with the entities listed in appendix A. A U.S. person also is prohibited from engaging in most transactions with entities located in Iran that are not owned or controlled by the Government of Iran. Finally, please be aware that certain entities listed in Appendix A to Part 560 may be subject to further sanctions under other sanctions programs.

**Public Participation**

Because the amendment of the ITR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

**Paperwork Reduction Act**

The collections of information related to the ITR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

**List of Subjects in 31 CFR Part 560**

Administrative practice and procedure, Banks, Banking, Brokers, Foreign trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 560 as follows:

## PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation of part 560 continues to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

■ 2. Amend Appendix A to Part 560 by revising the heading and introductory text, as well as redesignating paragraphs 19 and 20 as 22 and 23, respectively, and adding new paragraphs 19, 20, and 21, to read as follows:

**Appendix A to Part 560—Entities Determined To Be Owned or Controlled by the Government of Iran**

This non-exhaustive appendix lists entities determined by the Office of Foreign Assets Control (''OFAC'') to be *entities owned or controlled by the Government of Iran* within the meaning of §§ 560.304 and 560.313 of this part 560. The entities listed below are considered to be *entities owned or controlled by the Government of Iran* when they operate not only from the locations listed below, but also from any other location. The names and addresses are subject to change. This part 560 contains prohibitions against engaging in most transactions with entities owned or controlled by the Government of Iran, whether such entities are located or incorporated inside or outside of Iran. Moreover, regardless of whether an entity is listed below, if the entity is owned or controlled by the Government of Iran, the prohibitions on engaging in transactions with the entity, wherever located worldwide, apply to the same extent they would apply if the entity were listed in this appendix. Note that the prohibitions in this part 560 also apply to transactions with entities located in Iran that are not owned or controlled by the Government of Iran. Finally, please be aware that certain entities listed in this appendix may be subject to further sanctions under other sanctions programs.

* * * * *

19. NATIONAL IRANIAN OIL COMPANY, (a.k.a. NIOC) Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran
20. NAFTIRAN INTERTRADE COMPANY LTD, (a.k.a. NICO); a.k.a. Naft Iran Intertrade Ltd, 22 Grenville St, St Helier, Jersey Channel Islands JE4 8PX, United Kingdom; 22 Grenville St, St Helier, Jersey, Channel Islands JE2 4UF, United Kingdom; 5th floor, Petro Pars Building, Saadat Abad Avenue, No. 35, Farhang Blvd, Tehran, Iran
21. NAFTIRAN INTERTRADE CO. (NICO) Sarl, 6, Avenue de la Tour Haldimand, 1009 Pully, VD, Switzerland

* * * * *

**Barbara C. Hammerle,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. E8–28711 Filed 12–3–08; 8:45 am]

**BILLING CODE 4811–45–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 1045, 1054, and 1065

**[EPA–HQ–OAR–2004–0008; FRL–8712–8]**

**RIN 2060–AM34**

### Control of Emissions From Nonroad Spark-Ignition Engines and Equipment

*Correction*

In rule document E8–21093 beginning on page 59034 in the issue of Wednesday, October 8, 2008, make the following corrections:

**§ 1045.205 [Corrected]**

1. On page 59205, in the third column, in § 1045.205(q), in the fifth line, ''CO2'' should read ''$CO_2$''.

**§ 1045.315 [Corrected]**

2. On page 59212, in the second column, in § 1045.315(b), the equation should read as follows:

''$C_i$ = Max [0 or $C_{i-1}$ + $X_i$ − (STD + 0.25 × σ)]''

3. On the same page, in the same column, in § 1045.315(f), in the fourth line, ''5.0 x σ'' should read ''5.0 × σ''.

**§ 1054.112 [Corrected]**

4. On page 59264, in the first column, in § 1054.112(b)(2), in the first line, ''m2 day'' should read ''$m^2$/day''.

**§ 1065.370 [Corrected]**

5. On page 59329, in the first column, in § 1065.370(c), in the third line, ''± 3% or less'' should read ''± 2% or less''.

