–2(b).

Section 3601.21 would combine portions of 2 sections of the existing regulations, 3601.1–2(a) and (c), to explain the rights of the purchaser of a materials sales contract and the holder of a free use permit. These rights include the extraction, removal, processing, and stockpiling of material during the life of the contract or permit, and use and occupancy of the land if BLM determines it necessary for the operation. It would also state that subsequent authorized users of the land would have rights subordinate to the holder of the contract or permit. Except for the consolidation of sections, the proposed rule does not change this provision substantively.

Section 3601.30 Pre-Application Activities

The only substantive change to this section from current § 3602.2 would be new language limiting to 90 days the effectiveness of a letter from BLM authorizing sampling and testing. BLM may extend the 90-day authorization for another 90 days if we agree that extension is necessary. BLM believes a time limit on authorized activities is desirable to maintain control over the land. This 90-day period should be sufficient in most cases, and the possible extension would provide flexibility for cases requiring more time.

Section 3601.40 Mining and Reclamation Plans

The next 5 sections address mining and reclamation plans, describing what they must contain, how to submit them, and how BLM reviews, modifies, and approves them. These sections are based

on current §§ 3602.1 through 3602.1–3. We would add language to § 3601.43 explaining that mining and reclamation plans are part of the contract or permit. We invite comment on whether we should retain the language in the proposed rule in § 3601.44 that would substantively amend the provision to allow BLM to require modification of a plan to adjust to changed conditions or to correct an oversight even if the purchaser or permittee does not agree.

Section 3601.50 Administration of Sales Contracts and Free Use Permits

This heading would introduce 2 sections describing BLM’s inspection rights and the purchaser’s or permittee’s obligation to remove improvements and equipment after finishing operations.

Section 3601.51 How Will BLM Inspect My Operation?

This is a new section that would require purchasers and permittees to allow BLM to inspect the mine operation, conduct surveys, and verify production and compliance with contract or permit terms and regulatory requirements. The change is prompted by internal BLM reviews and reports from the Office of the Inspector General of the Department of the Interior that show that the United States has been losing revenues due to under-reporting of mineral materials produced from the public lands, and from other forms of theft. Adding these inspection provisions will strengthen BLM’s ability to spot-check operations for compliance with regulations and with the terms of contracts and permits. BLM is not proposing constant monitoring, as the cost would be prohibitive.

Section 3601.52 When Must I Remove Improvements and Equipment After I Finish My Operations?

This proposed section would be based on current § 3602.3. The only substantive amendment proposed is to add that cancellation, as well as expiration, of a contract or permit, will cause BLM to set a deadline of no more than 90 days for you to remove improvements and equipment.

Section 3601.60 Cancellation

Section 3601.60 introduces 2 new sections that would set forth the grounds and procedures for BLM to cancel permits and contracts. BLM may cancel a permit or contract if you fail to comply with the Materials Act or the applicable regulations, or default in performing any of the terms or stipulations of the contract or permit. Under the rule, BLM would give you written notice of performance problems

and 30 days to correct them or to request more time to correct them or to show why BLM should not cancel the contract or permit. If you fail to make the corrections or the required showing within the time limit (including any extension granted), BLM would be able to cancel the contract or permit.

These additions are necessary to allow BLM to promote efficient and expeditious development of these resources, and to protect the environment.

Section 3601.80 Appeals

Although this section is new in this proposed rule, it reflects existing appeals rights. Parties adversely affected by a BLM decision may appeal to the Interior Board of Land Appeals, Office of Hearings and Appeals. You must file your appeal in writing in the office of the BLM official who made the decision within 30 days after the date of receipt of the decision. This section would direct appellants to the regulations in 43 CFR part 4 for appeals procedures.

Subpart 3602 Mineral Materials Sales

This subpart would replace existing part 3610 and subpart 3610. It would contain the requirements and procedures pertaining to sales of mineral materials, except those from community pits and common use areas, which are covered in the next subpart.

Section 3602.10 Applying for a Mineral Materials Sales Contract

The first 4 sections under this heading explain the application, pricing, and bonding process, and the effect of tract designation. Most of these provisions are carried over from the existing regulations, but § 3602.12 would be new in the proposed rule. It would explain the relative rights and priorities among BLM land users when BLM designates tracts for competitive or noncompetitive sale of mineral materials. Under this section, any contract or permit BLM authorizes within 2 years after the date we designate the tract would convey a right to remove the materials superior to any subsequent claim, entry, or other conflicting use of the land. This right would not prevent other uses or segregate the land from the operation of the public land laws, including the mining and mineral leasing laws. However, the rule would not allow a subsequent use to interfere with the extraction of mineral materials. Notation of the tract designation in the public land records would establish this superior right. For good cause, BLM could extend the 2-year period for one additional year. The Secretary has broad authority under the Materials Act, 30

U.S.C. 601, to prescribe regulations to govern the disposal of mineral materials. The proposed provision is necessary to prevent other claims, especially speculative ones, from interfering with and raising the cost of planned development of mineral materials.

Section 3602.13 How Does BLM Measure and Establish the Price of Mineral Materials?

The proposed rule would amend this section to make it clear that BLM may reappraise at intervals of 2 years or more in order to adjust the contract price. Paragraph (b) of the existing regulations at § 3610.1–2, which was written with the intent of preventing BLM from reappraising any more often than every 2 years, can be read to require reappraisal every 2 years, whether circumstances suggest that an appraisal may be needed or not. This proposed rule is designed to avoid such a misinterpretation.

Section 3602.14 What Kind of Financial Security Does BLM Require?

This section appeared as § 3610.1–5 in a proposed rule published on August 2, 1996 (61 FR 40373). That proposed rule attracted no public comments. The proposed rule published today would not make any substantive changes in that provision. It would require, for materials sales contracts of \$2,000 or more, a performance bond of at least 5 percent of total contract value, plus sufficient funds, at least \$500, to pay for the reclamation required in the contract. If the contract sale is from a community pit and the purchaser pays a reclamation fee, we will not require the reclamation portion of the performance bond.

The section would also allow BLM to require a performance bond of not more than 20 percent of the total contract value for contract sales of less than \$2,000. Finally, it would list the types of instruments that are acceptable as performance bonds.

Section 3602.15 What Will Happen to My Bond if I Transferred All of My Interests or Operations to Another Bonded Party?

This section is new in this proposed rule. It provides that BLM will cancel your bond obligations following an assignment if the assignee assumes all of your existing liabilities.

Section 3602.20 Administration of Mineral Materials Sales

Here begins a series of sections describing, first, the actions BLM may take, and second, the responsibilities of

purchasers, during the course of operations under a mineral materials sales contract.

Section 3602.21 What Payment Terms Apply to My Mineral Materials Sales Contract?

This section of the proposed rule is derived from portions of § 3610.1–3 of the existing rule. The proposed rule would make a few substantive changes.

- It would establish the payment terms for mineral materials sales contracts. Small contracts of \$2,000 or less would still require you to pay the full amount upon signing the contract. Upon signing the contract, for a noncompetitive sale, or upon submitting a bid, in a competitive sale, for contracts for more than \$2,000, the rule would reduce the initial installment you must pay to the greater of \$500 or 5 percent (instead of 10 percent) of the purchase price. Experience shows that an initial payment of 5 percent on larger contracts is sufficient to protect the public interest.

- The rule would remove as unnecessary the requirement that you make an advance payment before removing materials: the requirement that you pay the first installment with the bid or upon signing the contract is equivalent to requiring such an advance payment.

- Until production begins, you would be obligated to make an annual payment equal to the first installment. Once production begins, the rule would require you to pay for the amount of material you produce each month, and either produce annually enough to pay an amount equal to the first installment on or before the contract anniversary or, in lieu of such production, make an annual payment in the amount of the first installment. The deadline for paying the entire amount of the contract would be 60 days before its expiration date. If you fail to make the required payments, you would forfeit all payments made to date. The only changes proposed in this portion of the section are to improve clarity.

