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

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

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

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this final rule to amend its mineral resources regulations to increase certain fees and to impose new fees to cover BLM's costs of processing documents relating to its minerals programs. The new fees include costs of actions such as environmental studies performed by BLM, lease applications, name changes, corporate mergers, lease consolidations and reinstatements, and other processing-related costs. BLM established some fixed fees and some fees on a case-by-case basis. BLM based these fee changes on statutory authorities, which authorize us to charge for our processing costs, and on policy guidance from the Office of Management and Budget (OMB) and the Department of the Interior (DOI) requiring BLM to charge these fees. This rule also responds to recommendations issued in audit reports by the DOI's Office of Inspector General (OIG). The final rule also reflects changes to the proposed rule required by the Energy Policy Act of 2005.

DATES: This rule is effective November 7, 2005.

ADDRESSES: You may mail suggestions or inquiries to Bureau of Land Management, Minerals Group, Room 501 LS 1849 C Street, NW., Washington, DC 20240–0001.

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

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I. Background

A. Procedural Background

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

On July 19, 2005, BLM reissued the proposed rule (70 FR 41532), and added the following fees that were not included in the 2000 proposed rule:

1. A processing fee for oil and gas applications for permit to drill (APDs),
2. A processing fee for geothermal permits to drill (GPDs),
3. A processing fee for geothermal exploration permits, and
4. A processing fee for renewing mineral materials competitive contracts.

The 2005 proposed rule also included a fixed fee for the processing of oil and gas geophysical exploration permits, instead of the case-by-case fee that we proposed in 2000.

This final rule adopts many provisions of the July 19, 2005 proposal. We discuss below changes we have made from that proposal. The rationale for most of this final rule was set forth in the July 2005 preamble and BLM continues to rely on the discussions contained therein.

B. Authority for This Rule

Federal agencies are authorized to charge processing costs by the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. BLM also has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. This section was discussed in greater detail in the July 2005 preamble. In FLPMA, public land means all lands or interests in land owned by the United States and administered by BLM, excluding outer continental shelf lands and Native American lands (43 U.S.C. 1702(e)). This includes Federal mineral lands with private or state surface as well as lands where the United States owns both the surface and mineral rights. A mineral lease or mineral materials disposal administered by BLM, and a mining claim (for which BLM determines validity), even in land where another agency administers the surface, are ''interests in land'' for the purposes of FLPMA.

The IOAA and Section 304 of FLPMA authorize BLM to charge applicants for the cost of processing documents by issuing regulations, which BLM is doing in this rule. The IOAA also states that these charges should pay for the agency services, as much as possible.

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

Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) authorized a pilot project to improve Federal permit coordination, and directed in subsection (i) that ''the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.'' The provisions of the proposed rule related to drilling-

related permit applications and use authorizations are those that would have required cost recovery for oil and gas and geothermal permits to drill (APDs and GPDs), and geophysical and geothermal exploration permits. Therefore, we have removed all provisions regarding APDs, GPDs, and geophysical and geothermal exploration permits that appeared in the proposed rule from this final rule. The remainder of the 2005 proposed rule was not affected by the Energy Policy Act and may be finalized.

C. Continuation of Rulemaking

In the preamble to the July 19, 2005, proposed rule, we explained that in the final rule we might provide that BLM would recover costs of validity examinations and reports performed in connection with plan of operations (PoO) applications submitted under parts of the Code of Federal Regulations other than 43 CFR part 3800, such as those submitted under 36 CFR part 9, which implements the Mining in the Parks Act. (See 70 FR 41538.) The National Park Service (NPS) submitted a comment urging BLM to include in the final rule recovery of such costs for applications submitted pursuant to NPS regulations. At this time, BLM has not made a final decision whether to extend the rule to cover such other costs. Thus, BLM is including in this final rule the provision as proposed, but is continuing the rulemaking on the issue of whether it will revise the provision to include recovery of costs of validity examinations and reports associated with PoOs submitted under other parts of the CFR. BLM may issue a further final rule to address this issue. If BLM decides to promulgate a final rule that would recover such costs, the next final rule would likely contain conforming amendments to such other parts to notify affected applicants of the applicability of the cost recovery provisions of this rule.

II. How Does the Final Rule Differ From the Proposed Rule?

As stated earlier, in response to Congress's direction in the Energy Policy Act, BLM is not implementing cost recovery fees for APDs, GPDs, and geophysical and geothermal exploration permits.

Other changes we made are:

1. We adjusted the fees proposed in 2000 by using the Implicit Price Deflator for 4th Quarter 2004 (110.077) (IPD), rounded to the nearest $5.00. For example, for an oil and gas lease reinstatement, the cost recovery fee proposed in 2000 was $60. Applying the IPD, the equivalent cost recovery fee for the 4th Quarter 2004 would be $66.05. For this final rule, we rounded this figure to $65.

2. We amended the coal lease by application regulations. The proposed rule did not adequately account for case-by-case fee situations where the successful bidder is an entity other than the original applicant. The final coal leasing regulations at 43 CFR 3473.2 provide that the applicant who nominates a tract will pay BLM the processing costs that we incur up to the publication of the competitive lease sale notice. That fee amount will be included in the notice itself, and the successful bidder, if someone other than the original applicant, will be responsible for paying that amount to BLM. In such circumstances, BLM will refund the fees the original applicant paid to BLM. If there is no successful bidder, the applicant will remain responsible for processing fees and there will be no refund. It should be noted that an applicant will not be reimbursed for moneys the applicant (and not BLM) may pay directly to third persons to perform studies, because it is not clear that FLPMA Section 304 applies in that situation.

Because persons other than the applicant could also be a successful bidder under BLM's other programs, we have made similar changes to the regulations at 43 CFR part 3500 applicable to the leasing of solid minerals other than coal, and to the mineral materials sales regulations at 43 CFR part 3600.

3. We amended the mining claim patent application adjudication fee so that patent applications covering 10 or fewer claims will be charged only half the cost recovery fee that applications with more than 10 claims will be charged. This change was made in response to comments expressing concern that the proposed fee would be too burdensome on claimants who submit patent applications for only a few claims. We selected the 10-claim threshold because that is the number Congress chose to define the class of miners who may perform assessment work in lieu of paying the claim maintenance fee. The adjudication fee in the proposed rule was a fixed fee based on a weighted average of BLM's adjudication costs. We believe that the commenters may have a valid concern and that it may be more reasonable to base the adjudication fees on the per claim costs depending on how many claims are included in an application. BLM plans to reassess its costs of adjudication and may propose a revision to this fee in the future. In this final rule, we decided that it was reasonable to phase in the adjudication fee for patent applications that contain 10 or fewer claims. A discussion of phasing in fees is contained in the preamble to the proposed rule. 70 FR 41533. This rule contains the first step of this phasing-in process.

4. The final rule adds language at section 3000.11 to clarify that a decision of BLM to change a fixed fee to a case-by-case fee may be appealed to the Interior Board of Land Appeals.

5. In response to comments objecting to the applicability of the fee provisions to applications pending when this rule is made final, we have revised the rule to make the fee provisions of the final rule applicable only to documents BLM receives after the effective date of this rule. Section 3000.10(d) has been restructured to clarify the timing of the applicability of both fixed and case-by-case fees established by this rule. Because both the new fixed and case-by-case fee provisions apply only to documents received after the effective date of this rule, proposed section 3000.11(c), which would have addressed how to treat costs of pending documents, is not necessary and has not been included in the final rule. Also, rather than include in section 3000.10(a) a statement that required fees must be included with documents that are filed, we moved the statement to section 3000.12(a) of this chapter to make it clear that such a requirement applies only to fixed fees. We have also amended paragraphs (d)(1) and (d)(2) of section 3000.10 to make it clear that the documents for which BLM will begin to charge the new fees are those that BLM receives on or after November 7, 2005. The proposed rule referred to documents that BLM ''accepted.'' We have amended this language to avoid confusion. The date of receipt may be easily evidenced by a log-in date on the document or by a receipt given to an applicant by BLM.

6. We amended the language of section 3000.11(b)(4)(i) to clarify that we will not stop ongoing processing if we re-estimate the costs associated with a case-by-case document. (This issue is further discussed in the preamble under III.A. General Comments.) We also moved the last sentence of section 3000.11(b)(4)(ii) regarding refunds into a new paragraph (b)(4)(iii) to make it clear that whenever money paid as a case-by-case fee was not spent on processing costs, BLM will refund that money once processing is complete.

We wish to make one further clarification with regard to section 3000.11, relating to the charging of processing fees on a case-by-case basis. Under paragraph (a), if at any time BLM

decides that a particular document designated for a fixed fee will have a unique processing cost, such as an Environmental Impact Statement, we may set the fee under the case-by-case procedures. BLM intends to recover on a case-by-case basis those costs that BLM incurs following the decision that the document processing will have a unique processing cost. BLM will not charge for costs that BLM incurred before that decision was made. The applicant will receive a credit for any fixed fee already paid against the case-by-case fees that are billed.

7. We have clarified the final regulatory text for section 3800.5 as it relates to the applicability of case-by-case cost processing for validity examinations and common variety determinations associated with mining notices, applications for PoOs, and applications for patents. We divided proposed paragraph (b) into final paragraphs (b) and (c). Revised paragraph (b) relates to mining notices and plans of operation and redesignated paragraph (c) applies to patent applications.

Revised paragraph (b) makes it clear that a notice level operation or an applicant for a plan of operations for which a mineral examination, including a validity examination or a common variety determination, and associated reports, are performed and prepared under 43 CFR 3809.100 or 3809.101, must pay a processing fee on a case-by-case basis. It was not BLM's intent to include validity examinations BLM may perform on its own volition that are not performed under sections 3809.100 or 3809.101. This change is in response to comments that the regulatory text contained in the July 2005 proposed rule was confusing. It also should be noted that the cost recovery provisions are not intended to modify BLM policy as to when mineral examinations are performed.

Final paragraph (c) provides that an applicant for a mineral patent under 43 CFR subpart 3860 must pay a processing fee on a case-by-case basis as described in section 3000.11 for any validity examination and report prepared in connection with the application. This includes any analyses performed in connection with the validity examination and report, such as common variety determinations. Although contained in a new paragraph, this is not a substantive change from the July 2005 proposed rule. 43 CFR subpart 3860 applies to all mineral patent applications that BLM processes, regardless of the agency with surface management responsibility for the lands covered by the patent applications. Thus, case-by-case cost recovery will occur for validity examinations associated with BLM processing of mineral patent applications, whether the surface is administered by BLM, the U.S. Forest Service, NPS, or other agencies.

BLM wishes to make one further clarification with regard to section 3800.5(a), relating to the case-by-case cost recovery for the processing of PoOs requiring the preparation of an environmental impact statement. Under paragraph (a), an applicant for a PoO under 43 CFR part 3800 must pay a processing fee on a case-by-case basis as described in 43 CFR 3000.11 whenever BLM decides that consideration of the PoO requires the preparation of an Environmental Impact Statement (EIS). The costs that BLM intends to recover on a case-by-case basis under the final rule are those costs BLM incurs following the decision that an EIS is necessary, not costs that BLM may have incurred before that decision.

8. As a conforming amendment, we added language revising section 3835.32(c) so that it refers to a processing fee rather than a non-refundable service charge. Paragraph (c) includes a cross-reference to the table in section 3830.21 on service charges and fees, which BLM considered for amendment in the proposed rule. This conforming amendment to section 3835.32 was inadvertently omitted in the proposed rule.

The rule also contains other technical conforming and editorial changes.

Today's rule adopts both fixed fees and case-by-case fees. The table below sets forth the final fees that are imposed by this rule, compared to the fees as proposed in 2000 and 2005.

TABLE 1.—FEES FOR FY 2006

[Note that fees will be adjusted annually for changes in the IPD–GDP, published in the Federal Register, and posted on BLM's website. Revised fees are effective each October 1.]

Document/action	Existing fee	Proposed fee in 2000 rule	Proposed fee in 2005 rule [1]	Final fee [2]
Oil and Gas (Part 3100, 3110, 3120, 3130):				
Noncompetitive lease application	$75	$305	$324	$335
Competitive lease application	$75	$120	$127	$130
Assignment and transfer	$25	$70	$74	$75
Overriding royalty transfer, payment out of production.	$25	$9	$10	$10
Name change, corporate merger or transfer to heir/devisee.	$0	$160	$170	$175
Leases consolidation	$0	$335	$356	$370
Lease renewal or exchange	$75	$305	$324	$335
Lease reinstatement, Class I	$25	$60	$64	$65
Leasing under right-of-way	$75	$305	$324	$335
Geophysical exploration notice of intent—outside Alaska.	$0	Case-by-case	$500	$0
Geophysical exploration permit application—Alaska.	$25	Case-by-case	$500	$25
Application for Permit to Drill (AP)	$0	Not included	$1600	$0
Geothermal (Group 3200):				
Noncompetitive lease application	$75	$305	$324	$335
Competitive lease application	$0	$120	$127	$130
Assignment and transfer of record title or operating right.	$50	$70	$74	$75
Name change, corporate merger or transfer to heir/devisee.	$0	$160	$170	$175
Lease consolidation	$0	$335	$356	$370

TABLE 1.—FEES FOR FY 2006—Continued

[Note that fees will be adjusted annually for changes in the IPD–GDP, published in the Federal Register, and posted on BLM's website. Revised fees are effective each October 1.]

