

document you filed with the local recording office. We have amended paragraph (a) of this section to make it clear that you must file with BLM a copy of the notice of intent to hold that you have recorded or will record with the county.

Subpart D—Defective Waivers and FLPMA Filings

Sections 3835.91–3835.93.

Numerous Comments stated that some provisions in these sections were ambiguous as proposed. Some comments included alternative language. After a careful analysis, BLM has amended these sections to include plainer identification of the possible defects, the penalties, and the remedies available.

Section 3835.91 What If I Fail To File Annual FLPMA Documents?

One comment stated that “on time” was insufficiently specific as a standard for making annual FLPMA filings, and requested a specific date instead. We amended this section to provide the specific annual deadline of December 30.

Section 3835.92 What If I Fail To Submit a Qualified Waiver Request?

One comment asked that we amend this section to—

- Define the term “qualified waiver request”;
- Define “on time”; and
- Clarify the difference between “defective waiver” and “non-qualified waiver.”

We amended this section in the final rule by adding a cross-reference to an explanation of qualifying for a waiver, and by stating the actual deadline rather than saying “on time.” In this section, we no longer refer to “qualified waiver requests” or “qualified waivers.”

These comments also stated that paragraph (d) must be amended to make it clear that it is only in the case where a miner has filed a waiver request but does not pay the maintenance fee that a co-owner’s failure to qualify as a small miner will invalidate the claim. We have amended paragraph (d) to clarify that if you, a co-claimant, or any related parties file small miner waivers for more than 10 mining claims or sites and also fail to pay the maintenance fee for each claim or site, the claims and sites will be forfeited. We have also added language that states that you may be subject to criminal penalties if you attempt to obtain a small miner waiver for more than 10 mining claims or sites.

Part 3836—Annual Assessment Work Requirements for Mining Claims

This part consolidates the provisions of current part 3851 on performing and recording assessment work, which is sometimes a condition for a maintenance fee waiver. Sections 3836.10 through 3836.15 identify the types of work that qualify as assessment work, and tell you how to record the work. Section 3836.16 discusses what happens if you fail to perform assessment work. If you are a qualified small miner, and you have been denied access to your claims, you may petition BLM to defer assessment work as outlined in sections 3836.20 through 3836.25.

Subpart A—Performing Assessment Work

Section 3836.11 What Are the General Requirements for Performing Assessment Work?

Several comments addressed this section. One comment stated that paragraph (a) should say that assessment work must be done before the small miner waiver deadline in order to qualify for the waiver. The comment is correct. We have amended the rule accordingly.

Another comment pointed out that the requirement in paragraph (a) to do assessment work for every claim every year does not recognize that you need not perform assessment work in the assessment year during which you locate a new claim. We have amended this provision in light of the comment.

Several comments stated that our interpretation in paragraph (b) of the assessment provision of the General Mining Law is erroneous. A comment also challenged the “on claim” provision, stating that some work can be performed off site and still qualify. We are not aware of any case law that would disallow BLM’s longstanding practice of allowing claimants to comply with the assessment work requirement by conducting work on a group of contiguous claims that cover the same deposit. In addition, the Supreme Court in *St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636 (1881), held that off site work qualifies as assessment work so long as it supports development of the claim. BLM therefore has amended this provision in the final rule accordingly.

Some of these comments said that this paragraph was not clearly worded. We have amended the language to try to make it more clear.

Section 3836.14 What Other Requirements Must Geological, Geochemical, or Geophysical Surveys Meet to Qualify As Assessment Work?

One comment questioned the term “local district recording office”, which was a typographical error in the proposed rule. The term “local recording office” replaces it in the final rule.

Subpart B—Deferment of Assessment Work

Section 3836.21 How Do I Qualify for a Deferment of Assessment Work on My Mining Claims?

One comment stated that this provision in the proposed rule seemed garbled, and left incomplete the reasons allowed for obtaining a deferment of assessment work. The comment stated that it did not specifically allow for deferment when a unit of government has issued a declaration of taking. We have revised this paragraph in light of the comment.

Section 3836.22 How Do I Qualify for a Deferment of Assessment Work on My Mining Claims That Are on National Park System (NPS) Lands?

We have added this section in the final rule in response to a public comment. A comment addressed the issue of deferments and documentation on National Park System lands, stating that the rule should explain the procedure for obtaining a deferment of assessment work for claims situated on National Park System land. The comment suggested language to fix the problem. We accepted this recommendation and created a new section 3836.22, renumbering proposed section 3836.22 as 3836.23.

Section 3836.23 How Do I Petition for Deferment?

Several comments asked why a petition for deferment must be submitted in duplicate. The requirement is obsolete, a holdover from old General Land Office regulations promulgated when photocopy machines could have appeared only in science fiction. It is clearly no longer necessary, and we have removed it in the final rule.

These comments also suggested the following amendments to clarify this section—

- Amend paragraph (a)(4) to make it clear that you must meet its requirements only if the provisions of the paragraph apply to your situation. We have amended the paragraph to make clear that you must file a statement that you plan to submit a small miner waiver form on or before