Section 3602.22 When Will a Contract Terminate?

This section is new in the proposed rule, although it would incorporate parts of current § 3610.1–3. It would state that a contract can terminate in 3 ways:

- (1) When the contract term expires;
- (2) If BLM cancels the contract for cause under § 3601.60; or
- (3) By mutual agreement of BLM and the purchaser.

Section 3602.23 When Will BLM Make Refunds or Allow Credits?

Section 3602.23 merely restates and clarifies current § 3610.1–4 provisions regarding refunds and credits. The changes are not substantive.

Section 3602.24 When May I Assign My Materials Sales Contract?

and

Section 3602.25 What Rights and Responsibilities Does My Assignee Assume?

These 2 sections of the proposed rule are based on paragraphs (a) and (b) and paragraph (c), respectively, of § 3610.1–6 in the existing regulations. Except for presenting them more clearly, the proposed rule would make no change in these provisions.

Section 3602.26 If I Assign My Contract, When Do My Obligations Under the Contract End?

This section would clarify current § 3610.1–6. When BLM approves an assignment, the assignor is released from liability for actions the assignee subsequently takes, but continues to be responsible, along with the assignee, for obligations that accrued before the approval. This protects the public's interest by ensuring that obligations such as reclamation arising from actions taken by the assignor are fulfilled. For example, to the extent the assignor disturbed an area to create a pit, the assignor would remain liable for reclamation of that area if problems arose enforcing reclamation provisions against the assignee.

Section 3602.27 When Will BLM Extend the Term of a Contract?

This section would amend § 3610.1–7 of the current regulations only by adding a provision allowing BLM to extend contracts with terms of 90 days or less if the purchaser requests it in writing no later than 15 days (instead of 30 days) before the expiration. This change is made to provide a more reasonable deadline for letting BLM know that you cannot complete a short-term contract on time.

Section 3602.28 What Records Must I Maintain and How Long Must I Keep Them?

and

Section 3602.29 How Will BLM Verify My Production?

These 2 sections are new in the proposed rule. They would allow BLM—

- To require purchasers to keep, and make available to BLM, records, maps,

and surveys relating to production verification and valuation for 6 years;

- To require purchasers to submit a report annually (or more frequently if BLM requires) of the amount of mineral materials mined or removed under their contract of sale; and

- To require pre-operation, annual, and post-operation surveys of mine sites.

These requirements would allow BLM to verify that you make required payments and check your compliance with statutes, regulations, and contract terms.

Section 3602.30 Noncompetitive Sales

This section would apply the general provisions on sales in proposed § 3602.11 through 3602.29 to noncompetitive sales of mineral materials, and lead into a series of sections discussing noncompetitive sales.

Section 3602.31 What Volume Limitations Generally Apply to Noncompetitive Mineral Materials Sales?

This section is not substantively changed in the proposed rule from current § 3610.2–1, except to increase the amount that BLM may sell noncompetitively. It would set a maximum quantity for noncompetitive sale of 200,000 cubic yards (or weight equivalent) in any one State for the benefit of any one purchaser, in any 12-month period. These limits do not apply to mineral material sales in Alaska that BLM determines are needed for construction, operation, maintenance, or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System. The volume limitations also do not apply if BLM determines that competition would not be possible, or that there is insufficient time to invite competitive bids due to an emergency affecting public property, health, or safety.

Section 3602.32 What Volume and Other Limitations Pertain to Noncompetitive Sales Associated With Public Works Projects?

This section would amend current § 3610.2–2 by increasing the noncompetitive sale limit for urgent public works projects from 200,000 cubic yards to 400,000 cubic yards. BLM may make such a sale if we find the sale to be in the public interest, and time is insufficient for a competitive sale.

Section 3602.33 How Will BLM Dispose of Mineral Materials for Use in Development of Federal Mineral Leases?

This section, like current § 3610.2–3, would allow BLM to sell up to 200,000 cubic yards of mineral materials in one State in any 12-month period noncompetitively for use in connection with the development of a Federal mineral lease. It would make clear that BLM will not charge for mineral materials that a Federal lessee needs to move in order to extract minerals under a Federal lease, so long as the materials remain within the boundaries of the lease. It would amend the current section by allowing such materials to be used without charge whether or not the lessee uses them for lease development.

Section 3602.40 Competitive Sales

Following this heading is a series of sections explaining the process for competitive sales of mineral materials. Although all of the sections would be renumbered from the current regulations, this preamble only addresses those sections substantively changed.

Section 3602.43 How does BLM Conduct Competitive Mineral Materials Sales?

In paragraph (b) of this section we explain what is a minor deficiency in a bid that BLM might waive. Our intent is that a defect that would not change the outcome of the bidding would not invalidate your bid. An example might be if you inadvertently provide an incorrect telephone number or other item of personal data.

Section 3602.45 What Conditions Must I Meet Before BLM Will Issue Me a Contract?

The principal substantive change in this section in the proposed rule from current § 3610.3–5 would allow the successful bidder an additional 30 days to comply with BLM information requests and to sign and return the contract, performance bond, and mining and reclamation plan, if required. The section would continue to allow BLM to extend this period an additional 30 days upon request. This change would allow you more reasonable deadlines to meet. If you fail to sign and return the contract by the due date you would forfeit the bid deposit and BLM would offer the contract to the next highest bidder for the amount of the original high bid. The section would allow BLM to include additional provisions and stipulations for resource and environmental protection. It also makes clear that BLM may refuse to issue a contract to the highest bidder if we determine that the

bidder cannot fulfill the obligations of the contract.

Section 3602.46 What Is the Term of a Competitive Contract?

This section would clarify current § 3610.3–6. It confirms that the standard term for a mineral materials contract is 10 years, but would make it clear that contracts can be extended and renewed.

Section 3602.47 When and How May I Renew My Competitive Contract?

and

Section 3602.48 What May BLM Require When Renewing My Contract?

These sections would be new in the proposed rule. They would explain when and how to apply for contract renewal and what BLM may require when renewing a contract. A prerequisite for renewal would be payment of the full contract price of the initial contract. BLM would allow you to renew your contract in order to extract additional materials, not to complete the initial contract. You would be required to apply for renewal 90 days before the expiration date. Renewal would be for a maximum term of 10 years, but the rule would not limit the number of renewals. The rule would require reappraisal for each renewal, and would allow BLM to adjust bond requirements and impose environmental protection measures. Renewals are a less costly and more efficient alternative to reapplying, when a purchaser wishes to continue extracting materials from a particular site. For competitive contracts offered after the effective date of this rule, the sale notice would specify whether the contract was renewable under proposed § 3602.42(b)(14). For existing contracts, BLM would decide upon request by the purchaser whether that contract is renewable. The rule would allow you to make the request at any time, but not later than 90 days before the contract expires.

Section 3602.49 When Will BLM Issue a Non-Renewable Contract?

This section would be new in this proposed rule. It is occasionally desirable for BLM to conduct a competitive sale of mineral materials under which the purchaser is limited to a single term to remove the contracted materials. BLM would issue such a contract if, for example, we contemplate a second use of the land after the conclusion of the first term or expect that the site may be appropriate for future use by multiple operators or by the local community. For instance, BLM may sell gravel from a flood control area before construction of the flood control

structure, or may sell valuable deposits before a land exchange or sale. This section would provide this option for limited-term contracts.

Subpart 3603—Community Pits and Common Use Areas

This subpart would renumber, reorganize, and clarify, but not substantively amend, current subpart 3604. It contains regulations on the sale of mineral materials from community pits and common use areas, which is referred to as non-exclusive disposal in the existing regulations. This subpart addresses only sales from these areas. The next subpart covers free use. See the Section Conversion Table in part II of this Supplementary Information for the source of each of the renumbered sections.