Document/action	Existing fee	Proposed fee in 2000 rule	Proposed fee in 2005 rule [1]	Final fee [2]
Lease reinstatement	$0	$60	$64	$65
Exploration operations permit application	$0	Not included	$500	$0
Geothermal Permit to Drill (GPD)	$0	Not included	$1600	$0
Coal (Group 3400):				
License to mine application	$10	$10	$11	$10
Exploration license application	$250	$250	$266	$275
Lease or lease interest transfer	$50	$50	$53	$55
Competitive coal lease	$250	Case-by-case	Case-by-case	Case-by-case
Coal lease modification	$250	Case-by-case	Case-by-case	Case-by-case
Logical mining unit formation or modification.	$0	Case-by-case	Case-by-case	Case-by-case
Royalty reduction application	$0	Case-by-case	Case-by-case	Case-by-case
Nonenergy Leasable (Group 3500):				
Applications other than those listed below.	$25	$25	$27	$30
Prospecting permit application amendment.	$0	$50	$53	$55
Extension of prospecting permit	$25	$80	$85	$90
Lease renewal	$25	$390	$414	$430
Prospecting permit application	$25	Case-by-case	Case-by-case	Case-by-case
Preference right lease application	$0	Case-by-case	Case-by-case	Case-by-case
Successful competitive lease	$0	Case-by-case	Case-by-case	Case-by-case
Application to suspend, waive or reduce your rental, minimum royalty, production royalty or royalty rate.	$0	Case-by-case	Case-by-case	Case-by-case
Future or fractional interest lease application.	$25	Case-by-case	Case-by-case	Case-by-case
Mineral Materials Disposal (Group 3600):				
Noncompetitive sale (excluding sales from community pits or common use areas).	$0	Case-by-case	Case-by-case	Case-by-case
Competitive sale	$0	Case-by-case	Case-by-case	Case-by-case
Competitive contract renewal	$0	N/A	Case-by-case	Case-by-case
Mining Law Administration (Group 3800):				
Notice of Location [3]	$10	$15	$16	$15
Amendment of location	$5	$10	$11	$10
Transfer of mining claim/site	$5	$10	$11	$10
Recording an annual FLPMA filing § 3835.30).	$5	$10	$11	$10
Deferment of Assessment	$25	$80	$85	$90
Mineral Patent Adjudication	1st claim—$250 Each additional claim $50.	$2,290	$2,433	$2,520 (>10 claims) $1,260 [4] (10 or fewer claims)
Adverse claim	$10	$80	$85	$90
Protest	$10	$50	$53	$55
Plan of Operations with EIS	$0	Case-by-case	Case-by-case	Case-by-case
Validity and Mineral Examinations and Reports performed in connection with a Patent Application, 43 CFR 3809.100 or 43 CFR 3809.101.	$0	Case-by-case	Case-by-case	Case-by-case

[1] The fees proposed in July 2005 adjusted the fees proposed in 2000 by using the Implicit Price Deflator 4th Quarter 2003 (106.244) and rounding to the nearest dollar.

[2] The fees in this final rule adjusted the fees proposed in 2000 by using the Implicit Price Deflator for 4th Quarter 2004 (110.077), then rounding to the nearest $5.00.

[3] The existing fee for recording a mining claim or site location (43 CFR 3833) is a total of $165. This includes the initial maintenance fee of $125 and one time $30 location fee required by statute and the $10 service charge shown in the table. The service charge becomes a $15 processing fee in this final rule, making the total fee $170.

[4] In this final rule, the fixed fee for adjudication of mineral patents has been modified in response to comments received. Applications with 10 or fewer claims will be charged a fixed fee of $1,260. Where the mineral patent application includes more than 10 claims, the fee will be $2,520.

III. Responses to Comments on the December 2000 and July 2005 Proposed Rules

In this section of the preamble, we respond to the substantive comments that we received on the December 15, 2000, proposed rule (65 FR 78440) and on the proposed rule published in the **Federal Register** on July 19, 2005 (70 FR 41532). In response to the December 15, 2000, proposed rule (65 FR 78440), BLM received approximately 136 comments. In response to the 2005 re-proposed rule (70 FR 41532), BLM received approximately 43 comments.

A. General Comments

Although BLM received some comments in support of the rule, the majority of comments generally opposed

any fee increases in BLM Mineral Programs. The commenters expressed many reasons for opposing the rule. Some commenters said that BLM appeared to have based the fee changes on out-of-date data from fiscal years 1988 to 1990. Similarly, a commenter said that BLM used cost recovery data from a period of low activity, resulting in an inaccurate fee structure.

The commenters are incorrect in asserting that BLM based the fees solely on data from fiscal years 1988 to 1990. In the mid-1990s, BLM reanalyzed the data and conducted spot checks to verify their continued validity as explained in more detail in the preamble to the proposed rule (70 FR 41534). BLM's processes covered by this rule have not changed significantly since that time. Moreover, we have adjusted the fees using the Implicit Price Deflator for 4th Quarter 2004 to reflect current costs. Accordingly, we believe that the fees in this final rule are not out of date. Moreover, the period for which BLM collected data was not a period of particularly low activity.

Some commenters asserted that the cost recovery fees are equivalent to a tax on producers. The commenters also objected to the proposed rule because operators already pay for the services provided by BLM through taxes. They recommended that operators be given a tax incentive or tax credit to offset the cost of these higher fees.

We disagree. The fees in this rule are not a tax. The fees are charged for special benefits received by identifiable beneficiaries and are intended to reimburse the agency for the costs of processing the various energy and minerals related filings. Creating tax incentives and tax credits to offset the cost to the operator of these fees is not part of this rule, and it is outside BLM's or DOI's jurisdiction or authority to initiate such a rule.

Some commenters asserted that the fees in this rule are unjustified in light of the fact that the government receives other revenues such as royalties, bonus bids, and rentals for the mineral activities covered by these fees, which in their view should cover processing costs. A commenter recommended that BLM deduct the costs of processing minerals and energy documents from the royalties that BLM is already paid. As an example, a commenter stated that the public receives ''the vast portion of the revenues from the proceeds from the federal coal lease'' but has no overhead costs or investment risks.

We disagree. Royalties, rents, and bonus bids reflect the value of the resource to the lessor. Congress authorized BLM to recover processing costs, and did so fully aware that BLM was already collecting bonuses, rents, and royalties, so there cannot have been any legislative intent that one fee should offset another.

BLM charges processing fees pursuant to its authorities under the Independent Offices Appropriation Act, as amended, 31 U.S.C. 9701 (IOAA); Section 304(a) of FLPMA; Circular A–25; DOI Manual 346 DM 1.2 A; and case law (also see the preamble to the proposed rule at 70 FR 41533 and Solicitor's Opinion M–36987 (December 5, 1996)). Congress clearly intended for agencies to recover processing costs in addition to bonuses, rents, and royalties.

The IOAA states that Federal agencies should be ''self-sustaining to the extent possible,'' and authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' Section 304(a) of FLPMA specifically authorizes the Secretary of the Interior to ''establish reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents relating to the public lands.'' Circular A–25 sets forth a general policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

A commenter said that other public land users who do not pay royalties should also pay processing costs.

BLM has implemented or is considering implementing cost recovery for other programs that it administers.

One commenter stated that, because much of the processing fees go toward satisfying other government regulations, as additional regulatory requirements are imposed and become part of BLM's processing, costs would continue to increase.

We appreciate the commenter's concern. In the short term, potential new requirements would not affect BLM's fixed fees. Over the longer term, BLM may have to reassess the fixed fees if our processing costs change significantly. Although we do not foresee increased regulatory burdens that would significantly affect processing costs, case-by-case fees would include any such increases. It is important to note, however, that as technology and automation improve, our document processing costs may decrease, which will be reflected in reduced case-by-case fees.

Some commenters asserted that case-by-case fees are open-ended and contain no cap, which makes it difficult to plan for future costs. Some of these commenters asked how an applicant would know in advance whether they could afford to submit an application.

Although case-by-case fees do not contain a prescribed cap, the process that BLM has established for case-by-case fees provides that cost estimates be given to applicants before processing begins. In advance of an application being submitted to BLM, an operator may also discuss the project with BLM and ask for cost projections. We expect that with time and experience, case-by-case fees will become more predictable.

Some commenters are concerned that the rule provisions give BLM too much authority to convert fixed fees into case-by-case fees under the provision that allows BLM to change a document designated for a fixed fee to a case-by-case fee if BLM decides that it will have a unique processing cost. The commenters said that BLM might arbitrarily change the designation during processing and set a higher fee under the case-by-case procedures. A commenter requested that, if possible, BLM identify fixed fees that will not be subject to case-by-case cost recovery.

We do not agree that the rule gives BLM unlimited discretion to convert fixed fees into case-by-case fees. By ''unique processing costs,'' BLM means costs associated with a processing step that would result in significantly higher costs than are customary for that fixed-fee category. When applied to certain fixed-fee categories, costs of efforts such as EISs, cultural resource surveys, or threatened or endangered species consultations and studies, may be considered unique because they are not usually required for actions in those categories. Although most fixed fees are not of a type that could incur unique processing costs, BLM cannot guarantee that any particular transaction cannot give rise to unique circumstances that would warrant case-by-case processing. However, BLM has guidelines for determining when it takes actions such as those referenced above and will not decide that a document will require such processing steps unless those guidelines are satisfied.

If the applicant disagrees with BLM's determination that the application merits a case-by-case fee, the applicant may appeal that determination to IBLA under BLM's appeals process at 43 CFR part 4, subpart E, when it receives the cost estimate from BLM. In response to the commenters' concern, we have added language to the rule text clarifying that such a determination may be appealed. If the applicant prevails, BLM will refund the disputed fee and charge only the fixed fee.

A commenter stated that, although estimated processing costs can be

appealed, he has no confidence in the ability of IBLA to process those cases expeditiously. The comment concluded that there is apparently no motivation for BLM or IBLA to move quickly on any appeals.

With respect to appeals, there is little BLM can do to shorten the period between when an appeal is filed and when an appeal is resolved. However, the regulations provide that an applicant can ensure that BLM will continue processing the document and issue a decision while an appeal is pending by paying the disputed fee under protest.

Some commenters contended that the fees would have a negative impact on small operators or miners. Some commenters said the proposed rule would have a negative impact on the national and local economies, especially as it relates to exploration, and will result in an increase in the number of energy and mineral projects being abandoned. They generally stated that higher fees would adversely affect mining industry ability to compete.

The Record of Compliance that BLM prepared for the 2005 proposed rule concluded that, when mineral industry revenues are compared with the cost increases in this rule, the projected annual total for these increases amounts to less than one percent of sales. Even if the entire amount of the increases were to be borne by small business entities, the effects would be minimal. For example, under this rule, we project that small oil and gas operators will pay an additional $2 million annually, approximately, while generating sales of about $1 billion annually from operations on Federal lands. As a matter of prudence, operators will factor these fees into their business decisions before pursuing on-the-ground operations. In addition, for competitive leasing, these higher costs may be reflected in the successful bid.

The increases in the fees paid by the applicants represent the direct economic impact of complying with the final rule. We estimate the cost of the rule, in the form of higher fees, will be approximately $7 million annually. We do not anticipate any measurable reduction in economic activity due to these fees.

Several commenters said that BLM did not adequately consider the FLPMA factors when calculating the proposed fee increases, and challenged BLM's statement that the projects for which fees are charged in this rule usually provide little or no service to the public. A commenter stated that developers are involved in tremendous financial risks in producing minerals, and urged that the rule should consider the financial risks involved and potential positive benefits to the general public. Commenters stated that we did not consider various benefits of mining, including improved grazing land, improved wildlife habitat on reclaimed mine lands, and maintenance of trails that benefit recreational and subsistence users. Some commenters asserted providing heat and electricity to homes and businesses and other mineral uses are an obvious service and benefit to the public. A few commented that BLM should give applicants a credit for the data they produce, or reimburse them for providing it. A commenter concluded that BLM should include discussion of how these factors were considered in the final decision-making process on the fee procedures.

A commenter also discussed the importance of coal production and contended that because coal resources from Federal leases are vital to supplying electricity at a reasonable price and in an environmentally sound manner, BLM should not charge additional document processing costs. The commenter contended that a FLPMA factor mandates that BLM not impose additional processing costs for leasable minerals because the public receives significant benefit from lease revenues.

BLM agrees that the domestic mining industry is vital to the American economy and provides immense benefits to the public. However, the FLPMA factor of ''service to the public'' concerns whether the applicant's project itself provides some significant direct service or benefit to the general public, not the fact that members of the public are the ultimate consumers of mineral resources extracted from the public lands (which is true of virtually all public land resources). Companies extracting resources from the public lands do not necessarily engage in extraction operations for the benefit of the public, but are for-profit enterprises. There is thus no basis for using the public's ultimate consumption of the resource as a reason for reducing processing fees below BLM's actual processing costs.

BLM agrees that there are times when the applicant's project itself does result in tangible benefits to the public, such as the identification of cultural and archaeological sites in resource surveys, trail maintenance, and others mentioned above. For documents processed on a case-by-case fee basis, BLM will consider each of the FLPMA factors as it relates to that individual project. For the fixed fee documents, we considered the likelihood of activities in those categories providing substantial direct benefits to the public. We concluded that such potential benefits from transactions in the fixed fee categories are too speculative to warrant charging less than BLM's actual costs of processing, particularly when weighed against the monetary value of the project to the applicant.

With regard to operators' financial risks, such investment risks and overhead costs of a for-profit entity operating on public land are normal costs of doing business and should not be a reason for BLM to collect less than its actual processing costs under the FLPMA reasonableness factors.

Some commenters asserted that BLM's processing activities provide benefits to the general public such that BLM should charge less than its actual costs of processing. Some commenters also objected that many of BLM's processing activities benefit only the public and not the applicant.