[FR Doc. Z8–21093 Filed 12–3–08; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 3800

**[LLWO32000.L13300000.PO0000.24–1A]**

**RIN 1004–AE00**

### Mining Claims Under the General Mining Laws

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Interim final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is issuing this interim final rule to amend the BLM's regulations for Mining Claims under the General Mining Laws. The rule responds to a Federal district court decision that required the BLM to evaluate whether the regulations

comply with Congress's policy goal for the United States to receive fair market value for the use of the public lands and their resources. The interim final rule makes it clear that, other than processing fees, location fees, and maintenance fees provided for in 43 CFR parts 3800 and 3830, the BLM does not require any other fees for surface use of the public lands for mining purposes.

**DATES:** *Effective date:* The interim final rule is effective December 4, 2008.

*Comment deadline:* You should submit your comments on the interim final rule on or before February 2, 2009. The BLM may not necessarily consider or include in the administrative record for the interim final rule comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

**ADDRESSES:** Mail: Director (630), Bureau of Land Management, U.S. Department of the Interior, Mail Stop 401 LS, 1849 C St., NW., Washington, DC 20240, Attention: 1004–AD69.

*Personal or messenger delivery:* 1620 L Street, NW., Washington, DC 20036.

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

**FOR FURTHER INFORMATION CONTACT:** Scott Haight at (406) 538–1930 for information relating to the surface management program or the substance of the notice, or Ted Hudson at (202) 452–5042 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

**SUPPLEMENTARY INFORMATION:**



## I. Public Comment Procedures

*A. How do I comment on the notice?*

If you wish to comment, you may submit your comments by any one of several methods:

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, Director (630), Mail Stop 401 LS, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Attn: 1004–AD69.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may access and comment on the notice at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Written comments on the interim final rule should be specific, should be confined to issues pertinent to the interim final rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing.

The BLM may not necessarily consider or include in the Administrative Record for the notice comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

You may examine documents pertinent to this interim final rule as follows. Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: ''Personal or messenger delivery'' during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. They will also be available at the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at this Web site.

*C. Can my name and address be kept confidential?*

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. Mail your comment to: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 40l LS, 1849 C Street, NW., Attention: 1004–AD69, Washington, DC 20240.

You may deliver comments to: Room 401, 1620 L St., NW., Washington, DC 20036.

## II. Background

In 2003, a Federal district court substantially upheld the BLM's surface management regulations in 43 CFR subpart 3809, but remanded them in part to the Department ''for evaluation, in light of Congress's expressed policy goal for the United States to 'receive fair market value of the use of the public lands and their resources.' '' The district court concluded that ''[o]perations neither conducted pursuant to valid mining claims nor otherwise explicitly protected by [the Federal Land Policy and Management Act of 1976 (FLPMA)] or the Mining Law (i.e., exploration activities, ingress and egress, and limited utilization of mill sites) must be evaluated in light of Congress's expressed policy goal for the United States to 'receive fair market value of the use of the public lands and their resources.' '' *Mineral Policy Center* v. *Norton,* 292 F. Supp. 2d 30, 51 (D.D.C. 2003). The court remanded the regulations to the Department to evaluate the competing priorities set forth in FLPMA as applied to invalidly claimed or unclaimed lands ''in light of Congress's expressed policy goal for the United States to 'receive fair market value of the use of public lands and their resources.' '' *Id.*

On February 23, 2007, the BLM published an advance notice of proposed rulemaking (ANPR) to assist the BLM in the evaluation ordered by the court (71 FR 8139). The ANPR requested public comments regarding whether any miners or mining companies in fact use unclaimed lands for such mining operations. The BLM asked for detailed examples of any such use so that it could determine whether it needed to conduct further evaluation of FLPMA's competing priorities with regard to any mining operations that go beyond exploration activities on unclaimed lands. The absence of comments providing such examples suggests that the BLM's belief is correct that no mining operations amounting to more than initial exploration activities occur on unclaimed Federal lands under the Mining Law. (The comments we received are discussed fully below.) Consequently, the BLM has determined that there is no use of the surface of invalidly claimed or unclaimed lands for mining purposes, amounting to more than initial exploration activities, for which BLM must consider charging fair market value.

