

amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "December 31, 1998".

3. *Option 2 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "June 30, 1998".

4. *Option 3 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "December 31, 1997".

5. *Option 4 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "June 30, 1997".

6. *Option 5 for paragraph (l):* paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words "December 31, 1996" each time they occur, and adding in their place, "four months after such time as the LTMS final EIS/EIR has been completed and a subsequent Record of Decision signed by EPA".

#### *Under Volume Options*

7. *Option 1 for paragraph (l):* paragraph (l)(3)(vii) is amended by removing the words "six million cubic yards" and adding in their place, "4.8 million cubic yards".

8. *Option 2 for paragraph (l):* paragraph (l)(3)(vii) is amended by removing the words "six million cubic yards" and adding in their place, "two million cubic yards".

9. *Option 3 for paragraph (l):* paragraph (l)(3)(vii) is amended by removing the words "six million cubic yards" and adding in their place, "five million cubic yards".

[FR Doc. 96-26630 Filed 10-16-96; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**43 CFR Parts 1600, 1820, 1840, 1850, 1860, 1880, 2090, 2200, 2300, 2450, 2520, 2540, 2560, 2620, 2640, 2650, 2720, 2800, 2810, 2880, 2910, 2920, 3000, 3100, 3120, 3150, 3160, 3180, 3200, 3240, 3250, 3260, 3280, 3410, 3420, 3430, 3450, 3470, 3480, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3590, 3710, 3730, 3740, 3800, 3810, 3830, 3870, 4200, 4300, 4700, 5000, 5470, 5510, 8370, 9180 and 9230**

[WO-130-1820-00 24 1A]

RIN 1004-AC99

### Appeals Procedures; Hearings Procedures

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

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to amend its regulations that govern procedures for protests of proposed decisions, contests, appeals of BLM decisions and hearings. The proposed regulations provide more consistent procedures for administrative review of BLM decisions. The proposal also clarifies when and how BLM decisions go into effect and if an appeal will or will not stay the effectiveness of a BLM decision. The goal of the proposed regulation is to present a single, streamlined administrative review process for most of BLM's decisions, thereby reducing costs and time spent on appeals by the appellants, BLM and the Office of Hearings and Appeals (OHA).

**DATES:** *Comments:* Submit comments by November 18, 1996. BLM will consider comments received or postmarked on or before this date in the preparation of the final rule.

**ADDRESSES:** Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC. 20240. Commenters may send comments through the internet to [WOCComment@WO0033wp.wo.blm.gov](mailto:WOCComment@WO0033wp.wo.blm.gov). Please include "attn: AC99", and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your internet message, please contact us by telephone or mail.

**FOR FURTHER INFORMATION CONTACT:** Jeff Holdren 202-452-7779, or Bernie Hyde 202-452-5057.

### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

#### I. Public Comment Procedures

Please provide written comments about the proposed rule which explain the reason for any recommended changes to the addresses listed above. Please indicate the section or paragraph of the proposed rule on which you are commenting.

Comments received after the closing date of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**) may, but need not be, considered or included in the Administrative Record for the final rule.

#### II. Background

##### *A. Introduction—Protests, Appeals, Contests and Hearings*

This rule pertains to the following: Protests—which are objections to any action proposed to be taken in any proceeding before the BLM. A protest is normally considered by the official who has the next higher rank above the BLM official who will make the proposed decision, unless otherwise directed in a notice of proposed decision, if such a notice is issued.

Appeals—which are requests under part 4 of title 43 of the Code of Federal Regulations for a review of a BLM decision. You may appeal a BLM decision if you are a party to a case and adversely affected by BLM's decision.

Contests—which are formal proceedings regarding such matters as disputes over title to lands or the validity of mining claims as described in 43 CFR 4.450 and 4.451. Contests usually involve hearings.

Hearings—which are evidentiary and factfinding proceedings before an administrative law judge. They may be held in a variety of circumstances. The Interior Board of Land Appeals (IBLA) may, on its own or at the request of an appellant, order a hearing to resolve a factual dispute related to an appeal of a BLM decision. In some cases, a hearing must be on the record when statutorily required.

##### *B. Historical and Current Procedures*

The Department of the Interior (Department) has been handling protests, appeals, contests and hearings since its creation in 1849. From 1849 until BLM was created in 1946, the

Secretary, an under secretary, or an assistant secretary signed decisions, which made them final agency actions. Prior to 1970, decisions regarding the public lands were reviewed in an administrative review process involving review by the BLM Director and then by the Secretary. This procedure was criticized for a perceived lack of impartiality. Thus, in 1970, OHA, and its component, the IBLA, were created. 43 CFR 4.1.

Under current Department regulations, anyone who seeks to protest a proposed decision, appeal a BLM decision, participate in a contest or seek a hearing, is confronted with a wide variety of procedures described in title 43 of the Code of Federal Regulations (43 CFR). Because of decades of statutory changes and resulting regulatory amendments, Departmental appeals procedures have become increasingly inconsistent.

While parts 1840 and 1850 in 43 CFR currently serve only as a cross reference to OHA regulations in 43 CFR part 4, over 40 other protest regulations and 100 other appeals regulations are found in Chapter II of 43 CFR. Chapter II of 43 CFR also contains regulations regarding hearings, contests, administrative remedies, and the effectiveness of decisions. As a result, anyone who wants to protest a proposed decision or to appeal a BLM decision may often have difficulty in understanding or following proper administrative procedures.

### *C. Legal Authorities for Administrative Review*

The Federal Land Policy and Management Act (FLPMA) establishes a policy in favor of considering the views of the general public in establishing rules and regulations and structuring adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions and expeditious decisionmaking. 43 U.S.C. 1701(a). FLPMA also authorizes the Secretary of the Interior to promulgate rules and regulations to carry out the purposes of the FLPMA and of other laws applicable to the public lands. 43 U.S.C. 1740.

### *D. Proposed Procedures*

BLM is proposing regulations to make the procedures for filing protests and appeals more consistent and more readily understandable and accessible to members of the public. BLM is also proposing to amend the regulations in Chapter II of 43 CFR wherever they describe protest, contest, appeals or hearings procedures. While BLM has attempted to streamline its appeals

procedures and make them as consistent as possible in this proposed rule, some variation in handling of protests, contests, hearings and appeals is still necessary in BLM's regulations due to the wide variety of subject matter about which BLM makes decisions. The proposed rule identifies these variations.

When seeking administrative review of a BLM decision, you should refer to three places in the regulations: (1) The regulations which govern the specific activity, (2) the regulations proposed for part 1840 of title 43 CFR which describe general review procedures for BLM decisions and (3) the regulations in part 4 of title 43 CFR which describe OHA review procedures. Under 4.1(b) of title 43 CFR, if the general rules in subpart B of part 4 conflict with a special rule in another subpart of title 43 CFR, the special rule governs.

### *III. Discussion of Proposed Rule*

#### *A. Protests, Appeals, Contests and Hearings*

This proposed rule identifies the steps a person would follow in order to seek to protest a decision proposed by BLM, to appeal a decision made by BLM, or to participate in a contest or hearing regarding a disputed matter. This proposed rule applies to these activities with regard to decisions proposed to be made or made by BLM under the regulations found in chapter II of 43 CFR.

The proposed rule amends the regulations found in chapter II of 43 CFR in three ways: (1) By eliminating provisions which duplicate those found in the proposed part 1840 regulations, (2) by eliminating unnecessary steps in the administrative review process where possible, and (3) by adding cross references to the proposed part 1840 and to part 4 of 43 CFR. In a few instances, certain protests, appeals, contests and hearings regulations may not follow the same general procedures outlined in proposed part 1840. Those regulations will describe the procedures which differ from the provisions in proposed part 1840.

The proposed rule explains that, when a decision has been appealed, BLM is not prohibited from reconsidering or discussing the appealed decision with the appellant or other interested parties. If BLM decides to rescind or amend the appealed decision as a result of additional review or discussion with the appellant or other interested parties, it may do so by requesting OHA to remand the matter for further action by BLM. BLM officials and appellants are encouraged to work

toward informal resolutions regarding disputes over decisions proposed or made by BLM before and after appeals are filed. These informal reviews and discussions are intended to replace the unnecessarily formal mid-level reviews, such as State Director reviews, found in the existing regulations.

#### *B. Effect of Decisions*

Under the existing regulations in part 4 of 43 CFR, except as provided by other regulations, BLM decisions do not go into effect during a 30-day appeals period. If an appeal and a petition for a stay is filed during the 30-day appeals period, the decision does not go into effect for an additional 45 days or until OHA denies the petition, whichever is first. The 45-day period is used by OHA to decide if a stay is warranted. If OHA concludes that a stay is not warranted and denies the petition, the decision goes into effect when OHA denies the petition. If the 45 days pass without a decision from OHA regarding the petition for a stay, the decision goes into effect after the 45-day period. If a stay is granted, the decision does not go into effect while the appeal is pending. If neither an appeal nor a request for a stay is filed, the decision goes into effect after the 30-day appeal period.

Some regulations in chapter II of 43 CFR provide for certain categories of decisions to go into effect immediately and to remain in effect while appeals are pending. The following categories of decisions will go into effect as provided in the regulations cited below:

- (1) Right-of-Way decisions under part 2800 (see § 2804.1);
- (2) Right-of-Way under the Mineral Leasing Act decisions under part 2880 (see § 2884.1);
- (3) Minimum impact permit decisions under subpart 2920 (see § 2920.2-2(b) as published in 61 FR 32351 (1996));
- (4) Decisions to hold competitive oil and gas lease sales under § 3120.1-3;
- (5) Onshore Oil and Gas Geophysical Exploration decisions under subpart 3150 (see § 3150.2);
- (6) Onshore Oil and Gas Operations decisions under part 3160 (see §§ 3165.3(e) and 3165.4(c));
- (7) Geothermal Resources Operations decisions under part 3260 (see § 3266.1);
- (8) Coal Lease Readjustments under § 3451.2;
- (9) Coal Lease Termination decisions for disqualified lessees under § 3472.1-2(e)(4) (ii) and (iii);
- (10) Phosphate Lease Readjustments under § 3511.4(b);
- (11) Potassium Lease Readjustments under § 3531.4(b);
- (12) Gilonite Lease Readjustments under § 3551.4(b);

(13) Hardrock Mining Surface Management decisions under subpart 3809 (see § 3809.4(f));

(14) Notices of closure to abate unauthorized grazing use under § 4150.2;

(15) Grazing decisions under group 4100 (see § 4160.3);

(16) Adopted Wild Horse and Burro removal decisions under § 4770.3;

(17) Forest Management decisions under group 5000 (see § 5003.1); and

(18) Use authorization decisions under part 8370 (see § 8372.6).

The proposed rule amends the current way in which most BLM decisions are put in effect while appeals are pending. The proposed rule describes three general classes of decisions, how those classes of decisions will go into effect, and how an appeal may or may not change the effectiveness of those classes of decisions.

First, the proposed rule describes a general rule under which BLM decisions will go into effect 30 days after the date of service of the decisions. If an appeal is filed during this 30-day appeals period, the general rule provides that BLM decisions will be stayed while appeals are pending. Under this provision, BLM may ask OHA to put a decision into effect if public interest requires.

Second, the proposed rule provides for an exception from the general rule for those categories of decisions listed above which go into effect and remain in effect while appeals are pending as provided in specific existing regulations.

Third, the proposed rule provides for a second exception for decisions which suspend use, occupancy or development of the public lands which must be put in effect immediately in order to protect health, safety or the environment. If a decision is placed in effect under either exception, the appellant may request a stay of the decision under § 4.21(b) of 43 CFR.

Because hearings procedures are located in part 4 of 43 CFR to which proposed part 1840 refers, BLM is proposing to delete part 1850 of 43 CFR from the regulations.

### C. Scope of Rule

Except as specifically provided, this proposed rule does not apply to protests of BLM's planning recommendations (see 43 CFR 1610.5-2 and 1610.5-5), protests of proposed and initial classification decisions (see 43 CFR part 2400), or protests or appeals of grazing decisions (see 43 CFR part 4100). However, 43 CFR parts 1600, 2400, and 4100 may be modified in the future so that the protest provisions in part 1840

will apply to them. Also, this proposed rulemaking does not apply to protests and appeals decided by the Board of Contract Appeals under 43 CFR part 4, subpart C, or arising from Indian Affairs as addressed under 43 CFR part 4, subpart D.