BLM disagrees. The processing fees charged in this rule are for the documents that an applicant must submit to satisfy various statutory and regulatory requirements pertaining to the various minerals programs that BLM administers. The processing of an application necessarily benefits the applicant. See 70 FR 41541. BLM considered the potential benefits to the public of its processing of the fixed fee documents in this rule and concluded that the monetary value to the applicant outweighs the possible benefit to the public.

Several commenters were unclear how the fees relate to situations where the applicant directly pays a third party to perform required studies. Some commenters suggested that because they often pay third party contractors to perform required environmental studies, BLM should credit those costs by reducing the fees BLM charges.

A credit is inappropriate because the fees in this rule do not include any costs that an applicant pays directly to a third party. For third party contracts, BLM's cost recovery is restricted to recovering the costs of its own activities, such as supervising the contractor, reviewing and approving the final document. If BLM pays for environmental studies in connection with its document processing, it will include those costs in its fee.

Some commenters said that because the industry already pays for the privilege of operating on public lands by performing many studies and inventories, and compiling National Environmental Policy Act (NEPA) documents, the Federal Government

should consider reimbursing industry for performing these undertakings.

BLM will not be reimbursing operators for studies they perform in compliance with various laws, mandates, and policies. All such costs are borne by the operator. The operator conducts these studies for their own benefit because an operator cannot receive a permit or authorization to extract resources from public lands until all required studies are completed. The operator does have the option of paying a BLM-permitted contractor to conduct these studies or they can ask BLM to conduct them at a charge to the operator.

Some commenters contended that BLM must ensure efficient and timely processing and provide time frames within which it will complete processing. A commenter suggested that BLM undertake an independent review of the processes that are funded by these increased fees before they are implemented in the final rule.

BLM recognizes that we have a responsibility to administer our programs in an efficient and effective manner, and review our procedures for processing applications to ensure their efficiency on an on-going basis. However, this is not a basis for delaying the implementation of this rule. Setting time frames for BLM processing is not part of this cost recovery rulemaking.

A few commenters asked BLM to hold public meetings before finalizing any fee increases. Several commenters asked that we extend the comment period. Another commenter asked BLM to develop regulations governing minerals management programs with more industry involvement.

BLM believes that adequate public involvement has occurred with respect to this rule. The original proposal, in December 2000, was very similar to this final rule, and the comment period at that time was open for over six months. We also provided a 30-day comment period for the July 2005 proposal.

Some commenters said that BLM's current fees are much higher than those charged by local governments and private industry for similar services.

BLM bases its fees on its own processing costs in conjunction with its consideration of the FLPMA reasonableness factors. Neither the states nor private industry has the same statutory responsibilities, as does BLM.

A commenter said that use of a weighted average creates a situation where they are charged more than is necessary and that they should not be penalized if a BLM office is less cost efficient than another one. A commenter requested that BLM define ''weighted average'' and said that this mathematical cost basing leads to unequal application under the law and creates a cost structure slanted toward higher than necessary fees. A commenter asked what authority gives BLM the means to use a ''weighted average'' instead of the actual or average cost.

BLM relied on its regulatory authority in FLPMA (43 U.S.C. 1740) to determine the proper method of analysis. BLM used a weighted average for fixed fees to incorporate economies of scale achieved by offices that process many more documents than those with less active oil and gas (or other mineral) programs. The processing cost fees in this rule are based on a weighted average, rather than a simple average, of BLM-wide processing costs for each type of document. This method gave greater weight to the processing cost data from field offices having a heavy workload, and thus more expertise, in processing a particular type of document. Offices that process a greater number of a particular type of document generally have a lower processing cost per document of that type. We first estimated the actual cost for a type of document and then considered each of the FLPMA factors to see if any of them might cause a fee to be set at less than actual cost. We then decided the amount of the fee, which cannot be more than our processing cost.

A commenter said that BLM failed to set reasonable ground rules like limits on dollars per hour for BLM staff to work on administering the project.

BLM will base case-by-case fees on the actual costs incurred in processing the application. Before processing begins, BLM will provide the applicant with an estimate of BLM's costs and its key components. The applicant will have an opportunity to object if it believes the estimated costs are excessive.

A commenter asked why there are differences in costs among BLM State Offices for the same program elements and services. Another commenter asked how BLM's processes can be ''reasonably efficient'' when BLM's preliminary review of the data showed large cost differences among BLM offices for processing certain types of documents as well as large numbers of documents filed and processed.

As stated in the proposed rule preamble, BLM determined that the differences in costs cited by the commenters were attributable to site-or sale-specific factors or economies of scale.

Some commenters said that BLM was attempting to circumvent the budgeting process by burdening industry with additional fees and increasing existing fees as much as 15 times the current fee.

BLM is not circumventing the budgeting process. Congress authorized BLM to recover processing costs under the IOAA and FLPMA, and OMB directives require us to do so. The IOAA states that Federal agencies should be self-sustaining to the extent possible and authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' Section 304(a) of FLPMA specifically authorizes the Secretary of the Interior to ''establish reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents related to the public lands.'' The IOAA and FLPMA give BLM authority to charge fees for processing applications. Moreover, Circular A–25 provides that the general Federal policy is that a charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the public.

A commenter stated that BLM went too far beyond what is reasonable in setting the proposed fees beyond the fees established in previous regulations.

BLM disagrees. The prior filing fees were more in the nature of a recordation fee, and were not intended to recover BLM's processing costs.

Several commenters argued that BLM's proposed cost recovery regulations are flawed because they rely on an incorrect legal conclusion in Solicitor's Opinion M–36987 (December 5, 1996) that cost recovery is mandatory under FLPMA and the IOAA.

The commenters are mistaken. The Solicitor's Opinion did not conclude that those statutes require cost recovery, nor did BLM's preamble to the proposed rule characterize the Opinion's conclusion as such. Solicitor's Opinion M–36987 concluded that ''BLM has authority under applicable statutory and case law to recover costs of minerals document processing * * *. Because it has this authority and because the Departmental Manual and OMB policy require that costs be recovered where possible, BLM should take steps to initiate cost recovery * * *.''

Commenters also maintained that the Department mistakenly relies on the BLM Manual to create a mandatory cost recovery obligation.

By ''BLM Manual,'' we assume the commenters meant to refer to the Departmental Manual, which was cited in both the Solicitor's Opinion and the proposed rule preamble. The commenters' objection that the Manual does not have the force or effect of law

and cannot override a Federal statute misses the point. As explained in the preamble to the proposed rule, Congress has authorized cost recovery in both the IOAA and FLPMA. The executive branch, through Circular A–25, has stated the general Federal policy to be that charges will be assessed against identifiable recipients of special benefits. The Secretary of the Interior, in the Departmental Manual, has instructed bureaus and offices within DOI to recover costs that they are authorized to recover. There is no issue here of a conflict between the Departmental Manual and statutory authority—the Manual, the OMB guidance, and the statutes are all in accord. Nor is there any issue, as the commenters assert, of BLM interpreting the Manual as directing it to disregard one of the FLPMA factors. As explained in the preamble to the proposed rule, BLM carefully considered each of the FLPMA factors in setting the proposed fees.

One commenter asserted that BLM appears to rid itself of its responsibility to prepare any special studies as outlined in NEPA and stated that BLM must maintain the necessary staff and resources to perform NEPA requirements.

BLM recognizes that it has continuing responsibilities to satisfy its requirements under NEPA. The provision in section 3000.11(b) simply allows the applicant to ask BLM's approval to do studies or other activities, under BLM supervision and to BLM standards, on a voluntary basis. If the applicant chooses not to do the work, BLM will perform the work and include the cost in the case-by-case fee. Nothing in these regulations relieves BLM from fulfilling any of its statutory responsibilities.

One commenter expressed concern that the fee increases will adversely affect academic interests involved in fossil research.

The cost recovery provisions apply to applications for certain commercial activities. Academic interests involved in fossil research, including collectors of petrified wood under 43 CFR subpart 3622 and other kinds of researchers under 43 CFR part 2930, will not be affected by this rule.

A few commenters stated that BLM should not be pursuing a prior administration's agenda or initiative.

The changes in this final rule do not represent the agenda of any particular administration. BLM's efforts to recover costs were initiated in response to recommendations from the OIG in 1988, as part of a 1980s Presidential initiative calling for all Federal agencies to charge appropriate user fees for agency services.

A commenter asked if BLM had considered implementing electronic filings of ownership transfers before implementing a new fee schedule.

BLM intends ultimately to implement electronic filings for title transfers. We will then review the processing costs and adjust them as necessary. This is not a reason to delay implementation of this rule.

A commenter said that the rule could be abused in its implementation by BLM offices seeking to delay or deny permit applications, including those that state regulatory agencies handle expeditiously.

The comment is speculative. We have carefully explained how the fees will be implemented in accordance with applicable authority. These fees will not be used to delay any BLM action unnecessarily.

A commenter said it is unclear what, if any, BLM costs other than land use plan studies and programmatic environmental assessments (EAs) were exempted from the rule.

BLM intends this rule to provide for the collection of document-specific costs rather than programmatic costs.

A commenter said that if BLM proceeds with this rule, it must ensure that all management overhead is excluded, citing *Nevada Power Co.* v. *Watt,* 711 F.2d 913, 931 (10th Cir. 1983).

BLM's actual costs are the sum of both direct and indirect costs. However, under FLPMA, BLM cannot recover the costs of management overhead. We have interpreted this to mean the costs of BLM State Directors and Washington Office staff, except when a member of this group works on a specific authorization such as a lease. We have not excluded the costs of Deputy State Directors or other supervisory staff because they are typically involved in day-to-day decision making. BLM's cost accounting system is intended to reflect this distinction.

One commenter noted that it appeared that BLM was attempting to ''double-dip'' by assessing both an application fee and a filing fee. Another commenter noted that BLM was only assessing application and filing fees for some actions and questioned why BLM was not collecting the processing fee for those same actions.

Some commenters seem to have misunderstood how BLM structured the fixed fees. Some fixed fees were already-existing, nominal filing fees that we did not propose to change. Filing fees serve to limit filing to serious applicants and are not intended to reimburse processing costs. This rule adds certain fixed fees for other documents based on BLM's processing costs. Each action for which this rule charges a fee has either a filing fee or a processing fee. No action has both a filing fee and a cost recovery processing fee. We may in the future change some filing fees to processing fees. As explained in the preamble to the proposed rule, BLM intends to continue to work on establishing and collecting fees for other documents (70 FR 41533).

Some commenters stated that these provisions appear to create further delays in an already time consuming set of procedures. A commenter stated that at a minimum the final regulations should include provisions to establish an escrow-type account that BLM can access. A commenter recommended that BLM add the following language to proposed section 3000.11: ''You may elect to establish a standing contingency fund to be accessed and utilized by BLM in case of shortfall, to assure that processing continues. Provisions for appeals and fees paid under protest in subsection (c)(6) will apply equally to any funds utilized from such an account.''

This rule does not provide for escrow or contingency accounts to facilitate payments of case-by-case fees. However, based on these comments, we have amended the language of section 3000.11(b)(4)(i) to clarify that we will not stop ongoing processing if we re-estimate the costs associated with a case-by-case document. This revision should reduce potential delays associated with re-estimation of costs.

The commenter also asked BLM to consider that cost recovery should be limited to the costs of the actual hours that BLM staff worked directly on the project being charged and specifically should exclude any staff training.

The preamble to the proposed rule explained what costs BLM includes in determining its fees in this rule. Both direct and indirect costs are included. Training is only included to the extent that it is allowable as indirect costs.

One commenter asked that BLM consider dedicating funds collected from increased fees to paying personnel who process the permits for which the fees are levied. The commenter said that BLM staff that is responsible for the minerals permitting process should not have other assignments within their respective offices.

BLM intends to structure its budget processes to return fees collected to the BLM office which processes the actions. BLM staff workload is determined by the needs of individual BLM offices.

One commenter asked for further explanation of the relationship between

existing Federal fees, assessments, and levies and the proposed charges, asserting that existing fees already cover certain BLM document processing costs. Specifically, the commenter contended that net smelter royalties, other Mining Law Administration Program (MLAP) funds, and bonus bid payments that cover document processing costs should essentially be counted as document processing fees, and that BLM should not seek additional revenue from applicants if double recovery of such fees would occur.

As discussed earlier in this preamble, we have addressed the relationship between royalties, bonus bids, rents, and the processing fees in this rule. We address here the relationship between the processing fees and Mining Law fees, such as the annual maintenance fee on unpatented mining claims and the location fee on new claims.

Moneys that Congress has directed BLM to collect as location and maintenance fees are deposited directly to the Treasury and are to be used as an offset to BLM's appropriation, up to a certain ceiling. The purpose for the maintenance fee is to replace the $100 assessment work requirement in the Mining Law. The assessment work requirement was intended to show a mining claimant's bona fides in exploring for or developing minerals. Similarly, the location fee is intended to discourage speculative filings of mining claims. Consequently, the fundamental purpose for those fees is not for cost recovery.

The Interior Department's appropriation act specifies two purposes for which BLM can use mining claim fees. First, Congress has directed that a set amount of mining claim fees be used to cover the costs of administering the mining claim fee program. The mining claim fee program is the program under which BLM collects and processes the $125 claim maintenance fee and the location fee. We did not propose and have not adopted any additional processing fee for collecting and processing the statutory mining claim fees. Although the terminology may appear similar (the word ''location'' is used in both), the fee this rule imposes for processing location notices is intended to cover BLM's processing costs related to the statutory filing requirement imposed by FLPMA Section 314 (43 U.S.C. 1744), and is unrelated to the collection of the statutorily imposed location fee.

