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**§ 3834.23 When do I start paying the adjusted fees?**

(a) In the case of a CPI adjustment required by 30 U.S.C. 28j(c), you must pay the adjusted initial maintenance and location fees when you record a new mining claim or site located on or after the September 1 that immediately follows the date BLM published its notice about the adjustment.

(b) In the case of adjustments required by other statute, you must pay the adjusted initial maintenance and location fees for a new mining claim or site as provided in the statute.

(c) For previously recorded mining claims and sites, you must pay the CPI-based adjusted maintenance fee on or before the September 1 that immediately follows the date BLM published its notice about the adjustment.

(d) Notwithstanding 43 CFR 3830.91(a)(3) and 3830.96, in any year in which BLM adjusts the maintenance and location fees, if you pay the fees timely, but pay an amount based on the fee in effect immediately before the adjustment was made, BLM will send you a notice, as provided in §3830.94, giving you 30 days in which to pay the additional amount required to meet the adjusted fees. If you do not pay the additional amount due within 30 days after the date you received the notice, you will forfeit the affected mining claims or sites.

[70 FR 52030, Sept. 1, 2005]

**PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES**

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**Subpart A—Filing Requirements**

**§ 3835.1 How do I qualify for a waiver?**

(a) Under certain conditions, you may qualify for a waiver from the annual maintenance fee requirements. You cannot obtain a waiver from service charges, the location fee, the initial maintenance fee, or the \$550 oil shale fee.

(b) The following table lists the types of waivers available and how you qualify for them (detailed requirements for each category appear in §3835.10):

| Type of waiver        | Qualifications  |
|-----------------------|---|
| (a) Small Miner ..... | All related parties must hold no more than a total of 10 mining claims or sites nationwide, not including oil shale claims; and All co-claimants must qualify for the small miner waiver. |

| Type of waiver                               | Qualifications   |
|--|--|
| (b) Soldiers' and Sailor's Civil Relief Act. | You and all co-claimants must be military personnel on active duty status.   |
| (c) Reclamation .....                        | Maintenance fees are waived for your mining claims or sites that are undergoing final reclamation under subparts 3802, 3809, or 3814, if you do not intend to continue mining, milling, or processing operations on those sites. |
| (d) Denial of Access                         | You have received a declaration of taking or a notice of intent to take from the National Park Service (NPS) or other Federal agency; or the United States has otherwise denied you access to your mining claim or site.         |
| (e) Mineral Patent Application.              | You have submitted an application for a mineral patent under part 3860 and the Secretary has granted you a final certificate.  |

**§ 3835.11 What special filing and reporting requirements pertain to the different types of waivers?**

(a) *Small miner waivers.* Small miner waiver requests must include a declaration that:

(1) You and all related parties hold no more than a total of 10 mining claims and sites nationwide;

(2) You have completed or will complete all assessment work required by the General Mining Law and part 3836 of this chapter to maintain your claims by the end of the applicable assessment year.

(3) If you were not required to perform assessment work in the previous assessment year, you must include the reason why assessment work was not required in your certification, whether it is because:

(i) Your claim was located in that assessment year;

(ii) You paid a maintenance fee to maintain your claim during that assessment year;

(iii) Assessment work was deferred for that year; or

(iv) Any other reason recognized under Federal law.

(b) *Soldiers' and Sailors' Civil Relief Act waivers.* Your application for waiver must include a notice of active military service or entry into active military service. You must also notify BLM in writing when you leave active duty status.

(c) *Reclamation waivers.* Your application must include a certified and/or notarized statement that:

(1) States that you are reclaiming the mining claims or sites;

(2) States your intent to end mining operations on the claims or sites permanently; and

(3) References a reclamation plan that you submitted to BLM or that BLM approved; or references a reclamation plan approved by a surface managing agency other than BLM.

(d) *Denial-of-access waivers.* (1) Your application must include a statement that you have received a declaration of taking or a notice of intent to take from the National Park Service or other Federal agency or have otherwise been denied access to your mining claim or site in writing by the surface management agency or a court.

**§ 3835.10 How do I request a waiver?**

(a) You must submit BLM's waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver. You must submit your waiver on or before September 1 for BLM to exempt your claims or sites from the annual maintenance fee requirement that is due on the same date. You may have an agent submit a waiver form on your behalf if you file or have filed with BLM a power of attorney or other legal documentation which shows that the agent is acting on your behalf.

