

Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress, and a copy of the report appears as an attachment to this document. The report is being published to comply with the requirements of the law. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 95.5 cents for airplanes, 36.0 cents for automobiles, and 27.5 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.0 cents effective January 1, 2003.

**B. Regulatory Flexibility Act**

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

**C. Executive Order 12866**

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is also exempt from congressional review prescribed under 5

U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 301-10**

Government employees, Travel and transportation expenses.

Dated: December 24, 2002.

**Stephen A. Perry,**  
*Administrator of General Services.*

For the reasons set forth in the preamble, amend 41 CFR part 301-10 as set forth below:

**PART 301-10—TRANSPORTATION EXPENSES**

1. The authority citation for 41 CFR part 301-10 is revised to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118.

2. Revise section 301-10.303 to read as follows:

**§ 301-10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?**

For use of a	Your reimbursement is
Privately owned aircraft (e.g., helicopter, except an airplane) .....	Actual cost of operation ( <i>i.e.</i> , fuel, oil, plus the additional expenses listed in § 301-10.304).
Privately owned airplane .....	195.5. <sup>1</sup>
Privately owned automobile .....	136.0. <sup>1</sup>
Privately owned motorcycle .....	127.5. <sup>1</sup>

<sup>1</sup> Cents per mile.

**Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles**

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations,

conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.0 cents effective January 1, 2003.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 95.5 cents for airplanes, 36.0 cents for automobiles, and 27.5 cents for motorcycles.

I have issued a regulation decreasing the current 97.5 to 95.5 cents for privately owned airplanes, 36.5 to 36.0 cents for privately owned automobiles, and 28.0 to 27.5 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

[FR Doc. 03-136 Filed 1-3-03; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 1860**

[WO-350-1864-24 1A]

RIN 1004-AD50

**Conveyances, Disclaimers and Correction Documents**

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) amends its regulations pertaining to recordable disclaimers of interest in land. We are amending the regulation by: removing the 12-year regulatory filing deadline for states; removing the requirement that an applicant be a "present owner of record" to be qualified under the Act; allowing any entity claiming title, not just current owners of record, to apply for a disclaimer of interest; defining the term "state" as it is used in this rule; clarifying how we will apply

disclaimer applications involving another Federal land managing agency.

**DATES:** This rule is effective February 5, 2003. Any application for a recordable disclaimer pending on the effective date of this final rule will be subject to this final rule.

**FOR FURTHER INFORMATION CONTACT:** Jeff Holdren 202 452-7779. Individuals who use a telecommunications device for the deaf may contact Mr. Holdren through the Federal Information Relay Service at 1-800-877-8339 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

- I. What Is the Background of This Rulemaking?
- II. How Did BLM Change the Proposed Rule in Response to Comments?
- III. Responses to Comments
- IV. How Did BLM Fulfill Its Procedural Obligations?

**I. What Is the Background of This Rulemaking?**

Section 315 of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of the Interior, through a delegation of authority to BLM, to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where the Secretary determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid (43 U.S.C. 1745(a)). BLM may issue recordable disclaimers to disclaim Federal title in a wide variety of instances, including avulsion, reliction, or accretion of lands, survey errors, clerical errors, or when applicants assert title previously created under now expired authority.

The following statutory requirements must be met before the Secretary can issue a disclaimer:

1. An applicant must file a written application with the Secretary.
2. The Secretary must publish a notice in the **Federal Register** of the application setting forth the grounds supporting it at least ninety days before the issuance of the disclaimer.
3. The applicant must pay the Secretary the administrative costs associated with issuance of the disclaimer. The Secretary determines the amount of the costs.
4. The Secretary must consult with any affected Federal agency.

BLM published regulations implementing the Secretary's authority under section 315 of FLPMA to issue recordable disclaimers in 1984 (49 FR 35296). These regulations imposed requirements in addition to those

identified in the statute. Specifically, the regulations restrict applicants for a disclaimer to "any present owner of record" (43 CFR 1864.1-1). The regulations also specify information the applicant must submit in the application and the costs associated with submitting an application. For example, an applicant is required to submit "[a]ll documents which show to the satisfaction of the authorized officer the applicant's title to the lands." (43 CFR 1864.1-2(c)(3)) This requirement may be waived if BLM believes it is not needed to properly adjudicate the application. The regulation requires that BLM deny an application if more than 12 years have passed since the owner knew or should have known of the alleged claim of the United States (43 CFR 1864.1-3(a)(1)).

"Interest in land" can pertain to various situations because there are different types of interests a property owner can hold. For example, for a specific parcel of land, interests could include surface rights, subsurface rights, mineral interests, timber interests and various other interests which, when combined, equate to a fee simple interest for that parcel. Interests in land can be sold, given away, leased, or otherwise transferred from one entity to another by means of various conveyance documents (e.g., deed or patent). They may also be temporarily transferred from the one entity to another by means of a lease, permit, license, or other such document.

