§ 3598.5 Appeals.

Orders or decisions issued under the regulations in this part may be appealed as provided in part 4 of this title. Orders issued under § 3598.4(c) of this title shall be effective during the pendency of any appeal.

Subpart 3599—Late Payment or Underpayment of Charges

§ 3599.1 Late payment or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the overdue amount is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the ''Treasury Current Value of Funds Rate.''

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in that new calendar quarter. The rate is also published in the Notices section of the FEDERAL REGISTER and indexed under ''Fiscal Service/Notices/Funds Rate; Treasury Current Value.''

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include rentals; production, minimum, or advance royalties; assessments for liquidated damages; administrative fees and payments by purchaser of royalty taken-in-kind or any other payments, fees, or assessments that a lessee/operator/permittee/payor/or purchaser of royalty taken-in-kind is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 36588, Aug. 12, 1983. Redesignated at 51 FR 15212, Apr. 22, 1986]

Group 3600—Mineral Materials Disposal

NOTE: The information collection requirements contained in parts 3600, 3610 and 3620 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0103. The information is being collected to allow the authorized officer to determine if the applicant is qualified to purchase or have free use of mineral materials on the public lands. The obligation to respond is required to obtain a benefit.

PART 3600—MINERAL MATERIALS DISPOSAL

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AUTHORITY: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

SOURCE: 66 FR 58901, Nov. 23, 2001, unless otherwise noted.

Subpart 3601—3601–Mineral Materials Disposal; General Provisions

FUNDAMENTAL PROVISIONS

§ 3601.1 Purpose.

The regulations in this part establish procedures for the exploration, development, and disposal of mineral material resources on the public lands, and for the protection of the resources and the environment. The regulations apply to permits for free use and contracts for sale of mineral materials.

§ 3601.3 Authority.

(a) BLM's authority to dispose of sand, gravel, and other mineral and vegetative materials that are not subject to mineral leasing or location under the mining laws is the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), commonly referred to as the Materials Act. This authority applies to sale and free use of these materials. BLM's authority to allow removal of limited quantities of petrified wood from public lands without charge is section 2 of the Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

(b) Section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1732) provides the general authority for BLM to manage the use, occupancy, and development of the public lands under the principles of multiple use and sustained yield in accordance with the land use plans that BLM develops under FLPMA.

(c) Section 304 of FLPMA (43 U.S.C. 1734) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) authorize the U.S. Government to collect fees and to require reimbursement of its costs.

§ 3601.5 Definitions.

As used in this part the term:

Act means the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, *et seq.*).

BLM means the Bureau of Land Management.

Common use area means a generally broad geographic area from which BLM

can make disposals of mineral materials to many persons, with only negligible surface disturbance. The use is dispersed throughout the area.

Community pit means a relatively small, defined area from which BLM can make disposals of mineral materials to many persons. The surface disturbance is usually extensive in the confined area.

Mineral materials means, but is not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay.

Performance bond means a bond to ensure compliance with the terms of the contract and reclamation of the site as BLM requires.

Permittee means any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any non-profit organization, to which BLM issued a free use permit for the removal of mineral materials from the public lands.

Public lands means any lands and interest in lands owned by the United States and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except lands held for the benefit of Indians, Aleuts, and Eskimos.

Purchaser means any person, including a business or government entity, buying or holding a contract to purchase mineral materials on the public lands.

§ 3601.6 Policy.

It is BLM's policy:

(a) To make mineral materials available unless it is detrimental to the public interest to do so;

(b) To sell mineral material resources at not less than fair market value;

(c) To permit Federal, State, Territorial, and local government entities and non-profit organizations free use of these materials for qualified purposes;

(d) To protect public land resources and the environment and minimize damage to public health and safety during the exploration for and the removal of such minerals;

(e) To prevent unauthorized removal of mineral materials; and

(f) To require purchasers and permittees to account for all removals of mineral materials.

§ 3601.8 Public availability of information.

(a) All data and information concerning Federal and Indian minerals that you submit under this part are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. BLM may make available for inspection certain mineral information not protected from disclosure under part 2 of this title without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part that you believe to be exempt from public disclosure, and that you wish BLM to withhold from such disclosure, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

§ 3601.9 Information collection.

The Office of Management and Budget has approved the information collection requirements in part 3600 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0103. BLM is collecting the information to allow us to determine if you are qualified to purchase or have free use of mineral materials on the public lands. You must respond to obtain a benefit.

LIMITATIONS ON DISPOSAL OF MINERAL MATERIALS

§ 3601.10 Limitations on BLM's discretion to dispose of mineral materials.

§ 3601.11 When will environmental considerations prevent BLM from disposing of mineral materials?

BLM will not dispose of mineral materials if we determine that the aggregate damage to public lands and resources would exceed the public benefits that BLM expects from the proposed disposition.

§ 3601.12 What areas does BLM exclude from disposal of mineral materials?

(a) BLM will not dispose of mineral materials from wilderness areas or other areas where it is expressly prohibited by law. This includes national parks and monuments.