Second, Congress has directed that the bulk of the appropriation that is offset by mining claim fees be used for the MLAP generally This appropriation has averaged approximately $34 million a year for the past few years, and is used for the entire range of administrative costs incurred by the MLAP; it has historically been inadequate to operate all aspects of the program. In the past, BLM has used appropriated funds to cover the processing costs of documents when no processing fees were being charged. The fact that general Mining Law Program funds were used to cover these costs in the past, however, does not mean that these costs ''should'' be funded from those collections, or that BLM cannot now exercise its statutory authority to charge a specific processing fee to cover certain document processing costs. When general Mining Law Program funds no longer have to be directed to cover all processing costs, they can and will be directed to cover other aspects of the program.

The commenter also stated that because claim maintenance fees and location fees generate millions of dollars, which will increase as fees are increased, BLM should re-evaluate the need to impose additional processing fees.

As is the case with royalties, bonus bids, and rents, Congress imposes claim maintenance and location fees for purposes different from covering the costs of document processing. BLM cannot predict how much money will be collected from these statutory fees or the size of future Congressional appropriations for Mining Law administration. In the IOAA and FLPMA, Congress has also separately authorized the collection of fees to cover the costs of document processing. Those fees are the ones that will be collected under this rule.

One commenter objected to BLM charging for pending documents where processing has already begun. The commenter asserted that charging new fees on pending documents would constitute an unlawful retroactive application of new requirements. The commenter also asserted that equitable concerns arise regarding such charges since the charges could not have been anticipated and planned for in the planning phase of the action. In addition, the commenter stated that often the applicant has no control over the pace of document processing, and thus would be unfairly punished due to BLM's processing backlogs.

As discussed earlier in this preamble, BLM will apply both fixed and case-by-case fee provisions in this final rule to applications submitted after the effective date of this rule, and not to applications pending on that date. Although BLM disagrees with the characterization of the proposed regulations as retroactive, BLM is sensitive to practical concerns relating to applying this rule to pending applications, as well as perceived inequities, and has revised the rule accordingly.

Another commenter stated that any cost reimbursement policy should prohibit the imposition of significant new processing fees upon the lessee or operator of an existing lease, other than future minor filing fees, for specific actions such as processing right-of-way applications. The commenter asserted that at the time existing leases were bid upon and issued, BLM represented by implication and conduct that fees would be imposed under existing law and regulation only for certain activities, such as rights-of-way, and that other administrative costs associated with existing leases were reasonably expected to be borne by BLM. The commenter concluded that lessees' bids reflected those assumptions.

BLM rejects the comment. The commenter's assertions are based on speculation, not fact. Existing lessees do not have any contractual or other basis to be exempt from BLM cost recovery assessments. To the contrary, BLM leases typically contain a condition that lessees must comply with present and future BLM regulations. The recovery of processing costs by government agencies is not a new phenomenon, and BLM's doing so under existing authorities could have been anticipated by lessees at the time of lease acquisition.

Some commenters stated that deadlines are particularly important for documents where fees are collected on a case-by-case basis, and should be established preliminarily through negotiations between the applicant and BLM during the time period when they would be working together on the cost estimate.

This rule does not establish mandatory timelines for processing documents. BLM agrees, however, that it would be helpful to all persons if BLM and an applicant reach a common understanding as to the estimated time when various steps will be achieved.

B. Comments on Oil and Gas Leasing Cost Recovery

A commenter said that BLM's added costs do not address any improvement in services to industry. The commenter stated that by increasing fees BLM is attempting to drive up the cost of doing business on Federal lands and discourage companies from exploration and development of oil and gas.

A commenter said that poor customer service and long periods to process documents by BLM have been long-

standing industry concerns, and that BLM's budget and staffing have not kept up with increasing industry activity. The comment continued that this has created delays and permit backlogs. The commenter said these issues are more important than ''incremental cost recovery.''

Several commenters stated that if the price of energy decreases they would still be required to pay higher fees for reduced service from BLM and less commodity. Several commenters said they had concerns with BLM's quality of ''customer service.'' Others stated that the proposed cost recovery rule is contrary to the new National Energy Plan; and an impediment to domestic oil and gas exploration and development.

BLM takes seriously its customer service obligations, and is constantly looking to improve the means by which it addresses permit processing and its other program responsibilities. To the extent moneys recovered from processing fees are directed back to the offices from which they were collected, we hope this will serve to maintain or enhance the level of service that BLM provides.

We disagree that processing fees should decrease if the price of energy decreases. A processing fee covers the cost of a service that provides a benefit to the applicant and should be considered by the applicant as equivalent to any other cost of doing business. BLM's costs to process documents submitted by an applicant are unrelated to market fluctuations. Just as fees will not increase due to market upswings, they will not decrease due to market declines. BLM's economic analysis indicates that the new fees will not be an impediment to domestic oil and gas or other mineral development. The fees are minor in the context of the overall energy market.

Some commenters stated that these fee increases could result in operators not filing assignments and transfers with BLM. Another commenter said that the current fees are considerably higher when compared to those charged by local governments and private industry for similar services, and in order for operators to have good title to any oil and gas lease, the leases and transfers must be recorded in the county. The commenter continued that, because BLM requires a second set of records on BLM-prescribed forms to be filed with field offices, operators must undertake expensive curative title work when BLM records do not match the county records.

BLM disagrees that an increase in fees would result in operators not filing assignments and transfers with BLM. In accordance with statutory requirements, including the MLA, BLM must approve title transfers and, until they are approved, the transfer is not effective regardless of any private agreements between parties. While we appreciate the commenters' concern about a second set of title records, this is required by statute. Earlier in this preamble we have addressed the relationship between BLM fees and state and local fees.

A commenter said that BLM must set minimum fees that reflect the lesser of the reasonable or actual BLM administrative costs to conduct a pre-lease EA and promptly issue the lease. The commenter urged that any cost recovery program provide the lessee with a schedule of maximum fees and a time period for payment.

We agree that under FLPMA, BLM's fees must be based on the lesser of reasonable or actual costs. The fees in this rule were determined after a consideration of all of the FLPMA factors and reflect BLM's reasonable costs. As explained in the preamble to the proposed rule (70 FR 41540), the fixed fees for oil and gas leasing in this rule do not include the steps required to prepare an individual sale parcel before preparing the sale notice, such as earlier NEPA costs, even though such costs are recoverable. The fees are based on costs that BLM incurs from the point of preparing the sale notice. Unless there is a unique cost that would cause the conversion of the fixed fee to a case-by-case fee, the fees are established in the schedule in this rule.

A commenter asked BLM to return a portion of all revenues back to BLM districts based on the level of oil and gas activities in the district.

BLM is establishing a procedure through which the fees collected will go back to the office from which they were generated.

Some commenters asked BLM to abandon all case-by-case fees for oil and gas operations on Federal land.

BLM proposed case-by-case fees for certain oil and gas transactions in the 2000 proposed rule on cost recovery. However, they were not in the 2005 proposed rule, and they are not in this final rule.

Another commenter stated that the fee increases would be acceptable if the fees covered expenses that the operator has incurred. However, according to the commenter, many environmental, social, and economic issues have to be reviewed before land is listed in public auctions. The commenter said that these reviews are for the benefit of the public, and that it would be unfair to pass these costs on to the user and accuse users of causing this expense.

The fees in this final rule for BLM's oil and gas program do not include the environmental, social, and economic costs that BLM incurs before land is listed in public auctions. As was stated in the preambles to both the 2000 and 2005 proposed rules, we may propose in future rulemaking to recover those costs. As explained earlier in this preamble, these reviews are associated with a special benefit to an identifiable beneficiary and are recoverable under FLPMA and the IOAA.

A commenter stated that BLM's authority to impose cost recovery is discretionary, not required by statute. The commenter said that previous administrations chose not to impose this cost recovery proposal on oil and gas operators and lessees for sound public policy reasons and urged BLM to continue this policy and reconsider the proposed rule in its entirety.

Under the Administrative Procedure Act, an agency may change its policy if such changes have a rational basis and are supported by law. BLM has explained both its basis and purpose and the legal authority supporting this rule.

A commenter said that the transfer-of-operating-rights fees are inappropriate because the documents are not adjudicated, but only filed.

While operating rights transfers do not involve the same adjudicative processing steps as other documents, BLM must still review these documents for legal adequacy, and the cost recovery fee is appropriate.

C. Comments on Geothermal Leasing Cost Recovery

A commenter asked if we have considered fee increases from a national strategic energy viewpoint. For example, according to the comment, increased geothermal production from Federal lands would address the local energy shortages in the West in an environmentally benign way. The commenter therefore questions whether BLM should increase such fees.

As mentioned earlier in this preamble, this final rule does not include processing fees for geothermal permits to drill or geothermal exploration permits. Any remaining geothermal fees established by this rule will not hinder geothermal development.

D. Comments on Coal Leasing Cost Recovery

A commenter suggested that BLM offset the processing fees for a competitive coal lease by an equivalent

reduction in the fair market value bid for the lease.

Prospective bidders independently determine what they consider the fair market value of a coal lease to be. Companies will take all costs, including processing costs, into account when bidding. BLM will do the same when it makes its pre-lease determination of a minimum acceptable bid. Fair market value cannot be further reduced by the amount of processing costs, since those were already taken into account by the market. Also, Congress authorized the recovery of both fair market value and processing fees.

A commenter stated that BLM did not consider how the final rule would determine fees when the same or similar activity has been undertaken by another Federal or state agency with regard to the same transaction. The commenter stated that BLM should withdraw the rule until this issue is addressed.

To the greatest extent possible, BLM and other Federal agencies make diligent efforts to reduce or eliminate duplicative Federal or state requirements. This reduces the work burden for the agencies and provides better service to our customers. BLM and the Office of Surface Mining (OSM) have eliminated as many duplications of effort as possible. Moreover, in determining the fixed fees in this rule, we averaged our processing costs based on a survey of our actual costs (which included only our review time) plus consideration of the reasonableness factors. For the case-by-case fees, we will charge only for the time it actually takes BLM to process the document.

The commenter raised an issue about Resource Recovery and Protection Plans (R2P2). There are no fees currently assessed or proposed to be assessed for BLM to process an R2P2 for a Federal lease.

As stated in the preamble to the 2005 proposed rule at 70 FR 41536, at the time BLM was preparing the proposed rule for publication, BLM became aware that the case-by-case procedures outlined in proposed section 3000.11 were not appropriate for fees charged to the successful bidder in a lease sale or mineral materials sale context. Because a competitive sale requires BLM to perform work before conducting the sale, and BLM has the ability to track associated processing costs, the preamble to the 2005 proposed rule stated that it is our intent to include in the final rule a different set of procedures for charging a case-by-case fee to the successful bidder in the context of coal lease sales, solid mineral lease sales, and competitive mineral materials sales. Although the 2005 proposed rule contained revisions to sections 3473.2, 3508.21, and 3602.44, the proposed revisions did not address procedures for charging case-by-case fees to successful bidders, including situations in which the applicant is not the successful bidder. The final rule provides more extensive revisions to those sections as well as to related sections. These changes are described in an earlier section of this preamble.

One commenter suggested that BLM provide a mechanism whereby an unsuccessful bidder for a coal lease is not assessed any of the processing fees for the lease sale.

BLM agrees. As described above, the final rule requires the successful bidder to pay lease sale processing costs that BLM incurs.

A commenter asked BLM to clarify what happens when proprietary data is collected through activities that are covered by cost recovery. The commenter asked that BLM consider revising the regulation by incorporating mechanisms to ensure that any baseline data or information collected or contracted for collection by the applicant that is in excess of that information specifically required for applications would remain the property of the applicant, regardless of the outcome of the application process.

BLM will protect proprietary information in its possession to the extent provided under applicable law.

One commenter asserted that having an open-ended case-by-case cost recovery determination with no cap could easily create a disincentive to the coal lease modification process. The commenter stated that coal lease modifications are designed to maximize the recovery of the coal resources by allowing for a quick process and procedure to incorporate coal that cannot or will not be mined by anyone else into an existing coal lease. The commenter stated that BLM should encourage this practice, and that, in most instances, the additional royalties and bonus bids received more than offset the cost of processing these lease modifications.

BLM disagrees with this comment. We do not view a case-by-case fee as opposed to a fixed fee as a disincentive to filing an application for a coal lease modification. A lease modification is intended to provide the lessee an opportunity to obtain non-competitively adjoining tracts of coal that would otherwise be bypassed and that are not independently commercially viable. Other than not requiring a competitive lease sale and related public hearings on fair market value and maximum economic recovery, processing a lease modification application mirrors the processing steps associated with a competitive lease sale. The distinction between royalties and bonuses on the one hand and processing costs on the other was discussed earlier in this preamble. See also the earlier comment response in this preamble regarding the amounts and procedures related to case-by-case fees.

One commenter stated that a royalty rate reduction is an important component if a company reaches a critical financial or operational stage of their operation, and that if an operation is losing money and potentially facing closure of the property, then the Federal Government is also at risk of losing Federal mineral royalty income. The commenter stated that an open-ended case-by-case cost recovery process with no cap could be a big disincentive for a struggling company to overcome.

BLM disagrees with this comment. The commenter speculates as to the impact of the cost recovery process on a company requesting a royalty rate reduction. If a company requesting a royalty rate reduction objects to the cost estimate that BLM provides in a case-by-case cost recovery situation, it may appeal. BLM will apply the FLPMA reasonableness factors in setting cost recovery fees in case-by-case situations, as it applied them in setting the fixed fees in this rule. The authority for a royalty rate reduction (30 U.S.C. 209) does not address processing the royalty rate reduction applications. The MLA provides no authority to waive, suspend, or reduce recovery of processing costs. BLM will, of course, in its application of the FLPMA reasonableness factors, consider the facts that were presented in support of a royalty rate reduction.