(b) All waiver requests must include:

(1) The names and addresses of all claimants who maintain an interest in the mining claims or sites listed on the waiver document;

(2) The original signatures of the claimants of the mining claims or sites who are requesting the waiver, or the original signature of the authorized agent of the owner or owners of those mining claims or sites;

(3) The names of the mining claims or sites for which you request a waiver;

(4) The serial numbers, if available, that BLM assigned to the mining claims or sites; and

(5) The date the maintenance fee was due from which you are seeking a waiver.

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(2) You must submit copies of all official documents you have received that demonstrate the declaration of taking, notice of intent to take, or denial of access.

(3) Applying for National Park Service (NPS) approval of a complete plan of operations does not justify your denial-of-access waiver. While the NPS is reviewing your plan of operations, or if the NPS disapproves it but has not denied you access, or issued a declaration of taking or a notice of intent to take, you must pay the annual maintenance fee.

(e) *Contest actions.* If the Secretary contests your mining claim or site under part 4 of this title, you must maintain the mining claim or site

until the Department of the Interior issues a final decision.

(f) *Appeals.* If you forfeit your mining claim or site and you file an appeal under part 4 of this title and the Interior Board of Land Appeals stays BLM's voidance decision, you must maintain your mining claim or site through the appeals process.

**§ 3835.12 What are my obligations once I receive a waiver?**

If BLM allows you the waiver, you must then perform annual assessment work on time and file annual FLPMA documents. You will find more information about annual FLPMA documents in §3835.30 of this part, and about assessment work in part 3836 of this chapter.

**§ 3835.13 How long do the waivers last and how do I renew them?**

The following table states how long waivers last and explains how to renew them:

| Type of waiver   | Duration  | Renewal requirements  |
|--|---|---|
| (a) Small Miner .....                                  | One assessment year .....   | Apply for a small miner waiver by each September 1.   |
| (b) Soldiers' and Sailors' Civil Relief Act.           | Until six months after you are released from active duty status or from a military hospital, whichever is later.  | Your waiver is automatically renewed if you continue to meet the qualifications. You must notify BLM when you leave active duty status.   |
| (c) Reclamation .....                                  | One assessment year .....   | Apply for a reclamation waiver by each September 1.   |
| (d) Denial of Access .....                             | One assessment year .....   | Apply for waiver certification by each September 1.   |
| (e) Mineral Patent Application with Final Certificate. | Until patent issues or the final certificate is canceled. BLM will not refund previously deposited annual maintenance fees to a mineral patent applicant. | None. If the final certificate is canceled, you must pay the required fees beginning on the September 1 immediately following the cancellation or file a different form of waiver if you qualify. |

**§ 3835.14 How do I submit a small miner waiver request for newly-recorded mining claims?**

In order to obtain a small miner waiver for newly-recorded mining claims, you must—

(a)(1) Submit the waiver request on or before September 1; or

(2) If the mining claim or site was located before September 1 and recorded after September 1 in a timely manner, you must submit the waiver request at the time of recording the mining claim or site with BLM, and

(b) File on or before the December 30 immediately following the September 1st for which you applied for a waiver a notice of intent to hold the mining

claim or site. The Mining Law does not require you to perform assessment work in the assessment year in which you locate a mining claim. The notice of intent to hold must conform to §§ 3835.31 through 3835.33.

[68 FR 61064, Oct. 24, 2003; 68 FR 74197, Dec. 23, 2003]

**§ 3835.15 If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?**

You must submit a waiver request complying with §3835.10 before the assessment year begins for which you wish to obtain a waiver. In addition, you must—

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(a) Make a FLPMA filing, in the form of a notice of intent to hold under §§ 3835.31 and 3835.33 of this part on or before December 30th immediately following the submission of a waiver request;

(b) Perform your assessment work in the assessment year for which BLM waived the maintenance fee; and

(c) Make a FLPMA filing in the form of an affidavit of assessment work under §§ 3835.31 and 3835.33 of this part on or before the December 30th immediately following the close of the assessment year in which you performed assessment work.