(b) BLM will not dispose of mineral materials from Indian lands and lands set aside or held for the use or benefit of Indians.

(c) BLM will not dispose of mineral materials from areas identified in land use plans as not appropriate for mineral materials disposal.

§ 3601.13 How can I obtain mineral materials from Federal lands that have been withdrawn to aid a function of another Federal agency or of a State or local government agency?

If you wish to obtain mineral materials from lands withdrawn to aid a function of another Federal agency or of a State or local government agency, you may apply to BLM. BLM will dispose of the mineral materials only with the consent of that agency.

§ 3601.14 When can BLM dispose of mineral materials from unpatented mining claims?

(a) BLM may dispose of mineral materials from unpatented mining claims if disposal does not endanger or materially interfere with prospecting, mining, or processing operations, or uses reasonably incident thereto.

(b) BLM will ask a mining claimant for a waiver before disposing of mineral materials from a claim. If the mining claimant refuses to sign a waiver, BLM will make sure that disposal of the mineral materials will not be detrimental to the public interest. We also will consult with the Solicitor's Office, if necessary, before proceeding with the disposal.

RIGHTS OF PURCHASERS AND PERMITTEES

§ 3601.20 Rights of parties.

§ 3601.21 What rights does a person have under a materials sales contract or use permit?

(a) Unless otherwise provided, if you are a purchaser under a sales contract or a free use permittee, you have the right to:

(1) Extract, remove, process, and stockpile the material until the contract or permit terminates, regardless of any rights others acquire later under the provisions of the general land laws; and

(2) Use and occupy the described lands to the extent necessary for fulfillment of the contract or permit.

(b) Users of the lands covered by your materials sales contract or free use permit who acquire their rights later than the date BLM designated the tract for mineral materials disposal will be subject to your existing use authorization, as provided in § 3602.12. This applies to uses due to any later settlement, location, lease, sale, or other appropriation under the general land laws, including the mineral leasing and mining laws.

§ 3601.22 What rights remain with the United States when BLM sells or issues a permit for mineral materials?

Your sale contract or use permit is subject to the continuing right of the United States to issue leases, permits, and licenses for the use and occupancy of the lands, if such use would not endanger or materially interfere with the production or removal of materials under contract or permit.

PRE-APPLICATION SAMPLING AND TESTING

§ 3601.30 Pre-application activities—how and when may I sample and test mineral materials?

(a) BLM may authorize you in writing to sample and test mineral materials. The authorization letter expires after 90 days, but BLM may extend it for an additional 90 days if you show us that an extension is necessary. BLM may authorize these activities before issuing a sales contract or free use permit.

(b) You must submit your sampling and testing findings to BLM. All information you submit under this section is subject to part 2 of this title. That part sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records. (*See* § 3601.8.)

(c) A letter from BLM authorizing you to sample and test mineral materials does not give you a preference right to a sales contract or free use permit.

(d) BLM may impose bonding and reclamation requirements on sampling and testing that you conduct under an authorization letter.

MINING AND RECLAMATION PLANS

§ 3601.40 Mining and reclamation plans.

BLM may require you to submit mining and reclamation plans before we begin any environmental review or issue a contract or permit. You may combine these plans in one document.

§ 3601.41 What information must I include in my mining plan?

If BLM requires you to submit a mining plan, it must include:

(a) A map, sketch, or aerial photograph identifying the area for which you are applying, the area and depth you plan to disturb, existing and proposed access, and the names and locations of major topographic and known cultural features;

(b) A description of your proposed methods of operation and the periods during which you will operate;

(c) A description of measures you will take to prevent hazards to public health and safety and to minimize and mitigate environmental damage; and

(d) Such other information as BLM may require.

§ 3601.42 What information must I include in my reclamation plan?

If BLM requires you to submit a reclamation plan, it must include:

(a) A statement of the proposed manner and time in which you will complete reclamation of the areas disturbed by your operations;

(b) A map or sketch which delineates the area you will reclaim; and

(c) Such other information as BLM may require.

§ 3601.43 What is the process for BLM to approve my mining and reclamation plans?

(a) After reviewing your mining and reclamation plans, BLM will notify you of any deficiencies in the plans and recommend the changes necessary. BLM will notify you in writing when we approve your plan. You must follow BLM-approved mining and reclamation plans, which become part of the contract or permit.

(b) Your operation must not deviate from the plan BLM approves, unless it is modified under § 3601.44.

§ 3601.44 How and when may my mining or reclamation plan be modified?

(a) Either you or BLM may initiate a modification of an approved mining or reclamation plan to adjust for changed conditions or to correct any oversight. BLM will consult with you before requiring a modification.

(b) If BLM notifies you that you must modify your plan, you must prepare the modification, or explain why you need more time, within 30 days. If you fail to modify your plan to BLM's satisfaction, BLM may order you to stop operations under your contract or permit.

(c) When you ask to change an approved mining or reclamation plan for one of the reasons in paragraph (a) of this section, BLM will notify you in writing within 30 days whether we approve the modification, deny it, or require any changes in it.