One commenter stated that the proposed rule fails to recognize that applicants sometimes voluntarily pay for approved third-party contractors to perform studies to avoid certain delays associated with BLM processing of these documents. For example, the commenter stated, many applicants operating under the MLA pay BLM-approved third-party contractors to prepare the EISs associated with their leasing application.

BLM acknowledges that applicants have voluntarily paid for the preparation of an EIS for many actions to expedite the processing of that action. We anticipate that a similar process may continue under these regulations. Under this rule, if BLM pays for the preparation of studies such as an EIS, BLM's preparation costs will be included in the costs charged for case-by-case processing. If the coal lease

applicant pays a third party directly for the preparation of an EIS, for instance, these regulations do not provide that the applicant will be reimbursed if the applicant is not the successful bidder. The coal lease applicant will have the choice whether to pay a third party directly for the preparation of the environmental study or to have BLM fund the study, the cost of which, including BLM contracting costs, will be part of the fee charged to the successful bidder.

E. Comments on Cost Recovery for Leasing of Solid Minerals Other Than Coal

Comments received regarding leasing solid minerals other than coal were general in nature and have been addressed in the General Comments section earlier in this preamble.

F. Comments on Cost Recovery for Mineral Materials Sales

Most comments received regarding mineral materials sales were general in nature and have been addressed in the General Comments section earlier in this preamble.

One commenter inquired as to whether mineral materials free use permits will be subject to cost recovery fees.

Under this final rule, processing fees do not apply to free use permits issued under 43 CFR subpart 3604.

G. Comments on Cost Recovery for Mining Law Administration

A commenter suggested that the fees under part 3860 be dropped in the final rule and that if and when patents are allowed in the future BLM should consider cost recovery fees at that time.

BLM has established the fees relating to mineral patent applications so that they will be in place if Congress chooses to lift the current moratorium on issuing mineral patents.

Some commenters said they opposed the proposed fee changes because mining claimants have a stake in the patent process and, therefore, those who have paid for the patent process should not be charged additional fees.

BLM disagrees that steps that an applicant must take to qualify for a patent can substitute for BLM's recovery of its processing costs.

A commenter said the proposed rule conflicts with BLM's published policy on when and under what circumstances a validity or common variety mineral examination will be required.

This rule does not change the existing published policy concerning when mineral examinations are performed. It only requires that cost recovery be initiated if a validity or common variety mineral examination is performed under 43 CFR 3809.100 and 3809.101.

A commenter noted that BLM recently reported to Congress that BLM processes most PoOs within six months, with some plans taking longer to process. The commenter suggested that, because BLM thus processes most PoOs in an efficient manner, it is not justified in imposing cost recovery fees. It also suggested that if BLM had needed additional funds to process PoOs, it would have mentioned that in its report. The commenter suggested that because most PoOs are processed within six months, it would be reasonable and more efficient for BLM to establish a fixed processing fee for PoOs. Based on BLM's report that it processes most PoOs within six months and the failure of the report to express a need for additional funds, the commenter contended that it is inappropriate for BLM to assert in the July 2005 proposed rule a need to increase fees. Another commenter suggested that the BLM be required to demonstrate that the currently available fee and other subsidies are insufficient.

BLM disagrees with the commenters. The fact that BLM reported that it processes most PoOs within six months has no bearing on whether BLM recovers its processing costs. Whether or not a report to Congress stated that BLM ''needs'' additional funds in order to efficiently process PoOs is also not a determining factor in BLM's cost recovery effort. The report was prepared in response to a Congressional directive to create a PoO tracking system, report on how long it took BLM to process PoOs, and describe ways in which BLM's processing time could improve. It was not intended to address BLM's cost recovery efforts. As explained in the preamble to the proposed rule, the Department's OIG has determined that BLM should be recovering the costs included in this rule, and both the OMB, in Circular A–25, and the Secretary of the Interior, in the Departmental Manual, have directed that BLM should assess charges against identifiable recipients for special benefits. That is what BLM is doing in this rule. It needs to be recognized that PoOs that are processed within six months are those that require only an EA, not those that require an EIS. BLM agrees that it may be reasonable and efficient to set a fixed fee for PoOs that are authorized under an EA. However, in this rule BLM is not charging any fee for PoOs that are authorized under an EA. The rule imposes a fee, on a case-by-case basis, only for PoOs that require the preparation of an EIS. Case-by-case fees are appropriate for PoOs that require an EIS because of the significant variability in costs that may occur in the preparation of EISs and associated studies. We will consider whether to propose fees for PoOs that are authorized under an EA, and may propose a future rule on the subject.

Commenters also asserted that applicants for PoOs and other types of applications already typically pay significant costs by hiring third-party contractors to prepare the NEPA documentation, and often subsidize a BLM employee or retain a contractor to work as a project coordinator. In light of these costs already often borne by applicants, commenters contend that companies should not be required to subsidize additional costs, and that any additional costs should be covered by claim location and maintenance fees.

BLM recognizes that many companies have incurred financial expenditures related to processing PoOs. Such payments to third parties will not be included in BLM's case-by-case fees. The fee will only include costs that BLM incurs. BLM statutory responsibilities require that it independently review any analysis performed by an outside contractor. This review is an integral part of the processing required before BLM can act on an application. It is therefore reasonable and necessary that BLM consider the review costs in calculating its costs for processing a document, notwithstanding that a company may have incurred other expenses related to processing. We have addressed earlier in this preamble the relationship between claim location and maintenance fees and processing costs.

Another commenter was concerned that the procedure in proposed section 3000.11(b)(2) under which BLM will not process documents until BLM gives the applicant a written estimate of costs will not work in situations where BLM has to begin processing an application in order to decide whether a case-by-case fee will be imposed. The commenter used as an example that when BLM receives a mining PoO application, it must begin processing to determine whether an EIS is required.

The estimate that BLM provides under section 3000.11(b) precedes any case processing. However, if the initial estimate under section 3000.11(b)(4) needs to be revised, the rule provides that BLM will re-estimate its reasonable processing costs under section 3000.11(b)(4)(i). There is no fee in this rule for BLM's processing of a PoO that does not require an EIS. Therefore, the processing that BLM performs up to the point where a decision is made that an EIS will or will not be required is not

charged to the applicant. In response to this and other comments, we have stated earlier in this preamble that when a determination is made during the processing of a PoO that an EIS is required, the processing costs will be tracked and charged to the applicant on a case-by-case basis only from that point forward. This same principle applies when a fixed fee is changed to a case-by-case fee under section 3000.11(a).

A commenter said that third parties should not be permitted to appeal a BLM cost estimate because this could be used by opponents of the project as a delaying tactic.

It is clear from the context of the regulatory text at section 3000.11(b)(7), and confirmed by the preamble discussion in the proposed rule at 70 FR 41536–37, that only applicants may appeal a BLM cost estimate made under section 3000.11(b)(4).

Several commenters expressed opposition to BLM's proposed case-by-case fees because activities associated with case-by-case fee processing will add costs, especially when BLM has to re-evaluate cost estimates.

BLM appreciates the commenters' concern. However, we have not made changes to the final rule based on this comment. Means exist to keep costs down. For instance, an applicant should submit an application as complete as possible to allow BLM to provide an accurate initial cost estimate and to reduce BLM's processing costs. BLM already uses an automatic accounting system to streamline this process.

Commenters stated that a paying party should be permitted to audit BLM's accounting in case-by-case situations.

BLM disagrees that a paying party needs to audit BLM's accounting in case-by-case situations. The process has been set up to provide estimates as close as possible to actual costs, with re-estimates if BLM encounters higher or lower costs than anticipated. The applicant may appeal BLM's estimates. The process provides that the applicant may comment on BLM's written estimate of costs before BLM provides a final estimate.

A commenter stated that section 3800.5 contains provisions requiring applicants to pay for EISs and validity examinations if the Field Office requires them, and asserted that if the application is for a simple PoO, BLM has enough control to prevent severe environmental degradation.

It appears that this comment addresses PoOs that do not require an EIS. This rule does not impose cost recovery for processing PoOs that do not require an EIS. We note that validity examinations are not directly related to preventing severe environmental degradation.

A commenter stated that the proposed rule is inconsistent with the Mining and Mineral Policy Act of 1970, and that BLM should demonstrate that the proposed rule is consistent with the Act.

The Mining and Mineral Policy Act of 1970 (30 U.S.C. 21a) is a statement of Congressional policy relating to the benefits of mineral production to our society. BLM continues to support a healthy domestic mining industry. This rule is not expected to affect the nation's domestic mining industry adversely.

A commenter raised the findings of a 2001 General Accounting Office (now the Government Accountability Office—GAO) Report titled ''Improper Charges Made to the Mining Law Administration Program'' (GAO–010356), which stated BLM employees had improperly coded various activities to the MLAP, potentially resulting in an overcharge of about $1.2 million. The commenter asked BLM to withdraw the fee proposals until BLM implements appropriate training programs and provides detailed guidance.

BLM has remedied the problems the commenter identified. In fiscal year 2002, BLM removed all pertinent moneys from the State Offices that had miscoded the funds and placed these moneys into a central BLM account. BLM modernized its computer system for the field offices to use specifically for the surface management program and provided additional training courses at BLM's National Training Center for its mineral specialists that work in the surface management and mineral examination programs. In the same manner, additional training courses were held for BLM's adjudication staff that process mining claim documents and files.

A commenter recommended that the GAO evaluate BLM's need for cost recovery.

As explained in the preamble to the proposed rule, OIG reports in the 1980s and 1990s examined BLM's need for cost recovery for processing minerals-related documents. The OIG recommended that BLM establish and collect processing fees for all non-exempt types of documents. We believe this independent OIG report provides a sufficient audit of BLM activities related to minerals cost recovery. We do not believe any further audits are necessary before BLM goes forward with this rule.

A commenter said that an $80.00 processing fee to file a petition for deferment is inappropriate for the time required to determine whether an application is valid.

We disagree with the commenter's view of the work involved in determining whether a petition meets the regulatory requirements. Processing a petition for a deferment is time-consuming, as there are several steps involved in processing the document, including verifying the reason for the deferment. BLM must issue a formal decision and properly note the official records, costing the BLM both staff time and expenditure of operations funds.

A commenter opposed the proposed fees for non-patent validity exams, stating that these reports are being initiated by the agency to challenge the validity of the claim.

It is BLM's responsibility under its regulations to confirm the validity of a claim, including making a common variety determination, before allowing operations to proceed on withdrawn or segregated land, and in circumstances where the mineral claimed may not be locatable. See 43 CFR sections 3809.100 and 3809.101. The mining claimant is the beneficiary, as the examination enables BLM to act on the application.

A commenter expressed concern that the proposed rule indicates that BLM is going to perform mineral validity exams for most PoOs and Notices.

As discussed earlier in this preamble, we have clarified section 3800.5 to address this concern. Nothing in this rule changes BLM's policies on when it conducts a mineral examination.

A commenter noted that DOI published new policies on NEPA recently. They stated that in view of these policies and procedures, if BLM proceeds with this proposal for case-by-case fees for processing PoOs requiring preparation of an EIS, BLM needs to ensure that it will comply with its own policies and procedures implementing NEPA.

This rule does not affect BLM's obligation to comply with NEPA. BLM's policies concerning NEPA compliance are controlled by the regulations and guidelines issued by the Council on Environmental Quality, applicable Departmental policy, and other applicable law.

A commenter questioned the interplay between the proposed rule at section 3800.5(b) and the current regulations at section 3809.101. The commenter stated that under the proposed rule, if the applicant believes that uncommon variety minerals exist on its claim, it must first pay a case-by-case processing fee to conduct a validity examination as well as pay a processing fee on a case-by-case basis for processing a PoO. The commenter stated that discovery of minerals falling outside the ''common variety mineral''

classification should exempt the claimant from the requirement of a validity examination, and that the final rule should clarify this situation.

This rule does not impose a fee for processing PoOs that do not require an EIS. BLM would require the applicant to pay a case-by-case fee for a common variety determination under 43 CFR 3809.101 only when a question exists as to whether the mineral to be extracted is locatable under the Mining Law of 1872. If the claimant submits sufficient information to BLM that the mineral material is uncommon or that there is clearly a discovery of a valuable mineral deposit upon the claims, then the issue may be resolved without proceeding to a formal mineral examination. In this instance, the case-by-case cost will be minimal.

A commenter asked BLM to provide assurances that we will not decide that all PoOs require an EIS merely to allow BLM to recoup all its processing costs.

BLM is not revising the existing procedures and protocols for determining if an EIS is needed. Existing Council on Environmental Quality, DOI, and BLM guidance determines when an EIS is required.

A commenter stated that BLM might use these new fees as an administrative tool to drive out holders of valid existing rights under the Mining Law.

BLM does not believe this rule will adversely affect those who hold valid existing rights to any significant degree. The rule is not intended to deny or extinguish prior existing rights. These fees are set at reasonable levels based on the FLPMA Section 304(b) factors as explained in the preamble of the proposed rule. (70 FR 41537–41543). For a discussion of the possible impact of this rule on the validity of mining claims, see 70 FR 41538.