### D. Section by Section Description of the Rule

Section 1840.1—describes the purposes of the rule, which is to tell you how you may protest a decision proposed by BLM, appeal a BLM decision, participate in a contest or seek a hearing related to BLM decisions.

Section 1840.5—defines terms that apply to this subpart and other protest, appeals, contest and hearings regulations in chapter II of this title as amended by this rule.

Section 1840.7—describes what is not covered by this subpart.

Section 1841.10—describes what you must submit when you want to file a protest of a proposed decision.

Section 1841.11—explains how much time you have to file a protest.

Section 1841.12—tells you where you may file a protest.

Section 1842.10—describes who may appeal a BLM decision regarding the public lands and resources.

Section 1842.11—directs you to the procedures in part 4 of 43 CFR for additional information regarding appeals procedures.

Section 1843.10—describes who may file a contest.

Section 1843.11—describes who may request a hearing.

Section 1844.10—explains that BLM may reconsider a decision which has been appealed by reviewing it or by discussing it with the appellant or other interested parties.

Section 1844.11—describes how and when decisions will go into effect.

Section 1844.12—describes how you may request that a decision be stayed.

Section 1845—directs you to part 4, subparts A, B, and E, of 43 CFR for more detailed information concerning administrative review procedures.

### IV. Procedural Matters

The principal authors of this proposed rule are members of the Protest and Appeals Redesign Team, under the leadership of Jeff Holdren and Bernie Hyde, assisted by the staff of the Regulatory Management Team.

### National Environmental Policy Act

BLM has determined that this proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, in

accordance with 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Under Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which 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.

### Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501.

### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) 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. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

### Unfunded Mandates Reform Act

BLM has determined that this proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

### Executive Order 12612

The proposed rule does 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 various levels of government. Therefore, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant BLM's preparation of a federalism assessment.

### Executive Order 12630

The proposed rule does not represent a government action that interferes with constitutionally protected property

rights or would result in a taking of private property.

*Executive Order 12866*

The proposed rule is not significant regulatory action under section 3(f) of Executive Order 12866 and, accordingly, is not subject to review by the Office of Management and Budget.

List of Subjects

*43 CFR Part 1600*

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Public lands.

*43 CFR Part 1820*

Administrative practice and procedure, Alaska, Archives and records, Land Management Bureau, Public lands.

*43 CFR Part 1840*

Administrative practice and procedure, Land Management Bureau, Public lands.

*43 CFR Part 1850*

Administrative practice and procedure, Land Management Bureau, Public lands.

*43 CFR Part 1860*

Administrative practice and procedure, Land Management Bureau, Public lands.

*43 CFR Part 1880*

Administrative practice and procedure, Civil rights, Grants programs—natural resources, Intergovernmental relations, Land Management Bureau, Loan programs—natural resources, Public lands, Public lands-mineral resources.

*43 CFR Part 2090*

Airports, Alaska, Coal, Grazing lands, Indians—lands, Land Management Bureau, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

*43 CFR Part 2200*

Land Management Bureau, National forests, Public lands.

*43 CFR Part 2300*

Administrative practice and procedure, Electric power, Federal Energy Regulatory Commission, Land Management Bureau, Public lands—withdrawal.

*43 CFR Part 2450*

Administrative practice and procedure, Land Management Bureau, Public lands—classification.

*43 CFR Part 2520*

Irrigation, Land Management Bureau, Public lands, Reclamation, Reporting and recordkeeping requirements.

*43 CFR Part 2540*

Land Management Bureau, Public lands, Public lands—sale, Reporting and recordkeeping requirements.

*43 CFR Part 2560*

Alaska, Homesteads, Indians-lands, Land Management Bureau, Public lands, Public lands-sale, Reporting and recordkeeping requirements.

*43 CFR Part 2620*

Alaska, Intergovernmental relations, Land Management Bureau, Public lands-grants, Public lands-mineral resources.

*43 CFR Part 2640*

Airports, Land Management Bureau, Public lands-grants.

*43 CFR Part 2650*

Administrative practice and procedure, Alaska, Federal buildings and facilities, Indians-claims, Indians-lands, Land Management Bureau, National forests, Public land-grants, Wildlife refuges.

*43 CFR Part 2710*

Administrative practice and procedure, Land Management Bureau, Public lands-mineral resources, Public lands-sale.

*43 CFR Part 2720*

Administrative practice and procedure, Land Management Bureau, Public lands-mineral resources, Public lands-sale.

*43 CFR Part 2800*

Communications, Electric power, Highways and roads, Land Management Bureau, Pipelines, Public lands-rights-of-way, Reporting and recordkeeping requirements.

*43 CFR Part 2810*

Highways and roads, Land Management Bureau, Public lands-rights-of-way, Reporting and recordkeeping requirements.

*43 CFR Part 2880*

Administrative practice and procedure, Common carriers, Land Management Bureau, Pipelines, Public lands-rights-of-way, Reporting and recordkeeping requirements.

*43 CFR Part 2910*

Airports, Alaska, Land Management Bureau, Public lands, Recreation and recreation areas, Waste treatment and disposal.

*43 CFR Part 2920*

Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

*43 CFR Part 3000*

Land Management Bureau, Public lands-mineral resources.

*43 CFR Part 3100*

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3120*

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3150*

Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3160*

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3180*

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Surety bonds.

*43 CFR Part 3200*

Geothermal energy, Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3240*

Geothermal energy, Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Water resources.

*43 CFR Part 3250*

Geothermal energy, Government contracts, Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3260*

Environmental protection, Geothermal energy, Government contracts, Land Management Bureau,

Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3280*

Geothermal energy, Government contracts, Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3410*

Administrative practice and procedure, Coal, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3420*

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3430*

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements.

*43 CFR Part 3450*

Coal, Government contracts, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3470*

Coal, Government contracts, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3480*

Government contracts, Intergovernmental relations, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3500*

Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3510*

Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3520*

Government contracts, Land Management Bureau, Public lands-mineral resources.

*43 CFR Part 3530*

Government contracts, Mineral royalties, Mines, Potassium, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3540*

Land Management Bureau, Public lands-mineral resources.

*43 CFR Part 3550*

Land Management Bureau, Public lands-mineral resources.

*43 CFR Part 3560*

Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Surety bonds.

*43 CFR Part 3590*

Environmental protection, Government contracts, Indian-lands, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3710*

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources.

*43 CFR Part 3730*

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 3740*

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources.

*43 CFR Part 3800*

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

*43 CFR Part 3810*

Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3830*

Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3870*

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 4200*

Administrative practice and procedure, Alaska, Grazing lands, Land Management Bureau, Livestock, Range management.

*43 CFR Part 4300*

Administrative practice and procedure, Alaska, Grazing lands, Land Management Bureau, Range Management, Reindeer, Reporting and recordkeeping requirements

*43 CFR Part 4700*

Horses, Intergovernmental relations, Land Management Bureau, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wildlife.

*43 CFR Part 5000*

Administrative practice and procedure, Forests and forest products, Land Management Bureau, Public lands.

*43 CFR Part 5470*

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

*43 CFR Part 5510*

Forests and forest products, Land Management Bureau, Public lands.

*43 CFR Part 8370*

Land Management Bureau, Penalties, Public lands, Recreation and recreation areas, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 9180*

Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

*43 CFR Part 9230*

Land Management Bureau, Penalties, Public lands.

Dated: September 27, 1996.

Sylvia V. Baca,

*Deputy Assistant Secretary of the Interior.*

For the reasons set forth in the preamble and under the authority of 43 U.S.C. 1740, BLM proposes to amend subchapter A, chapter II, subtitle B of Title 43 of the Code of Federal Regulations as follows:

**PART 1600—PLANNING,  
PROGRAMMING, BUDGETING**

1. The authority citation for part 1600 is revised to read as follows:

Authority: 43 U.S.C. 1740.

2. Section 1610.5–3 is amended by revising paragraph (b) to read as follows:

**§ 1610.5–3 Conformity and  
Implementation.**

\* \* \* \* \*

(b) Within a reasonable time after a plan is approved or amended, subject to valid existing rights, the District or Area Manager will take action to make operations and activities under existing permits, contracts, cooperative agreements or other instruments for occupancy and use conform to the approved plan or amendment to the extent applicable laws and regulations or the existing permits, contracts, cooperative agreements or other instruments of occupancy and use allow. Any party adversely affected by this action by the District or Area Manager may appeal the action in accordance with parts 4 and 1840 of this title.

\* \* \* \* \*

**Group 1800—Public Administrative  
Procedures****PART 1820—APPLICATION  
PROCEDURES**

3. An authority citation for part 1820 is added to read as follows:

Authority: 43 U.S.C. 1740.

4. Section 1821.2–2 is amended by revising paragraph (b) to read as follows:

**§ 1821.2–2 Time limit for filing documents.**

\* \* \* \* \*

(b) If you are adversely affected by a decision, to reject an application may appeal the decision in accordance with parts 4 and 1840 of this title. Alternatively, if not precluded by other law or regulation, the party may file a new and properly executed application or re-execute the rejected application. The re-executed application will not relate back to the date of first execution.

5. The authority citation for subparts 1821, 1822, 1823, 1824, 1825, and 1826 is removed.

6. Part 1840 is revised to read as follows:

**PART 1840—PROTESTS, APPEALS,  
CONTESTS, AND HEARINGS  
PROCEDURES****Subpart 1840—Protests, Appeals, Contests,  
and Hearings—General**

Sec.

1840.1 What are the purposes of this subpart?

1840.5 Definitions.

1840.7 What is not covered by this subpart? Protests

1841.10 What must I submit with a protest?

1841.11 How long do I have to file a protest?

1841.12 Where may I file a protest? Appeals

1842.10 Who may appeal a BLM decision regarding the public lands and resources?

1842.11 How do I appeal a BLM decision regarding public lands and resources? Contests and Hearings

1843.10 Who can file a contest?

1843.11 Who can request a hearing? Decisions

1844.10 May BLM reconsider a decision which has been appealed?

1844.11 When will BLM decisions go into effect?

1844.12 How can I request that a decision be stayed?

1845.10 Where can I find more information on appeals, contests, and hearings procedures?

Authority: 43 U.S.C. 1740.

**Subpart 1840—Protests, Appeals,  
Contests, and Hearings****§ 1840.1 What are the purposes of this  
part?**

(a) Except as noted in § 1840.7 below, this part tells you how you may:

- (1) protest a decision proposed by BLM;
- (2) appeal from a BLM decision; or
- (3) seek a contest or hearing related to BLM decisions.

(b) This part is to be used in conjunction with the procedures set out in subparts A, B, and E of part 4 of this title. Under § 4.1(b) of this title, if the general rules in subpart B of part 4 conflict with a special rule in another subpart of this title, the special rule governs.

**§ 1840.5 Definitions.**

The following definitions apply in this subpart and in other regulations in chapter II of this title which are related to protests, appeals, contests or hearings:

*Adversely Affected Party* means a party who may appeal, or seek a hearing on, a decision of the BLM as provided in part 4 of this title.

*Appeal* means a request for review of a BLM decision under part 4 of this title. See part 4 of this title.

*Contest* means a formal proceeding referred to in either sections 4.450 or 4.451 of this title.

*Decision* and *BLM Decision* mean a decision by BLM officials which is subject to appeal under part 4 of this title, including but not limited to, notices of decision, notices of violation, notices of incidents of non-compliance, records of decision, orders, instructions, and assessments.

*Hearing* means an evidentiary or factfinding proceeding before an administrative law judge under § 4.415 and 4.470 of this title and under regulations contained within Chapter II of this title which may require a hearing and other applicable laws. See § 4.420 through 4.439 and § 4.452 through 4.478 of this title for hearings procedures. In some cases, a hearing must be “on the record” when statutorily required to be so.

*Protest* means any objection to any action proposed to be taken by BLM. See § 4.450–2 of this title.