The BLM received 958 comments in response to the ANPR. The comments expressed opinions on whether the BLM had the authority to implement regulations to obtain fair market value for the use of unclaimed lands for mining purposes.

The great majority of the comments appeared in identical form e-mails, and read as follows:

''In 2003, a court ordered the Bureau of Land Management to require fair market value for operations conducted on lands not subject to valid claims or unclaimed lands. This would require mining companies to

comply with the current mining law and demonstrate the validity of their mining claims.

''In the advance notice of proposed rulemaking issued February 23, the BLM argued that it is not 'practical' to undertake claim validity examinations to determine whether or not a mining company has staked valid claims under the 1872 Mining Law. It appears the BLM plans to just ignore the fact that there may be mining companies that are violating the law by operating on unclaimed or invalidly claimed lands.

''Please do not permit the BLM to allow mining companies to violate the 1872 Mining Law—an antiquated law that has already caused tremendous harm to western lands and water resources—instead of compelling mining companies to comply with the law and demonstrate the validity of their mining claims.

''Instead of allowing mining companies to thwart the law, the BLM should do everything it can to make sure that all mining occurs on valid claims.''

Most of the other comments presented variations on these positions, or general statements favoring or opposing the Mining Law. (The latter issue is beyond the scope of this rule.) Others opposed any imposition of fair market value charges on mining operations.

As we stated in the ANPR, ''[t]he court's decision in *Mineral Policy Center* did not address the use of lands on which mining claims of unknown validity exist.'' Nevertheless, we discussed in the ANPR and discuss in the next section of this preamble the budgetary and other practical reasons why the BLM does not routinely undertake validity examinations of all mining claims.

Public lands are generally open to the operation of the Mining Law, unless they are statutorily or administratively withdrawn from such use. A mining claim on lands that are open to the operation of the Mining Law and that is determined invalid by the BLM remains open for relocation by the original claimant or another claimant.

On the other hand, withdrawn lands are usually withdrawn subject to valid existing rights. Under the BLM's regulations, a mining claim that was located before a withdrawal is automatically subject to a validity examination when the claimant files a plan of operations under 43 CFR 3809.11 or a notice under 43 CFR 3809.21. See 43 CFR 3809.100. A validity examination is also triggered when a mining claimant files a patent application under 43 CFR part 3860. See 43 CFR 3862.1–1. Also, when anyone attempts to use a mining claim for purposes not contemplated by the Mining Law, the BLM treats that use as a trespass and will conduct a validity examination of the mining claim. In these ways, the BLM prevents abuse of the Mining Law.

The ANPR specifically requested that comments provide examples of uses of unclaimed lands for mining operations that go beyond exploration activities on the public lands. None of the comments provided any past or current examples of miners or mining companies using unclaimed lands for such mining operations under the Mining Law. One comment purported to describe such an example, but upon further investigation the mining operation described did not occur on unclaimed lands. Other comments described activities in support of mining, such as access and storage. However, when these ancillary uses are conducted in relation to mining claims or mill sites, they need not be evaluated in light of FLPMA's fair market policy. As noted in the ANPR, Judge Kennedy of the Federal district court concluded that the Mining Law authorizes operations, including possession, occupancy, and mineral extraction activities, without payment of fair market value for that use (292 F. Supp. 2d at pages 47 and 51). The court also concluded that the Mining Law authorizes exploration activities, mill site use, and ingress and egress to mining claims (id.). None of the comments presented factual scenarios in which such ancillary uses took place in association with operations on unclaimed lands that amount to more than initial exploration activities.

The response to the ANPR with regard to the use of unclaimed lands for mining operations was consistent with the BLM's expectations. The BLM is not aware of any miner or mining company that would be willing to invest money or resources in the development of a mine without some tenure in the land in the form of a mining claim or mill site. If a mining company were to file a plan of operations to extract minerals from unclaimed lands, a third party could easily locate mining claims over the area and assert adverse rights to the lands. Consequently, the fact that none of the handful of comments addressing the issues raised in the ANPR presented an example of an operator engaging in more than initial exploration on the public lands without a mining claim or mill site was not surprising.