CONTRACT AND PERMIT ADMINISTRATION

§ 3601.50 Administration of sales contracts and free use permits.

§ 3601.51 How will BLM inspect my operation?

You must allow BLM access at any reasonable time:

(a) To inspect or investigate the mine condition;

(b) To conduct surveys;

(c) To estimate the volume, types, and composition of commodities that you mine or remove;

(d) To examine weight tickets, truck logs, and other records that BLM finds necessary to verify production; or

(e) To determine whether you comply with contract, permit, statutory, or regulatory requirements.

[66 FR 58901, Nov. 23, 2001; 67 FR 68778, Nov. 13, 2002]

§ 3601.52 After I finish my operations, when must I remove improvements and equipment?

After your contract or permit period expires, or after cancellation of your permit or contract, BLM will allow you up to 90 days, excluding periods of inclement weather, to remove the equipment, personal property, and any other improvements that you placed on the public lands. You may leave in place improvements such as roads, culverts, and bridges if BLM consents. If you fail to remove equipment, personal property, or any other improvement, it becomes the property of the United States. However, you remain liable for the cost of its removal and for restoration of the site.

CONTRACT AND PERMIT CANCELLATION

§ 3601.60 Cancellation.

§ 3601.61 When may BLM cancel my contract or permit?

BLM may cancel your contract or free use permit if you:

(a) Fail to comply with the provisions of the Materials Act of 1947, as amended (30 U.S.C. 601 *et seq.*);

(b) Fail to comply with any applicable regulations; or

(c) Default in the performance of any material term, covenant, or stipulation in the contract.

§ 3601.62 Cancellation procedure.

(a) BLM will give you written notice of any defaults, breach, or cause of forfeiture, either in person or by certified mail. You have 30 days after receiving the notice:

(1) To correct all defaults;

(2) To request an extension of time in which to correct the defaults; or

(3) To submit evidence showing to BLM's satisfaction why we should not cancel your contract or free use permit.

(b) If you fail to respond to the notice under paragraph (a) of this section, or if delivery of the notice is refused, or not completed as described in § 1810.2 of this chapter, BLM may cancel the contract or permit.

UNAUTHORIZED USE

§ 3601.70 Unauthorized use.

§ 3601.71 What constitutes unauthorized use?

(a) Except as provided in paragraph (b) of this section, you must not extract, sever, or remove mineral materials from public lands under the jurisdiction of the Department of the Interior, unless BLM or another Federal agency with jurisdiction authorizes the removal by sale or permit. Violation of this prohibition constitutes unauthorized use.

(b) If you own the surface estate of lands with reserved Federal minerals, you may use mineral materials within the boundaries of your surface estate without a sales contract or permit only in the following circumstances:

(1) You use a minimal amount of mineral materials for your own personal use;

(2) You have statutory authority to use the mineral materials; or

(3) You have other express authority to use the mineral materials.

§ 3601.72 What are the consequences of unauthorized use?

Unauthorized users are liable for damages to the United States, and are subject to prosecution for such unlawful acts (see subpart 9239 of this chapter).

APPEALS

§ 3601.80 How do I appeal a final decision by BLM?

If a BLM decision adversely affects you, you may appeal the decision in accordance with parts 4 and 1840 of this title.

Subpart 3602—Mineral Materials Sales

APPLICATIONS

§ 3602.10 Applying for a mineral materials sales contract.

§ 3602.11 How do I request a sale of mineral materials?

(a) You may submit a written request for sale of mineral materials to the BLM office with jurisdiction over the

site containing the materials. No particular form is required for this request.

(b) BLM also may initiate a sale without a request under paragraph (a) of this section.

§ 3602.12 How does the mineral materials sales process affect other users of the same public lands?

(a) When BLM designates tracts for competitive or noncompetitive sale of mineral materials, and notes the designation in the public land records, it creates a right to remove the materials superior to any subsequent claim, entry, or other conflicting use of the land, including subsequent mining claim locations.

(b) The superior right under paragraph (a) of this section is part of all contracts and permits BLM authorizes within 2 years after the date we designate the tract. BLM may extend this 2–year period for one additional year for good cause. The right continues for the entire term of the contract or permit and any renewal term. The superior right under paragraph (a) of this section also applies to any subsequent contracts or permits that BLM authorizes within 2 years after the previous contract or permit expires or terminates.

(c) This right does not prevent other uses or segregate the land from the operation of the public land laws, including the mining and mineral leasing laws. However, such subsequent uses must not interfere with the extraction of mineral materials.

[66 FR 58901, Nov. 23, 2001; 67 FR 68778, Nov. 13, 2002]

§ 3602.13 How does BLM measure and establish the price of mineral materials?

(a) BLM will not sell mineral materials at less than fair market value. BLM determines fair market value by appraisal.

(b) BLM may periodically reappraise the value of mineral materials not yet removed, and adjust your contract price accordingly. BLM will not adjust the price during the first 2 years of the contract. BLM also will not adjust the contract price during the 2–year period following any adjustment. However, BLM may adjust the price at the beginning of any contract renewal period.