Subpart 3604—Free Use of Mineral Materials

Subpart 3604 on free use of mineral materials would replace subpart 3621 in the existing regulations. There are no substantive changes in this subpart in the proposed rule. See the Section Conversion Table in part II of this Supplementary Information for the source of each of the renumbered sections.

Subpart 3622—Free Use of Petrified Wood

BLM is planning to include revised regulations for the free use of petrified wood in a future proposed rule addressing the use of fossils on the public lands. We have therefore decided not to propose extensive changes to subpart 3622 at this time. We do propose to change cross-references to conform to changes made in this rule, and to conform to current **Federal Register** cross-reference style. The only substantive change is to remove the phrase “prevents unnecessary and undue degradation of lands” in accordance with our explanation under the Definitions section of this preamble, above, and substitute language referring to the prevention of hazards and minimization and mitigation of environmental damage, to be consistent with the remainder of the proposed rule. We note that the wording of the standard as stated in the current rule is, in any event, in error: the correct phrase from 43 U.S.C. 1732(b) would be “unnecessary or undue degradation.”

IV. Procedural Matters

The principal author of this proposed rule is Dr. Durga N. Rimal of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group,

Washington Office, Bureau of Land Management.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of \$100 million or adversely affect in a material way the economy, an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government or communities. A cost-benefit and economic analysis is not required.

During fiscal years 1996 through 1998, BLM annually issued an average of a little over 2,900 mineral materials free use permits and sales contracts, valued at a little less than \$12 million over the life of the contracts. Of this value, about \$4.2 million was disposed of under free-use permits, and about \$1.3 million was sold in non-exclusive sales from community pits, with an average sale of about \$570. There were 395 exclusive sales in an average fiscal year during the period, valued at a little less than \$6.5 million, with an average sale of a little over \$16,400.

Average annual production for these 3 years, under existing and new permits and contracts (some being multi-year contracts), exclusive and non-exclusive, amounted to \$8.75 million.

The changes proposed in this rule are:

- Adding procedures for inspection, production verification, and cancellation of contracts;
- Protecting material sales from interference by subsequent land users and claimants;
- Allowing BLM to dispose of mineral materials from unpatented mining claims;
- Reducing the amount of required installment payments;
- Increasing the value threshold triggering the requirement for competitive bidding;
- Allowing additional time to prepare and submit mining and reclamation plans;
- Adding certificates of deposit as an acceptable financial instrument for bonds;
- Ensuring that bonding amounts for sales contracts of \$2,000 or more are adequate to perform reclamation; and
- Adding provision for the renewal of competitive sales contracts.

These changes should not have appreciable effects on the economy, and any effects certainly will not approach \$100 million annually.

(2) This rule will not create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency. The proposed rule will have no effect on disposal of mineral materials from national forest lands. The rule will not be in conflict with State regulations or requirements. The rule will have no effect on lands over which States have jurisdiction, other than to require their consent before materials may be disposed of from public lands that are withdrawn for their use, as already required. The rule expressly does not apply to national park lands or to Indian lands.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. BLM sells mineral materials at not less than the fair market value of the materials extracted, except in the instance of free use. The proposed rule will not have an effect on user fees.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this 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.*). For the purpose of this section a "small entity", as defined by the Small Business Administration for mining and quarrying of nonmetallic minerals, except fuels, is considered to be an individual, limited partnership, or small company (together with its affiliates), with fewer than 500 employees. Most sand and gravel companies and other mineral material enterprises that purchase mineral materials from BLM are small businesses, employing fewer than 500 persons, and many governmental units that may obtain free use permits are also small entities.

Nationwide average production of crushed stone and sand and gravel used for construction for 1996–1998 was about \$12.3 billion per year. The value of production from public lands is a small portion of this figure. For instance, the value of mineral materials produced from mineral material sales contracts averaged about \$74 million or less than $\frac{2}{3}$ of 1 percent of the national production. (Note that this represents the value of the product free on board (fob) at the pit, not the fair market value of the in-place (in situ) material. Experience shows the average in-place value to be about 8% of the fob price.) Even when we add production from free use permits the total annual production averages about \$119 million, still under 1% of the national total. The specific changes in this rule, including changes

in bonding requirements for material sales contracts of \$2,000 or more, should not have an appreciable effect on small business. For average operations (contracts of \$57,000) the bond amount is expected to decrease from \$11,400 to \$7,850, a reduction of \$3,550. Therefore, the impact of this rule on the entire industry, including small business entities, is expected to be minor, and neither an initial Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. See the discussion in the previous section of this preamble.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule should have little or no effect on prices of mineral materials, which are determined under the regulations by fair market value. The changes in the rule, which are described in the previous section of the preamble, should have no appreciable effect on costs.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule should have marginal economic effects on a small segment of one industry. The mineral materials industry deals with materials that generally have high bulk and low unit value, and thus does not have appreciable foreign competition due to the high costs of transportation.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The existing and proposed regulations both allow local government agencies free use of mineral materials for public projects. Such governments must show that their proposed use is a public project, and meet certain other requirements stated in the regulations. The rule would not require anything of State or local governments other than an application for a free use permit. A statement containing the information

required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, BLM has found that the rule does not have significant takings implications. No takings of personal or real property will occur as a result of this rule. Although the rule does include new provisions for contract cancellation, a contract issued under these regulations does not convey a property interest protected by the Takings Clause. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The main connection the mineral materials program regulations have with other levels of government is in the context of free use of these resources. The rule does not place any new burdens on this use. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law.

Civil Justice Reform (E.O. 12988)

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. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on the tribes. The Materials Act expressly excludes Indian lands and lands set aside or held for the benefit or use of Indians from the effects of the statute, and thereby from the effects of the implementing regulations. The regulations do not bar Indians or Tribes from buying mineral materials from public lands, although the abundance of these materials on Indian lands has made such purchases

unnecessary. We do not know of any instances of tribal use of mineral materials from public lands.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I prepared by BLM has been reviewed by the Department and sent to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) is not required.

BLM has determined that any environmental effects that this proposed rule may have are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Each sale of mineral materials other than from a community pit or common use area, each designation of the community pit or common use area itself, and each free use permit, will be subject to evaluation under NEPA. The proposed rule also provides that BLM will perform additional NEPA analyses as required before renewing mineral materials sales contracts. Therefore, the proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) 2.3A and 516 DM 2, Appendix I, Item 1.10, and does not meet any of the 10 criteria for exceptions to categorical exclusion 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 exclusion" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this

proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, "\$ 3601.21 What rights does a person acquire under a materials sales contract or use permit?") (5) Is the description of the proposed rule in the "Supplementary Information" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Execsec@ios.doi.gov.

List of Subjects

43 CFR Part 3600

Governmental contracts, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR part 3610

Governmental contracts, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR part 3620

Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: August 1, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM proposes to amend Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

1. Part 3600 is revised to read as follows:

PART 3600—MINERAL MATERIALS DISPOSAL

Subpart 3601—Mineral Materials Disposal; General Provisions

Sec.

Fundamental Provisions

- 3601.1 Purpose.
- 3601.3 Authority.
- 3601.5 Definitions.
- 3601.6 Policy.
- 3601.8 Public availability of information.
- 3601.9 Information collection.

Limitations on Disposal of Mineral Materials

- 3601.10 Limitations on BLM's discretion to dispose of mineral materials.
- 3601.11 When will environmental considerations prevent BLM from disposing of mineral materials?
- 3601.12 What areas does BLM exclude from disposal of mineral materials?
- 3601.13 How can I obtain mineral materials from Federal lands managed by other agencies?
- 3601.14 When can BLM dispose of mineral materials from unpatented mining claims?