This is an interim final rule. Although the rule is effective upon publication, there is a 60-day comment period that starts on the date of publication. After the comment period, we will review the comments and may issue a further final rule with any necessary changes.

Because this rule makes no substantive change in any rule or requirement, the BLM for good cause finds that notice and public comment are unnecessary and the rule may take effect upon publication pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3).

## III. Why We Are Publishing This Rule

As previously noted, the court concluded that the Mining Law authorizes operations, including possession, occupancy, and mineral extraction activities, on valid mining claims without payment of fair market value for that use (*Mineral Policy Center*, 292 F. Supp. 2d at page 51). The court instructed the BLM to evaluate whether the fair market value policy in FLPMA should be applied to ''invalidly claimed or unclaimed lands.''

The BLM is not aware of any mining operations taking place on ''invalidly claimed'' public lands (i.e., public lands where BLM has determined that the claims or sites are invalid) or unclaimed public lands (i.e., lands where there are no mining claims or mill sites). Because there are no mining operations occurring on unclaimed lands or lands determined to be invalidly claimed, the BLM concludes that there is nothing to evaluate in light of the fair market value policy.

For mining operations occurring on claimed lands, the BLM is publishing this rule to make it clear that mine operators are not required to pay any fee to use the surface of public lands for mining operations conducted under the Mining Law, other than the fees that mining claimants already pay in the form of the maintenance fee, the claim location fee, and services charges for other transactions associated with mining claims (see 43 CFR 3830.21).

As discussed above and in the ANPR, the BLM does not routinely undertake validity examinations for all mining claims located under the Mining Law. Even though the validity of most mining claims is unknown, the BLM treats all properly maintained mining claims as active claims. The BLM requires all mining claimants to comply with the statutory recording and maintenance requirements, as well as the prohibition against causing unnecessary or undue degradation of the public lands. The requirements to maintain a claim's active status include timely payment of location fees and annual maintenance fees. By law, claimants must pay the fees without regard to whether the BLM has determined the underlying validity of the claims.

Because Congress authorizes mining claimants to locate mining claims under the Mining Law and maintain them by making annual payments to the BLM while the validity of the claims is unknown or undetermined, the BLM

has concluded that it may not apply FLPMA's fair market value policy to approved mining operations that occur on mining claims of unknown validity. Likewise, the BLM has concluded that it may not apply FLPMA's fair market value policy to approved mining operations that occur on mining claims of known validity.

The BLM believes that its conclusions comport with the fair market value policy of FLPMA, which establishes a goal of receiving fair market value of the use of the public lands ''unless otherwise provided by statute.'' The Supreme Court has acknowledged that the Mining Law allows ''citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals.'' *United States* v. *Locke*, 471 U.S. 84, 86 (1985). In particular, the Supreme Court has explained that the Mining Law ''extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits, and * * * [t]hose who, being qualified, proceed in good faith to make such explorations and enter peaceably upon vacant lands of the United States for that purpose are not treated as mere trespassers, but as licensees or tenants at will.'' *Union Oil Co.* v. *Smith*, 249 U.S. 337, 346 (1919). The Ninth Circuit also has stated, ''Under the wise and beneficent policy of the government of the United States, all its public lands were thrown open to its citizens, and those who had declared their intention to become such, for exploration for the precious minerals and development thereof.'' *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 112 F. 4, 13 (9th Cir. 1901). The Mining Law has authorized public land use for mineral exploration and development without any requirement to pay fair market value for that use. Therefore, based on the express terms of FLPMA's policy statement, that use is exempt from FLPMA's fair market value policy and this rule adds a provision making it clear that, other than processing fees, location fees, and maintenance fees provided for in 43 CFR parts 3800, 3830, and 3834, the BLM does not require any other fees for surface use of the public lands for mining purposes.

