

claimants may fail to comply with regulatory requirements are innumerable. BLM will notify you when they have determined that a filing or payment you have submitted is defective, but curable. For example, when recording a mining claim with BLM, FLPMA requires claimants to include a description of the claim that allows BLM to find the claim on the ground. 43 U.S.C. 1744(b). When you record a claim with BLM, the regulations require that you file a map showing where the claim is situated. If you omit a description altogether, you have failed to record the claim as required by statute, so the failure to include it is not curable, and BLM will reject the document. (In such a case, you may re-file, but your claim will be subject to location by other locators until you provide the description required by law. However, if you include a description that is inadequate, BLM will allow you to cure the defect, just as we would if you failed to provide material required by regulation but not statute, without losing your time advantage over competitors.) On the other hand, if you fail to include a map as required by regulation, BLM will send a decision to you, allowing you 30 days to send in the missing map. We encourage you to contact the BLM State Office if you have questions about filing requirements.

One comment suggested cross-referencing the sections of this rule into two groups, one for curable defects and one for incurable defects. We believe the existing organization is sufficiently clear. Another comment suggested that we should provide a listing of the common errors and defects a locator or claimant should avoid. We decline to do this, because such a list would be extremely lengthy and, even then, likely to have omissions. Such defects will become apparent if you read the individual regulations pertaining to your specific activity.

Section 3830.95 What if I Pay Only Part of the Service Charges, Location Fees, or First Year Maintenance Fees for Newly Filed Claims or Sites?

and

Section 3830.96 What if I Pay Only Part of The Service Charges and Fees for Oil Shale Claims or Previously-Filed Mining Claims or Sites?

Several comments said these sections proposed no cure for defects in complying with requirements that are not statutory, a result they say is inconsistent with section 3830.91. Section 3830.91 provides that defects in

complying with statutory requirements are not curable, while defects in complying with regulatory requirements are curable. In fact, sections 3830.95 and 3830.96 provide a means by which claimants may cure defects in complying with regulatory requirements. Both sections provide that BLM will notify you of such defects and give you 60 days from the date you receive notification to remedy curable defects in small miner waiver filings and 30 days from the date you receive notification to remedy all other curable defects. The comments said that the old regulations at section 3833.1–3 allowed claimants to cure defective service charge payments when recording a new claim within 90 days of the location of the claim, but that the proposed rule allowed no such cure. We reorganized sections 3830.95 and 3830.96 to make clear that you may still cure defective fees and charges by resubmitting the location with a complete payment of fees and charges within the 90-day period that FLPMA provides for you to record a new mining claim or site.

Also, in section 3830.96 in the proposed rule we inadvertently omitted a provision that would allow claimants who own existing claims or sites, including oil shale claims, to cure an incomplete service charge payment by submitting the complete payment within 30 days after receiving notice of the defect from BLM. We have corrected this oversight in the final rule.

Part 3831—Mineral Lands Available for Locating Mining Claims or Sites

This part is reserved so that BLM may, at some future time, consolidate the available information describing the public lands that are open to mineral entry. This information is currently found in 43 CFR Group 2000, parts 3730, 3740, 3809, 3810, and 3820.

Part 3832—Locating Mining Claims or Sites

This part consolidates location requirements for lode and placer mining claims and mill and tunnel sites, which were in 43 CFR subpart 3831 and part 3840 of the previous regulations.

Section 3832.1 describes what location is. Sections 3832.10 through 3832.12 describe general procedures for locating mining claims or sites. Sections 3832.20 through 3832.22 provide specific requirements for lode and placer mining claims.

Sections 3832.30 through 3832.34 contain specific requirements for dependent and independent or custom mill sites (these terms are explained in section 3832.31). Sections 3832.40 through 3832.45 contain specific

requirements for tunnel sites. Sections 3832.90 and 3832.91 specify when and how you can correct defects in your location of claims or sites.

Subpart A—Locating Mining Claims and Sites

Section 3832.1 What Does It Mean To Locate Mining Claims or Sites?

Several comments asked whether a claimant must discover a valuable mineral deposit before locating a mining claim or a mill site. While you may locate and record a mining claim before discovering a valuable mineral, your mining claim is not valid until you have made such a discovery. In addition, you may locate and record mill sites only on nonmineral lands. Therefore, in this final rule, we have removed discovery as an element of locating mining claims.

Section 3832.11 How do I locate mining claims or sites? One comment stated that the law does not require discovery before location and that our regulations need to reflect this. We have amended this section to recognize that claimants may locate mining claims before discovering a valuable mineral deposit. However, we have added a provision that states that the location is not valid until the claimant has discovered a valuable mineral deposit. As the U.S. Supreme Court has recognized:

[I]t has come to be generally recognized that while discovery is the indispensable fact and the marking and recording of the claim dependent upon it, yet the order of time in which these acts occur is not essential to the acquisition from the United States of the exclusive right of possession of the discovered minerals or the obtaining of a patent therefor, but that discovery may follow after location and give validity to the claim as of the time of discovery, provided no rights of third parties have intervened.

Union Oil Co. v. Smith, 249 U.S. 337, 347 (1919).

Several comments noted some lack of clarity in some of the language in this section. We have made editorial changes to the text to clarify our intent and the requirements in this section.

One comment suggested several additions to paragraph (b), stating that we needed to emphasize that you can locate mining claims and sites only on Federal lands, that you must comply with applicable state monumenting requirements, and that the requirement for posting public notice of the claim should include a statement of the name of the claim. We have placed the necessary language to effect the first addition in paragraph (b)(1) in the final rule. We believe that paragraph (b)(5), which requires claimants to follow all relevant state law requirements, would