

recording and notice requirements and contest procedures under certain special laws. The current regulations are found in 43 CFR parts 3710, 3730, 3740, 3810, and 3820. These parts cover surface rights determinations under the Surface Resources Act of 1955; permission to use or occupy placer mining claims located in power site withdrawals under the Mining Claim Rights Restoration Act of 1955; conflict resolution between mining claims and mineral leases under the Multiple Mineral Development Act of 1954; and timber use on O. and C. lands (Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands) in Oregon by mining claimants.

Part 3840—Nature and Classes of Mining Claims

BLM has moved the provisions of part 3840, which describes the types of claims or sites and how to locate and record them, to parts 3832 and 3833. See the conversion chart earlier in this preamble.

Part 3850—Assessment Work

BLM has moved the provisions of part 3850, which describes assessment work requirements, to part 3836.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These changes do not significantly change the substance of current mining claim administration within BLM. The annual revenue received from the collection of the congressionally mandated oil shale, maintenance, and location fees has averaged \$24 million since 1999. This rule does not change the fee amounts and thus will not have a significant impact on fees collected.

- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of BLM to other agencies and their actions.

- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their

recipients. The rule does not address any of these programs.

- This rule will not raise novel legal issues. It makes no major substantive changes in the regulations. The Constitutionality of the rental and maintenance fees has been challenged in the Federal Courts. The Courts have consistently upheld the previous 1992, 1993, and 1998 Acts, which provided for the maintenance and location fees, and their implementing regulations.

- The proposed rule raised a novel policy issue regarding the number of millsites that the Mining Law allows per mining claim. This final rule, although it reverses this policy proposal from the proposed rule, will likely continue to be controversial as to this matter. We have amended the final rule, as discussed earlier in this Preamble, to adopt previous prevalent practice as the standard in this connection.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will not have an impact because the fees paid by small entities will not change. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 500 employees or less than \$5 million in revenue. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of \$100 million or more. As explained in section 1 above, the revised regulations will not materially alter current BLM policy or the fees paid by mining claimants. Under this rule claimants will pay about \$20 million annually.

- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The changes implemented by this rule are likely to leave all other economic aspects of BLM unaffected.

- Does not have significant adverse effects on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

- This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.

- This rule will not produce a Federal mandate of \$100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal Courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The Courts have upheld the previous 1992, 1993, and 1998 Acts and the BLM rules thereunder as a proper exercise of Congressional and Executive authorities.

Executive Order 13132, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role or responsibilities between Federal, state, and local governmental entities, nor does it relate to the structure and role of states or have direct, substantive, or significant effects on states.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this final rule does not include policies that have tribal implications. Because this rule does not specifically involve Indian reservation lands (which are closed to the operation of the general mining law), we believe that relations with Indians, Indian tribes, and tribal governments will remain unaffected.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not