Moreover, FLPMA states that its policies will become effective ''only as specific statutory authority for their implementation is enacted by [FLPMA] or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.'' 43 U.S.C. 1701(b). FLPMA did not enact specific authority requiring fair market value payments for mining uses of the public lands. However, Congress has enacted subsequent legislation that requires mining claimants to pay for the use of public lands encumbered with mining claims and mill sites through the maintenance fee. When Congress proposed the mining claim maintenance fee, the stated purpose was to generate some financial return to the public for use of Federal lands and the disposition of valuable mineral resources from those lands. See, e.g., 139 Cong. Rec. E 64 (Jan. 5, 1993). Since 1992, the BLM has collected over $300 million from mining claimants in maintenance fee payments for their use of the public lands for mining purposes. Congress has therefore addressed FLPMA's fair market value policy through specific statutory authority requiring annual maintenance fee payments for mining claims and mill sites.

## IV. Section-by-Section Analysis

*Section 3800.6 Am I required to pay any fees to use the surface of public lands for mining purposes?*

This interim final rule adds section 3800.6, which states that anyone who is using the surface of public lands for mining purposes is not required to pay any fee for that use, other than the processing fees, location fees, and maintenance fees currently required.

## V. Procedural Matters

*Executive Order 12866, Regulatory Planning and Review*

This interim final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This interim final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This interim final rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This interim final rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. This rule makes no substantive change in any rule or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise provided by statute or regulation.

*Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this interim final rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the interim final rule clearly stated?

2. Does the interim final rule contain technical language or jargon that interferes with its clarity?

3. Does the format of the interim final rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example § 3800.6. Am I required to pay any fees to use the surface of public lands for mining purposes?)

5. Is the description of the interim final rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final rule? How could this description be more helpful in making the interim final rule easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

*National Environmental Policy Act*

The BLM has determined that this interim final rule, which makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise provided by statute or regulation, is a regulation of an administrative, financial, legal, technical, or procedural nature. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the interim final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures

adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule makes no substantive change in any rule or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation. We have identified no entity that has carried out or proposes to carry out mining operations on unclaimed land. The rule affirms that the BLM will not charge fair market value for mining use of unclaimed land, use that does not occur because there are strong practical disincentives. Therefore, the BLM has determined under the RFA that this interim final rule would not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This interim final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would 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. This rule makes no substantive change in any regulation or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

*Unfunded Mandates Reform Act*

This interim final rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this interim final rule have a significant or unique effect on state, local, or tribal governments. The rule imposes no requirements on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that this interim final rule will not have effects approaching $100 million per year on the private sector. Therefore, the BLM does not need to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

This interim final rule is not a government action capable of interfering with constitutionally protected property rights. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property and does not require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

The interim final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the levels of government. It does not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this interim final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, we have determined that this interim final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have found that this interim final rule does not include policies that have tribal implications. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

*Information Quality Act*

In developing this interim final/final rule, we did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (section 515 of Public Law 106–554).

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, the BLM has determined that the interim final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

*Executive Order 13352—Facilitation of Cooperative Conservation*

In accordance with Executive Order 13352, the BLM has determined that this interim final rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety. This rule makes no substantive change in any regulatory provision or requirement. It merely makes it clear that the BLM will not charge fair market value or any additional fee for mining or related use of public lands except as otherwise expressly provided by statute or regulation.

*Paperwork Reduction Act*

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

*Author*

The principal author of this notice is Scott Haight of the Lewistown Field Office, Montana, assisted by Ted Hudson of the Division of Regulatory

Affairs, Washington Office, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

**List of Subjects in 43 CFR Part 3800**

Administrative practice and procedure; Environmental protection; Intergovernmental relations; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

Dated: November 14, 2008.

**C. Stephen Allred,**

*Assistant Secretary of the Interior, Land and Minerals Management.*

■ For the reasons stated in the Preamble, and under the authorities stated below, the BLM amends 43 CFR part 3800 as follows:

## PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

■ 1. Revise the authority citation for part 3800 to read as follows:

**Authority:** 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 22–42, 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. No. 97–35, 95 Stat. 357.

