

Section 1864.1–3 Action on Application

Section 1864.1–3(a)(1) currently provides, in part, that the BLM will deny an application for a disclaimer if “[m]ore than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States.” This deadline was modeled after the statute of limitations in the Quiet Title Act, which also includes a disclaimer provision (28 U.S.C. 2409a(e)). The Quiet Title Act now provides that “any civil action under this section, except for an action brought by a state, will be barred unless it is commenced within twelve years of the date upon which it accrued. Such action will be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.” (28 U.S.C. 2409a(g)).

As enacted in 1972, the Quiet Title Act subjected all parties, including states, to the 12-year limitation period. In 1986, Congress amended the Quiet Title Act to exempt states from this 12-year statute of limitations in most instances. However, BLM has not updated 43 CFR 1864.1–3(a), issued in 1984, to reflect the 1986 change in the Quiet Title Act. Thus, today’s rule amends this section to be more consistent with the Quiet Title Act.

Today’s rule adds language exempting states from the 12-year filing deadline to allow states, as we have defined this term in this rule, to apply for disclaimers of interest under FLPMA at any time. We also made editorial changes to this section and brought up-to-date a reference to another section.

Section 1864.1–4 Consultation With Other Agencies

The existing regulations at 43 CFR 1864.1–4 direct BLM to refer disclaimer applications to the affected Federal agency for comment before making a decision on the application. As a result of comments BLM added provisions to today’s rule stating that if a surface management agency has a valid objection to an application, BLM will reject the application. If the application is approved by the surface management agency, then BLM can issue a recordable disclaimer of interest.

We specifically made the change in response to the U.S. Forest Service comments by clarifying in this final rule how BLM will handle disclaimer of interest applications for lands managed by another land managing agency.

IV. How Did BLM Fulfill Its Procedural Obligations?

E.O. 12866, Regulatory Planning and Review

This regulation is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866. Therefore it does not require an assessment of potential benefits and costs, nor does it require an explanation pertaining to the manner in which the regulatory action is consistent with a statutory mandate and, to the extent allowed by law, promotes the President’s priorities and avoids undue interference with state, local, and tribal governments in the exercise of their governmental functions. Because this rule is not a “significant regulatory action” the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

Commenters asserted that the rulemaking is a significant regulatory action because it relates directly to R.S. 2477 claims and will, therefore, cause adverse impacts to the environment; presents novel legal issues; and is inconsistent with the actions of another agency.

We disagree and stand by our analysis that the rule is not a significant regulatory action. Today’s rule does not change the basic process for issuing recordable disclaimers and will not have additional environmental impact, will better conform to existing statutes, and better explains how the disclaimer process relates to other agencies.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The changes to the current rules will have no impact on an applicant’s costs for filing or processing an application for a disclaimer of interest which currently consist of a one-time filing fee of \$100 and fact-specific processing costs with provisions for a fee waiver.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This regulation is not a “major rule” as defined at 5 U.S.C. 804(2) because it

will not have an annual effect on the economy greater than \$100 million, nor will it result in major cost or price increases for consumers, industries, government agencies, or regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

BLM has determined that this 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 and tribal government, or private sector expenditures of \$100 million or more in any one year. This rule will not significantly or uniquely affect small governments.

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

In accordance with Executive Order 12360, BLM has found that the rule does not have significant takings implications. No takings of personal or real property will occur as a result of this rule. The rule broadens the opportunity for the United States to issue disclaimers of interest in land, thereby making it easier to remove clouds on title to certain lands. A takings implication analysis is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact assessment. The rule does not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt state law. The rule broadens the opportunity for states and other entities to apply for a disclaimer of interest in land, thereby removing clouds on the title to certain lands.

A commenter believes the rulemaking will impact the public under Executive Order 13132 because the rulemaking would change Federal and state land ownership.

We disagree. Although states will gain an additional ability to apply for disclaimers because we are removing the states’ 12-year filing deadline, no substantive changes in ownership would occur because recordable disclaimers may only be issued for