(c) BLM measures mineral materials by in-place volume or weight equivalent. When BLM requires you to measure materials, we may either designate the method you must use or allow you to choose either method. We will verify your results.

§ 3602.14 What kind of financial security does BLM require?

(a) For contracts of $2,000 or more, BLM will require a performance bond of an amount sufficient to meet the reclamation standards provided for in the contract, but at least $500. If you have a sales contract from a community pit or common use area and you pay a reclamation fee, BLM will not require you to post a performance bond.

(b) BLM may require a performance bond for contracts of less than $2,000. We will not require a bond amount greater than 20 percent of the total contract value.

(c) A performance bond may be a—

(1) Bond of a corporate surety shown on the approved list (Circular 570) issued by the U.S. Treasury Department, including surety bonds arranged or paid for by third parties;

(2) Certificate of deposit that:

(i) Is issued by a financial institution whose deposits are Federally insured;

(ii) Does not exceed the maximum insurable amount set by the Federal Deposit Insurance Corporation;

(iii) Is made payable or assigned to the United States;

(iv) Grants BLM authority to demand immediate payment if you fail to meet the terms and conditions of the contract;

(v) States that no party may redeem it before BLM approves its redemption; and

(vi) Otherwise conforms to BLM's instructions as found in the contract terms;

(3) Cash bond, with a power of attorney to BLM to convert it upon your failure to meet the terms and conditions of the contract;

(4) Irrevocable letter of credit from a bank or financial institution organized or authorized to transact business in the United States, with a power of attorney to BLM to redeem it upon your

failure to meet the terms and conditions of the contract; or

(5) Negotiable Treasury bond of the United States of a par value equal to the amount of the required bond, together with a power of attorney to BLM to sell it upon your failure to meet the terms and conditions of the contract.

§ 3602.15 What will happen to my bond if I transferred all of my interests or operations to another bonded party?

BLM will cancel your bond obligations following approval of the transfer of your interests or operations if the transferee provides a bond that assumes all of your existing liabilities as required in § 3602.24. However, under § 3602.26, you remain liable for any reclamation or other obligation that accrued during the time you held your interest.

ADMINISTRATION OF SALES

§ 3602.20 Administration of mineral materials sales.

§ 3602.21 What payment terms apply to my mineral materials sales contract?

(a) Under a sales contract for mineral materials—

(1) For sales of $2,000 or less, you must pay the full amount before BLM will sign the contract.

(2) When the sale exceeds $2,000, you may make installment payments. The first installment payment must be the greater of $500 or 5 percent of the total purchase price. If you elect to make installment payments—

(i) For non-competitive sales, you must pay the first installment at or before the time BLM awards the contract;

(ii) For competitive sales, you must pay the first installment as a deposit at the time you submit the bid; and

(iii) For noncompetitive and competitive sales—

(A) Once you have removed materials, you must make each subsequent installment payment monthly in an amount equal to the value of the minerals you remove each month. You must make the payment by the 15th day following the end of the month for which you are reporting. However, you must pay the balance of the purchase price not later than 60 days before the expiration date of the contract. BLM will credit your first installment payment to you at the time of your final payment unless we cancel your contract under § 3601.61; or

(B) You may make advance payment for your annual production based on the previous year's production or your projection of the current year's production, so long as you resume paying on a monthly basis as required in paragraph (a)(2)(iii)(A) of this section if your annual payment does not cover your actual production for the current year. You must resume monthly payments no later than the 15th day following the end of the month in which production exceeds the projected production on which payments were based.

(3) You must annually (as provided in your contract) produce an amount sufficient to pay to the United States a sum of money equal to the first installment determined under paragraph (a)(2) of this section. In lieu of such production, you may make an annual payment in the amount of the first installment. If in any contract year you make production payments that are less than the first installment, you must pay the difference between the production payments and the amount of the first installment. These annual payments are due on or before each anniversary date of the contract.

(b) If you fail to comply with the terms and conditions of the contract and BLM cancels your contract under § 3601.61, you will forfeit all moneys that you paid.

§ 3602.22 When will a contract terminate?

(a) Your contract terminates when—

(1) Its term expires;

(2) You have completed production under your contract or permit and any renewal, and completed required reclamation; or

(3) BLM cancels your contract under § 3601.60 *et seq.* of this part.

(b) You and BLM may, by agreement, terminate the sales contract at any time.

§ 3602.23 When will BLM make refunds or allow credits?

(a) BLM may make refunds or allow credits if—

(1) When your contract expires, your total payments exceed the total value of mineral materials included in the contract;

(2) BLM determines that insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(3) Materials you paid for are unavailable as a result of terminating your contract by mutual agreement under § 3602.22(b).

(b) If your refund or credit is a result of terminating your contract by mutual agreement under § 3602.22(b), BLM will reduce the amount of the refund or credit by the amount of the administrative cost of processing the disposal action. If these administrative costs exceed your total payments, BLM will not make a refund or allow a credit.