### Subpart 3800—General

■ 2. Add § 3800.6 to read as follows:

**§ 3800.6 Am I required to pay any fees to use the surface of public lands for mining purposes?**

You must pay all processing fees, location fees, and maintenance fees specified in 43 CFR parts 3800 and 3830. Other than the processing, location and maintenance fees, you are not required to pay any other fees to the BLM to use the surface of public lands for mining purposes.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[FWS–R1–ES–2007–0006; 92210–1117–0000–B4]**

**RIN 1018–AU93**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 12 Species of Picture-Wing Flies From the Hawaiian Islands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for 12 species of Hawaiian picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 8,788 acres (ac) (3,556 hectares (ha)) fall within the boundaries of the final critical habitat designation. The critical habitat is located in four counties (City and County of Honolulu, Hawaii, Maui, and Kauai) in Hawaii.

**DATES:** This final rule becomes effective on January 5, 2009.

**ADDRESSES:** The final rule, final economic analysis, and map of critical habitat are available on the Internet at *http://www.regulations.gov*. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850; telephone 808–792–9400; facsimile 808–792–9580.

**FOR FURTHER INFORMATION CONTACT:** Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**); telephone 808–792–9400; facsimile 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For additional information on the 12 Hawaiian picture-wing flies, refer to the final listing rule published in the **Federal Register** on May 9, 2006 (71 FR 26835), the revised proposed critical habitat rule published in the **Federal Register** on November 28, 2007 (72 FR 67428), and the recovery outline for the 12 Hawaiian picture-wing flies available on the Internet at *http://www.fws.gov/Pacific/ecoservices/endangered/recovery/documents/Drosophilarecoveryoutline-final.pdf.*

### Previous Federal Actions

On November 28, 2007, we published a revised proposed rule in the **Federal Register** to designate critical habitat for the 12 Hawaiian picture-wing flies (72 FR 67428). The publication of the revised proposal opened a 60-day public comment period, which closed on January 28, 2008. On March 6, 2008, we published a document in the **Federal Register** announcing the reopening of the public comment period until April 25, 2008, and a notice of two public hearings (73 FR 12065). On April 4, 2008, we held a public hearing in Hilo, Hawaii, and on April 10, 2008, we held a public hearing in Honolulu, Hawaii. On August 12, 2008, we published a document in the **Federal Register** (73 FR 46860) announcing the availability of the draft economic analysis of the proposed critical habitat designation and reopening the public comment period until September 11, 2008. For more information on previous Federal actions concerning the 12 species of Hawaiian picture-wing flies, refer to the proposed designation of critical habitat published in the **Federal Register** on August 15, 2006 (71 FR 46994), and the final rule to list 11 picture-wing flies as endangered and one picture-wing fly as threatened published in the **Federal Register** on May 9, 2006 (71 FR 26835).

### Summary of Comments and Recommendations

During the comment period that opened on November 28, 2007, and closed on January 28, 2008 (72 FR 67428), we received 10 comments, including 2 requests for public hearings. Three comments were from peer reviewers, three were from State of Hawaii agencies, and four were from nongovernmental organizations or individuals. During the comment period that opened on March 6, 2008, and closed on April 25, 2008 (73 FR 12065), we received nine comments from organizations or individuals. We also conducted public hearings in Hilo on the Island of Hawaii and in Honolulu on the Island of Oahu, Hawaii. During the comment period that opened on August 12, 2008, and closed on September 11, 2008 (73 FR 46860), we received seven comments. Three comments were from individuals (which includes two individuals that presented testimony at the public hearing in Honolulu, Hawaii on April 10, 2008), one comment was from the U.S. Navy, and three comments were received from the State of Hawaii Division of Forestry and Wildlife, Office of Hawaiian Affairs, and the State Historic Preservation Office.

Twelve comments supported the designation of critical habitat for the Hawaiian picture-wing flies and four opposed the designation. Two comments were received from individuals expressing general views on the Endangered Species Act, but were unrelated to the proposed designation of