

surface management agency before beginning operations.

One comment suggested that we remove paragraph (a)(6), because miners should be able to use mill sites for mine closure operations. The case law rejects this idea. Mill sites may not be located or patented for closure operations alone. You may only locate or patent mill sites for the support of a mining operation. You may use a mill site for the storage of top soil and materials that you removed in initial mine stripping that you will later replace on the mine site for reclamation. Of course, you may reclaim a mill site and, indeed, must do so upon termination of your operation. See *United States v. Utah International, Inc.*, 45 IBLA 73 (1980).

We have amended this section to describe separately the types of uses allowed for independent or custom mill sites.

Section 3832.44 What Rights do I Have to Minerals Within my Tunnel Site?

We revised paragraph (c) of this section for the sake of clarity. Although no one commented on this provision, on reviewing it while drafting the final rule, we found its wording in the proposed rule somewhat inaccurate. The intent of this paragraph is that, to maintain your right to possess all unknown, undiscovered veins, lodes, or ledges that your tunnel may intersect as you develop it, you must perform at least some work on the tunnel within every consecutive 6-month period.

Subpart E—Defective Locations

Section 3832.91 How Do I Amend a Mining Claim or Site Location if it Exceeds the Size Limitations?

Numerous industry comments objected to the provision in paragraph (a) that you would forfeit a claim or site if it were oversized by more than 10 percent, and said that any forfeiture should only cover the excess acreage. After further consideration, BLM agrees and has removed the language in the final rule. If a claim is oversize, BLM will issue a decision, notify you, and direct you to file an amended location certificate correcting the matter within 30 days.

Part 3833—Recording Mining Claims or Sites [Added]

This part walks you through the Federal process for recording a mining claim or site.

Section 3833.1 describes what it means to record mining claims and sites and why you must record your mining claims and sites. The recording process provides BLM with a record of claims and sites, as required by FLPMA.

Sections 3833.10 and 3833.11 outline the procedures for recording mining claims and sites. Specifically, section 3833.11 describes how you record mining claims and sites. Some of this information may be the same information that you used to locate your claim under part 3832.

Sections 3833.20 through 3833.23 describe when and how you may amend the record of a previously located mining claim or site. Sections 3833.30 through 3833.35 cover transfers of mining claims or sites.

Finally, sections 3833.90 through 3833.93 describe how to cure certain defects in your recording of mining claims or sites.

Section 3833.1 Why Must I Record Mining Claims and Sites?

A comment suggested that BLM use the term “record” in these regulations to refer to the county recorder’s office and the term “file or filing” to refer to documents given to BLM. We did not adopt this comment because the term file or filing as applied to a notice of location can be confused with the other types of filings claimants make with BLM. In addition, the heading for the section in FLPMA that requires claimants to file a copy of the notice of location with the state and BLM is “Recordation of Mining Claims and Abandonment.” We have added a definition of the term “recording” to make clear that recording applies only to filing of notices or certificates of location.

A comment, repeated in numerous letters, stated that we should add language to the rule at this point requiring demonstration of discovery before mining activity can occur, saying that staking a claim does not guarantee discovery. We have addressed this concern in earlier sections in which we state that a mining claim is not valid until the claimant discovers a valuable mineral deposit.

Another comment noted we did not state that the 90-day recording requirement of section 314(b) of FLPMA also applies to county recordings. We have added language to paragraph (a) to correct this oversight.

For paragraph (b), another comment requested that this section include a list of items that would cause a claim to become invalid, void, or without effect. We have provided a list of defects that are not curable in section 3830.91 and will lead to a forfeiture of your claim. Other failures may mean that you have not established a valid mining claim. For example, your mining claim is not valid if you have not discovered a valuable mineral deposit. Because

overall mining claim validity depends on so many factors that are case specific, we have not adopted this suggestion in the final rule.

We also removed from the final rule the last sentence of paragraph (b) as proposed, which provided that recording a claim does not in and of itself establish property rights in the land. That sentence was redundant to the first sentence in paragraph (b).

Section 3833.11 How Do I Record Mining Claims and Sites?

One comment asked for an explanation of “O and C Lands” as used in paragraph (d). “O and C Lands” refers to Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon. These are explained in 43 CFR subpart 3821.

Several comments stated that the wording of paragraph (a) was internally inconsistent, requiring the claimant to record with the county a copy of the document he or she already recorded with the county. We have corrected this problem in the final rule.

One comment asked that we identify which among those items that paragraph (b) requires to be in the notice or certificate of location, if omitted, would be—

- A curable defect, or
- An incurable defect causing forfeiture of the mining claim.

We believe that such a list is unnecessary in light of the explanation of when and how to amend locations in section 3833.20 *et seq.*

Subpart B—Amending Mining Claims and Sites

Section 3833.21 When May I Amend a Notice or Certificate of Location?

Several comments disputed paragraph (b)(4) of this section, which provides that you cannot enlarge a claim by amendment. The comments stated that state laws and case law allow enlargement of undersized claims so long as there are no intervening rights. The cases and other authorities cited in the comments do not support this position.

The general rule is that you may not enlarge an existing mining claim or site by amendment. The Interior Board of Land Appeals (IBLA) has held that such an attempted amendment is a re-location of the original claim (see *Junior L. Dennis*, 133 IBLA 239 (1995) and cases cited therein).

You may reposition lode claims at a later date, in the absence of intervening rights, by amendment for proper alignment along a vein or lode as work progresses, in order to secure your