*Stay* means injunction in the form of an order or regulation which stops a BLM decision from going into effect or suspends the effectiveness of a BLM decision.

**§ 1840.7 What is not covered by this  
subpart?**

Except as specifically provided, this subpart does not apply to:

- (a) protests to planning decisions made under § 1610.5–2 and 1610.5–5 of this title;
- (b) protests to proposed or initial classification decisions made under the provisions of part 2400 of this title; or
- (c) grazing decisions issued under part 4100 of this title; or
- (d) protests and appeals which are decided by the Board of Contract Appeals under 43 CFR part 4, subpart C.

Protests

**§ 1841.10 What must I submit with a  
protest?**

Unless otherwise provided in other regulations in this Chapter II, you must submit:

- (a) your objections to or concerns about the proposed decision, and why you feel the proposed decision is wrong; and,
- (b) the reasons, if any, why you believe you would be adversely affected by the proposed decision.

**§ 1841.11 How long do I have to file a  
protest?**

(a) If a proposed decision is issued to you, it will inform you how long you have to file a protest from the date you receive the notice of the proposed decision.

(b) If the proposed decision is published in the Federal Register or in some other way, you may file a protest as specified in the publication.

(c) If a regulation in this Chapter II provides for a specific time period for protests, you may file a protest in that time period.

(d) In all other cases, you may file a protest until the BLM decision is made.

#### **§ 1841.12 Where may I file a protest?**

You may file a protest at the BLM office in which the proposed decision will be made.

#### **Appeals**

#### **§ 1842.10 Who may appeal a BLM decision regarding the public lands and resources?**

You may appeal a BLM decision if you are an adversely affected party.

#### **§ 1842.11 How do I appeal a BLM decision regarding public lands and resources?**

You may appeal a BLM decision by following the procedures described in the applicable provisions of this subpart and part 4 of this title.

#### **Contests and Hearings**

#### **§ 1843.10 Who may file a contest?**

A contest may be initiated by a private entity or by a government agency such as BLM or the Department. See § 4.450 and § 4.451 of this title.

#### **§ 1843.11 Who may request a hearing?**

(a) Anyone who is a party to an appeal before the Interior Board of Land Appeals (see § 4.415 of this title) and

(b) Anyone who may properly seek a hearing under any pertinent statutes or applicable regulations.

#### **Decisions**

#### **§ 1844.10 May BLM reconsider a decision which has been appealed?**

BLM is not prohibited from reconsidering or discussing matters which have been appealed with the appellant. If BLM decides to rescind or amend the appealed decision as a result of the reconsideration or discussion, it may do so by requesting the Office of Hearings and Appeals in writing to remand the matter for further action by BLM.

#### **§ 1844.11 When will BLM decisions go into effect?**

(a)(1) Except as otherwise provided in this section, BLM decisions issued under this title will go into effect 30 days after the date of service of the decision. If a decision is published in the Federal Register, it will go into effect 30 days after the date of publication. However, except as provided in paragraphs (b) and (c) of

this section, if an adversely affected party appeals the decision in accordance with this part and part 4 of this title, the decision is stayed while the appeal is pending.

(2) BLM may request, in writing, the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place a decision, or any part of it, which is not effective or has been stayed under this paragraph, into effect immediately when the public interest requires.

(b) The regulations listed below provide that certain BLM decisions will remain effective during the time a notice of appeal may be filed or while an appeal is pending. Decisions made under the following regulations will go into effect as provided in the regulations:

(1) Right-of-Way decisions under part 2800 (see § 2804.1);

(2) Right-of-Way under the Mineral Leasing Act decisions under part 2880 (see § 2884.1);

(3) Minimum impact permit decisions under subpart 2920 (see § 2920.2–2(b) as published in 61 FR 32351 (1996));

(4) Decisions to hold competitive oil and gas lease sales under § 3120.1–3;

(5) Onshore Oil and Gas Geophysical Exploration decisions under subpart 3150 (see § 3150.2);

(6) Onshore Oil and Gas Operations decisions under part 3160 (see §§ 3165.3(e) and 3165.4(c));

(7) Geothermal Resources Operations decisions under part 3260 (see § 3266.1);

(8) Coal Lease Readjustments under § 3451.2;

(9) Coal Lease Termination decisions for disqualified lessees under § 3472.1–2(e)(4)(ii) and (iii);

(10) Phosphate Lease Readjustments under § 3511.4(b);

(11) Potassium Lease Readjustments under § 3531.4(b);

(12) Gilsonite Lease Readjustments under § 3551.4(b);

(13) Hardrock Mining Surface Management decisions under subpart 3809 (see § 3809.4(f));

(14) Notices of closure to abate unauthorized grazing use under § 4150.2;

(15) Grazing decisions under group 4100 (see § 4160.3);

(16) Adopted Wild Horse and Burro removal decisions under § 4770.3;

(17) Forest Management decisions under group 5000 (see § 5003.1); and

(18) Use authorization decisions under part 8370 (see § 8372.6).

(c) BLM may place a decision which temporarily suspends use, occupancy or development of the public lands into effect immediately if it finds that immediate implementation is necessary

to protect health, safety or the environment.

(d) A decision which is in effect under paragraph (b) or (c) of this section will remain in effect unless a petition for a stay is granted under § 4.21(b) of this title.

#### **§ 1844.12 How can I request that a decision be stayed?**

You may request a stay of a decision which is in effect under § 1844.11(b) or (c) by filing a petition in accordance with § 4.21(b) of this title, which sets out criteria and procedures for requesting stays.

#### **§ 1845.10 Where can I find more information on appeals, contests, and hearings procedures?**

You can find more information on the procedures of the Department of the Interior's Office of Hearings and Appeals for appeals, contests, and hearings procedure in part 4, subparts A, B and E, of this title.

### **PART 1850—HEARINGS PROCEDURES—[REMOVED]**

7. Part 1850 is removed.

### **PART 1860—CONVEYANCES, DISCLAIMERS AND CORRECTION DOCUMENTS**

8. An authority citation for part 1860 is added to read as follows:

Authority: R.S. 2450, as amended; 43 U.S.C. 1161, 1201, 1740 and 1745.

9. The authority citation for subpart 1862 is removed.

10. The authority citation for subpart 1863 is removed.

11. Section 1864.4 is revised to read as follows:

#### **§ 1864.4 Appeals.**

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

12. Section 1865.4 is revised to read as follows:

#### **§ 1865.4 Appeals.**

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

### **PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS**

13. An authority citation for part 1880 is added to read as follows:

Authority: Pub. L. No. 94–565, 90 Stat. 2662, 31 U.S.C. 1601–1607; and 43 U.S.C. 1740.

14. The authority citation for subpart 1881 is removed.

15. The authority citation for subpart 1882 is removed.

16. Paragraphs (b) and (e) of § 1881.3 are revised to read as follows:

**§ 1881.3 Protests.**

\* \* \* \* \*

(b) Any affected unit of local government may protest the results of the computations of its payment to BLM in accordance with part 1840 and part 4 of this title.

\* \* \* \* \*

(e) BLM will consult with the affected unit of local government and the administering agency to resolve conflicts in land records and other data sources.

17. Section 1881.4 is revised to read as follows:

**§ 1881.4 Appeals.**

Any unit of local government which is adversely affected by BLM's rejection of a protest filed under this subpart may appeal the rejection in accordance with parts 4 and 1840 of this title.

**PART 2090—SPECIAL LAWS AND RULES**

18. An authority citation for part 2090 is added to read as follows:

Authority: 16 U.S.C. 3124; 30 U.S.C. 189; 43 U.S.C. 322, 641, 1201, 1624, and 1740.

19. The authority citation for subpart 2093 is removed.

20. The authority citation for subpart 2094 is removed.

21. In § 2091.07, the last sentence of paragraph (a) is revised to read as follows:

**§ 2091.07 Principles.**

(a) \* \* \* If a BLM decision regarding an application, selection, sale, location, entry, claim or settlement has been appealed in accordance with parts 4 and 1840 of this title, the segregation continues in effect until publication of an opening order.

\* \* \* \* \*

22. In § 2093.0–3, the last sentence of paragraph (a) is revised to read as follows:

**§ 2093.0–3 Authority.**

(a) \* \* \* Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

\* \* \* \* \*

23. In § 2093.2–3, paragraph (b) is revised to read as follows:

**§ 2093.2–3 Procedures.**

\* \* \* \* \*

(b) *Hearing.* Except for persons who file applications under section 2 of the

Act (36 Stat. 584; 30 U.S.C. 84), BLM will allow any person filing a non-mineral application or filing for lands classified as coal lands 30 days in which to submit evidence, preferably in the form of statements of experts or practical miners, that the land is in fact not coal in character, together with an application that BLM reclassify the land. BLM will reject the application if the applicant fails to furnish any evidence within the time specified. If, after considering the evidence presented and after other appropriate inquiry, BLM classifies the land as agricultural land, in the absence of other objections, BLM will allow the non-mineral application. If BLM denies reclassification, the applicant may, within 30 days from receipt of notice, apply for a hearing in accordance with parts 4 and 1840 of this title, at which he or she will have the burden of proof for showing that the classification is improper. If he or she fails to apply for a hearing within the time allowed, BLM will reject his or her application to enter or file. The rejection of the application does not preclude the person from filing another application under section 2 of the Act.

24. Section 2093.3–3 is amended by revising paragraphs (c), (d)(1)(iv) and (d)(2)(ii) to read as follows:

**§ 2093.3–3 Procedures.**

\* \* \* \* \*

(c) *Notice to entryman; action by entryman.* (1) BLM will notify an entryman or claimant if the Geological Survey reports that land included in a non-mineral entry or claim, on which final proof has not been submitted or which has not been perfected, is in an area in which valuable deposits of oil and gas may occur, because no reliable evidence exists that the land contains geological structures which are not favorable to oil and gas accumulation. After notifying the entryman or claimant, BLM will give the entryman or claimant a reasonable time to apply for reclassification of the land as non-mineral and to submit evidence in support of the reclassification. If BLM denies the reclassification request, the entryman or claimant may seek a hearing regarding the reclassification request or appeal BLM's decision denying the reclassification request in accordance with parts 4 and 1840 of this title. If a hearing is ordered, the entryman or claimant has the burden of proof to show that BLM's denial of the reclassification was in error. If the entryman or claimant does not seek a hearing or appeal the BLM decision denying the request for reclassification, the entry or claim and any patent issued

for lands under the entry or claim will reserve the oil and gas to the United States.

(2) If the Geological Survey reports that land included in a non-mineral entry or claim is in an area in which valuable deposits of oil and gas may occur after an entryman has submitted acceptable final proof or perfected a claim, BLM will not rely on the report in order to reserve the oil and gas unless it can prove that the land was known to be of mineral character on or before the date on which the entryman submitted acceptable final proof or the claim was perfected, according to the established criteria for distinguishing mineral from non-mineral lands, including the criteria recognized by the Supreme Court in *United States v. Southern Pacific Company et al.* (251 U.S. 1, 64 L. ed. 97). If BLM decides to reclassify the lands for the reasons stated above and, after notification, the entryman disagrees with BLM's decision within a reasonable time, BLM will seek a hearing in accordance with parts 4 and 1840 of this title. BLM has the burden of proof for justifying the reclassification. If the entryman fails to answer BLM's allegations within the time allowed, the entry or claim and any patent issued the lands under the entry or claim will reserve the oil or gas to the United States.

\* \* \* \* \*

(d) *Applications to disprove classification of land; hearing.* (1) \* \* \*

(iv) If the application is denied, the applicant may, within 30 days from notice of the denial, seek a hearing to disprove the classification in accordance with parts 4 and 1840 of this title. If the applicant fails to seek a hearing within the time allowed, BLM will reject the application to locate, select, enter or purchase.

\* \* \* \* \*

(2) \* \* \*

(ii) Claimants to whom this provision applies may file an application for a classification of the land as non-mineral, together with the evidence prescribed here to be filed by an original applicant with his request for classification with the BLM office having jurisdiction. If BLM denies the application, the claimant has 30 days from receipt of the notice of the denial to seek a hearing to establish the non-mineral character of the land in accordance with parts 4 and 1840 of this title.