Rights of Purchasers and Permittees

- 3601.20 Rights of parties.
- 3601.21 What rights does a person acquire under a materials sales contract or use permit?
- 3601.22 What rights remain with the United States when BLM sells or issues a permit for mineral materials?

Pre-Application Sampling and Testing

- 3601.30 Pre-application activities—how and when may I sample and test mineral materials?

Mining and Reclamation Plans

- 3601.40 Mining and reclamation plans.
- 3601.41 What information must I include in my mining plan?
- 3601.42 What information must I include in my reclamation plan?
- 3601.43 How will I know when BLM approves my mining and reclamation plans?
- 3601.44 How and when may my mining or reclamation plan be modified?

Contract and Permit Administration

- 3601.50 Administration of sales contracts and free use permits.
- 3601.51 How will BLM inspect my operation?
- 3601.52 After I finish my operations, when must I remove improvements and equipment?

Contract and Permit Cancellation

- 3601.60 Cancellation.
- 3601.61 When may BLM cancel my contract or permit?
- 3601.62 Cancellation procedure.

Unauthorized Use

- 3601.70 Unauthorized use.
- 3601.71 What constitutes unauthorized use?
- 3601.72 What are the consequences of unauthorized use?

Appeals

- 3601.80 How do I appeal a final decision by BLM?

Subpart 3602—Mineral Materials Sales**Applications**

- 3602.10 Applying for a mineral materials sales contract.
- 3602.11 How do I request a sale of mineral materials?
- 3602.12 How does the mineral materials sales process affect other users of public lands that are subject to a sale designation?
- 3602.13 How does BLM measure and establish the price of mineral materials?
- 3602.14 What kind of financial security does BLM require?
- 3602.15 What will happen to my bond if I transferred all of my interests or operations to another bonded party?

Administration of Sales

- 3602.20 Administration of mineral materials sales.
- 3602.21 What payment terms apply to my mineral materials sales contract?
- 3602.22 When will a contract terminate?
- 3602.23 When will BLM make refunds or allow credits?
- 3602.24 When may I assign my materials sales contract?
- 3602.25 What rights and responsibilities does my assignee assume?
- 3602.26 If I assign my contract, when do my obligations under the contract end?
- 3602.27 When will BLM extend the term of a contract?
- 3602.28 What records must I maintain and how long must I keep them?
- 3602.29 How will BLM verify my production?

Noncompetitive Sales

- 3602.30 Noncompetitive sales.
- 3602.31 What volume limitations generally apply to noncompetitive mineral materials sales?
- 3602.32 What volume and other limitations pertain to noncompetitive sales associated with public works projects?
- 3602.33 How will BLM dispose of mineral materials for use in developing Federal mineral leases?
- 3602.34 What is the term of a noncompetitive contract?

Competitive Sales

- 3602.40 Competitive sales.
- 3602.41 When will BLM sell mineral materials on a competitive basis?
- 3602.42 How does BLM publicize competitive mineral materials sales?
- 3602.43 How does BLM conduct competitive mineral materials sales?
- 3602.44 How do I make a bid deposit?
- 3602.45 What conditions must I meet before BLM will issue me a contract?
- 3602.46 What is the term of a competitive contract?
- 3602.47 When and how may I renew my competitive contract?
- 3602.48 What may BLM require when renewing my contract?
- 3602.49 When will BLM issue a non-renewable contract?

Subpart 3603—Community Pits and Common Use Areas**Disposal of Materials—Community Pits and Common Use Areas**

- 3603.10 Disposal of mineral materials from community pits and common use areas.
- 3603.11 What rights pertain to users of community pits?
- 3603.12 What rights pertain to users of common use areas?
- 3603.13 What price does BLM charge under materials sales contracts for mineral materials from community pits and common use areas?
- 3603.14 What plans do I need to prepare to mine or remove mineral materials from a community pit or common use area?

Reclamation

- 3603.20 Reclamation.
- 3603.21 What reclamation requirements pertain to community pits and common use areas?
- 3603.22 What fees must I pay to cover the cost of reclamation of community pits and common use areas?

Subpart 3604—Free Use of Mineral Materials**Obtaining Free Use Permits**

- 3604.10 Permits for free use of mineral materials.
- 3604.11 How do I apply for a free use permit?
- 3604.12 Who may obtain a free use permit?
- 3604.13 When will BLM decline to issue a free use permit to a qualified applicant?

Administration of Free Use

- 3604.20 Administration of free use permits.
- 3604.21 What is the term of a free use permit?
- 3604.22 What conditions and restrictions pertain to my free use permit?
- 3604.23 When and how may I assign my free use permit?
- 3604.24 Who may remove materials on my behalf?
- 3604.25 What bond requirements pertain to free use permits?
- 3604.26 When will BLM cancel my permit?
- 3604.27 What rights does a free use permit give me against other users of the land?

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

Subpart 3601—Mineral Materials Disposal; General Provisions**Fundamental Provisions****§ 3601.1 Purpose.**

The regulations in this part establish procedures for the exploration, development, and disposal of mineral material resources on the public lands, and for the protection of the resources and the environment. The regulations pertain to both permits for free use and contracts for sale.

§ 3601.3 Authority.

(a) The authority for BLM to dispose of sand, gravel, and other mineral and vegetative materials that are not subject to mineral leasing or location under the mining laws is found in the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), commonly referred to as the Materials Act. This authority extends to sale and free use of these materials. The authority for BLM to allow limited quantities of petrified wood to be removed without charge from public lands is found in section 2 of the Act of September 28, 1962 (Pub. L. 87-713, 76 Stat. 652).

(b) Section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1732) provides the general authority for BLM to manage the use, occupancy, and development of the public lands under the principles of multiple use and sustained yield in accordance with the land use plans developed under FLPMA.

(c) Section 304(b) of FLPMA (43 U.S.C. 1734) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) authorize the U.S. Government to collect fees and to require reimbursement of its costs.

§ 3601.5 Definitions.

As used in this part the term:
Act means the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, *et seq.*).

BLM means the Bureau of Land Management.

Common use area means a generally broad geographic area from which BLM can make disposals of mineral materials to many persons, with only negligible surface disturbance. The use is dispersed throughout the area.

Community pit means a relatively small, defined area from which BLM can make disposals of mineral materials to many persons. The surface disturbance is usually extensive in the confined area.

Mineral materials include, but are not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay.

Performance bond means a bond to ensure compliance with the terms of the contract and reclamation of the site as BLM requires.

Permittee means any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any non-profit organization, to which BLM has issued a free use permit for the removal of mineral materials from the public lands.

Public lands means any lands and interest in lands owned by the United States and administered by the

Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership, except lands held for the benefit of Indians, Aleuts, and Eskimos.

Purchaser means any person, including a business or government entity, buying or holding a contract to purchase mineral materials on the public lands.

§ 3601.6 Policy.

It is BLM's policy:

- (a) To sell mineral material resources under BLM's jurisdiction at not less than fair market value;
- (b) To prevent unauthorized removal of mineral materials;
- (c) To require that all removals of mineral materials be properly accounted for;
- (d) To permit free use of these materials by Federal, State, Territorial, and local government entities and non-profit organizations for qualified purposes;
- (e) To make mineral materials available when it will not be detrimental to the public interest; and
- (f) To protect public land resources and the environment and minimize damage to public health and safety during the authorized exploration for and the removal of such minerals.

§ 3601.8 Public availability of information.

(a) All data and information concerning Federal and Indian minerals that you submit under this part 3600 are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA)(5 U.S.C. 552) request.

(b) When you submit data and information under this part 3600 that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

§ 3601.9 Information collection.