A commenter stated that imposing a mineral patent adjudication fee of $2,290 where none had been required is not reasonable. Several other commenters objected to the fee structure proposed for mineral patent applications, saying that a fixed fee for a patent application regardless of the number of claims is unfair to smaller operations involving fewer than 40 claims. Likewise, they contended that it unfairly benefits large operators that apply for patents on large claim blocks. The comment concluded that BLM should retain the current ''sliding scale'' fee.

In response to these comments, we amended the mining claim patent application adjudication fee so that patent applications covering 10 or fewer claims will be charged only half the cost recovery fee that applications with more than 10 claims will be charged. We selected the 10-claim threshold because that is the number Congress chose to define the class of miners who may perform assessment work in lieu of paying the claim maintenance fee. The adjudication fee in the proposed rule was a fixed fee based on a weighted average of BLM's adjudication costs. We believe that the commenters may have a valid concern and that it may be more reasonable to base the adjudication fees on the per claim costs depending on how many claims are included in an application. BLM plans to reassess its costs of adjudication and may propose a revision to this fee in the future. In this final rule, we decided that it was reasonable to phase in the adjudication fee for patent applications that contain 10 or fewer claims. A discussion of phasing in fees is contained in the preamble to the proposed rule at 70 FR 41533. This rule contains the first step of this phased-in fee.

A commenter said the fact that acquiring a patent is voluntary and not required by law does not justify imposing a fee.

We agree that the mere fact that acquiring a patent is voluntary is not a justification for requiring a processing fee. All processing fees in this rule, including those related to patent applications, are based on special benefits to identifiable beneficiaries beyond those provided to the general public. BLM's review of a patent application provides a special benefit to the applicant.

The commenter asked that the final rule clarify whether subpart 3809 notices are exempt from fees because they are not Federal actions.

Under this final rule, we are not charging fees for reviewing notices except where a validity examination is performed. As explained in Solicitor's Opinion M–36987 (Dec. 5, 1996) at page 25, ''[f]iling a notice under this section triggers agency review, which provides a special benefit to an identifiable recipient. BLM thus has authority to recover the agency costs of processing notices * * *.'' However, under section 3800.5(b) of the final rule, we are only exercising this authority in the limited context of validity examinations performed in connection with notices.

A commenter said that BLM's proposed fixed fees, such as $2,290 for Mineral Patent Adjudication, that are not appealable violate their right to due process, and non-appealable fees must be set at a low and reasonable amount.

BLM disagrees that the fixed fees violate due process. The fees were published in a proposed rule that allowed for public comment, and this final rule, including the fixed fees, is subject to challenge. The fee for a mineral patent adjudication is based on BLM's average costs. In the preamble to the proposed rule, we listed the processing steps involved in a mineral patent adjudication (70 FR 41539). As explained earlier in this preamble, in response to other comments, we have revised the final rule to phase in the processing fee for mineral patent adjudications that include 10 or fewer claims.

One commenter raised a question regarding how BLM should proceed in a specific situation in which an escrow account was set up under 43 CFR part 3809.

The comment addressed a hypothetical factual dispute following a specific IBLA decision and was not directly related to the processing fees imposed by this rule.

A commenter stated that the cost recovery regulations would result in sanctions or penalties on persons who propose mining operations rather than charging mineral claimants for special benefits.

The fees in this rule are not penalties. They are intended to recover BLM's reasonable costs of processing associated with special benefits to identifiable beneficiaries and are recoverable under FLPMA and the IOAA.

A commenter stated that most of the costs the rule would recover are the result of laws and regulations specifically created to protect the public. Therefore, according to the commenter, the public should be paying these costs with their tax dollars.

As discussed earlier in this preamble, the actions for which BLM will recover costs under this rule are undertaken as a direct result of an application that will provide a special benefit to the applicant. Any incidental benefit that BLM's processing actions may also provide to the public was considered as part of BLM's consideration of the FLPMA reasonableness factors for the fixed fees, and will be considered on an individual basis for the case-by-case fees.

One commenter supported fee increases, saying that taxpayers should not subsidize mining and mineral companies. The commenter also asserted that the 1872 Mining Law should be replaced with new provisions requiring mining companies to pay the full cost of associated expenses when they benefit from mining activity.

This rule implements recovery of some of the costs of processing documents associated with mineral activities on the public lands. It is not

necessary to change the 1872 Mining Law to implement these cost recovery fees.

A commenter stated that BLM should remove section 3000.11, asserting that the inadequacy of BLM's funding should not prevent an applicant's document from being processed.

The commenter appears to have misinterpreted section 3000.11(b)(4)(ii), which provides that if BLM determines that a case-by-case fee will be set at an amount less than BLM's actual costs due to the FLPMA reasonableness factors, and BLM does not have sufficient appropriated funds available to process the document immediately, an applicant has the option of paying BLM's actual costs (unreduced by FLPMA factor considerations), which would enable BLM to process the document without waiting for additional appropriated funds. If an applicant does not wish to pay actual costs, BLM will process the document as soon as it is able. We do not expect that this situation will arise often. Many companies now pay actual costs for the preparation of environmental studies in connection with an application. We included this option to allow applicants to continue that practice if they wish to do so.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

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

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

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

The OIG reports documented the budgetary impact of delaying collection of fees to reimburse agency costs, and strongly admonished BLM to collect the fees in this final rule. Finally, this rule will not raise novel legal issues. The minerals industry may object, but the legal issues are not novel. Circular A–25 and the Departmental Manual require the collection of processing fees. The rule does implement new policy for the minerals programs.

A commenter stated that the proposed rule violates Executive Order 12866 by ignoring the ''costs and benefits'' of mineral development, such as the huge financial risk to the developer and huge benefits these minerals provide to society.

We disagree that BLM ignored the costs and benefits of this rule. We have estimated the cost of the rule, in the form of higher fees, to be approximately $7 million annually. BLM has also concluded that there would be no measurable reduction in economic activity due to these fees. BLM also noted that by instituting cost recovery, the rule ensures that the applicants bear the cost of processing applications, rather than the general public. The preamble to the proposed rule explained that waiving or reducing these fees would simply mean that United States taxpayers would bear the costs that the applicant who directly benefits was not bearing. The benefits to the taxpaying public that underlie the statutory authorizations and policy mandates for cost recovery, weighed against the costs to the applicants who benefit from the processing activities, in light of BLM's determination that the fees would cause no measurable reduction in economic activity, support this final rule.

Regulatory Flexibility Act

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.*). A Regulatory Flexibility Analysis was not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this discussion, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining: a coal lessor is a small entity if it employs not more than 250 people, including people working for its affiliates. The SBA would consider most of the operators that BLM works with in the onshore minerals programs to be small entities. BLM notes that this rule does not apply to service industries, for which the SBA has a different definition of ''small entity.''

BLM is aware that this rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. As presented in the analysis prepared by BLM, and available as an attachment to the Record of Compliance for this final rule, except for mineral materials, when the total fee increases paid by these entities are expressed as a percentage of their sales value, it is clear that the relative size and effect of the fees are very small and that the increases will have no measurable effect on these entities. We completed a threshold analysis, which is available for public review at the address stated under **ADDRESSES.** The Threshold Analysis BLM prepared for the proposed rule of July 19, 2005, has been updated to reflect changes made in this final rule. These included adjusting the fixed fees and estimated case-by-case costs for inflation, and incorporating more current firm and receipt data published by the U.S. Bureau of Census, U.S. Minerals Management Service, and BLM into the analysis.

In the area of mineral materials, the fee increases only apply to exclusive mineral materials sales. The fee increases do not apply to nonexclusive sale applications (community pits and common use areas) or to free use permit applications. The fee increases are estimated to be 12.82 percent of the reported production value for exclusive mineral materials sales. (In the analysis conducted for the proposed rule, we reported the fee increases for exclusive

mineral materials sales to be 25.65 percent of the reported production data for 1997. For the revised analysis for the final rule, we were able to obtain 2002 production data. This dramatic reduction to 12.82 percent is due to the significant increase in mineral materials production value coming from Federal lands. In 1997, mineral material production value from Federal lands was approximately $3.6 million. For 2002, the reported production value was over $7.4 million.) Without further analysis, this percentage might suggest the potential of a significant impact on operators, including small entities, operating on Federal lands. However, a number of factors mitigate this potential impact.

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

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

For many document types, BLM will establish charges on a case-by-case basis. In these situations, the applicant/operator has the opportunity to present data to BLM on the reasonableness of the fees using the FLPMA factors. If, for example, the entity is small and has a small operation, the monetary value factor may cause BLM to reduce the fee(s).

One commenter asserted that BLM's Threshold Analysis should have looked at Internal Revenue Service (IRS) data to determine the profit margin for different mineral sectors, which could be used to determine the ability of small entities to pay the new fees and thus whether the rule would have a significant impact on small entities. The commenter requested that BLM withdraw the proposed rule and re-conduct its Threshold Analysis.

In response to this comment, between the publication of the proposed rule and the publication of this final rule, BLM reviewed the most recent IRS tax return information for corporations operating within the mining sector. The IRS data was not broken down by number of employees and thus could not be exactly correlated with the SBA definition of small entities. The data could, however, be analyzed on the basis of reported assets, and we therefore evaluated that data and compared the fee increases to reported net income by groupings based on dollar value of assets.

The analysis we originally performed, based on a comparison of fee increases to receipts, showed that, for all minerals areas except mineral materials, the fee increases in this rule are less than 1% of receipts from Federal lands. The more recent review, based on similar IRS data, corroborates our conclusion that fees will not have a significant impact on a substantial number of small entities. The complete Threshold Analysis is available for public review at the address stated under **ADDRESSES**. Some commenters expressed their opposition to the proposed rule because they asserted that it would place an unfair regulatory and financial burden on small miners. Some commenters asserted that BLM's conclusion that the proposed rule would not have a significant economic impact on a substantial number of small entities was based on an inadequate, incomplete, and flawed Threshold Analysis, and therefore a Regulatory Flexibility Analysis is required.

We have analyzed the impact of this rule on small miners involved in the exploration and development of energy and mineral resources on Federal lands based on the Small Business Administration's (SBA) guidance, including SBA's definition of small entities. In the analysis we first identified number of firms and reported receipts by firm size (based on number of employees) for entities involved in the exploration and extraction of energy and mineral resources in the United States. This data enabled us to identify the number of firms that qualify as small entities under the SBA definition and the receipts of those firms. This national data was obtained from the most recent industrial statistical data available from the U.S. Census Bureau (*http://www.census.gov/csd/susb*).

Next, we identified receipts generated from energy and mineral extraction from Federal lands. Receipt data for leasable resources (oil, gas, geothermal, coal, and other non-energy resources) was obtained from the U.S. Department of the Interior, Minerals Management Service, Minerals Revenue 2000, Report of Receipts from Federal and Indian Leases (*http://www.mrm.mms.gov/Stats/mr.htm*), and Reported Royalty Revenue Statistics for Fiscal Years 2001 through 2004. Mineral materials sales data was obtained from the U.S. Department of the Interior, Bureau of Land Management, Public Land Statistics, 2002, Disposition of Mineral Materials (*http://www.blm.gov/natacq/pls02/*). BLM does not systematically collect production or production value information for mining activity authorized under the Mining Law of 1872. Thus, we relied on estimates of production value for locatable minerals in our analysis.

Based on the national numbers of entities involved in the mining sector and the number of those that would be classified as small entities by SBA, we projected the percentage of revenue that would be attributable to small entities operating on Federal lands. To measure the annual total fee increase of the fees we relied on the increases in the fixed fees, estimated increases for the case-by-case fees, and projections of the annual number of filings of each type of application. Finally, we compared these total fee increases to the receipt information for small mining entities operating on Federal lands.

Based on this analysis, we concluded that the impact of this rule will not be disproportionately borne by small entities, including small miners, and the impact of fees on small entities, as defined by the SBA, will not have a significant impact on a substantial number of small businesses. In addition, the economic impact of the rule is not expected to be significant. We estimate the cost of the rule, in the form of higher fees, will be approximately $7 million annually. Because BLM has determined and certified that the rule will not significantly affect a substantial number of small entities, it is not necessary to conduct a Regulatory Flexibility Analysis.

One commenter urged BLM to establish limits on fees based on the size of the company.

BLM's Regulatory Flexibility Analysis examined the impact of fees on small businesses as defined by the SBA and concluded that they will not have a significant impact on a substantial number of small businesses. Therefore, BLM sees no need to institute separate fees based on the size of the company. However, the fees with the highest increases are generally those determined on a case-by-case basis. If an entity proposes an operation that will be subject to a case-by-case fee, the applicant will have the opportunity to request that BLM consider a lower fee based on the applicable FLPMA factors. In addition, for fees established on a case-by-case basis, the applicant may appeal BLM's decision concerning the

fee amount if the applicant thinks it is unreasonable.

A commenter opposed BLM's statement in the preamble that ''[t]he smaller the entity, the more likely it is that the application will seek to patent fewer mining claims, reducing the time needed for BLM's mineral examination.'' (70 FR 41544) The comment stated that this indicates that BLM still does not understand the requirements of the RFA and SBRFA, and questioned the validity of the RFA.

The statement cited in the comment was not part of BLM's Regulatory Flexibility Act Threshold Analysis, but was included in the preamble to the 2005 proposed rule. The statement was intended to express the logical assumption that patent applications containing fewer claims will most likely require less time for BLM to conduct the mineral examination, resulting in lower mineral examination costs.