\* \* \* \* \*



## **PART 2200—EXCHANGES: GENERAL PROCEDURES**

25. The authority citation for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1740.

26. In § 2201.1, paragraph (g) is revised to read as follows:

### **§ 2201.1 Agreement to initiate an exchange.**

(g) BLM's withdrawal from or termination of an exchange proposal or its agreement to begin an exchange, at any time prior to a notice of decision, under § 2201.7-1, may not be protested or appealed.

27. Section 2201.7-1 is amended by revising paragraphs (b) and (c) to read as follows:

### **§ 2201.7-1 Notice of decision.**

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision will be subject to protest in accordance with parts 4 and 1840 of this title.

(c) Any party adversely affected by BLM's decision on a protest may appeal that decision in accordance with parts 4 and 1840 of this title.

28. Section 2201.7-2 is amended by revising paragraph (b)(4) to read as follows:

### **§ 2201.7-2 Exchange agreement.**

(b)\* \* \*

(4) Any BLM decision to approve an exchange in response to a protest under § 2201.7-1 has been affirmed if appealed in accordance with parts 4 and 1840 of this title; and

## **PART 2300—LAND WITHDRAWALS**

29. The authority citation for part 2300 continues to read as follows:

Authority: 43 U.S.C. 1201; 43 U.S.C. 1740; E.O. 10355 (17 FR 4831, 4833).

30. In § 2310.3-2, paragraphs (f)(1) and (f)(2) are revised to read as follows:

### **§ 2310.3-2 Development and processing of the case file for submission to the Secretary.**

(f) \* \* \*

(1) If the applicant objects to BLM's findings and recommendations to the Secretary, the applicant may, within 30 days of receipt by the applicant of notification thereof, protest the findings and recommendations in accordance with parts 4 and 1840 of this title,

stating his or her objections in writing, and requesting the BLM Director to review BLM's findings and recommendations. BLM will advise the applicant of the BLM Director's decision within 30 days of receipt of the applicant's protest in BLM's Washington Office. The applicant's protest and the BLM Director's decision must be made part of the case file and thereafter the case file must be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the BLM Director, he/she may, within 30 days of receipt by the applicant of the BLM Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement will be considered by the Secretary together with BLM's findings and recommendations, the applicant's protest, the decision of the BLM Director, the balance of the case file and any additional information the Secretary may request.

## **PART 2450—PETITION-APPLICATION CLASSIFICATION SYSTEM**

31. An authority citation for part 2450 is added to read as follows:

Authority: 43 U.S.C. 1740.

32. In § 2450.5, paragraphs (d) is removed.

## **PART 2520—DESERT LAND ENTRIES**

33. The authority citation for part 2520 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201 and 1740.

34. In § 2520.0-7, paragraph (b) is revised to read as follows:

### **§ 2520.0-7 Cross references.**

(b) For protests, appeals, contests and hearings procedures, see parts 4 and 1840 of this title.

35. Section 2521.6 is amended by revising the last sentence of paragraph (i)(2) to read as follows:

### **§ 2521.6 Final proof.**

(1) \* \* \*

(2) \* \* \* In default of any action by the claimant within the specified time, BLM will reject the proof. Any claimant adversely affected by BLM's rejection of a proof under this section may appeal the rejection decision in accordance with parts 4 and 1840 of this title.

36. In § 2521.8, paragraph (a) is revised to read as follows:

### **§ 2521.8 Contests.**

(a) Contests may be initiated in accordance with parts 4 and 1840 of this

title by any person seeking to acquire title to or to claim an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the BLM records.

\* \* \* \* \*

37. Section 2522.2 is revised to read as follows:

### **§ 2522.2 Procedure on applications for extensions of time, where contest is pending.**

(a) A pending contest against a desert-land entry will not prevent BLM from granting an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of a right to such an extension (41 L.D. 603).

(b) BLM will not defer its consideration of an application for extension of time because of a pending contest against the entry in question unless the contest charges are sufficient, if proven, to negate the right of the entryman to an extension of time for making final proof. If the contest charges are insufficient to negate the right of the entryman to an extension of time for making final proof, BLM will grant the application for extension if the application is regular in all respects and dismiss the contest subject to the right of appeal, but without prejudice to the contestant's right to amend his or her charges.

## **PART 2540—COLOR-OF-TITLE AND OMITTED LANDS**

38. An authority citation for Part 2540 is added to read as follows:

Authority: 43 U.S.C. 1740.

39. In § 2541.5, paragraph (a) is revised to read as follows:

### **§ 2541.5 Publication; protests and contests.**

(a) The applicant must publish a notice once a week for four consecutive weeks in accordance with § 1824.3 of this title, at the applicant's expense, in a newspaper and in a form designated by BLM. The purpose of the notice is to give anyone who may claim the land adversely against the applicant an opportunity to file a protest or contest to the issuance of patent under the application in accordance with parts 4 and 1840 of this title. Anyone who protests or contests the issuance of patent must serve a copy of the protest or contest on the applicant and furnish BLM with evidence of the service. BLM will post a copy of the notice for publication in the appropriate office during the entire period of publication.

Before to patent issuance, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

\* \* \* \* \*

40. Section 2542.3 is revised to read as follows:

**§ 2542.3 Publication and posting of notice.**

If upon consideration of the application BLM determines that the applicant is entitled to purchase the land applied for, the applicant, at the applicant's expense, must publish notice of the application in a form designated by the BLM and in a newspaper of general circulation in the county in which the land applied for is located. The purpose of this notice is to give all persons who may claim the lands adversely to the applicant or who may have a bona fide objection to the proposed purchase an opportunity to file a protest or contest in accordance with parts 4 and 1840 of this title before the purchase is completed. Anyone who protests or contests the purchase must serve a copy of the protest or contest on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice for publication in the appropriate office during the entire period of publication. Before, to purchase, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

41. In § 2542.4, paragraph (a) is revised to read as follows:

**§ 2542.4 Patent.**

(a) If the applicant submits satisfactory proof of publication and no one has filed a protest or contest against the application in accordance with parts 4 and 1840 of this title during the time allowed for filing objections against the application, BLM will issue the applied-for patent.

\* \* \* \* \*

42. Section 2543.4 is revised to read as follows:

**§ 2543.4 Publication and posting.**

Upon payment of the appraised price, BLM will issue a notice of application. The applicant must pay for publication of the notice of the application in a newspaper of general circulation, designated by BLM, in the vicinity of the applied-for lands. The notice must be published once a week for five consecutive weeks immediately prior to the date of sale. However, a sufficient time should elapse between the date of last publication and the date of sale to

enable the statement of the publisher to be filed. The purpose of the notice is to give all persons who may claim the lands adversely to the applicant an opportunity during the publication period to file a protest or contest in accordance with parts 4 and 1840 of this title. Protests and contests must be corroborated. Anyone who files a protest or contest must serve a copy on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice for publication in the appropriate office during the entire period of publication. Before to the date fixed for the sale, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

43. Section 2543.5 is revised to read as follows:

**§ 2543.5 Patent.**

If the applicant submits satisfactory proof and no one has filed a protest or contest against the application in accordance with parts 4 and 1840 of this title, BLM will issue the applied-for patent.

44. Section 2544.4 is revised to read as follows:

**§ 2544.4 Publication and posting.**

Upon payment of the appraised price of the land, BLM will issue a notice of application. In accordance with § 1824.3 of this title, the notice must be published at the expense of the applicant in a newspaper of general circulation, designated by the BLM, in the vicinity of the applied-for lands, once a week for five consecutive weeks immediately prior to the date of sale. However, a sufficient time must elapse between the date of the last publication and the date of sale to enable the statement of the publisher to be filed. The purpose of the notice is to give all persons who may claim the lands adversely to the applicant an opportunity during the publication period to file a protest or contest in accordance with parts 4 and 1840 of this title. Protests and contests must be corroborated. Anyone who files a protest or contest must serve a copy on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice of publication in the appropriate office during the entire period of publication. Before the date fixed for the sale, the applicant must give BLM copies of the notice of publication and the statement of the publisher as evidence that the notice was published for the required period.

45. Section 2545.3 is revised to read as follows:

**§ 2545.3 Publication and posting.**

Upon payment of the appraised price, BLM will issue a notice of application. The applicant must pay for publication of the notice of the application at his/her own expense in a newspaper of general circulation, designated by BLM, in the vicinity of the applied-for lands. The notice must be published once a week for five consecutive weeks immediately before the date of sale. However, a sufficient time must elapse between the date of last publication and the date that patent is issued to enable the statement of the publisher to be filed. The purpose of the notice is to give all persons who may claim the lands adversely to the applicant an opportunity to file a protest or contest in accordance with parts 4 and 1840 of this title. Protests and contests must be corroborated. Anyone who files a protest or contest must serve a copy on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice of application in the appropriate office during the entire period of publication. Before patent issuance, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

46. In § 2546.3, paragraph (a) is revised to read as follows:

**§ 2546.3 Payment and publication.**

(a) Before lands may be sold to a qualified preference-right claimant, the claimant must pay the purchase price of the lands and must publish a notice, once a week for four consecutive weeks, at his/her expense, in a newspaper and format designated by BLM. The purpose of the notice is to give all persons an opportunity to file with the BLM State Office at Boise, Idaho, any protests or contests to issuance of patent to the claimant in accordance with parts 4 and 1840 of this title. Anyone who files a protest or contest must serve on the claimant a copy of the protest or contest and must furnish BLM with evidence of the service.

\* \* \* \* \*

47. In § 2547.4, paragraph (a) is revised to read as follows:

**§ 2547.4 Publication and posting.**

(a) The applicant must publish a notice of the application once a week for five consecutive weeks in accordance with 1824.3 of this title, in a newspaper and a format designated by BLM. All persons who may claim the land adversely to the applicant may file with

the BLM State Office identified in the notice, a protest or contest to issuance of patent under the application in accordance with parts 4 and 1840 of this title. Anyone who files a protest or contest must serve on the applicant a copy of the protest or contest and furnish BLM with evidence of the service.

\* \* \* \* \*

#### **PART 2560—ALASKA OCCUPANCY AND USE**

48. An authority citation for part 2560 is added to read as follows:

Authority: R.S. 2473; 43 U.S.C. 1201 and 1740.

49. The authority citation for subpart 2562 is removed.

50. Section 2565.2 is amended by revising paragraph (d) to read as follows:

#### **§ 2565.2 Application; fees; contests and protests.**

\* \* \* \* \*

(d) *Contests and protests.*

Applications for entry will be subject to contest or protest in accordance with parts 4 and 1840 of this title.

51. Section 2565.4 is amended by revising the last sentence of paragraphs (b)(1) and (b)(2) to read as follows:

#### **§ 2565.4 Deeds.**

(b)(1) \* \* \* In case of conflicting applications for lots, the trustee, if he or she considers it necessary, may order a hearing to be conducted in accordance with parts 4 and 1840 of this title.

(2) \* \* \* Any party adversely affected by a decision of the trustee or a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

#### **PART 2620—STATE GRANTS**

52. The authority citation for part 2620 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201.

53. Section 2621.2 is amended by revising paragraph (a) to read as follows:

#### **§ 2621.2 Publication, protests, and contests.**

(a) The State must publish a notice of the application once a week for five consecutive weeks in accordance with § 1824.3 of this title, at its own expense, in a newspaper and format designated by BLM. The purpose of the notice is to give all persons who may claim the land adversely an opportunity to file with BLM a protest or contest, in accordance with parts 4 and 1840 of this title, to the issuance of a certification to the State

for lands selected under the law. Anyone who files a protest or contest must serve on the State a copy of the protest or contest and furnish evidence of service to the appropriate BLM office.

\* \* \* \* \*

54. Section 2623.2 is amended by removing the paragraph designation (a) and revising the last sentence to read as follows:

#### **§ 2623.2 Claims protected.**

\* \* \* BLM will follow the procedures of parts 4 and 1840 of this title for all protests, contests, or claims filed by individuals, associations, or corporations against the States, affecting school-section lands.

#### **PART 2640—FAA AIRPORT GRANTS**

55. The authority citation for part 2640 is revised to read as follows:

Authority: 49 U.S.C. 2215.