The information collection requirements contained in part 3600 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0103. BLM is collecting the information to allow us to

determine if you are qualified to purchase or have free use of mineral materials on the public lands. You must respond to obtain a benefit.

Limitations on Disposal of Mineral Materials

§ 3601.10 Limitations on BLM's discretion to dispose of mineral materials.

§ 3601.11 When will environmental considerations prevent BLM from disposing of mineral materials?

BLM will not dispose of mineral materials if we determine that the aggregate damage to public lands and resources would exceed the public benefits that BLM expects to be derived from the proposed disposition.

§ 3601.12 What areas does BLM exclude from disposal of mineral materials?

BLM will not dispose of mineral materials from wilderness areas or other areas where it is expressly prohibited by law. This includes national parks and monuments. We also will not dispose of mineral materials from Indian lands and lands set aside or held for the use or benefit of Indians.

§ 3601.13 How can I obtain mineral materials from Federal lands managed by other agencies?

If you wish to obtain mineral materials from lands managed by other Federal agencies or by State or local governments, you should apply to the appropriate representative of that agency. That office will either consent to or deny your application or suggest an alternative source. If the other agency consents to the disposal, it may instruct BLM to initiate the disposal under the regulations in this part, or conduct the disposal itself.

§ 3601.14 When can BLM dispose of mineral materials from unpatented mining claims?

BLM has authority to dispose of mineral materials from unpatented mining claims if disposal does not endanger or materially interfere with prospecting, mining, or processing operations, or uses reasonably incident thereto. BLM will ask a claimant for a waiver before disposing of mineral materials from a claim. If the claimant refuses to sign a waiver, BLM will make sure that disposal will not be detrimental to the public interest and consult with the Solicitor's Office, if necessary, before proceeding with the disposal.

Rights of Purchasers and Permittees

§ 3601.20 Rights of parties.

§ 3601.21 What rights does a person acquire under a materials sales contract or use permit?

(a) If you are a purchaser under a contract of sale or a permittee with a permit for free use, unless otherwise provided, you have the right to:

- (1) Extract, remove, process, and stockpile the material until the contract or permit terminates, regardless of any rights others acquire later under the provisions of the general land laws; and
- (2) Use and occupy the described lands to the extent necessary for fulfillment of the contract or permit.

(b) Users of the lands covered by your materials sales contract or free use permit who acquire their rights later than you will be subject to your existing use authorization. This applies to uses due to any later settlement, location, lease, sale, or other appropriation under the general land laws, including the mineral leasing and mining laws.

§ 3601.22 What rights remain with the United States when BLM sells or issues a permit for mineral materials?

Your sale contract or use permit is subject to the continuing right of the United States to issue leases, permits, and licenses for the use and occupancy of the lands, if this authorized use does not endanger or materially interfere with the production or removal of materials under contract or permit.

Pre-Application Sampling and Testing

§ 3601.30 Pre-application activities—how and when may I sample and test mineral materials?

(a) You may sample and test mineral materials under a letter of authorization from BLM. The letter of authorization expires after 90 days, but may be extended for an additional 90 days if you show BLM that an extension is necessary. BLM may authorize these activities before issuing a sales contract or free use permit.

(b) You must submit your sampling and testing findings to BLM. All information you submit under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided in § 3601.8 of this part.

(c) A letter from BLM authorizing you to sample and test mineral materials does not give you a preference right to a sales contract or free use permit.

(d) BLM may impose bonding and reclamation requirements on sampling

and testing activities that you conduct under a letter of authorization.

Mining and Reclamation Plans

§ 3601.40 Mining and reclamation plans.

BLM may require you to submit mining and reclamation plans before we begin any environmental review or issue a contract or permit. You may combine these plans in one document.

§ 3601.41 What information must I include in my mining plan?

Your mining plan must include:

(a) A map, sketch, or aerial photograph identifying the area for which you are applying, the area you plan to disturb, existing and proposed access, and the names and locations of major topographic and known cultural features;

(b) A description of your proposed methods of operation and the periods during which you will operate;

(c) A description of measures you will take to prevent hazards to public health and safety and to minimize and mitigate environmental damage; and

(d) Such other information as BLM may require.

§ 3601.42 What information must I include in my reclamation plan?

Your reclamation plan must include:

(a) A statement of the proposed manner and time in which you will complete reclamation of the areas disturbed by your operations;

(b) A map or sketch which delineates the area you will reclaim; and

(c) Such other information as BLM may require.

§ 3601.43 How will I know when BLM approves my mining and reclamation plans?

(a) After reviewing your mining and reclamation plans, BLM will notify you of any deficiencies in the plans and recommend the changes necessary. BLM will notify you when we approve your plan. Approved mining and reclamation plans are a part of the contract or permit.

(b) Your operation must not deviate from the plan BLM approves, unless it is modified under § 3601.44.

§ 3601.44 How and when may my mining or reclamation plan be modified?

(a) Either you or BLM may initiate a modification of an approved mining or reclamation plan to adjust for changed conditions or to correct any oversight. If BLM notifies you that you must modify your plan, you will have 30 days to prepare the modification or explain why you need more time. If you fail to modify your plan to BLM's satisfaction, BLM may order you to stop all

operations under your contract or permit.

(b) When you ask to change an approved mining or reclamation plan, BLM will review the proposed modification and within 30 days will notify you of approval, any needed changes, or denial.

Contract and Permit Administration

§ 3601.50 Administration of sales contracts and free use permits.

§ 3601.51 How will BLM inspect my operation?

You must allow BLM access at any reasonable time:

(a) To inspect or investigate the mine condition;

(b) To conduct surveys;

(c) To estimate the volume, types, and composition of commodities mined or removed; and

(d) To determine whether you comply with established requirements.

§ 3601.52 After I finish my operations, when must I remove improvements and equipment?

After your contract or permit period expires, or after cancellation of your permit or contract, BLM may grant you up to 90 days, excluding periods of inclement weather, to remove the equipment, personal property, and any other improvements that you placed on the public lands. You may leave in place improvements such as roads, culverts, and bridges if BLM consents. If you fail to remove such equipment, personal property, or other improvement, it will become the property of the United States, but you will remain liable for the cost of its removal and for restoration of the site.

Contract and Permit Cancellation

§ 3601.60 Cancellation.

§ 3601.61 When may BLM cancel my contract or permit?

BLM may cancel your contract or free use permit if you:

(a) Fail to comply with the provisions of the Materials Act of 1947, as amended (30 U.S.C. 601 *et seq.*);

(b) Fail to comply with any applicable regulations, including the inspection requirements of § 3601.51; or

(c) Default in the performance of any of the terms, covenants, or stipulations of the contract.

§ 3601.62 Cancellation procedure.

(a) BLM will give you written notice of any defaults, breach, or cause of forfeiture. You have 30 days after receipt of the notice:

(1) To correct all defaults;

(2) To request an extension of time in which to correct the defaults; or

(3) To submit evidence showing to the satisfaction of BLM why we should not cancel your contract or free use permit.

(b) If you fail to respond to the notice in one of the ways provided for in paragraph (a) of this section, BLM may cancel the contract or permit.

(c) If you are adversely affected by a cancellation, you may appeal under § 3601.80.

Unauthorized Use

§ 3601.70 Unauthorized use.

§ 3601.71 What constitutes unauthorized use?

You must not extract, sever, or remove mineral materials from public lands under the jurisdiction of the Department of the Interior, unless BLM or another Federal agency with jurisdiction authorizes the removal by sale or permit. Violation of this prohibition is unauthorized use.

§ 3601.72 What are the consequences of unauthorized use?

Unauthorized users are liable for damages to the United States, and are subject to prosecution for such unlawful acts (see subpart 9239 of this chapter).

Appeals

§ 3601.80 How do I appeal a final decision by BLM?