(c) BLM may credit to future production on the same contract, but not refund, payments that you make in lieu of production under § 3602.21(a)(3). However, if, upon expiration of the contract, the total value of payments you have made exceeds the total value of mineral materials included in your contract, BLM will refund the difference in accordance with paragraphs (a) and (b) of this section.

§ 3602.24 When may I assign my materials sales contract?

(a) You may not assign the contract or any interest therein unless BLM approves the transfer in writing.

(b) BLM will not approve your proposed assignment of contract, unless—

(1) Your assignee—

(i) Furnishes a financial guarantee as required by § 3602.14; or

(ii) Obtains a written commitment from the previous surety that it will be bound by the assignment when BLM approves it; and

(2) The assignment contains all the terms and conditions in your contract.

§ 3602.25 What rights and responsibilities does my assignee assume?

When BLM approves your assignment, your assignee is entitled to all the rights and is subject to all the obligations under the contract.

§ 3602.26 If I assign my contract, when do my obligations under the contract end?

When BLM approves your assignment, you are released from any further liability under the contract for actions the assignee may take after the effective date of the assignment. You continue to be responsible for obligations that accrued before the approval date, whether or not you knew of them at the time of the transfer.

§ 3602.27 When will BLM extend the term of a contract?

BLM may grant a one-time extension of the contract not to exceed 1 year, if:

(a) (1) For contracts with terms over 90 days, BLM receives your written request between 30 and 90 days before the contract expires; or

(2) For contracts with terms of 90 days or less, BLM receives your written request not later than 15 days before the contract expires; and

(b) You show in writing that the delay in removing the mineral materials was due to causes beyond your control and was not due to your fault or negligence.

§ 3602.28 What records must I maintain and how long must I keep them?

(a) BLM may require you to maintain and preserve for 6 years records, maps, and surveys relating to production verification and valuation. These include, but are not limited to, detailed records of quantity, types, and value of commodities you moved, processed, sold, delivered, or used.

(b) You must make such records available to BLM to allow us to determine whether you have complied with statutes, regulations, and the terms of the contract.

§ 3602.29 How will BLM verify my production?

(a) You must submit at least one report per contract year of the amount of mineral materials you have mined or removed under your sales contract so BLM can verify that you have made

the required payments. BLM will specify the timing of the reports in your contract or permit.

(b) BLM may require more frequent reporting if we find it necessary.

(c) BLM may require you to conduct pre-operation, annual, and post-operation volumetric surveys of the mine site.

NONCOMPETITIVE SALES

§ 3602.30 Noncompetitive sales.

In addition to the following sections, §§ 3602.31 through 3602.35, the provisions of §§ 3602.11 through 3602.29 also apply to noncompetitive sales.

§ 3602.31 What volume limitations generally apply to noncompetitive mineral materials sales?

(a) BLM may sell, at not less than fair market value, and without advertising or calling for bids, mineral materials not greater than 200,000 cubic yards (or weight equivalent) in any individual sale, when BLM determines it to be:

(1) In the public interest; and

(2) Impracticable to obtain competition.

(b) BLM will not approve multiple noncompetitive sales that exceed a total of 300,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one purchaser, whether an individual, partnership, corporation, or other entity, in any period of 12 consecutive months.

(c) The volume limitations in paragraphs (a) and (b) of this section do not apply to sales in the State of Alaska that BLM determines are needed for construction, operation, maintenance, or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

(d) The volume limitations in paragraphs (a) and (b) of this section do not apply if:

(1) BLM determines that circumstances make it impossible to obtain competition; or

(2) There is insufficient time to invite competitive bids, because of an emergency situation affecting public property, health, or safety.

§ 3602.32 What volume and other limitations pertain to noncompetitive sales associated with public works projects?

BLM may sell mineral materials not exceeding 400,000 cubic yards (or weight equivalent), at not less than fair market value, without advertising or calling for bids if:

(a) BLM determines the sale to be in the public interest; and

(b) The materials will be used in connection with an urgent public works improvement program on behalf of a Federal, State, or local governmental agency, and time does not permit advertising for a competitive sale.

§ 3602.33 How will BLM dispose of mineral materials for use in developing Federal mineral leases?

(a) If you propose to use mineral materials in connection with developing a mineral lease issued by BLM, we may, without calling for competitive bids, sell you at fair market value a volume of mineral materials not exceeding a total of 200,000 cubic yards (or weight equivalent) in one State in any period of 12 consecutive months.

(b) If the materials remain within the boundaries of the lease, BLM will not charge for mineral materials that you must move in order to extract minerals under a Federal lease, whether or not you use them for lease development.

§ 3602.34 What is the term of a noncompetitive contract?

BLM will not issue a noncompetitive contract for the sale of mineral materials for a term exceeding 5 years, excluding any contract extension under § 3602.27 and any period that BLM may allow for removal of equipment and improvements under § 3601.52.

COMPETITIVE SALES

§ 3602.40 Competitive sales.