56. In § 2641.3 paragraph (c) is revised to read as follows:

#### **§ 2641.3 Publication and payment.**

\* \* \* \* \*

(c) BLM will send the decision concerning the granting or denial of an application to the applicant and to any party who commented on the application. Any party who is adversely affected by BLM's decision may appeal the decision in accordance with parts 4 and 1840 of this title.

\* \* \* \* \*

#### **PART 2650—ALASKA NATIVE SELECTIONS**

57. The authority citation for part 2650 is revised to read as follows:

Authority: 43 U.S.C. 1624.

58. In § 2650.7, the third sentence of paragraph (d), introductory text, and the second sentence of paragraph (d)(2) are revised to read as follows:

#### **§ 2650.7 Publication.**

\* \* \* \* \*

(d) \* \* \* Any decision or notice actually served on parties or constructively served on parties in accordance with this section must state that any party claiming a property interest in land affected by the decision may appeal the decision in accordance with parts 4 and 1840 of this title. \* \* \*

\* \* \* \* \*

(2) \* \* \* Furthermore, the decision or notice of decision must inform readers where further information about filing an appeal may be found. It must also state that any party known or unknown who may claim a property interest which may be adversely

affected by the decision will be deemed to have waived their rights which may have been adversely affected unless they file an appeal. They must file the appeal in accordance with the requirements stated in the decisions or notices provided for in this subsection and parts 4 and 1840 of this title.

59. Section 2650.8 is revised to read as follows:

#### **§ 2650.8 Appeals.**

Any decision relating to a land selection will become final unless appealed in accordance with parts 4 and 1840 of this title.

60. In § 2653.5, paragraph (l) is revised to read as follows:

#### **§ 2653.5 Cemetery sites and historical places.**

\* \* \* \* \*

(l) BLM or the Secretary will serve the decision on the applicant and all parties of record in accordance with the provisions of parts 4 and 1840 of this title. The decision will be published in accordance with the requirements of § 2650.7 of this title. The decision of BLM will become final unless appealed in accordance with parts 4 and 1840 of this title. Any agency adversely affected by the certification of BIA or the decision of BLM may also appeal the matter in accordance with parts 4 and 1840 of this title. After a decision to convey an existing cemetery site or historical place has become final, BLM will adjust the segregation of the lands to conform with that conveyance.

61. Section 2653.8–3 is revised to read as follows:

#### **§ 2653.8–3 Appeals.**

Any party who is adversely affected by a decision made by BLM on applications filed under section 14(h)(5) of the Act may appeal the decision in accordance with parts 4 and 1840 of this title.

62. Section 2655.4 is revised to read as follows:

#### **§ 2655.4 Adverse decisions.**

(a) Any decision adverse to the holding agency or Native corporation will become final unless appealed in accordance with parts 4 and 1840 of this title. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with § 4.5 of this title. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation must be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and

the reasons for the decision must be sent in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that BLM neglected to make a determination under section 3(e)(1) of the Act, the matter will be remanded by the Interior Board of Land Appeals to BLM for a determination under section 3(e)(1) of the Act and these regulations: provided, that the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

#### **PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS**

63. The authority citation for part 2720 continues to read as follows:

Authority: 43 U.S.C. 1719 and 1740.

64. Section 2720.5 is revised to read as follows:

##### **§ 2720.5 Appeals.**

Any applicant adversely affected by a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

#### **PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES**

65. The authority citation for part 2800 is revised to read as follows:

Authority: 43 U.S.C. 1733, 1740, and 1763–1764.

66. Section 2803.4 is amended by revising paragraph (e) to read as follows:

##### **§ 2803.4 Suspension and termination of right-of-way authorizations.**

(e) In the case of a right-of-way grant which is, under its terms, an easement, BLM will give written notice to the holder of the suspension or termination. BLM will then refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title. If the administrative law judge determines that grounds for suspension or termination exist and such an action is justified, BLM will suspend or terminate the right-of-way grant.

67. Section 2804.1 is revised to read as follows:

##### **§ 2804.1 Appeals procedure.**

(a) A party adversely affected by a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) All decisions of BLM made under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

68. Section 2808.2–2 is revised to read as follows:

##### **§ 2808.2–2 Category determination.**

(a) BLM will determine the appropriate category and collect the required application processing fee under § 2808.3–1 and 2808.5 before processing an application. A record of BLM's category determination will be made and given to the applicant. A party adversely affected by this determination may appeal the decision in accordance with §§ 2804.1 and 2808.6.

(b) During the processing of an application, BLM may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph will be made and given to the applicant. A party adversely affected by a revised determination may appeal the decision in the same manner as an original category determination under paragraph (a) of this section. BLM will make no other changes of category determination.

69. In § 2808.3–1, paragraph (i) is revised to read as follows:

##### **§ 2808.3–1 Application fees.**

(i) BLM will provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and § 2808.5. A party adversely affected by this determination may appeal the decision in accordance with §§ 2804.1 and 2808.6.

70. In § 2808.5, paragraph (c) is revised to read as follows:

##### **§ 2808.5 Other cost considerations.**

(c) The State Director may reduce or waive fees under this section in determining reimbursable costs made under § 2808.3. Any party adversely affected by the State Director's decision may appeal the decision in accordance with §§ 2804.1 and 2808.6.

71. Section 2808.6 is revised to read as follows:

##### **§ 2808.6 Action pending decision on appeal.**

(a) Even if an appeal is filed regarding BLM's determination under § 2808.2–

2(a) that an application is in Categories I through IV, the application will not be accepted for processing without payment of the fee for the application according to the category determined by BLM. However, when the payment is received, BLM may process the application and, if proper, issue the grant or temporary use permit. BLM will refund monies or make any other adjustments necessary as a result of the outcome of the appeal.

(b) If an appeal is filed regarding BLM's determination that an application is in Category V under § 2808.2–2(a) or that an applicant must pay additional costs under § 2808.3–1 (e) through (i) or § 2808.5(c), BLM will suspend processing of the application pending the outcome of the appeal.

#### **PART 2810—TRAMROADS AND LOGGING ROADS**

72. The authority citation for part 2810 continues to read as follows:

Authority: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

73. Section 2812.8–1 is amended by revising paragraph (c) to read as follows:

##### **§ 2812.8–1 Notice of termination.**

(c) BLM will serve notice of the termination personally or by registered mail on the permittee and will describe the misrepresentation, failure or default involved. Any permittee adversely affected by BLM's notice of termination may appeal the decision in accordance with parts 4 and 1840 of this title.

74. Section 2812.8–2 is amended by revising the second and third sentences of paragraph (b) as follows:

##### **§ 2812.8–2 Remedies for violations by licensee.**

(b) \* \* \* The permittee is bound by BLM's decision. A permittee who is adversely affected by the BLM decision may appeal the decision in accordance with parts 4 and 1840 of this title. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain appropriate relief.

75. Section 2812.9 is revised to read as follows:

##### **§ 2812.9 Appeals.**

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

## **PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT**

76. The authority citation for part 2880 is revised to read as follows:

Authority: 30 U.S.C. 185.

77. In § 2883.1–1, paragraph (a)(4) is revised to read as follows:

### **§ 2883.1–1 Cost reimbursement.**

(a) \* \* \*

(4)(i) BLM may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee. However, BLM will collect the full amount of the nonrefundable application processing fee prior to processing the application. BLM will make a record of BLM's category determination and give it to the applicant. Any party who is adversely affected by BLM's category determination may appeal the decision in accordance with § 2884.1. Even if a category determination is appealed, BLM will not process an application without payment of the fee determined by BLM. If the payment is made, BLM will process the application and will issue the grant or permit if the application is proper. BLM will refund fees if directed to do so in the appeal decision. Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of the fee required in BLM's category determination, BLM will refund the excess unless requested in writing by the applicant to apply all or part of the refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for the grant or permit.

(ii) During the processing of an application, BLM may change a category determination to place an application in Category VI at any time BLM determines that the application requires preparation of an environmental impact statement. BLM will make a record of the change in category determination under this paragraph. Any party adversely affected by BLM's decision to change the category determination may appeal the decision in accordance with § 2884.1.

78. Section 2883.5 is revised to read as follows:

### **§ 2883.5 Immediate temporary suspension of activities.**

(a) BLM may order immediate remedial actions or an immediate temporary suspension of any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area in accordance with this section and parts 4 and 1840 of this title.

(b) BLM may order an immediate suspension without regard to actions which have been or may be taken by another federal or state agency.

(c) BLM may order an immediate temporary suspension orally or in writing on the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them. The activity must end at that time. As soon as practicable, BLM will send a written notice to the holder or the holder's designated agent to confirm the previous oral order.

79. In § 2883.6–1, paragraph (c) is revised to read as follows:

### **§ 2883.6–1 Suspension and termination of right-of-way grants.**

\* \* \* \* \*

(c) If BLM determines that a situation under § 2883.6 or this section exists in connection with a right-of-way grant, BLM will give written notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title. BLM will suspend or terminate the right-of-way grant if the administrative law judge determines that grounds for suspension or termination exist and that the action is justified.

80. Section 2883.6–2 is amended by revising paragraphs (b) and (c) to read as follows:

### **§ 2883.6–2 Suspension and termination of temporary permits.**

\* \* \* \* \*

(b) If BLM determines that a situation under § 2883.6 or this section exists, BLM will give written notice to the holder. The holder may protest the determination to the BLM office issuing the notice. The reviewing official will, within the time specified in the notice, affirm, modify, or cancel the determination and will provide the holder with a written decision.

(c) A holder who is adversely affected by the decision made under paragraph (b) of this section may appeal the decision in accordance with parts 4 and 1840 of this title.

81. Section 2884.1 is revised to read as follows:

### **§ 2884.1 Appeals procedure.**

(a) A party adversely affected by a decision of BLM under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) Except for decisions under § 2883.6 through 2883.6–2, all BLM decisions under this part will go into effect immediately and will remain in effect while appeals are pending unless

a stay is granted in accordance with § 4.21(b) of this title.

## **PART 2910—LEASES**

82. The authority citation for part 2900 is revised to read as follows:

Authority: 43 U.S.C. 687c–1, 1441–1443 and 1740.

83. The authority citation for subpart 2911 is removed.

84. The authority citation for subpart 2912 is removed.

85. Section 2916.2–5 is added to read as follows:

### **§ 2916.2–5 Appeals.**

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

## **PART 2920—LEASES, PERMITS AND EASEMENTS**

86. The authority citation for part 2920 is revised to read as follows:

Authority: 43 U.S.C. 1732–1733 and 1740.

87. Section 2920.2–2 is revised to read as follows:

### **§ 2920.2–2 Minimum impact permits.**

(a) BLM may, without publication of a notice of realty action, issue a permit for a land use authorization if BLM determines that the proposed use conforms with BLM plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

(b) Permit decisions made under paragraph (a) of this section will go into effect immediately upon execution, and remain in effect during the period of time specified in the decision to issue the permit. Any person adversely affected by a decision to grant or deny a permit under paragraph (a) of this section may appeal the decision in accordance with parts 4 and 1840 of this title. However, decisions and permits issued under paragraph (a) of this section will remain in effect unless a petition for a stay is granted under § 4.21(b) of this title.

88. In § 2920.2–5 paragraph (b), introductory text, and paragraph (b)(4) are revised to read as follows:

### **§ 2920.2–5 Proposal review.**

\* \* \* \* \*

(b) If the proposal is found to be appropriate for further consideration, BLM will examine the proposal and make one of the following determinations:

\* \* \* \* \*

(4) The proposed land use does not conform with the approved land use plan. Any party adversely affected by this determination may appeal the determination in accordance with parts 4 and 1840 of this title.

89. Section 2920.4 is amended by revising paragraph (d) to read as follows:

**§ 2920.4 Notice of realty action.**

\* \* \* \* \*

(d) An application submitted before a notice of realty action is published will not be processed and will be returned to the person who submitted it. Return of an application may not be appealed or protested.