[68 FR 61064, Oct. 24, 2003; 68 FR 74197, Dec. 23, 2003]

### **§ 3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?**

(a) You must perform the required assessment work in the assessment year for which you obtained a waiver from payment of the annual maintenance fee, and file the annual FLPMA document required by the December 30th immediately following the payment of the maintenance fee; and

(b) You must pay the maintenance fee by the proper deadline for the following assessment year.

### **§ 3835.17 What additional requirements must I fulfill to obtain a small miner waiver for my mining claims or sites on National Park System lands?**

(a) Before performing assessment work on National Park System lands, you must submit and obtain the National Park Service (NPS)'s approval of a complete plan of operations in compliance with regulations at 36 CFR parts 6 and 9. Your proposed activities must further the ultimate commercial mineral development of each claim, such as delineation of the mineral deposit or commencement of production. Once you submit a proposed plan, NPS will evaluate the plan, conduct a validity exam if necessary, and either approve or disapprove the plan.

(b)(1) If NPS approves your plan of operations, by the September 1 on

which you want to submit a small miner waiver request you must:

(i) Post a reclamation bond with NPS;

(ii) Begin the approved activity; and

(iii) Submit a waiver request complying with § 3835.10 before the assessment year begins for which you wish to obtain a waiver.

(2) By December 30, you must file your affidavit of assessment work for the mining claims and a notice of intent to hold for your mill or tunnel sites.

(c) If NPS does not approve your proposed plan of operations by July 1, to allow you sufficient time to conduct assessment work before September 1, you may—

(1) Pay BLM the maintenance fees by September 1;

(2) Petition BLM before September 1 for a deferment of assessment work; or

(3) Submit a request for a lack of access waiver.

## **Subpart B—Conveying Mining Claims or Sites Under Waiver**

### **§ 3835.20 Transferring, selling, inheriting, or otherwise conveying mining claims or sites already subject to a waiver.**

(a) If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver, you must also qualify for the waiver in order for BLM to continue to apply the waiver to the mining claims you have received in the transfer; or

(b) If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver and you do not qualify for the waiver, you must pay the annual maintenance fee by the September 1 following the date the transfer became effective under state law.

## **Subpart C—Annual FLPMA Documents**

### **§ 3835.30 Annual FLPMA documents.**

### **§ 3835.31 When do I file an annual FLPMA document?**

(a) If you must file an annual FLPMA document as required in paragraph (d) of this section, you must file your annual FLPMA documents with

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BLM on or before the December 30th of the calendar year in which the assessment year ends. (For example, if the assessment year ends on September 1, 2003, you must file your annual FLPMA document no later than December 30, 2003.)

(b) If part 3836 of this chapter requires you to perform assessment work, you must file an affidavit of assessment work. You do not need to complete assessment work in the assessment year when you located your claim. (For example, if you locate a claim on September 2, 2002, you first need to perform assessment work sometime between September 2, 2003, and September 1, 2004.)

(c) If part 3836 of this chapter does not require you to perform assessment work, either because you located the claim during the current assessment year or because BLM has deferred assessment work, you must submit a notice of intent to hold under §§ 3835.32 and 3835.33 of this part as an annual FLPMA document filing. You must state in the notice of intent to hold either that BLM has deferred the assessment work requirement or that you located the claim during the current assessment year.

(d) The following table describes the circumstances under which you must file annual FLPMA documents:

| Your situation  | Affidavit of assessment work required   | Notice of intent to hold required                                      |
|---|---|--|
| (1) You have paid annual maintenance fees.  | No .....  | No.  |
| (2) You have an oil shale placer claim ...  | No .....  | Yes, by December 30 of each year you must pay the \$550 oil shale fee. |
| (3) You have a small miner waiver that covers mining claims.                      | Yes, by December 30 for each assessment year you obtained a small miner waiver. | Yes, but only as described in paragraph (c) of this section.           |
| (4) You have a small miner waiver that covers mill or tunnel sites.               | No affidavit assessment work is required for mill or tunnel sites.              | Yes, notices of intent to hold are required for mill and tunnel sites. |
| (5) You have a Soldiers and Sailor's Civil Relief Act Waiver.                     | No .....  | No.  |
| (6) You have a reclamation waiver .....   | No .....  | Yes.   |
| (7) You have a waiver because you have been denied access.                        | No .....  | Yes.   |
| (8) You have a deferment of assessment work.                                      | No .....  | Yes, but only as described in paragraph (c) of this section.           |
| (9) You have applied for a mineral patent and BLM has issued a final certificate. | No .....  | No.  |

