

rewritten version of section 3833.11(a) in fact does not use the term at all, and we have removed the definition from the final rule.

Several comments criticized the definition of "local recording office" for including the notion that claimants need to record documents in the local recording office to make them effective. These comments noted that such documents are binding between the parties regardless of whether they are recorded. State law governs whether documents must be recorded with the state in order to be effective.

Consequently, we have removed any reference to the legal effect of recording with state offices from this definition.

Subpart B—Providing Information to BLM

Section 3830.8 How Will BLM Use the Information it Collects and What Does it Estimate the Burden Is On the Public?

One comment stated that our estimate that a customer needs 8 minutes of time per document was low, but offered no explanation or time estimate for BLM to work with. We have not made a change in the final rule.

Subpart C—Mining Law Minerals

Section 3830.12 What Are Characteristics of a Locatable Mineral Deposit?

We received a large number of comments adverse to proposed paragraph 3830.12(a)(2), which stated that a characteristic of a locatable mineral is that the mineral is found in a quantity and quality to constitute a valuable mineral deposit. Paragraph 3830.12(a)(2) also defined "valuable mineral deposit." Some of the comments stated that our language imprecisely paraphrased the prudent person test and that we proposed to change the law by saying that in order for a mineral to be locatable it must first be found in quantities and qualities to support a valuable or profitable mine. We removed paragraph 3830.12(a)(2). The purpose of this section is to describe characteristics of locatable minerals, not characteristics of a validly-located mining claim. By removing this paragraph, we are not suggesting that a discovery of a valuable mineral deposit is not necessary to locate a valid mining claim.

In a similar manner, a number of comments opposed paragraph 3830.12(b), which we proposed to move from subpart 3711 and rewrote in plain language. This section concerns the definition of an uncommon variety of a mineral material under the Surface Resources Act (30 U.S.C. 611), subject to

location under the General Mining Law. The Federal 9th Circuit Court of Appeals in 1969 laid out five tests that a mineral material must meet in order to qualify as uncommon and therefore subject to location. See *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1969). In the final rule, we replaced the original language of proposed section 3830.12(b) paraphrasing the holding of the *McClarty* Court with the five tests directly from the decision to avoid ambiguity.

Subpart D—BLM Service Charge and Fee Requirements

Section 3830.21 What Are the Different Types of Service Charges and Fees?

One comment, repeated by several others, stated that it was hard to tell whether some of the charges and fees shown in the table in this section applied on a per claim basis or per filing. It is not necessary to amend the table in response to these comments. The column heading in the table clearly says "Amount due per mining claim or site."

Section 3830.22 Will BLM Refund Service Charges or Fees?

One comment asked why oil shale claims are excluded from this section. The Mineral Leasing Act prohibits locating oil shale claims after February 25, 1920. Therefore, the location fees discussed in this section do not apply to oil shale claims, and there is no need to provide for their refund. Also, the Energy Policy Act of 1992 established separate fees for oil shale placer claims.

Another comment asked why we removed the previous provision on applying overpayments of maintenance fees to years ahead. You may still apply an overpayment to future fee requirements. We have restored this provision in the final rule.

One comment stated that not refunding service charges is a change from the existing regulations and suggested that the final rule allow for refund of service charges. The previous regulations did provide for service charge refunds if BLM found the claim to be void. However, BLM has changed this practice because BLM spends the service charge funds it receives in order to process the documents, even if the claim for which the documents were filed turns out to be void. Therefore, the final rule allows refunds of overpayments only.

Subpart E—Failure To Comply With These Regulations

Section 3830.91 What Happens if I Fail To Comply With These Regulations?

Several comments addressed this section. One said the use of the word "defect" was too broad. The term "defect" is intended to cover a broad range of circumstances. BLM receives many documents and payments that are incomplete in various ways. The purpose of this regulation is to explain how claimants will be able to fix defects, to the extent they are curable, and to caution claimants about defects that cannot be cured.

Another questioned the Secretary's authority to cancel claims if cancellation is not expressly provided for by statute. We have added a list of ways in which you could forfeit your claims or sites by law or regulation. In addition, under the authority of 43 U.S.C. 1201, you may forfeit a claim or site if there is a defect in your compliance with the regulations and you fail to remedy the defect after BLM notifies you.

Another comment stated that an owner of a forfeited or canceled claim should not be held responsible for reclamation of the claim. A reclamation requirement is not new. Under the Federal Land Policy and Management Act, the Secretary has the responsibility to prevent unnecessary or undue degradation of the public lands. 43 U.S.C. 1732(b). You may learn more about your reclamation responsibilities in 43 CFR subpart 3809. You remain responsible for reclamation if you forfeit a claim or site, regardless of the reason for the forfeiture.

Several comments stated that most of the language of proposed part 3830 is explanatory or factual, and did not impose requirements on miners, and therefore that it would not be appropriate to impose penalties, including forfeiture of mining claims, on persons who violate the regulations in "this part," part 3830. We have amended the heading to make it clear that this section depicts the consequences for failing to comply with the regulations in all the parts and subparts from part 3830 through 3839.

Section 3830.93 When Are Defects Curable?

One comment specifically addressed paragraph (b) and asked for examples of requirements imposed by regulation (curable) and not by statute (incurable). We have added a list of the requirements that are statutory in section 3830.91. The ways in which