90. Section 2920.9-3 is amended by revising paragraphs (b)(1) and (c), introductory text, and (c)(2) to read as follows:

**§ 2920.9-3 Termination and suspension.**

\* \* \* \* \*

(b)(1) If BLM determines that there is noncompliance with the terms and conditions of a land use authorization which adversely affects health, safety or the environment, BLM will order an immediate temporary suspension of the land use in accordance with § 1844.11 (c) of this title.

\* \* \* \* \*

(c) Process for termination or suspension other than temporary immediate suspension.

\* \* \* \* \*

(2) After BLM gives the holder of the land use authorization due notice of termination or suspension, if noncompliance still exists after a reasonable time, BLM will give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with part 1840 and 4.420-4.439 of this title. BLM will suspend or revoke the land use authorization if the administrative law judge determines that grounds for suspension or revocation exist and that such an action is justified.

**PART 3000—MINERALS MANAGEMENT: GENERAL**

91. The authority citation for part 3000 is revised to read as follows:

Authority: 30 U.S.C. 189, 306 and 359; 16 U.S.C. 3150; 43 U.S.C. 1740; 42 U.S.C. 6508; 31 U.S.C. 9701(b); and 40 Op. Atty. Gen. 41.

92. Section 3000.4 is revised to read as follows:

**§ 3000.4 Appeals.**

Except as provided in § 3101.7-3(b), 3102.5-1, 3108.3, and 3120.1-3 of this title, any party adversely affected by a

decision of BLM made under the provisions of Group 3000 or Group 3100 of this title may appeal the decision in accordance with parts 4 and 1840 of this title.

**§ 3000.5 [Removed]**

93. Section 3000.5 is removed.

**PART 3100—ONSHORE OIL AND GAS LEASING**

94. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351-359.

95. Section 3101.7-3 is revised to read as follows:

**§ 3101.7-3 Appeals.**

(a) Any party adversely affected by a decision of BLM to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) If, as provided by statute, a surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any lease offeror adversely affected by the surface managing agency decision may appeal the decision only in accordance with the administrative appeals procedures provided for by the particular surface managing agency.

**PART 3120—COMPETITIVE LEASES**

96. The authority citation for part 3120 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351-359; 16 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*; 40 U.S.C. 471 *et seq.*, and 40 Op. Atty. Gen. 41.97. Section 3120.1-3 is revised to read as follows:

**§ 3120.1-3 Protests and appeals.**

(a) A decision of BLM to hold a lease sale as provided under this subpart will not be suspended or stayed under § 4.21(a) or § 1844.11 of this title if an appeal of the decision is filed. BLM may suspend the offering of a specific parcel while considering a protest or appeal regarding its inclusion in a Notice of Competitive Lease Sale.

(b) Only the Secretary or the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

**PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION**

98. The authority citation for part 3150 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 43 U.S.C. 1733 and 1740; 16 U.S.C. 3150; 42 U.S.C. 6508; and 31 U.S.C. 9701.

99. In § 3150.1, the second sentence is revised to read as follows:

**§ 3150.1 Suspension, revocation or cancellation.**

\* \* \* The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization as provided in § 1844.11(c) of this title.

100. Section 3150.2 is revised to read as follows:

**§ 3150.2 Appeals.**

(a) Any party adversely affected by a decision or approval of BLM under this subpart may appeal that decision in accordance with parts 4 and 1840 of this title.

(b) All decisions and approvals of BLM under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

(c) Notwithstanding paragraph (b) of this section, nothing in this section will diminish BLM's discretionary authority to stay the effectiveness of a decision under this subpart if the decision is appealed and an adversely affected party requests a stay or BLM decides to stay the decision on its own initiative.

**PART 3160—ONSHORE OIL AND GAS OPERATIONS**

101. The authority citation for part 3160 continues to read as follows:

Authority: 43 U.S.C. 1733; 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 306; 25 U.S.C. 396, 396d, 398e and 399; 42 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*

102. Section 3165.3 is revised to read as follows:

**§ 3165.3 Notice and hearing on the record.**

(a) *Notice.* If an operating rights owner or operator fails to comply with any provisions of the lease, the regulars in this part, applicable orders or notices, or any other appropriate orders of BLM, BLM will give the party written notice to remedy any defaults or violations. BLM will serve written orders or notices of violation, assessment, or proposed penalty on the party by personal service or by certified mail. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, BLM will make a good faith effort to contact the designated representative by telephone to be followed by a written notice. Receipt of notice will be deemed to

occur at the time of the telephone contact, and the time of notice and the name of the receiving party will be documented in the file. If BLM is unable to contact the designated representative after good faith efforts, BLM will serve notice of the major violation on any person conducting or supervising operations subject to the regulations in this part. In the case of a minor violation, BLM will serve notice as described above. A copy of all orders, notices, or instructions served on any contractor or field employee or designated representative will also be mailed to the operator. Any notice involving a civil penalty will be mailed to the operating rights owner.

(b) No civil penalty will be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Any party adversely affected by BLM's decision on the proposed penalty may request a hearing on the record before an administrative law judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2). If the party elects to request a hearing on the record, the request must be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the notice of proposed penalty. If a hearing on the record is requested, the State Director will refer the complete case file to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title.

(c) Effect of request for hearing on the record. Any request for a hearing on the record before an administrative law judge under this section will not suspend the requirement to comply with the notice of violation or proposed penalty or stop the daily accumulation of assessments, unless an administrative law judge so determines in accordance with part 4 of this title. However, a request for a hearing on the record will suspend the accumulation of additional daily penalties until a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of the request, recommend that the BLM Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the BLM Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement

of the accumulation and that the violation is causing or threatening immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the BLM Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension of accumulation of additional daily penalties will continue.

103. Section 3165.4 is revised to read as follows:

#### **§ 3165.4 Appeals.**

(a) *Appeal of decision.* Any party adversely affected by a notice, instruction, order, or decision under this subpart may appeal it in accordance with parts 4 and 1840 of this title.

(b) *Appeal from decision on a proposed penalty after a hearing on the record.* (1) Any party adversely affected by the decision of an administrative law judge on a proposed penalty after a hearing on the record under § 3165.3 may appeal that decision in accordance with parts 4 and 1840 of this title.

(2) In lieu of a hearing on the record under § 3165.3, any party adversely affected by a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals in accordance with parts 4 and 1840 of this title. However, waiving the right to a hearing on the record precludes further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act.

(c) *Effect of an appeal on a decision by an administrative law judge.* All decisions of an administrative law judge under this part will go into effect immediately and remain in effect while any appeals are pending unless a stay is granted in accordance § 4.21(b) of this title. Notwithstanding the foregoing sentence, nothing in this paragraph will diminish the BLM's discretionary authority to stay the effectiveness of a decision which has been appealed under paragraph (a) or (b) of this section if an adversely affected party requests a stay or if BLM's decides a stay is warranted on its own initiative.

(d) *Effect of appeal on compliance requirements.* Except as provided in paragraph (e) of this section, any appeal filed in accordance with paragraphs (a) and (b) of this section will not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that a suspension will not harm the interests of the lessor or that a bond has been submitted and accepted

which is adequate to indemnify the lessor from loss or damage.

(e) *Effect of appeal on assessments and penalties.* (1) Except as provided in paragraph (e)(3) of this section, an appeal filed under paragraph (a) of this section will suspend the accumulation of additional daily assessments.

However, the filing of an appeal will not bar BLM from assessing civil penalties under § 3163.2 in the event the operator has failed to abate the violation which resulted in the assessment. The Interior Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in paragraph (e)(3) of this section, an appeal filed under paragraph (b) of this section will suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the BLM Director reinstate the accumulation of assessments and daily civil penalties until a final decision is rendered or until the violation is abated. The BLM Director may, if he/she determines that the public interest requires it, reinstate the accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the BLM Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension will continue.

(f) *Judicial review.* Any person who is adversely affected by a final order of the Secretary under this section may seek review of the order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court will be on the administrative record only and not de novo. Such an action will be barred unless filed within 90 days after issuance of final decision.

#### **PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS**

104. The authority citation for part 3180 continues to read as follows:

Authority: 30 U.S.C. 181 and 226.

105. Section 3185.1 is revised to read as follows:

**§ 3185.1 Appeals.**

Any party adversely affected by an instruction, order, or decision issued under this part may appeal it in accordance with parts 4 and 1840 of this title.

**PART 3200—GEOTHERMAL RESOURCES LEASING: GENERAL**

106. The authority citation for part 3200 is revised to read as follows:

Authority: 30 U.S.C. 1023.

107. In § 3205.3–9, the sixth, seventh, and eighth sentences, are revised to read as follows:

**§ 3205.3–9 Readjustments.**

\* \* \* If the lessee files a protest in accordance with parts 4 and 1840 of this title, and no agreement can be reached between BLM and the lessee within a period of 60 days, the lease may be terminated by either party to the lease. Any party adversely affected by such a lease termination may appeal the termination in accordance with parts 4 and 1840 of this title. If the lessee files a protest to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between BLM and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated, except payments of any proposed readjusted rentals and royalties must be paid in the timely manner prescribed in these regulations and may be paid under protest. The readjusted terms and conditions will be effective as of the end of the term being adjusted. \* \* \*

**PART 3240—RULES GOVERNING LEASES**

108. The authority citation for part 3240 is revised to read as follows:

Authority: 30 U.S.C. 1023.

109. Section 3244.3 is revised to read as follows:

**§ 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.**

(a) A lease may be canceled by BLM for any violation of these regulations, the regulations in part 3260 of this title, or the lease terms, 30 days after the lessee receives notice from BLM of the violation, unless the lessee corrects the violation within that time period, or the violation is one that cannot be corrected within the notice period and the lessee has in good faith begun to correct the violation within the notice period and

thereafter continues to diligently complete the correction.

(b) Any lessee may seek a hearing before an administrative law judge regarding the violation or the proposed cancellation of lease. The lessee must request a hearing in accordance with parts 4 and 1840 of this title within the 30-day period after notice. BLM will extend the time in which a lessee may correct a violation of the regulations or of the lease terms to a date which is 30 days after the lessee receives the administrative law judge's decision on the hearing if the administrative law judge finds that a violation has occurred.

**PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES**

110. The authority citation for part 3250 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025.

111. Section 3250.9 is amended by revising paragraph (b) to read as follows:

**§ 3250.9 Relinquishment, expiration, or termination of license.**

\* \* \* \* \*

(b) A license issued under this part may be terminated by written order of BLM for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination will not take effect if within the 30-day notice period either the violation is corrected or the licensee has commenced in good faith to correct the violation and will thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. Any licensee who may be adversely affected by BLM's termination order may appeal the order and is entitled to a hearing regarding the violation and the termination in accordance with parts 4 and 1840 of this title if the appeal is filed within the 30-day notice period. If an appeal is filed on time, BLM will extend the time in which the licensee may begin to correct the violation to a date which is 30 days after a final decision is rendered if it is found that a violation exists.

**PART 3260—GEOTHERMAL RESOURCES OPERATIONS**

112. The authority citation for part 3260 is revised to read as follows:

Authority: 30 U.S.C. 1023.

113. Section 3266.1 is revised to read as follows:

**§ 3266.1 Appeals.**

(a) Any party adversely affected by a decision of BLM made under this part

may appeal that decision in accordance with parts 4 and 1840 of this title.

(b) All decisions or approvals of BLM under this part will go into effect immediately and remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

**PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS: UNPROVEN AREAS**

114. The authority citation for part 3280 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025.

115. Section 3285.1 is revised to read as follows:

**§ 3285.1 Appeals.**

Any party adversely affected by an order or decision made under this part may appeal the order or decision in accordance with parts 4 and 1840 of this title.

**PART 3410—EXPLORATION LICENSES**

116. The authority citation for part 3410 is revised to read as follows:

Authority: 30 U.S.C. 210(b).

117. In § 3410.3–1, paragraphs (g)(1) and (g)(2) are revised to read as follows:

**§ 3410.3–1 Issuance and termination of an exploration license.**

\* \* \* \* \*

(g) \* \* \*

(1) BLM may adjust the terms and conditions of the exploration license, or  
(2) BLM may direct adjustment in or approve modification of the exploration plan. Any licensee who is adversely affected by BLM's adjustment or modification decision may appeal the decision in accordance with parts 4 and 1840 of this title or may relinquish the exploration license.