In addition to the following sections, §§ 3602.41 through 3602.49, the provisions of §§ 3602.11 through 3602.29 also apply to competitive sales.

§ 3602.41 When will BLM sell mineral materials on a competitive basis?

Except for sales from community pits and common use areas under subpart

3603 of this part, and noncompetitive sales under § 3602.30 *et seq.*, BLM will make sales only after inviting competitive bids through publication and posting under § 3602.42.

§ 3602.42 How does BLM publicize competitive mineral materials sales?

(a) When offering mineral materials for sale by competitive bidding, BLM:

(1) Will advertise the sale by publishing a sale notice in a newspaper of general circulation in the area where the material is located, on the same day once a week for 2 consecutive weeks; and

(2) Will post a sale notice in a conspicuous place in the office where you will submit bids.

(b) In the sale notice, BLM will state:

(1) By legal description, the location of the tract or tracts on which we are offering the materials;

(2) The kind of materials we are offering;

(3) The estimated quantities of materials we are offering;

(4) The unit of measurement;

(5) The appraised prices;

(6) The time and place for receiving and opening of bids;

(7) The minimum deposit we require;

(8) The site access that will be available to the purchaser;

(9) The method of bidding;

(10) If applicable, that the purchaser must file mining or reclamation plans;

(11) The bonding requirement;

(12) The location for inspection of contract terms and proposed stipulations;

(13) The address and telephone number of the office where you may obtain additional information;

(14) Whether BLM will renew the contract; and

(15) Any additional information that BLM deems necessary.

(c) BLM may, in its discretion, extend the period of time for advertising;

(d) BLM will not hold sales sooner than 1 week after the last advertisement.

§ 3602.43 How does BLM conduct competitive mineral materials sales?

(a) In conducting a competitive sale, BLM may require submission of sealed written bids, oral bids, or a combination of both. The sale notice will state how you must submit your bid. If 2 or more persons make identical high sealed bids, BLM will determine the highest bid by holding an oral auction among the persons making the identical high bids. If no oral bid is made higher than the sealed bids, BLM will pick the successful bidder by lot. After BLM announces the high bid at an oral auction, if you are the high bidder you must confirm that bid in writing at least by the close of business on the date of the sale, or by such time as BLM may specify in the sale notice.

(b) When BLM determines that it is in the public interest to do so, we may reject any or all bids, or may waive minor deficiencies in the bids that would not ordinarily affect the outcome of the bidding.

§ 3602.44 How do I make a bid deposit?

(a) If you wish to make a bid to purchase mineral materials, you must submit a deposit in advance of the sale.

(1) Your sealed bids must contain a deposit.

(2) At an oral auction, you must make your deposit before the opening of the bidding.

(b) Your deposit must be the greater of $500 or 5 percent of the appraised value as we specify in the sale notice.

(c) Your deposit may be in the form of cash, a money order, a bank draft, or a cashier's or certified check made payable to the Bureau of Land Management.

(d) If you are not the successful bidder, BLM will return your bid deposit when the bidding concludes.

(e) If you are the successful bidder, BLM will apply your deposit to the purchase price.

§ 3602.45 What final steps will BLM take before issuing me a contract?

(a) *Ability to perform.* BLM may require you to furnish information we find necessary to determine whether you are able to meet the obligations of the contract.

(b) *Reasons for denying a contract.* We will deny you the contract, even if you made the highest bid, if—

(1) We determine that you are unable to meet the obligations of the contract,

(2) You are unwilling to accept the terms of the contract, or

(3) BLM rejects all bids.

(c) *Refund of deposit.* If BLM denies you a contract under paragraph (b)(1) or (b)(3) of this section, we will refund your deposit.

(d) *Awarding a contract.* BLM will notify you of your contract award by presenting you with or sending you the contract.

(e) *Accepting a contract.* If BLM awards you the contract, you must, within 60 days after receiving it, sign and return the contract, together with a performance bond and mining and reclamation plan when BLM requires them. BLM may extend this period an additional 30 days if you request it in writing within the first 60-day period. If you fail to sign and return the contract within the first 60-day period, or an approved 30-day extension period, you will forfeit the bid deposit.

(f) *Awarding the contract to the second-highest bidder.* If BLM determines that you are unable to meet the obligations of the contract, or if you fail to sign and return the contract within the time period specified, BLM may offer and award the contract for the amount of the high bid to the person making the next highest complete bid. That person must be qualified and willing to accept the contract, and must redeposit the amount required under § 3602.44(b).

(g) *Contract form.* BLM will make all sales on BLM standard contract forms approved by the Director, Bureau of Land Management. We will include as necessary additional provisions and stipulations in the contract to conform to the provisions of the competitive sale notice and to address environmental concerns or other site-specific issues.

§ 3602.46 What is the term of a competitive contract?

The term of the contract will be in the sales notice. BLM will not issue a competitive contract for the sale of mineral materials for a term exceeding 10 years. However, the 10-year period does not include any contract extension under § 3602.27, any contract renewal under § 3602.47, and any periods for removal of equipment and improvements under § 3601.52 of this part.