A commenter observed that the Threshold Analysis states that ''significance must be determined on a case-by-case basis. Significance should not be viewed in absolute terms, but should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' The commenter submitted that BLM ignored this statement in preparing its RFA Threshold Analysis and reached the incorrect conclusion that a Regulatory Flexibility Analysis is not required. The commenter believes BLM's use of production value to measure ''significance'' leads to a flawed analysis, because all the fees in the proposed rule would be imposed and collected many years before a small entity would realize production value from a mine. Thus, according to the commenter, production value is an inappropriate measure of significance, and using production value as a ''proxy'' for a small entity's ability to pay skews the analysis toward a finding of ''no significant impact.''

The Threshold Analysis prepared by BLM to assess the significance of the rule on small entities does not rely on absolute terms or values. We did estimate the fee increases in absolute terms. However, we also compared those absolute fee increases to the firms' reported production values. By viewing the fee increases in relation to reported production values, by entity size, we were able to arrive at a measure of the relative significance of the effect of the fee increases on different size business entities.

We believe that production value is a reasonable measure of the significance of the impact on small miners. Revenue generated from the production of discovered resources is ultimately the source of income for any entity to cover all of its costs, including processing fees. While the commenter is correct that many fees must be paid well in advance of production, in this regard fees are no different from other costs that an entity incurs well in advance of production, such as exploration costs and many capital costs.

A commenter stated that many individual miners or companies have significantly fewer than 500 employees, and that BLM did not analyze the impact of its proposed rule on what amounts to a significant population of the U.S. mining community.

As discussed above, the Threshold Analysis differentiated between receipt information reported for entities with fewer than 500 employees and those entities with 500 or more employees. This is the SBA definition of a small entity, which is the definition that BLM is required to use in its analysis. At the recommendation of a commenter, we also reviewed IRS net income information in the revised analysis. However, as discussed earlier, the additional analysis is based on entities' assets, not number of employees as required by SBA, because of the way the IRS data was broken down. However, the subgroup of entities with less than $500,000 in assets is likely to be the smallest of those entities that would be classified as small entities by SBA. The analysis of this subgroup corroborated our conclusion that fees will not have a significant impact on a substantial number of small entities.

A commenter suggested that BLM needs to include copper, silver, lead, zinc, bentonite, and other locatable minerals in its Threshold Analysis.

In our analysis, we included all locatable minerals. We did not differentiate between industrial locatable minerals and metallic locatable minerals, or by specific mineral or commodity. The commenter may have been confused because we used an example that mentioned gold. All firms exploring and developing locatable minerals will be subject to the same fees, regardless of the mineral located.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The rule:

- Will not have an annual effect on the economy greater than $100 million;
- Will not result in major cost or price increases for consumers, industries, government agencies, or regions;
- Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

BLM completed a Threshold Analysis for this rule, which is available for public review at the address stated under **ADDRESSES**.

Unfunded Mandates Reform Act

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

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

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

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the rule does not have significant effects on federalism, and therefore a federalism assessment is not required. The rule does not change the role or responsibilities between Federal, state, and local government entities. The rule does not relate to the structure and role of states and will not have direct, substantive, or significant effects on states. It may result in a slight decrease in bonus bids, which BLM shares with the states and other revenue recipients. However, the effect would be negligible over the life of a lease.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM has determined that this final rule does not include policies that have Tribal implications. A key factor is whether the rule has substantial direct

effects on one or more Indian Tribes. BLM has not found any substantial direct effects. Consequently, BLM did not utilize the consultation process set forth in section 5 of the Executive Order.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

A few commenters expressed concern that the rule will unduly burden the judicial system contrary to Executive Order 12988. They said there would be an increase in IBLA appeals based on the increased case-by-case fees, such as fees associated with validity exams.

Executive Order 12988 does not apply to administrative appeals to the IBLA. Moreover, BLM does not believe that the rule will result in a significant increased burden on the judicial system. Although there is the possibility that appeals to IBLA will increase, especially during early implementation of the final rule, the potential number of administrative appeals does not justify removing case-by-case fees from the rule.

Paperwork Reduction Act

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

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

1004–0034, Oil and Gas Lease Transfers;

1004–0073, Coal Management;

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

1004–0103, Mineral Materials Disposal;

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

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

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

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

1004–0169, Use and Occupancy;

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

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

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

National Environmental Policy Act

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

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

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

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

Several commenters asserted that the proposed regulation is contrary to Executive Order 13211 because the added financial disincentives could severely affect the supply and distribution of oil and gas, coal, and other energy resources. Some commenters said the proposed rule conflicts with E.O. 13211 because implementing these fee increases would delay energy projects. Another commenter said that E.O. 13211 requires BLM to prepare statements of Adverse Energy Effects.

BLM disagrees. E.O. 13211 requires a Statement of Energy Effects for those matters identified as significant energy actions. The Order defines a significant energy action as one that is (1) both a significant regulatory action under E.O. 12866 and likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This rule meets neither of those criteria. It has not been designated by OIRA as a significant energy action. Nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy. As discussed earlier in this preamble and in greater detail in the Regulatory Flexibility Act Threshold Analysis prepared in connection with this rule, any financial disincentives from this rule will be very small. Given the relatively high economic value associated with the various energy and mineral filings affected by this rule, we do not expect that the fees in this rule will cause an entity to cease or significantly alter its operations. Nor do we expect the fees to delay energy projects. The procedures in the rule for case-by-case fees provide that projects can move forward even while a fee is being revised or appealed.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with E.O. 13352, BLM has determined that this rule is purely administrative and does not affect cooperative conservation. This rule takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources because it does not interfere with such interests. It is solely a Federal responsibility not involving state or local participation, and has no impact on public health and safety.

Authors

The principal authors of this final rule are: William Gewecke, Gordon Hansen, Paul McNutt, Roger Haskins, and Stephen Salzman of the Fluid and Solid Minerals Groups, assisted by the Regulatory Affairs Group, Bureau of Land Management, DOI, and the Office of the Solicitor, DOI.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration,

Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

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

43 CFR Part 3120

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

43 CFR Part 3130

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

43 CFR Part 3200

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

43 CFR Part 3470

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

43 CFR Part 3500

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

43 CFR Part 3600

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3830

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

43 CFR Part 3833

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

43 CFR Part 3835

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

43 CFR Part 3836

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

43 CFR Part 3860

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

43 CFR Part 3870

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

Dated: September 15, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and the authorities stated below BLM amends parts 3000, 3100, 3110, 3120, 3130, 3200, 3470, 3500, 3600, 3800, 3830, 3833, 3835, 3836, 3860, and 3870 of Title 43 of the Code of Federal Regulations as set forth below:

Subchapter C—Minerals Management (3000)

PART 3000—MINERALS MANAGEMENT GENERAL

■ 1. Revise the authority citation for part 3000 to read as follows:

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

Subpart 3000—General

■ 2. Add § 3000.10 to read as follows:

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

(a) *Setting fees.* Fees may be statutorily set fees, relatively nominal filing fees, or processing fees intended to reimburse BLM for its reasonable processing costs. For processing fees, BLM takes into account the factors in Section 304 (b) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. BLM considers the factors for each type of document when the processing fee is a fixed fee and for each individual document when the fee is decided on a case-by-case basis, as explained in § 3000.11.

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

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

(d) *Timing of fee applicability.* (1) For a document BLM receives before November 7, 2005, we will not charge a fixed fee or a case-by-case fee under this subchapter for processing that document, except for fees applicable under then-existing regulations.

(2) For a document BLM receives on or after November 7, 2005, you must include required fixed fees with documents you file, as provided in § 3000.12(a) of this chapter, and you are subject to case-by-case processing fees as provided in § 3000.11 of this chapter and under other provisions of this chapter.

■ 3. Add § 3000.11 to read as follows:

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

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

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

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

(2) Before performing any case processing, we will give you a written estimate of the proposed fee for reasonable processing costs after we

consider the FLPMA Section 304(b) factors.

(3) You may comment on the proposed fee.

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

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedure in paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this section, but we will not stop ongoing processing unless you do not pay in accordance with paragraph (b)(5) of this section.

(ii) If the fee you would pay under this paragraph (b)(4) is less than BLM's actual costs as a result of consideration of the FLPMA Section 304(b) factors, and we are not able to process your document promptly because of the unavailability of funding or other resources, you will have the option to pay BLM's actual costs to process your document. This will enable BLM to process your document sooner.

(iii) Once processing is complete, we will refund to you any money that we did not spend on processing costs.

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

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

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

(7) You may appeal BLM's estimated processing costs in accordance with the regulations in part 4, subpart E, of this title. You may also appeal any determination BLM makes under paragraph (a) of this section that a document designated for a fixed fee will be processed as a case-by-case fee. We will not process the document further until the appeal is resolved, in accordance with paragraph (b)(5)(i) of this section, unless you pay the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, we will adjust the fee in accordance with paragraph (b)(5)(ii) of this section.

■ 4. Add § 3000.12 to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

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

FY 2006 PROCESSING FEE TABLE

Document/action	Fee
Oil and Gas (Parts 3100, 3110, 3120, 3130):	
Noncompetitive lease application	$335
Competitive lease application	130
Assignment and transfer	75
Overriding royalty transfer, payment out of production	10
Name change, corporate merger, or transfer to heir/devisee	175
Leases consolidation	370
Lease renewal or exchange	335
Lease reinstatement, Class I	65
Leasing under right-of-way	335
Geothermal (Part 3200):	
Noncompetitive lease application	335
Competitive lease application	130
Assignment and transfer of record title or operating right	75
Name change, corporate merger or transfer to heir/devisee	175
Lease consolidation	370
Lease reinstatement	65
Coal (Parts 3400, 3470):	
License to mine application	10
Exploration license application	275
Lease or lease interest transfer	55
Leasing of Solid Minerals Other Than Coal and Oil Shale (Part 3500):	
Applications other than those listed below	30
Prospecting permit application amendment	55
Extension of prospecting permit	90
Lease renewal	430
Mining Law Administration (Parts 3800, 3830, 3850, 3860, 3870)	
Notice of Location *	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing (§ 3835.30)	10
Deferment of Assessment Work	90
Mineral Patent Adjudication	2,520 (more than 10 claims)
	1,260 (10 or fewer claims)
Adverse claim	90
Protest	55

* The existing fee for recording a mining claim or site location (43 CFR 3833) is a total of $165. This includes the initial maintenance fee of $125 and one-time $30 location fee required by Statute and a $10 service charge. The service charge would become a processing fee and would increase to $15 under in the final rule making the total fee $170.

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

PART 3100—OIL AND GAS LEASING

■ 5. Revise the authority citation for part 3100 to read as follows:

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

Subpart 3105—Cooperative Conservation Provisions

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

§ 3105.6 Consolidation of leases.

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

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

■ 7. Revise § 3106.3 to read as follows:

§ 3106.3 Fees.

Each transfer of record title or of operating rights (sublease) for each lease must include payment of the processing fee for assignments and transfers found in the fee schedule in § 3000.12 of this chapter. Each request for a transfer to an heir or devisee, request for a change of name, or notification of a corporate merger under § 3106.8, must include payment of the processing fee for name changes, corporate mergers or transfers to heir/devisee found in the fee schedule in § 3000.12 of this chapter. Each transfer of overriding royalty or payment out of production must include payment of the processing fee for overriding royalty transfers or payments out of productions found in the fee schedule in § 3000.12 of this chapter for each lease to which it applies.

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

§ 3106.4–3 Mass transfers.

* * * * *

(d) Include with your mass transfer the processing fee for assignments and transfers found in the fee schedule in § 3000.12 of this chapter for each such interest transferred for each lease.

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

§ 3106.8–1 Heirs and devisees.

(a) * * * Include the processing fee for transfers to heir/devisee found in the fee schedule in § 3000.12 of this chapter with your request to transfer lease rights. * * *

* * * * *

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

§ 3106.8–2 Change of name.

* * * Include the processing fee for name change found in the fee schedule in § 3000.12 of this chapter with your notice of name change. * * *

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

§ 3106.8–3 Corporate merger.

* * * Include the processing fee for corporate merger found in the fee schedule in § 3000.12 of this chapter with your notification of a corporate merger.* * *

Subpart 3107—Continuation, Extension or Renewal

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

§ 3107.7 Exchange leases: 20-year term.

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

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

§ 3107.8–2 Application.

File your application to renew your lease in triplicate in the proper BLM office at least 90 days, but not more than 6 months, before your lease expires. Include the processing fee for lease renewal or exchange found in the fee schedule in § 3000.12 of this chapter.

Subpart 3108—Relinquishment, Termination, Cancellation

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

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

(a) * * *

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

* * * * *

Subpart 3109—Leasing Under Special Acts

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

§ 3109.1–2 Application.

No approved form is required for an application to lease oil and gas deposits underlying a right-of-way. The right-of-way owner or his/her transferee must file the application in the proper BLM office. Include the processing fee for leasing under right-of-way found in the fee schedule in § 3000.12 of this chapter. If the transferee files an application, it must also include an executed transfer of the right to obtain a lease. * * *

PART 3110—NONCOMPETITIVE LEASES

■ 16. Revise the authority citation for part 3110 to read as follows:

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

Subpart 3110—Noncompetitive Leases

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

§ 3110.4 Requirements for offer.

(a) * * * The original copy of each offer must be typed or printed plainly in ink, signed in ink and dated by the offeror or an authorized agent, and must include payment of the first year's rental and the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter.

* * * A noncompetitive offer to lease a future interest applied for under § 3110.9 must include the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter. * * *

* * * * *

PART 3120—COMPETITIVE LEASES

■ 18. Revise the authority citation for part 3120 to read as follows:

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

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

§ 3120.5–2 Payments required.

* * * * *

(b) * * *

(3) The processing fee for competitive lease applications found in the fee schedule in § 3000.12 of this chapter for each parcel.