\* \* \* \* \*

**PART 3420—COMPETITIVE LEASING**

118. The authority citation for part 3420 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1272 and 1273; and 43 U.S.C. 1733 and 1740.

119. Section 3427.2 is amended by revising paragraphs (j) and (k) to read as follows:

**§ 3427.2 Procedures.**

\* \* \* \* \*

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if BLM is unable to independently



determine whether or not the surface owner is qualified, BLM will presume that the surface owner is unqualified. BLM will notify the surface owner in writing of this determination and will provide the surface owner an opportunity to appeal the determination.

(k) Any surface owner determined to be unqualified by decision of the field official of the surface management agency will have 30 days from the date of receipt of such decision in which to appeal the decision in accordance with parts 4 and 1840 of this title.

#### **PART 3430—NONCOMPETITIVE LEASES**

120. The authority citation for part 3430 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1260, 1272 and 1273; and 43 U.S.C. 1733 and 1740.

121. Section 3430.5–2 is revised to read as follows:

##### **§ 3430.5–2 Appeals, lack of showing.**

(a) Any applicant whose application is rejected because the applicant has not shown the existence of commercial quantities of coal may appeal the decision to reject the application in accordance with parts 4 and 1840 of this title.

(b) The applicant is entitled to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged that the facts in the application are sufficient to show an entitlement to a lease.

(c) In such a hearing, the applicant bears both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

#### **PART 3450—MANAGEMENT OF EXISTING LEASES**

122. The authority citation for part 3450 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1272 and 1273; and 43 U.S.C. 1733 and 1740.

123. In § 3451.2, paragraph (d) is revised to read as follows:

##### **§ 3451.2 Notification of readjusted lease terms.**

(d) Any lessee adversely affected by the readjustment decision may appeal the decision in accordance with parts 4 and 1840 of this title; and

#### **PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS**

124. The authority citation for part 3470 is revised to read as follows:

Authority: 30 U.S.C. 189 and 30 U.S.C. 359.

125. Section 3472.1–2 is amended by revising paragraphs (e)(4)(ii) and (iii) to read as follows:

##### **§ 3472.1–2 Special leasing qualifications.**

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by BLM on the pending action, or the withdrawal of the pending action by the applicant, will result in termination of the lease or rescission of the transfer approval. An entity who is adversely affected by such a decision may appeal the decision in accordance with parts 4 and 1840 of this title. Such a decision will go into effect immediately and remain in effect while any appeal is pending unless a stay is granted in accordance with § 4.21(b) of this title. The possibility of lease termination will be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity will not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section while an appeal is pending before the Office of Hearings and Appeals regarding an adverse decision by BLM on any of the actions described in paragraph (e)(4)(i) of this section.

\* \* \* \* \*

#### **PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES**

126. The authority citation for part 3480 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1266 and 1273; and 43 U.S.C. 1461, 1733 and 1740.

137. Section 3486.4 is revised to read as follows:

##### **§ 3486.4 Appeals.**

Any party adversely affected by a decision or order issued by BLM under this part may appeal the decision or order in accordance with parts 4 and 1840 of this title.

#### **PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE**

128. The authority citation for part 3500 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 43 U.S.C. 1733 and 1740; 30 U.S.C. 192c; 30 U.S.C. 293; 16 U.S.C. 460n–5; 16 U.S.C. 460q–1; 16 U.S.C. 460dd–2; 16 U.S.C. 460mm–2–460mm–3; 31 U.S.C. 9701.

129. Section 3500.4 is revised to read as follows:

##### **§ 3500.4 Appeals.**

Any party adversely affected by a decision of BLM made under this part may appeal the decision in accordance with parts 4 and 1840 of this title.

130. In § 3500.9–1, paragraph (c) is revised to read as follows:

##### **§ 3500.9–1 Federal lands administered by agencies outside of the Department of the Interior.**

\* \* \* \* \*

(c) If, as provided by statute, a surface managing agency has required that certain stipulations be included in a lease or permit or has consented, or objected or refused to consent to leasing or permitting, any applicant adversely affected by the surface managing agency decision may appeal the decision only in accordance with the administrative appeals procedures provided for by the particular surface managing agency.

#### **PART 3510—PHOSPHATE**

131. The authority citation for part 3510 is revised to read as follows:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 43 U.S.C. 1701 et seq.; 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n et seq.; 16 U.S.C. 460q et seq.; 16 U.S.C. 90c et seq.; 16 U.S.C. 460dd et seq.; 16 U.S.C. 460mm–2–460mm–4; 31 U.S.C. 9701.

132. Section 3511.4 is revised to read as follows:

##### **§ 3511.4 Readjustment.**

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Before the expiration of each 20-year period, BLM will send proposed readjusted terms and conditions to the lessee. If BLM fails to send the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease will have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless within 60 days after receiving them, the lessee files a protest in accordance with part 4 and 1840 of this title to the readjusted terms and conditions or relinquishes the lease. BLM will issue a decision responding to the protest, and if the response is

adverse to the lessee, the lessee may appeal the decision in accordance with parts 4 and 1840 of this title. The effective date of the readjustment will not be affected by the filing of a protest or appeal.

(c) Except as provided in this paragraph, the readjusted terms and conditions will be effective pending a response to the protest or the outcome of the appeal provided for in paragraph (b) of this section unless BLM provides otherwise in the decision. Upon the filing of a protest or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended pending the outcome of the protest or appeal. However, any such increased royalties, minimum royalties and rentals will accrue while the protest or appeal is pending, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the protest or on appeal, the accrued balance, plus interest at the rate specified for late payment by the Service will be payable. (See part 3590 of this title.) Pending the decision on the protest or the appeal, the royalties, minimum royalties and rentals will be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

133. Section 3513.4 is revised to read as follows:

**§ 3513.4 Rejection of application.**

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of phosphate;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the lease applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of phosphate was discovered.

**PART 3520—SODIUM**

134. The authority citation for part 3520 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; 47 Stat.

1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 460q *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2–460mm–4; 31 U.S.C. 9701.

135. Section 3523.4 is revised to read as follows:

**§ 3523.4 Rejection of application.**

(a) BLM will reject the application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of sodium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of sodium or any sodium compound was discovered and that the lands are chiefly valuable therefor.

**PART 3530—POTASSIUM**

136. The authority citation for part 3530 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 460q *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2–460mm–4; 31 U.S.C. 9701.

137. Section 3531.4 is revised to read as follows:

**§ 3531.4 Readjustment.**

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, BLM will send proposed readjusted terms and conditions to the lessee. If BLM fails to send the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease will have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files a protest

of the readjusted terms in accordance with parts 4 and 1840 of this title or relinquishes the lease. BLM will issue a decision responding to the protest, and if the response is adverse to the lessee, the lessee may appeal the decision in accordance with parts 4 and 1840 of this title. The effective date of the readjustment will not be affected by the filing of a protest or appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions will be effective pending the outcome of the protest or the appeal provided for in paragraph (b) of this section unless BLM provides otherwise. Upon the filing of a protest or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended pending the outcome of the protest or appeal. However, any such increased royalties, minimum royalties and rentals will accrue while the protest or appeal is pending, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the protest or appeal, the accrued balance, plus interest at the rate specified for late payment by the Service will be payable (See part 3590). Pending the decision on the protest or appeal, the royalties, minimum royalties and rentals will be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

138. Section 3533.4 is revised to read as follows:

**§ 3533.4 Rejection of application.**

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of potassium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of potassium or any potassium compound was discovered

and that the lands are chiefly valuable therefor.

#### **PART 3540—SULPHUR**

139. The authority citation for part 3540 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 460q *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2–460mm–4; 31 U.S.C. 9701.

140. Section 3543.4 is revised to read as follows:

##### **§ 3543.4 Rejection of application.**

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of sulphur and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

#### **PART 3550—“GILSONITE” (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)**

141. The authority citation for part 3550 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701.

142. Section 3551.4 is revised to read as follows:

##### **§ 3551.4 Readjustment.**

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of that period. Before the expiration of each 20-year period, BLM will send proposed readjusted terms and conditions to the lessee. If BLM fails to send the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease will have been

waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files a protest of the readjusted terms in accordance with parts 4 and 1840 of this title or relinquishes the lease. BLM will issue a decision responding to the protest, and if the response is adverse to the lessee, the lessee may appeal the decision in accordance with parts 4 and 1840 of this title. The effective date of the readjustment will not be affected by the filing of a protest or an appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions will be effective pending a response to the protest or appeal provided for in paragraph (b) of this section unless BLM provides otherwise. Upon the filing of a protest or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended pending the outcome of the protest or appeal. However, any such increased royalties, minimum royalties and rentals will accrue during the pendency of the protest or appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the protest or appeal, the accrued balance, plus interest at the rate specified for late payment by the Service will be payable (See part 3590). Pending the decision on the protest or appeal, the royalties, minimum royalties and rentals will be payable as specified by the lease terms and conditions in effect before the end of the 20-year period.

143. Section 3553.4 is revised to read as follows:

##### **§ 3553.4 Rejection of application.**

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of “Gilsonite”;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a

preponderance of the evidence, that a valuable deposit of “Gilsonite” was discovered.

#### **PART 3560—HARDROCK MINERALS**

144. The authority citation for part 3560 is revised to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 192c; 16 U.S.C. 508(b); 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 460q *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2–460mm–4; 31 U.S.C. 9701.

145. Section 3563.4 is revised to read as follows:

##### **§ 3563.4 Rejection of application.**

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of any mineral covered by the prospecting permit;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of the mineral(s) was discovered.

#### **PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS**

146. The authority citation for part 3590 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 42 U.S.C. 4331 *et seq.*; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 192c; 16 U.S.C. 508(b); 30 U.S.C. 291–293; 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2–460mm–4; 31 U.S.C. 9701; 95 Stat. 1070; 35 Stat. 315; 95 Stat. 1070; 25 U.S.C. 396; 25 U.S.C. 396a–396q; 25 U.S.C. 2101 *et seq.*

147. In § 3598.4, paragraph (c) is revised to read as follows:

##### **§ 3598.4 Enforcement orders.**

\* \* \* \* \*

(c) If, in BLM's judgment, a failure to comply with established requirements threatens health, safety, or the environment, BLM may, in writing or orally with written confirmation, order

the suspension of operations without prior notice in accordance with § 1844.11(c) of this title.

148. Section 3598.5 is revised to read as follows:

#### **§ 3598.5 Appeals.**

Any party adversely affected by an order or decision made under this part may appeal the order or decision in accordance with parts 4 and 1840 of this title.

#### **PART 3710—PUBLIC LAW 167; ACT OF JULY 1955**

149. An authority citation for part 3710 is added to read as follows:

Authority: 30 U.S.C. 601; 61 Stat. 681.

150. Section 3713.1 is revised to read as follows:

#### **§ 3713.1 Hearing procedures.**

The procedures to be followed for hearings and appeals are set forth in parts 4 and 1840 of this title.

151. In § 3715.7–1, paragraph (a)(1)(ii) is revised to read as follows:

#### **§ 3715.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(ii) an immediate, temporary suspension in accordance with 1844.11(c) of this title is necessary to protect health, safety, or the environment.

\* \* \* \* \*

152. Section 3715.9 is revised to read as follows:

#### **§ 3715.9 What appeal rights do I have?**

If you are adversely affected by a BLM decision, order, or determination made under this subpart, you may appeal the decision, order or determination in accordance with parts 4 and 1840 of this title.

153. Section 3715.9–1 is revised to read as follows:

#### **§ 3715.9–1 Does an appeal suspend a BLM decision?**

(a) An immediate, temporary suspension issued under § 3715.7–1(a) will go into effect immediately and will, in accordance with part 1840 of this title, remain in effect while an appeal is pending unless a stay is granted in accordance with § 4.21(b) of this title.

(b) The effect of all other decisions, orders, or determinations under this subpart will be stayed in accordance with part 1840 of this title.

#### **PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL**

154. The authority citation for part 3730 continues to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 43 U.S.C. 28f–k; 107 Stat. 405.