[68 FR 61064, Oct. 24, 2003; 68 FR 74197, Dec. 23, 2003]

**§ 3835.32 What should I include when I submit an affidavit of assessment work?**

When you submit an affidavit of assessment work as required in § 3835.31(d), you must include the following:

- (a) The name and, if available, the BLM serial number of the claim for which you did assessment work;
- (b) Any known changes in the mailing addresses of the claimants;
- (c) A processing fee for each mining claim affected. (See the table of service charges and fees in § 3830.21 of this chapter); and
- (d) An exact legible reproduction or duplicate, other than microfilm or other electronic media, of either:

(1) The affidavit of assessment work that you filed or will file in the county where the claim is located; or

(2) The report of geological, geochemical, and geophysical surveys you filed in the county where the claim is located, as provided for in part 3836 of this chapter.

[68 FR 61064, Oct. 24, 2003, as amended at 70 FR 58879, Oct. 7, 2005]

**§ 3835.33 What should I include when I submit a notice of intent to hold?**

When you submit a notice of intent to hold as required in § 3835.31(d), you must include the following:

- (a) An exact legible reproduction or duplicate of a letter or other notice with signatures of one or more of the

claimants or their agent that states your intention to hold the mining claims or sites for the calendar year in which the assessment year ends, and that you filed or will file a notice of intent to hold in the county where the claim is located;

(b) If applicable:

(1) A copy of a BLM decision granting a deferment of the annual assessment work;

(2) A copy of a pending petition for deferment of the annual assessment work including the date you submitted the petition; or

(3) Any other documentation in the notice of intent to hold supporting why you are filing a notice of intent to hold instead of an assessment work filing;

(c) The name and, if available, the BLM serial number of the mining claim or site;

(d) Any known changes in the mailing addresses of the claimants; and

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

[68 FR 61064, Oct. 24, 2003, as amended at 70 FR 58879, Oct. 7, 2005]

## Subpart D—Defective Waivers and FLPMA Filings

### §3835.90 Failure to comply with this part.

### §3835.91 What if I fail to file annual FLPMA documents?

If you fail to file an annual FLPMA document by December 30, as required in §3835.31(d), you forfeit the affected mining claims or sites.

### §3835.92 What if I fail to submit a timely waiver request?

(a) If you fail to submit a qualified waiver request (see §3835.1) and also fail to pay an annual maintenance fee by September 1st, you forfeit the affected mining claims or sites.

(b) If you fail to list any mining claims or sites that you and all related parties own on your small miner waiver request and fail to pay an annual maintenance fee by September 1st, you forfeit the unlisted mining claims or sites.

(c) If you fail to cure any defects in your timely waiver request or pay the maintenance fee within the allowed time after BLM notifies you of the defects, you forfeit the affected mining claims or sites.

(d) If you, a co-claimant, or any related parties, submit small miner waiver requests for more than 10 mining claims or sites and fail to pay the \$100 maintenance fee for each claim on or before the due date, you forfeit the mining claims and sites and you may be subject to criminal penalties under 18 U.S.C. 1001.

### §3835.93 What happens if BLM finds a defect in my waiver request?

(a) BLM will send you a notice describing the defect by certified mail-return receipt requested at the most recent address you gave us on—

(1) Your notice or certificate of location;

(2) An address correction you have filed with BLM;

(3) A valid transfer document filed with BLM; or

(4) The waiver request form.

(b) If the certified mail is delivered to your most recent address of record, this constitutes legal service even if you do not actually receive the notice or decision. (See 43 CFR 1810.2.)

(c) You must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects, or forfeit the claim or site.

## PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

### Subpart A—Performing Assessment Work

Sec.

3836.10 Performing assessment work.

3836.11 What are the general requirements for performing assessment work?

3836.12 What work qualifies as assessment work?

3836.13 What are geological, geochemical, or geophysical surveys?

3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?

3836.15 What happens if I fail to perform required assessment work?