§ 3602.47 When and how may I renew my competitive contract?

(a) *Applying for competitive contract renewal.* When you have paid the United States the full contract price for the mineral materials you purchased under a competitive contract, you may apply for renewal of the contract without further competitive bidding in order to purchase and extract additional material that may be available at the contract site. You must submit your request for renewal of the contract at least 90 days before it expires. You do not need to use a specific form.

(b) *BLM's response to the application.* BLM will renew your contract if—

(1) You meet all the requirements of this section;

(2) Your contract is not limited under § 3602.49; and

(3) BLM determines that you are able to fulfill the obligations of a new contract.

(c) *Renewal term.* BLM will renew your contract for a maximum term of 10 additional years. The renewal may be for less than 10 years if you do not request that much time, or if BLM finds that the quantity of material involved does not justify a 10-year term.

(d) *Number of times BLM may renew a contract.* There is no maximum number of times BLM may renew a contract.

§ 3602.48 What may BLM require when renewing my contract?

(a) *Reappraisal.* BLM will not grant a renewal without requiring a reappraisal under § 3602.13.

(b) *Bond amount and terms.* Before renewing your contract, BLM may require you to increase, or allow you to decrease, the amount of the performance bond you posted under § 3602.14. BLM may also require other bond modifications to ensure coverage for the renewed contract.

(c) *Environmental protection requirements.* Before renewing your contract, BLM will perform additional environmental analysis as required, and may require you to adopt additional measures to prevent hazards to public health and safety, and to minimize and mitigate environmental damage.

(d) *Other requirements.* BLM may require additions or changes to other terms or conditions of your contract.

§ 3602.49 When will BLM issue a nonrenewable contract?

(a) BLM may offer you a contract restricted to a single term or otherwise limited in its duration. We will base this restriction on a finding that—

(1) The land should be used for another, possibly conflicting, purpose after mineral materials are removed;

(2) The deposit of mineral materials may be appropriate for future use by multiple operators or by the local community; or

(3) Other circumstances make renewal inappropriate.

(b) If BLM limits a contract under this section, the sale notice under § 3602.42 will include this information.

(c) If your contract is in existence on December 24, 2001, BLM will decide whether you may request renewal of that contract. You must ask BLM for this decision at least 90 days before the contract expires. If fewer than 120 days remain on your existing contract on December 24, 2001, BLM may approve a renewal request that you submit less than 90 days before the contract expires if we decide the contract qualifies for renewal and we have sufficient time to process your request before your contract is due to expire.

Subpart 3603—Community Pits and Common Use Areas

DISPOSAL OF MATERIALS—COMMUNITY PITS AND COMMON USE AREAS

§ 3603.10 Disposal of mineral materials from community pits and common use areas.

(a) BLM may make mineral material sales and allow free use under permit from the same deposit within areas that we designate for this purpose. These kinds of disposals must be consistent with other provisions of this part. These designated community pit sites or common use areas may be any size.

(b) This subpart applies to both sales and free use from community pits and common use areas unless otherwise stated. Refer to subpart 3604 of this part for additional regulations applicable to the free use of mineral materials.

§ 3603.11 What rights pertain to users of community pits?

BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the materials superior to any subsequent claim or entry of the lands.

§ 3603.12 What rights pertain to users of common use areas?

(a) BLM's designation of a common use area does not establish a right to remove the materials superior to any subsequent claim or entry of the lands.

(b) Once you have a permit or a sales contract to remove mineral materials from a common use area, your rights under that permit or contract are superior to any subsequent claim or entry on the lands.

§ 3603.13 What price does BLM charge under materials sales contracts for mineral materials from community pits and common use areas?

BLM will sell mineral materials from community pits or common use areas under materials sales contracts for not less than fair market value.

§ 3603.14 What plans do I need to prepare to mine or remove mineral materials from a community pit or common use area?

BLM generally will not require a mining or reclamation plan before you mine or remove mineral materials from a community pit or common use area. We may require such a plan if we find that circumstances warrant it. In all cases, you must comply with the terms of the contract or permit to protect health, safety, and the environment.

RECLAMATION

§ 3603.20 Reclamation.

§ 3603.21 What reclamation requirements pertain to community pits and common use areas?

Generally, you do not need to perform reclamation after extracting mineral materials from community pits or

common use areas. However, you must pay a reclamation fee as provided in § 3603.22.

§ 3603.22 What fees must I pay to cover the cost of reclamation of community pits and common use areas?

(a) You must pay a reclamation fee based on the amount of mineral materials you extract from the community pit or common use area, unless you make an alternative arrangement under paragraph (b) of this section. The reclamation fee you pay is a proportionate share of the total estimated cost of reclamation, determined by using the ratio of the material that you extract under your permit or contract to the total volume of the material BLM estimates will be extracted from the site.

(b) BLM may, at our discretion, allow purchasers and permittees to perform interim or final reclamation, where needed, in lieu of paying reclamation charges. If BLM allows you to perform reclamation in lieu of paying a fee, we may also require you to post a bond under § 3602.14.