155. Section 3736.2 is revised to read as follows:

#### **§ 3736.2 Hearing; notice of contest.**

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will give the time and place of hearing. The procedures to be followed for the hearing are set forth in parts 4 and 1840 of this title. No publication of the notice will be required but a copy of the notice must be posted in the BLM State and District offices for a period of not less than 30 days before the date set for the hearing.

(b) Any party, other than a Federal agency, who would like to appear and testify at a hearing in protest of a placer mining operation, must file a written notice of protest in the proper offices where the notice of hearing is posted. The notice of protest must be accompanied by a \$10 filing fee and contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. BLM will forward a copy of each notice of protest that is filed to the mining locator prior to the hearing.

(c) Following the hearing, any party adversely affected by a decision of the administrative law judge may appeal the decision in accordance with part 4 of this title. Each decision by an administrative law judge and each decision on an appeal will provide for the issuance of an appropriate order as provided in section 2(b) of the Act after the decision becomes final. A certified copy of any order issued must be filed in the same State or county office in which the location notice has been filed. Any order permitting mining operations must be filed at the expense of the mining locator.

#### **PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT**

156. An authority citation for part 3740 is added to read as follows:

Authority: 30 U.S.C. 521; 68 Stat. 708.

157. Section 3743.1 is revised to read as follows:

#### **§ 3743.1 Hearing procedures.**

The procedures to be followed for hearings and appeals are set forth in parts 4 and 1840 of this title.

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

158. The authority citation for part 3800 continues to read as follows:

Authority: 16 U.S.C. 447; 16 U.S.C. 347–354; 16 U.S.C. 460y *et seq.*; 16 U.S.C. 473, 478–482; 16 U.S.C. 1901 and 1907; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 122, 161 and 162; 30 U.S.C. 242; 31 U.S.C. 9701; 43 U.S.C. 2; 43 U.S.C. 154; 43 U.S.C. 299 and 300; 43 U.S.C. 1201; 43 U.S.C. 1474; 43 U.S.C. 1701 *et seq.*; 50 U.S.C. Appendix 565; 62 Stat. 162; 100 Stat. 3457–3468; 107 Stat. 60; and 30 U.S.C. 28f–k, 107 Stat. 405.

159. Section 3802.5 is revised to read as follows:

#### **§ 3802.5 Appeals.**

(a) Any party adversely affected by a decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) In any case involving lands under the jurisdiction of any agency or office other than BLM, if a party appeals a decision of that agency or office which relates to mineral development in a wilderness study area, the appellant must serve the other agency or office with a copy of the notice of appeal and any statement of reasons, written arguments, and briefs.

160. Section 3809.4 is revised to read as follows:

#### **§ 3809.4 Appeals.**

(a) Any party adversely affected by a decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) In order for an appeal of a decision made under this subpart to be considered, a notice of appeal must be filed in writing with the BLM office where the decision was made within 30 days after the date of receipt of the decision. All decisions under this subpart will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

(c) The written appeal must contain:

(1) The name and mailing address of the appellant;

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded in accordance with subpart 3833 of this title which are subject to the appeal; and

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

## **PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION**

161. The citation for the authority for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

162. Section 3816.3 is revised to read as follows:

### **§ 3816.3 Recommendations of Bureau of Reclamation to open lands.**

If BLM receives an application and finds it to be satisfactory, BLM will send the duplicate to the Bureau of Reclamation and request a report and recommendation. If the Bureau of Reclamation recommends that the application be rejected, BLM will reject the application. Any party adversely affected by the rejection decision may appeal the decision in accordance with parts 4 and 1840 of this title.

## **PART 3830—LOCATION OF MINING CLAIMS**

163. The authority citation for part 3830 continues to read as follows:

Authority: 30 U.S.C. 22 and 28; 43 U.S.C. 1201; 31 U.S.C. 9701; 16 U.S.C. 1901 and 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. Appendix 565; 107 Stat. 60; 107 Stat. 405.

164. Section 3833.5 is amended by revising paragraphs (d) and (h) to read as follows:

### **§ 3833.5 Effect of recording and filing.**

\* \* \* \* \*

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site under § 3833.1–2 or filed a notice of transfer of interest under § 3833.3 will be considered by the United States as parties whose rights are affected by the action or contest and will be personally notified and served by certified mail sent to their last address of record. As provided in subpart 1810 of this title, all owners of record with BLM will be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners will be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The notice provisions of this subpart are not applicable to the procedures for public notice of a mineral patent application required under part 3860 of this title.

\* \* \* \* \*

(h) Any party adversely affected by a decision of BLM made under this

subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

## **PART 3870—ADVERSE CLAIMS, PROTESTS AND CONFLICTS**

165. An authority citation for part 3870 is added to read as follows:

Authority: 30 U.S.C. 22 *et seq.*, 43 U.S.C. 1740 *et seq.*, 43 U.S.C. 1201 *et seq.*

166. In § 3872.1, the first sentence of paragraph (a) is revised to read as follows:

### **§ 3872.1 Protest against mineral applications.**

(a) At any time prior to the issuance of patent, a protest may be filed in accordance with parts 4 and 1840 of this title against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. \* \* \*

167. Section 3872.2 is revised to read as follows:

### **§ 3872.2 Procedure in contest cases.**

The procedures to be followed in all contests and hearings to determine the character of lands are in parts 4 and 1840 of this title.

168. In § 3872.4 paragraph (c) is revised to read as follows:

### **§ 3872.4 Procedure to dispute record character of land.**

\* \* \* \* \*

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and will be conducted in accordance with parts 4 and 1840 of this title.

## **PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK**

169. The authority citation for part 4200 is revised to read as follows:

Authority: 25 U.S.C. 500k; 43 U.S.C. 1740.

170. Section 4240.1 is revised to read as follows:

### **§ 4240.1 Protests.**

Protests against an application for a lease must be filed with the appropriate BLM office in accordance with parts 4 and 1840 of this title. A protest must disclose all facts upon which it is based, describe the lands involved, and be accompanied by evidence of service of a copy of the protest on the applicant. If the person filing the protest wants to lease all or part of the land embraced in

the application against which the protest is filed, the protest must be accompanied by an application for a grazing lease.

## **PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER**

171. The authority citation for part 4300 is revised to read as follows:

Authority: 43 U.S.C. 315; 43 U.S.C. 1740.

172. Section 4330.1 is revised to read as follows:

### **§ 4330.1 Protests.**

Protests against an application for a grazing permit must be filed with the appropriate BLM office in accordance with parts 4 and 1840 of this title. The protest must disclose all facts upon which it is based, describe the lands involved, and be accompanied by evidence of service of a copy of the protest upon the applicant. If the person filing the protest wants to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest must be accompanied by an application for a grazing permit.

## **PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS**

173. The authority citation for part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

174. Section 4770.3 is revised to read as follows:

### **§ 4770.3 Administrative remedies.**

(a) Any party who is adversely affected by a decision of BLM made under this part may appeal the decision in accordance with parts 4 and 1840 of this title. Appeals and petitions for stay of a decision of BLM must be filed within 30 days of receipt of the decision by the adversely affected party.

(b) Notwithstanding the provisions of § 4.21(a) of this title, BLM may provide that the decision to cancel a private maintenance and care agreement will be effective upon issuance or on a date established in the decision so as to allow repossession of wild horses or burros from adopters to protect the animals' welfare.

(c) Notwithstanding the provisions of § 4.21(a) of this title, BLM may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving

ecological balance and multiple use relationship will be effective upon issuance or on a date established in the decision.

#### **PART 5000—ADMINISTRATION OF FOREST MANAGEMENT DECISIONS**

175. The authority citation for part 5000 is revised to read as follows:

Authority: 43 U.S.C. 1181(a); 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1740.

176. Section 5003.1 is revised to read as follows:

##### **§ 5003.1 Effect of decisions; general.**

The filing of an appeal in accordance with parts 4 and 1840 of this title will not automatically stay the effect of a decision governing or relating to forest management made under §§ 5003.2 and 5003.3.

177. Section 5003.3 is revised to read as follows:

##### **§ 5003.3 Protests.**

(a) Protests of a forest management decision, including advertised timber sales, must be made in accordance with parts 4 and 1840 of this title within 15 days of the publication of a notice of decision or notice of sale in a newspaper of general circulation.

(b) Protests must be filed with BLM and must contain a written statement of reasons for protesting the decision.

(c) Protests received more than 15 days after the publication of the notice of decision or the notice of sale are not timely filed and will not be considered.

(d) Upon timely filing of a protest, BLM will reconsider the decision to be implemented in light of the statement of reasons for the protest and other pertinent information available to BLM.

(e) At the conclusion of the review, BLM will provide the protesting party with a copy of the written decision.

(f) Upon denial of a protest filed under paragraph (a) of this section, BLM may proceed with implementation of the decision.

#### **PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT**

178. The authority citation for part 5470 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

179. Section 5475.7 is amended by revising paragraph (a) to read as follows:

##### **§ 5475.7 Protests and appeals.**

(a) Any appeal filed prior to the execution of a buy-out agreement must

be in accordance with the provisions of parts 4 and 1840 of this title.

#### **PART 5510—FREE USE OF TIMBER**

180. The authority citation for part 5510 is revised to read as follows:

Authority: 61 Stat. 681; 69 Stat. 367; 48 Stat. 1269; 30 Stat. 414; 30 U.S.C. 189 and 601 *et seq.*; 43 U.S.C. 315, 1201 and 1740; and 48 U.S.C. 423.

181. In § 5511.1–4, paragraphs (a)(2) and (a)(4) are revised to read as follows:

##### **§ 5511.1–4 Free use of timber upon oil and gas leases.**

(a) \* \* \*

(2) *Notice of rejection of application; right of appeal.* The applicant will be notified by registered mail if the permit applied for is not granted. The applicant is allowed 30 days from service of notice within which to appeal from the decision in accordance with parts 4 and 1840 of this title.

\* \* \* \* \*

(4) *Notice of action on application.* The applicant will be notified by registered mail if the permit applied for is not granted. The settler or homestead entryman will be notified in a like manner before the issuance of the permit if protests are filed in accordance with parts 4 and 1840 of this title against the issuance of the permit.

#### **PART 8370—USE AUTHORIZATIONS**

182. The authority citation for part 8370 continues to read as follows:

Authority: 16 U.S.C. 4601–6a, 16 U.S.C. 670(g–n), 16 U.S.C. 1271–1287, 6 U.S.C. 1241–1249, 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

183. Section 8372.6 is revised to read as follows:

##### **§ 8372.6 Appeals.**

(a) Any party adversely affected by a decision of BLM made under this part may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) All decisions of BLM made under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

#### **PART 9180—CADASTRAL SURVEY**

184. The authority citation for part 9180 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 40 Stat. 965, as amended; and 43 U.S.C. 773.

185. In § 9185.2–2, paragraph (b) is revised to read as follows:

#### **§ 9185.2–2 Lands omitted from original survey.**

\* \* \* \* \*

(b) *Form of notice.* No particular form of notice is required. The notice must make it clear, however, that the land covered by the application is contended to be public land owned by the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the appropriate State Director in accordance with parts 4 and 1840 of this title. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

186. Section 9185.3–3 is revised to read as follows:

##### **§ 9185.3–3 Majority of land owners.**

A majority of the settlers in each township are required to join in the application, and the endorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented must appear, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. If an entryman or owner, including the State, has failed for any reason to join in the application, evidence of service of notice upon the entryman or owner is required. Notice must be given for at least 30 days in advance of the filing of the application in order that the entryman or owner may be afforded ample opportunity to protest in accordance with parts 4 and 1840 of this title against the granting of the resurvey.

#### **PART 9230—TRESPASS**

187. The authority citation for part 9230 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701 *et seq.*; 18 U.S.C. 1851–1858.

188. In § 9239.5–3, paragraph (f)(3) is revised to read as follows:

##### **§ 9239.5–3 Coal.**

\* \* \* \* \*

(f) \* \* \*

(3) No penalty under this section may be assessed unless the person is given notice and an opportunity for a hearing with respect to the violation in accordance with parts 4 and 1840 of this title.

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