If a BLM decision adversely affects you, you may appeal the decision in accordance with parts 4 and 1840 of this title.

Subpart 3602—Mineral Materials Sales

Applications

§ 3602.10 Applying for a mineral materials sales contract.

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

You may submit a written request for sale of mineral materials to the BLM office with jurisdiction over the site containing the materials. No particular form is required for this request. BLM may also initiate the sale without such a request.

§ 3602.12 How does the mineral materials sales process affect other users of public lands that are subject to a sale designation?

When BLM designates tracts for competitive or noncompetitive sale of mineral materials, and notes the designation in the public land records, it creates a right to remove the materials superior to any subsequent claim, entry, or other conflicting use of the land. This right attaches to all contracts and permits BLM authorizes within 2 years after the date we designate the tract.

BLM may extend this 2-year period for one additional year for good cause. This right does not prevent other uses or segregate the land from the operation of the public lands laws, including the mining and mineral leasing laws. However, such subsequent uses must not interfere with the extraction of mineral materials.

§ 3602.13 How does BLM measure and establish the price of mineral materials?

(a) BLM will not sell mineral materials at less than fair market value. BLM will determine fair market value by appraisal.

(b) BLM may periodically reappraise the value of mineral materials yet to be removed under a contract, and adjust the contract price accordingly. BLM will not adjust the price during the first 2 years of the contract. BLM also will not adjust the contract price during the 2-year period following any adjustment. However, BLM may adjust the price at the beginning of any contract renewal period.

(c) BLM measures mineral materials by in-place volume or weight equivalent. When BLM requires you to measure materials, you may use either of these methods, and BLM will verify your results.

§ 3602.14 What kind of financial security does BLM require?

(a) BLM will require, for contracts of \$2,000 or more, a performance bond of:

(1) At least 5 percent of total contract value; plus,

(2) An amount large enough to meet the reclamation standards provided for in the contract, but at least \$500. Where BLM makes contract sales from a community pit and you pay a reclamation fee as the purchaser, BLM will not require this portion of the performance bond.

(b) BLM may require a performance bond for contract sales of less than \$2,000, but will not require a bond for more than 20 percent of the total contract value.

(c) A performance bond may be a:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department;

(2) Certificate of deposit that:

(i) Is issued by a financial institution whose deposits are Federally insured;

(ii) Does not exceed the maximum insurable amount set by the Federal Deposit Insurance Corporation;

(iii) Is made payable or assigned to the United States;

(iv) Grants BLM authority to demand immediate payment if you fail to meet the terms and conditions of the contract;

(v) States that no party may redeem it before BLM approves its redemption;

and (vi) Otherwise conforms to BLM's instructions as found in the contract terms;

(3) Cash bond, with a power of attorney to BLM to convert it upon the purchaser's failure to meet the terms and conditions of the contract; or

(4) Negotiable Treasury bond of the United States of a par value equal to the amount of the required bond, together with a power of attorney to BLM to sell it upon the purchaser's failure to meet the terms and conditions of the contract.

§ 3602.15 What will happen to my bond if I transferred all of my interests or operations to another bonded party?

BLM will cancel your bond obligations following approval of the transfer of your interests or operations if the party to whom you transferred provides a bond that assumes all of your existing liabilities.

Administration of Sales

§ 3602.20 Administration of mineral materials sales.

§ 3602.21 What payment terms apply to my mineral materials sales contract?

(a) Under a contract of sale for mineral materials—

(1) For contract sales of \$2,000 or less, you must pay the full amount before BLM will sign the contract.

(2) When the sale exceeds \$2,000, you may make installment payments. The first installment payment must be the greater of \$500 or 5 percent of the total purchase price. If you elect to make installment payments—

(i) For non-competitive sales, you must pay the first installment at or before the time the contract is awarded;

(ii) For competitive sales, you must pay the first installment as a deposit at the time the bid is submitted; and

(iii) For noncompetitive or competitive sales, once you have removed materials, you must make each subsequent installment payment monthly in an amount equal to the value of the minerals removed; however, you must pay the balance of the purchase price not later than 60 days before the expiration date of the contract. BLM will credit your first installment payment to you at the time of your final payment.

(3) You must annually produce an amount sufficient to pay to the United States a sum of money equal to the first installment, or in lieu of such production, you must make an annual payment in the amount of the first installment. If you make production payments that are less than the first installment, your annual "in lieu" payment must be the difference between

the production payments and the amount of the first installment. These annual payments are due on or before the anniversary date of the contract.

(b) If you fail to make the required payments under the terms and conditions of the contract and BLM cancels your contract under § 3601.61, you will forfeit all moneys that you paid.

§ 3602.22 When will a contract terminate?

(a) Your contract will terminate when—

(1) Its term expires; or

(2) BLM cancels your contract under § 3601.60 *et seq.* of this part.

(b) You and BLM may, by agreement, terminate the sales contract at any time.

§ 3602.23 When will BLM make refunds or allow credits?

(a) BLM may make refunds or allow credits if—

(1) Upon expiration of the contract your total payments exceed the total value of mineral materials covered by the contract;

(2) BLM determines that insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(3) Materials paid for are unavailable as a result of termination of a contract by mutual agreement under § 3602.22(b) of this part.

(b) BLM will reduce the amount of the refund by the amount of the administrative cost of processing the disposal action. If these administrative costs exceed your total payments, BLM will not make a refund or allow a credit.

(c) BLM may credit to future production, but not refund, payments that you make in lieu of production under § 3602.21(a)(3). However, if, upon expiration of the contract, the total value of payments you have made exceeds the total value of mineral materials covered by your contract, BLM will refund the difference in accordance with paragraphs (a) and (b) of this section.

§ 3602.24 When may I assign my materials sales contract?

(a) You may not assign the contract or any interest therein unless BLM approves the transfer in writing.

(b) BLM will not approve your proposed assignment of contract, unless—

(1) Your assignee—

(i) Furnishes a performance bond as required by § 3602.14 of this part; or

(ii) Obtains a written commitment from the previous surety to be bound by the assignment when BLM approves it; and

(2) The assignment contains all terms and conditions agreed upon in your contract.

§ 3602.25 What rights and responsibilities does my assignee assume?

When BLM approves your assignment, your assignee will be entitled to all the rights and be subject to all the obligations under the contract.

§ 3602.26 If I assign my contract, when do my obligations under the contract end?

When BLM approves your assignment, you are released from any further liability under the contract for actions the assignee may take after the effective date of the assignment. You continue to be responsible for obligations, such as reclamation, that accrued before the approval date, whether or not you knew of them at the time of the transfer.

§ 3602.27 When will BLM extend the term of a contract?

BLM may grant a one-time extension of the contract not to exceed 1 year, if:

(a)(1) For contracts with terms over 90 days, BLM receives your written request between 30 and 90 days before the expiration of the contract; or

(2) For contracts with terms of 90 days or less, BLM receives your written request not later than 15 days before the expiration of the contract; and

(b) You show in writing that the delay in removal of the mineral materials was due to causes beyond your control and without fault or negligence on your part.

§ 3602.28 What records must I maintain and how long must I keep them?

(a) BLM may, as necessary, require you to maintain and preserve for 6 years records, maps, and surveys relating to production verification and valuation. These include, but are not limited to, detailed records of quantity, types, and value of commodities you moved, processed, sold, delivered, or used.

(b) You must make such records available to BLM to allow us to determine whether you have complied with statutes, regulations, and the terms of the contract.

§ 3602.29 How will BLM verify my production?

(a) You must submit an annual report of the amount of mineral materials you have mined or removed under your contract of sale, so BLM can verify that you have made the required payments. BLM may require more frequent reporting.

(b) BLM may require you to conduct pre-operation, annual, and post-operation volumetric surveys of the mine site.