Subpart 3604—Free Use of Mineral Materials

OBTAINING FREE USE PERMITS

§ 3604.10 Permits for free use of mineral materials.

§ 3604.11 How do I apply for a free use permit?

If you wish to apply for free use of mineral materials, you may file a letter of request or a BLM standard application form approved by the Office of Management and Budget.

§ 3604.12 Who may obtain a free use permit?

Any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any non-profit organization, may apply for a free use permit to extract and use mineral materials.

(a) BLM may issue free use permits to a government entity without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that the government entity shows that it will not use these materials for commercial or industrial purposes.

(b) BLM may issue free use permits to a non-profit organization for not more than 5,000 cubic yards (or weight equivalent) in any period of 12 consecutive months, provided that the organization shows that it will not use these materials for commercial or industrial purposes.

§ 3604.13 When will BLM decline to issue a free use permit to a qualified applicant?

BLM will not issue a free use permit if we determine that you own or control an adequate supply of suitable mineral materials that:

(a) Are readily available, and

(b) You can mine in a manner that is economically and environmentally acceptable.

ADMINISTRATION OF FREE USE

§ 3604.20 Administration of free use permits.

§ 3604.21 What is the term of a free use permit?

(a) BLM will determine the appropriate length of your free use permit term.

(1) BLM will not grant free use permits to government entities for terms exceeding 10 years.

(2) BLM will not grant free use permits to non-profit organizations for terms exceeding one year.

(b) BLM may extend any free use permit term for a single additional period not to exceed one year.

§ 3604.22 What conditions and restrictions pertain to my free use permit?

(a) You must not barter or sell mineral materials that you obtain under a free use permit.

(b) You must not remove mineral materials before BLM issues you a permit or after your permit expires.

(c) BLM may incorporate other conditions and restrictions into your free use permit.

§ 3604.23 When and how may I assign my free use permit?

You may assign or transfer your free use permit to entities qualified under

§ 3604.12. You must first obtain BLM's written approval.

§ 3604.24 Who may remove materials on my behalf?

(a) You may allow your agent to extract mineral materials under your free use permit.

(b) Your agent may charge you only for extraction services and must not—

(1) Charge you for the materials extracted, processed, or removed; or

(2) Take mineral materials from the permit area as payment for services rendered to you, or as a donation or gift.

§ 3604.25 What bond requirements pertain to free use permits?

BLM may require a bond or other security as a guarantee of your faithful compliance with the provisions of your permit and applicable regulations, including reclamation. The type of security must be one of those provided for in § 3602.14(c) of this part.

§ 3604.26 When will BLM cancel my permit?

BLM may cancel your permit if you fail, after adequate notice, to follow its terms and conditions.

§ 3604.27 What rights does a free use permit give me against other users of the land?

Permits that BLM issues under this subpart constitute a superior right to remove the materials in accordance with the permit terms and provisions, as against any claim to or entry of the lands made after the date BLM designated the tract for mineral materials disposal. *See* § 3602.12.

PART 3620—FREE USE OF PETRIFIED WOOD

Sec.

Subpart 3622—Free Use of Petrified Wood

3622.1 Program: General.
3622.2 Procedures; permits.
3622.3 Designation of areas.
3622.4 Collection rules.

AUTHORITY: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

SOURCE: 48 FR 27015, June 10, 1983, unless otherwise noted.

Subpart 3622—Free Use of Petrified Wood

§ 3622.1 Program: General.

(a) Persons may collect limited quantities of petrified wood for noncommercial purposes under terms and conditions consistent with the preservation of significant deposits as a public recreational resource.

(b) The purchase of petrified wood for commercial purposes is provided for in § 3602.10 *et seq.* of this chapter.

[48 FR 27015, June 10, 1983, as amended at 66 FR 58909, Nov. 23, 2001]

§ 3622.2 Procedures; permits.

No application or permit for free use is required except for specimens over 250 pounds in weight. The authorized officer may issue permits, using the procedures of subpart 3604 of this chapter, for the removal of such specimens if the applicant certifies that they will be displayed to the public in a museum or similar institution.

[48 FR 27015, June 10, 1983, as amended at 66 FR 58909, Nov. 23, 2001]

§ 3622.3 Designation of areas.

(a) All public lands administered by the Bureau of Land Management and the Bureau of Reclamation are open to or available for free use removal of petrified wood unless otherwise provided for by notice in the FEDERAL REGISTER. Free use areas under the jurisdiction of said Bureaus may be modified or cancelled by notices published in the FEDERAL REGISTER.

(b) The heads of other Bureaus in the Department of the Interior may publish in the FEDERAL REGISTER designations, modifications or cancellations of free use areas for petrified wood on lands under their jurisdiction.

(c) The Secretary of the Interior may designate, modify or cancel free use areas for petrified wood on public lands which are under the jurisdiction of other Federal departments or agencies, other than the Department of Agriculture, with the consent of the head of other Federal departments or agencies