

Homestead Act, the Mining Claim Rights Restoration Act, or the Energy Policy Act.

1. The Federal Land Policy and Management Act

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary to manage all public lands under broad-ranging authority. This Act resulted from Congress completely overhauling the entire public land management system of the United States. Relevant sections in FLPMA:

- Require recording and maintenance of all mining claims or sites with BLM or they are forfeited (section 314, 43 U.S.C. 1744);
- Make knowing disregard or circumvention of any regulation issued under the authority of FLPMA a Federal criminal offense (section 303, 43 U.S.C. 1733).

2. The General Mining Law

How Do I Locate Minerals Under the General Mining Laws?

The General Mining Laws, *as amended*, which generally comprise chapters 2, 11, 12, 12A, 15, 16, and 20, and section 161 of title 30 of the United States Code, are the primary statutes governing disposition of minerals on Federal lands by location. Locating claims or sites has four elements:

- Discovering a valuable mineral deposit (for claims)
- Locating mining claims or sites
- Recording mining claims or sites
- Maintaining mining claims or sites

Claimants who comply with these four elements gain a right of possession to the deposit and a right to extract and develop the minerals. This right includes the use of the surface for exploration, mineral development, mineral extraction, and uses reasonably incident to exploration, extraction, and development. This right is a real property interest and may be bought, sold, transferred, leased, rented, devised, or inherited. The United States retains ownership and title to the land, even while a claimant is developing the mineral deposit. On lands where the United States is not the owner of the surface estate, which is the situation on Stockraising Homestead Act and Taylor Grazing Act lands, the surface owner retains title to the surface of the land and BLM administers the mineral estate reserved to the United States.

3. Mineral Leasing Act

The Mineral Leasing Act allows you to lease the Federal lands for development of certain types of mineral.

The Mineral Leasing Act made several minerals that were once locatable and are now not available under the General Mining Law leaseable after February 25, 1920, including:

- Oil and gas
- Coal
- Potassium, sodium, and phosphate
- Oil shale, tar sands, native asphalt, solid and semisolid bitumen
- Oil recovered from oil sands after the deposit is mined or quarried
- Sulphur in Louisiana and New Mexico that belongs to the United States

These minerals are administered under 43 CFR Groups 3100, 3200, 3400, and 3500.

4. Mineral Materials Act and Surface Resources Act

The Mineral Materials Act and the Surface Resources Act govern sales of mineral materials on Federal land. These mineral materials include petrified wood and common variety mineral materials. Common variety mineral materials were locatable until July 23, 1955, when the Surface Resources Act (30 U.S.C. 611–615) made all deposits of common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay salable and therefore no longer locatable. Uncommon varieties of mineral materials, which have distinct and special value, are still locatable under the General Mining Law. BLM administers mineral materials under 43 CFR part 3600.

5. Stockraising Homestead Act and the Homestead Act

Claimants must follow additional procedures when seeking to locate mining claims or sites on lands patented under the Stockraising Homestead Act (SRHA) of 1916 (43 U.S.C. 291–299) or, in some instances, the Homestead Act of 1862, as amended (43 U.S.C. 161–284). The United States owns only the mineral estate in these lands.

Under the Homestead Act, the United States granted land patents (or title) to homesteaders who wanted to enter and cultivate the land. However, in some situations, particularly in the arid West, some land was not suitable for traditional crop farming. The SRHA allowed homesteaders to use the land for grazing, instead of traditional farming. For those who already had an application (entry) under the Homestead Act but could not meet the cultivation and irrigation requirements, the SRHA permitted conversion of the Homestead entry into an SRHA entry. The Government issued these converted patents under the Homestead Act.

However, unlike other Homestead Act patents that granted title to both the surface and mineral estates, the converted entries and patents conveyed title to the surface estate only and reserved the mineral estate to the United States under the SRHA.

Thus, certain lands that appear to have been patented under the authority of the Homestead Act after December 29, 1916, were patented under the SRHA with a Federal mineral estate reservation. You may locate mining claims or tunnel sites (but not mill sites) on these reserved mineral estates under certain conditions. Congress enacted amendments to the Stockraising Homestead Act in 1993 that impose notification requirements on mining claimants other than the surface owner who wants to enter Stockraising Homestead Act lands to explore for minerals and locate mining claims. Act of April 16, 1993; Pub. L. 103–23; 43 U.S.C. 299(b); 43 CFR part 3838.

6. Energy Policy Act

The Energy Policy Act (30 U.S.C. 242) no longer requires assessment work for oil shale placer claims, and instead requires payment of an annual \$550 fee for most oil shale claims, and also requires an annual filing of a notice of intent to hold. In cases where \$550 is due, the claimant is not required to pay an additional maintenance fee.

7. Federal Oil and Gas Royalty Management Act

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that a mining claimant may seek to convert an oil placer mining claim that was validly located before February 24, 1920, to a non-competitive oil and gas lease as of the date the claimant fails to comply with section 314 of FLPMA and the mining claim is deemed abandoned and void. The claimant's failure must be inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the claimant.

8. State Laws

Most states have passed their own laws about mining claim location, recording, and annual maintenance as authorized by the General Mining Law. In addition to following Federal regulations, each claimant must follow all applicable state law requirements not in conflict with these rules.

II. Discussion of Public Comments

A. General Discussion

We received 103 documents commenting on the proposed rule published August 27, 1999 (64 FR