Noncompetitive Sales

§ 3602.30 Noncompetitive sales.

In addition to the following sections, §§ 3602.31 through 3602.35, the provisions of §§ 3602.11 through 3602.29 of this part also apply to competitive sales.

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

(a) BLM may sell, at not less than fair market value, and without advertising or calling for bids, mineral materials not greater than 200,000 cubic yards (or weight equivalent) in any individual sale, when BLM determines it to be:

(1) In the public interest; and

(2) Impracticable to obtain competition.

(b) BLM will not approve noncompetitive sales that exceed a total aggregate of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one purchaser, whether an individual, partnership, corporation, or other entity, in any period of 12 consecutive months.

(c) The volume limitations in paragraphs (a) and (b) of this section do not apply to sales in the State of Alaska that BLM determines are needed for construction, operation, maintenance, or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

(d) The volume limitations in paragraphs (a) and (b) of this section do not apply if:

(1) The Director determines that circumstances make it impossible to obtain competition; or

(2) There is insufficient time to invite competitive bids, because of an emergency situation affecting public property, health, or safety.

§ 3602.32 What volume and other limitations pertain to noncompetitive sales associated with public works projects?

BLM may sell mineral materials not exceeding 400,000 cubic yards (or weight equivalent), at not less than fair market value, without advertising or calling for bids if:

(a) BLM determines the sale to be in the public interest; and

(b) The materials will be used in connection with an urgent public works improvement program on behalf of a Federal, State, or local governmental agency, and time does not permit advertising for a competitive sale.

§ 3602.33 How will BLM dispose of mineral materials for use in developing Federal mineral leases?

(a) If you propose to use mineral materials in connection with developing

a mineral lease issued by BLM, we may, without calling for competitive bids, sell you at fair market value a volume of mineral materials not exceeding 200,000 cubic yards (or weight equivalent) in one State in any period of 12 consecutive months.

(b) BLM will not charge for mineral materials that you must move in order to extract minerals under a Federal lease, whether or not you use them for lease development, if the materials remain within the boundaries of the lease.

§ 3602.34 What is the term of a noncompetitive contract?

BLM will not issue a noncompetitive contract for the sale of mineral materials for a term exceeding 5 years, excluding any contract extension under § 3602.27 and any period for removal of equipment and improvements under § 3601.52.

Competitive Sales

§ 3602.40 Competitive sales.

In addition to the following sections, §§ 3602.41 through 3602.49, the provisions of §§ 3602.11 through 3602.29 of this part also apply to competitive sales.

§ 3602.41 When will BLM sell mineral materials on a competitive basis?

Except for sales from community pits and common use areas under subpart 3603, and noncompetitive sales under § 3602.30 *et seq.*, BLM will make sales only after inviting competitive bids through publication and posting under § 3602.42.

§ 3602.42 How does BLM publicize competitive mineral materials sales?

(a) When offering mineral materials for sale by competitive bidding, BLM:

(1) Will advertise the sale by publishing a notice in a newspaper of general circulation in the area where the material is located, on the same day once a week for 2 consecutive weeks;

(2) May extend, at BLM's discretion, the period of time for advertising; and

(3) Will post a notice of sale in a conspicuous place in the office where you will submit bids.

(b) In the advertisement of sale, BLM will state:

(1) The location by legal description of the tract or tracts on which we are offering the materials;

(2) The kind of materials we are offering;

(3) The estimated quantities of materials we are offering;

(4) The unit of measurement;

(5) The appraised prices;

(6) The time and place for receiving and opening of bids;

- (7) The minimum deposit we require;
- (8) The site access that will be available to the purchaser;
- (9) The method of bidding;
- (10) That the purchaser must file mining and reclamation plans and that we require reclamation, if applicable;
- (11) The bonding requirement;
- (12) The location for inspection of contract terms and proposed stipulations;
- (13) The office where you may obtain additional information;
- (14) Whether the contract will be renewable; and
- (15) Any additional information that BLM deems necessary.

(c) BLM will not hold sales sooner than one week after the last advertisement inviting competitive bids.

§ 3602.43 How does BLM conduct competitive mineral materials sales?

(a) To bid at a competitive sale you must submit a written sealed bid, make oral bids, or do both as BLM directs in the sale notice. If 2 or more persons make identical high sealed bids, BLM will determine the highest bid by holding an oral auction among the persons making the high bids. If no oral bid is made higher than the sealed bids, BLM will pick the successful bidder by lot. If you are the high bidder at an oral auction, you must confirm that bid in writing immediately after BLM announces the high bid.

(b) When BLM determines that it is in the public interest to do so, we may reject any or all bids, or may waive minor deficiencies in the bids that would not ordinarily affect the outcome of the bidding.

§ 3602.44 How do I make a bid deposit?

(a) If you wish to make a bid to purchase mineral materials, you must submit a deposit in advance of the sale.

(1) Your sealed bids must contain a deposit.

(2) At an oral auction, you must make your deposit before the opening of the bidding.

(b) Your deposit must be the greater of \$500 or 10 percent of the appraised value as specified in the sale advertisement.

(c) Your deposit may be in the form of cash, a money order, a bank draft, or a cashier's or certified check made payable to the Bureau of Land Management.

(d) If you are not the successful bidder, BLM will return your bid deposit when the bidding concludes.

(e) If you are the successful bidder, BLM will apply your deposit to the purchase price.

§ 3602.45 What conditions must I meet before BLM will issue me a contract?

(a) BLM may require you to furnish information we find necessary to determine whether you are able to meet the obligations of the contract. We will award the contract to you if you made the highest bid, unless we determine that you are unable to meet the obligations of the contract, or you are unwilling to accept the terms of the contract, or BLM rejects all bids.

(b) If BLM determines that you are unable to meet the obligations of the contract, we will refund your deposit. If BLM awards you the contract, you must, within 60 days after receiving it, sign and return the contract, together with a performance bond and mining and reclamation plan when BLM requires them. BLM may extend this period an additional 30 days if you request it in writing within the first 60-day period. If you fail to sign and return the contract within the first 60-day period, or an approved 30-day extension period, you will forfeit the bid deposit. If BLM determines that you are unable to meet the obligations of the contract or if you fail to sign and return the contract within the time period specified, BLM may then offer and award the contract for the amount of the high bid to the person making the next highest complete bid who is qualified and willing to accept the contract, when that person redeposits the amount required under § 3602.44(b).

(c) BLM will make all sales on BLM standard contract forms approved by the Office of Management and Budget. We may include additional provisions and stipulations in the contract.

§ 3602.46 What is the term of a competitive contract?

BLM will not issue a competitive contract for the sale of mineral materials for a term exceeding 10 years. However, the 10-year period does not include any contract extension under § 3602.27, any contract renewal under § 3602.47, and any periods for removal of equipment and improvements under § 3601.52 of this part.

§ 3602.47 When and how may I renew my competitive contract?

(a) *Applying for competitive contract renewal.* When you have paid the United States the full contract price for the mineral materials you have purchased, you may apply for renewal of the contract in order to purchase and extract additional material that may be available at the contract site. You must submit your request for renewal of the contract at least 90 days before its

expiration date. You do not need to use a specific form.

(b) *BLM's response to the application.* BLM will renew your contract if—

(1) You meet all the requirements of this section;

(2) Your contract is not limited under § 3602.49; and

(3) BLM determines that you are able to fulfill the obligations of a new contract.

(c) *Renewal term.* BLM will renew your contract for a maximum term of 10 additional years. The renewal may be for less than 10 years if you do not request that much time, or if BLM finds that the quantity of material involved does not justify a 10-year term.

(d) *Number of times a contract may be renewed.* There is no maximum number of times you may apply for renewal.

§ 3602.48 What may BLM require when renewing my contract?