* * * * *

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

■ 20. Revise the authority citation for part 3130 to read as follows:

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

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

§ 3132.3 Payments.

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

* * * * *

Subpart 3135—Transfers, Extensions, Consolidations, and Suspensions

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

§ 3135.1–2 Requirements for filing of transfers.

* * * * *

(a)(1) * * *

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

* * * * *

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

§ 3135.1–6 Consolidation of leases.

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

* * * * *

PART 3200—GEOTHERMAL RESOURCE LEASING

■ 24. Revise the authority citation for part 3200 to read as follows:

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

Subpart 3204—Noncompetitive Leasing

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

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

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

Subpart 3205—Competitive Leasing

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

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

(a) * * *

(3) The first year's advance rent;

(4) The processing fee for competitive lease applications found in the fee schedule in § 3000.12 of this chapter; and

* * * * *

Subpart 3210—Additional Lease Information

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

§ 3210.12 May I consolidate leases?

* * * You must include the processing fee for lease consolidations found in the fee schedule in § 3000.12 of this chapter with your request to consolidate leases.

Subpart 3211—Fees, Rent, and Royalties

■ 28. Amend § 3211.10 by:

■ A. Revising the section heading;

■ B. Revising paragraph (b) introductory text;

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

■ D. In paragraph (b), redesignate the table entries (4) through (9) as (5) through (10); and add a new table entry (4).

The revisions and addition read as follows:

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

* * * * *

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

FEES, RENT, AND ROYALTIES

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

* * * * *

Subpart 3213—Relinquishment, Termination, Cancellation, and Expiration

■ 29. Revise § 3213.19 to read as follows:

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

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

Subpart 3216—Transfers

■ 30. Revise § 3216.14 to read as follows:

§ 3216.14 What fees and forms does a transfer require?

With each transfer request send us the correct form, if required, and pay the transfer processing fee found in the fee schedule in § 3000.12 of this chapter. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit 3 times the listed fee with the application. Use the following chart to determine forms and fees:

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

Group 3400—Coal Management

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

■ 31. Revise the authority citation for part 3470 to read as follows:

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

Subpart 3473—Fees, Rentals, and Royalties

■ 32. Revise § 3473.2 to read as follows:

§ 3473.2 Fees.

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

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

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

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

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

(f) The applicant who nominates a tract for a competitive lease sale must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by the provisions below. BLM will include in the sale notice under § 3422.2(b)(9) of this chapter a statement of the total cost recovery fee paid to BLM by the applicant up to 30 days before the competitive lease sale. The cost recovery process for a competitive coal lease follows:

(1) The applicant nominating the tract for competitive leasing must pay the cost recovery amount before BLM will publish a notice of the competitive lease sale;

(2) Before the lease is issued:

(i) The successful bidder, if someone other than the applicant, must pay to BLM the cost recovery amount specified in the sale notice; and

(ii) The successful bidder must pay all processing costs BLM incurs after the date of the sale notice;

(3) If the successful bidder is someone other than the applicant, BLM will refund to the applicant the amount paid under paragraph (f)(1) of this section; and

(4) If there is no successful bidder, the applicant remains responsible for all processing fees.

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

§§ 3473.2–1 and 3473.2–2 [Removed]

■ 33. Remove §§ 3473.2–1 and 3473.2–2.

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

■ 34. Revise the authority citation for part 3500 to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1701 *et seq.*; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

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

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

§ 3501.1 What is the authority for this part?

* * * * *

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

* * * * *

Subpart 3504—Fees, Rental, Royalty, and Bonds

■ 35. Add § 3504.10 to read as follows:

§ 3504.10 What fees must I pay?

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

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

Document	Processing fee
(1) Prospecting permit application	Case-by-case basis as described in Sec. 3000.11 of this chapter.
(2) Prospecting permit application amendment	As found in the fee schedule in § 3000.12 of this chapter.
(3) Prospecting permit extension	As found in the fee schedule in § 3000.12 of this chapter.
(4) Preference rigth lease application	Case-by-case basis as described in § 3000.11 of this chapter.
(5) Successful competitive lease application	Case-by-case basis as described in § 3000.11 of this chapter, and modified by §§ 3508.14 and 3508.21.
(6) Lease renewal application	As found in the fee schedule in § 3000.12 of this chapter.
(7) Application to waive, suspend, or reduce your rental, minimum royalty, or royalty rate.	Case-by-case basis as described in § 3000.11 of this chapter.
(8) Future or fractional interest lease application	Case-by-case basis as described in § 3000.11 of this chapter.

■ 36. Amend § 3504.12 by revising the heading and paragraph (a) to read as follows:

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

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

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

* * * * *

Subpart 3505—Prospecting Permits

■ 37. Revise § 3505.12 to read as follows:

§ 3505.12 How do I obtain a prospecting permit?

Deliver 3 copies of the BLM application form to the BLM office with jurisdiction over the lands you are interested in. Include the first year's rental with your application. You will also be charged a processing fee, which BLM will determine on a case-by-case basis as described in § 3000.11 of this chapter. For more information on fees and rentals, see subpart 3504 of this part.

■ 38. Amend § 3505.30 by removing the last sentence and by revising the third sentence to read as follows:

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

* * * You must include the rental for any added lands and the processing fee for prospecting permit application amendments found in the fee schedule in § 3000.12 of this chapter with your amended application.

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

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

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

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

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

* * * * *

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

§ 3505.51 [Removed]

■ 41. Section 3505.51 is removed.

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

§ 3505.64 How do I apply for an extension?

* * * Include the processing fee for extensions of prospecting permits found in the fee schedule in § 3000.12 of this chapter and the first year's rental in accordance with §§ 3504.10, 3504.15, and 3504.16 of this part.

Subpart 3507—Preference Right Lease Applications

■ 43. Revise § 3507.16 to read as follows:

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

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

Subpart 3508—Competitive Lease Applications

■ 44. Amend § 3508.12 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) as follows:

§ 3508.12 How do I get a competitive lease?

* * * * *

(b) Before BLM publishes a notice of lease sale, pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by §§ 3508.14 and 3508.21. If someone else is the successful bidder, BLM will refund you the amount you paid under this paragraph. If there is no successful bidder, you remain responsible for all processing fees.

* * * * *

■ 45. Amend § 3508.14 by adding a new paragraph (b)(7) to read as follows:

§ 3508.14 How will BLM publish the notice of lease sale?

* * * * *

(b) * * *

(7) If the tract being offered for competitive sale was nominated by an applicant, a statement of the total cost recovery fee paid to BLM by the applicant under § 3508.12 up to 30 days before the competitive lease sale.

■ 46. Amend § 3508.21 by removing the word ''and'' at the end of paragraph (a)(4), by removing the period and adding in its place a semi-colon at the end of paragraph (a)(5), and adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 3508.21 What happens if I am the successful bidder?

(a) * * *

(6) If you were not the applicant, pay the cost recovery fee specified in the lease sale notice; and

(7) Pay all processing costs BLM incurs after the date of the sale notice.

* * * * *

Subpart 3509—Fractional and Future Interest Lease Applications

■ 47. Amend § 3509.16 by removing the second sentence and adding a new sentence at the end to read as follows:

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

* * * BLM will charge you a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

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

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

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

■ 49. Amend § 3509.46 by removing the second sentence and adding a new sentence at the end to read as follows:

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

* * * BLM will charge you a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

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

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

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

Subpart 3511—Lease Terms and Conditions

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

§ 3511.27 How do I renew my lease?

* * * Send us 3 copies of your application together with the processing fee for lease renewal found in the fee schedule in § 3000.12 of this chapter and an advance rental payment of $1 per acre or fraction of an acre.

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

■ 52. Add § 3513.16 to read as follows:

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

Yes. BLM will charge you a processing fee on a case-by-case basis, as described in § 3000.11 of this chapter.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL

■ 53. Revise the authority citation for part 3600 to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1701 *et seq.*; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

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

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

* * * * *

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

■ 55. Amend § 3602.31 by:

■ A. Revising the section heading;

■ B. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively; and

■ C. Adding new paragraph (b) to read as follows:

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

* * * * *

(b) BLM will charge the purchaser a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

* * * * *

■ 56. Amend § 3602.42 by redesignating paragraphs (b)(8) through (b)(15) as paragraphs (b)(9) through (b)(16), respectively, and adding a new paragraph (b)(8) to read as follows:

§ 3602.42 How does BLM publicize competitive mineral materials sales?

* * * * *

(b) * * *

(8) If the sale is by request, the total cost recovery fee paid to BLM by the applicant up to 21 days before the sale;

* * * * *

■ 57. Amend § 3602.43 by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and adding a new paragraph (a) to read:

§ 3602.43 How does BLM conduct competitive mineral materials sales?

(a) The applicant requesting a mineral materials sale must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter as modified by the provisions in this section and in § 3602.42(b)(8). The cost recovery process for a competitive mineral materials sale follows:

(1) The applicant requesting the sale must pay the cost recovery fee amount before BLM will publish a sale notice.

(2) Before the contract is issued:

(i) The successful bidder, if someone other than the applicant, must pay to BLM the cost recovery amount specified in the sale notice; and

(ii) The successful bidder must pay all processing costs BLM incurs after the date of the sale notice.

(3) If the successful bidder is someone other than the applicant, BLM will refund to the applicant the amount paid under paragraph (a)(1) of this section.

* * * * *

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

§ 3602.44 How do I make a bid deposit?

* * * * *

(f) BLM will charge the successful bidder a processing fee on a case-by-case basis as described in § 3000.11 of this chapter and § 3602.43.

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

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

* * * * *

(e) *Fee.* BLM will charge a processing fee on a case-by-case basis as described in § 3000.11 of this chapter.

Group 3800—Mining Claims Under the General Mining Laws

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

■ 60. Revise the authority citation for part 3800 to read as follows:

Authority: 16 U.S.C. 351 and 460y–4; 30 U.S.C. 22 and 28k; 31 U.S.C. 9701; 43 U.S.C. 1201 and 43 U.S.C. 1701 *et seq.*

■ 61. Add a new subpart 3800, consisting of § 3800.5, to read as follows:

Subpart 3800—General

§ 3800.5 Fees.

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

(b) An applicant for any action for which a mineral examination, including

a validity examination or a common variety determination, and their associated reports, is performed under § 3809.100 or § 3809.101 of this part must pay a processing fee on a case-by-case basis as described in section 3000.11 of this chapter for such examination and report.

(c) An applicant for a mineral patent under part 3860 of this chapter must pay a processing fee on a case-by-case basis as described in § 3000.11 of this chapter for any validity examination and report prepared in connection with the application.

(d) An applicant for a mineral patent also is required to pay a processing fee under § 3860.1 of this chapter.

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

■ 62. Revise the authority citation for part 3830 to read as follows:

Authority: 18 U.S.C. 1001, 3571; 30 U.S.C. 22 *et seq.*, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1701 *et seq.*; 44 U.S.C. 3501 *et seq.*; 115 Stat. 414.

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

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

* * * * *

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

PART 3833—RECORDING MINING CLAIMS AND SITES

■ 64. Revise the authority citation for part 3833 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*, 621–625; 43 U.S.C. 2, 1201, 1457, 1701 *et seq.*; 62 Stat. 162; 115 Stat. 414.

■ 65. Revise § 3833.11(c) to read as follows:

§ 3833.11 How do I record mining claims and sites?

* * * * *

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

* * * * *

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

§ 3833.22 How do I amend my location?

* * * * *

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

* * * * *

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

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

* * * * *

(c) For each mining claim or site transferred, each transferee must pay the full processing fee specified in the table of service charges and fees in § 3830.21 of this chapter.

* * * * *

PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES

■ 68. Revise the authority citation for part 3835 to read as follows:

Authority: 30 U.S.C. 22, 28, 28f–28k; 43 U.S.C. 2, 1201, 1457, 1701 *et seq.*; 50 U.S.C. App. 501, 565; 115 Stat. 414.

■ 69. Revise § 3835.32(c) to read as follows:

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

* * * * *

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

* * * * *

■ 70. Revise § 3835.33(e) to read as follows:

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

* * * * *

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

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

■ 71. Revise the authority citation for part 3836 to read as follows:

Authority: 30 U.S.C. 22, 28, 28b–28e; 43 U.S.C. 2, 1201, 1457, 1701 *et seq.*; 50 U.S.C. App. 501, 565.

■ 72. Amend § 3836.23 by revising paragraph (g) to read as follows:

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

* * * * *

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

PART 3860—MINERAL PATENT APPLICATIONS

■ 73. Revise the authority citation for part 3860 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1701 *et seq.*

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

Subpart 3860—General

§ 3860.1 Fees.

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

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

Subpart 3862—Lode Mining Claim Patent Applications

■ 75. Revise § 3862.1–2 to read as follows:

§ 3862.1–2 Fees.

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

Subpart 3863—Placer Mining Claim Patent Applications

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

§ 3863.1 Placer mining claim patent applications: General.

* * * * *

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

Subpart 3864—Millsite Patents

■ 77. Add § 3864.1–5 to read as follows:

§ 3864.1–5 Fees.

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

PART 3870—ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

■ 78. Add an authority citation for part 3870 to read as follows:

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

Subpart 3871—Adverse Claims

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

§ 3871.1 Filing of claim.

* * * * *

(d) Each adverse claim filed must include the processing fee for adverse claims found in the fee schedule in § 3000.12 of this chapter.

Subpart 3872—Protests, Contests, and Conflicts

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

§ 3872.1 Protest against mineral applications.

* * * * *

(b) A protest by any party, except a Federal agency, must include the processing fee for protests found in the fee schedule in § 3000.12 of this chapter.

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