(a) *Reappraisal.* BLM will not grant a renewal without requiring a reappraisal under § 3602.13.

(b) *Bond amount and terms.* Before renewing your contract, BLM may require you to increase, or allow you to decrease, the amount of the performance bond you posted under § 3602.14. BLM may also require other bond modifications to ensure coverage for the renewed contract.

(c) *Environmental protection requirements.* Before renewing your contract, BLM will perform additional environmental analysis as required, and may require you to adopt additional measures to prevent hazards to public health and safety, and to minimize and mitigate environmental damage.

(d) *Other requirements.* BLM may require additions or changes to other terms or conditions of your contract.

§ 3602.49 When will BLM issue a non-renewable contract?

(a) BLM may restrict your contract to a single term or otherwise limit its duration. This restriction will be based on a finding that—

(1) The land should be used for another, possibly conflicting, purpose after mineral materials are removed;

(2) The deposit of mineral materials may be appropriate for future use by multiple operators or by the local community; or

(3) Other circumstances make renewal inappropriate.

(b) If a contract is to be limited under this section, the notice of sale under § 3602.42 will include this information.

(c) If your contract is in existence on [insert date 30 days after publication of final rule], BLM will decide whether that contract is renewable upon your

request not later than 90 days before the expiration of the contract.

Subpart 3603—Community Pits and Common Use Areas

Disposal of Materials—Community Pits and Common Use Areas

§ 3603.10 Disposal of mineral materials from community pits and common use areas.

(a) BLM may make mineral material sales and allow free use under permit from the same deposit within areas that we designate for this purpose. These kinds of disposals must be consistent with other provisions of this part. These designated community pit sites or common use areas are not limited in size.

(b) This subpart applies to both sales and free use from community pits and common use areas unless otherwise stated. Refer to subpart 3604 for additional regulations applicable to the free use of mineral materials.

§ 3603.11 What rights pertain to users of community pits?

BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the materials superior to any subsequent claim or entry of the lands.

§ 3603.12 What rights pertain to users of common use areas?

(a) BLM's designation of a common use area does not establish a right to remove the materials superior to any subsequent claim or entry of the lands.

(b) Once you have a permit or a sales contract to remove mineral materials from a common use area, your rights under that permit or contract are superior to any subsequent claim or entry on the lands.

§ 3603.13 What price does BLM charge under materials sales contracts for mineral materials from community pits and common use areas?

BLM will sell mineral materials from community pits or common use areas under materials sales contracts for not less than fair market value.

§ 3603.14 What plans do I need to prepare to mine or remove mineral materials from a community pit or common use area?

BLM will not require a mining or reclamation plan before you mine or remove mineral materials from a community pit or common use area, but you must comply with the terms of the contract or permit to protect health, safety, and the environment.

Reclamation

§ 3603.20 Reclamation.

§ 3603.21 What reclamation requirements pertain to community pits and common use areas?

You do not generally need to perform reclamation after extracting mineral materials from community pits or common use areas under permits or sale contracts. However, you must pay a reclamation fee as provided in § 3603.22.

§ 3603.22 What fees must I pay to cover the cost of reclamation of community pits and common use areas?

(a) You must pay a reclamation fee based on the amount of mineral materials you extract from the community pit or common use area, unless you make an alternative arrangement under paragraph (b) of this section. The reclamation fee will be a proportionate share of the total estimated cost of reclamation, determined by using the ratio of the material that you extract under your permit or contract to the total volume of the material BLM estimates will be extracted from the site.

(b) BLM may, at our discretion, allow purchasers and permittees to perform interim or final reclamation, where needed, in lieu of paying reclamation charges.

Subpart 3604—Free Use of Mineral Materials

Obtaining Free Use Permits

§ 3604.10 Permits for free use of mineral materials.

§ 3604.11 How do I apply for a free use permit?

If you wish to apply for free use of mineral materials, you must file your application with BLM on a BLM standard form approved by the Office of Management and Budget.

§ 3604.12 Who may obtain a free use permit?

Any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any non-profit organization, may apply for a free use permit to extract and use mineral materials.

(a) BLM may issue free use permits to you as a government entity without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that you show that these materials will not be used for commercial or industrial purposes.

(b) BLM may issue free use permits to you as a non-profit organization for not

more than 5,000 cubic yards (or weight equivalent) in any period of 12 consecutive months, provided that you show that these materials will not be used for commercial or industrial purposes.

§ 3604.13 When will BLM decline to issue a free use permit to a qualified applicant?

BLM will not issue a free use permit if we determine that you own or control an adequate supply of suitable mineral materials that:

- (a) Are readily available, and
- (b) Can be mined in a manner that is economically and environmentally acceptable.

Administration of Free Use

§ 3604.20 Administration of free use permits.

§ 3604.21 What is the term of a free use permit?

(a) BLM will determine the appropriate length of your free use permit term.

(1) BLM will not grant free use permits to government entities for terms exceeding 10 years.

(2) BLM will not grant free use permits to non-profit organizations for terms exceeding one year.

(b) BLM may extend any free use permit term for a single additional period not to exceed one year.

§ 3604.22 What conditions and restrictions pertain to my free use permit?

(a) You must not barter or sell mineral materials that you obtain under a free use permit.

(b) You must not remove mineral materials before BLM issues you a permit or after your permit has expired.

(c) BLM may incorporate other conditions and restrictions into your free use permit.

§ 3604.23 When and how may I assign my free use permit?

You may assign or transfer your free use permit to entities qualified under § 3604.12. You must first obtain the written approval of BLM.

§ 3604.24 Who may remove materials on my behalf?

(a) You may allow your agent to extract mineral materials under your free use permit.

(b) Your agent may charge you only for extraction services and must not—

- (1) Charge you for the materials extracted, processed, or removed; or
- (2) Take mineral materials from the permit area as payment for services rendered to you, or as a donation or gift.

§ 3604.25 What bond requirements pertain to free use permits?

BLM may require a bond as a guarantee of your faithful performance of the provisions of your permit and applicable regulations, including required reclamation. Your bond may be in any type of security provided for in § 3602.14(c) of this part.

§ 3604.26 When will BLM cancel my permit?

BLM may cancel your permit if you fail, after adequate notice, to follow its terms and conditions.

§ 3604.27 What rights does a free use permit give me against other users of the land?

Permits that BLM issues under this subpart constitute a superior right to remove the materials in accordance with the permit terms and provisions, as against any subsequent claim to or entry of the lands.

PART 3610 [REMOVED]

2. Part 3610 is removed.

PART 3620—FREE USE OF PETRIFIED WOOD

3. The authority citation for part 3620 is revised to read as follows:

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

4. The heading of Part 3620 is revised to read as set forth above.

Subpart 3621 [Removed]

5. Subpart 3621 is removed.

Subpart 3622—Free Use of Petrified Wood

6. Section 3622.1 is amended by revising paragraph (b) to read as follows:

§ 3622.1 Program: General.

* * * * *

(b) The purchase of petrified wood for commercial purposes is provided for in § 3602.10 *et seq.* of this chapter.

§ 3622.2 [Amended]

7. Section 3622.2 is amended by removing the phrase “subpart 3621 of this title” from the second sentence and adding in its place the phrase “subpart 3604 of this chapter.”

§ 3622.4 [Amended]

8. Section 3622.4 is amended by:

a. Removing the phrase “subpart 3621 of this title” from paragraph (a)(2) and adding in its place the phrase “subpart 3604 of this chapter,”

b. Removing the phrase “unnecessary and undue degradation of lands” from paragraph (a)(4) and adding in its place the phrase “hazards to public health and safety, and minimizes and mitigates environmental damage.”

c. Removing the phrase “in § 3622.4(a) of this title” at the end of paragraph (b), and adding in its place the phrase “in paragraph (a) of this section.”

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