Some Federal property interests may transfer by operation of law to another entity. For example, the Submerged Lands Act (43 U.S.C. 1301-1315), provides that title to the bed of navigable water bodies passes from Federal to state ownership when the state is admitted to the Union. The Act does not require that BLM either initiate or complete this title transfer of land, but by providing a recordable disclaimer of interest, BLM may lessen future disputes.

On February 22, 2002, we published in the **Federal Register** (67 FR 8216) a proposed rule to amend our regulations pertaining to Conveyances, Disclaimers, and Corrections Documents. The proposal sought to amend certain provisions of the regulations originally published in 1984. The proposed rule would further the purpose of section 315 of FLPMA to remove clouds on title to lands or interests in lands by allowing any entity claiming title, rather than only a present owner of record, to apply for a recordable disclaimer of interest. The proposed rule also sought to eliminate the application deadline in section 1864.1-3, as it applies to states.

This change would conform the regulations more closely to the Quiet Title Act (28 U.S.C. 2409a(g)) which, in most instances, exempts states from the 12-year statute of limitations under that act. These two technical changes are the only ones that BLM proposed in February 2002 to the 1984 regulations.

*Basis and Purpose for the Final Rule*

This final rule removes certain restrictions from the current rule that are not required by section 315 of FLPMA (43 U.S.C. 1745). The final rule also reflects a change that Congress made to the Quiet Title Act in 1986 (28 U.S.C. 2409a). These amendments to 43 CFR subpart 1864 will make the recordable disclaimer regulations more consistent with both section 315 of FLPMA and the Quiet Title Act. This rule will reduce the potentially inconsistent administrative interpretations and application of the recordable disclaimer regulations by eliminating the requirement that an applicant be a "present owner of record."

Specifically, this final rule amends the regulations by incorporating the following changes to the way we process disclaimers of interest. The rule:

- Eliminates the application deadline in 43 CFR 1864.1-3 as it applies to "states."
- Allows any entity claiming title, not just current owners of record, to apply for a recordable disclaimer of interest.
- Defines state as used in this rule.
- Clarifies how BLM will evaluate disclaimer of interest applications pertaining to non-BLM federally managed lands.

**II. How Did BLM Change the Proposed Rule in Response to Comments?**

In this preamble, we respond to significant comments we received on the February 22, 2002, proposed rule (67 FR 8216). Because a majority of responses were form letters opposing the rule, we address those comments generally. We have directly responded to individual substantive comments in support of or in opposition to the rule. In response to several comments we have:

1. Included a definition of "state," as it is used in this rule, and
2. Clarified how BLM will process disclaimer of interest applications affecting non-BLM managed lands.

**III. Responses to Comments**

During the 60-day comment period BLM received about 18,000 comments in support of, or in opposition to, the proposed rule. Most of the correspondence consisted of form letters

expressing opposition to the proposed rule for a variety of reasons.

#### *General Comments Opposing the Proposed Rule*

Letters opposing the rule generally stated the rule would:

- Enable BLM to transfer large tracts of public lands to states;
- Impact sensitive wilderness and roadless areas; and
- Adversely affect wildlife and habitats by allowing states to build major thoroughfares through wild land areas.

#### *General Comments Supporting the Proposed Rule*

Letters supporting the rule generally stated the rule would:

- Maintain access to public lands on existing routes in rural areas;
- Support state control over routes in rural places; and
- Ease the process whereby BLM could transfer public land to states.

We are responding to these general comments as they arise in the context of more specific substantive comments on the proposed rule.

Several commenters claimed that the proposed rule is illegal because 43 U.S.C. 1745 does not allow BLM to alter the intent of the statute from the present owner of record to "any entity claiming title to lands." Other commenters asserted that the proposed changes are inconsistent with 43 CFR Subpart 1864 because they do not further the purpose of 43 U.S.C. 1745 and would lead to an increase in inconsistent administrative interpretations, and would allow anyone to make a claim, not just the existing owners of record.

We disagree. The term "present owner of record" is not found in FLPMA. In the existing regulations, published in 1984, BLM required the applicant to be a present owner of record to preclude third parties having no property interest in the lands in question from applying for a recordable disclaimer. We think this present-owner-of-record requirement is inconsistent with the actual language of section 315 of FLPMA. The present-owner-of-record concept artificially limits FLPMA's goal of eliminating clouds on title. A cloud on title is less likely when there is also an actual present owner of record. Land title disputes often arise with parties who have gained title by operation of law, such as states that obtained title under the Submerged Lands Act to lands under navigable bodies of water. For example, a state applying for a recordable disclaimer may not have a record of the state's title to the lands in question in a county clerk's office.

Nevertheless, Congress has passed title to the state by virtue of the Submerged Lands Act. Moreover, today's rule does not increase the potential for inconsistent administrative interpretations. Applications containing invalid claims will be rejected regardless of whether they were filed by present owners of record or others.

A significant number of comments asked about the relationship between the proposed rule and R.S. 2477. A coalition of California conservation organizations expressed concern that the proposed rule was intended to facilitate disclaimers by the United States of its interest in lands that are used for recreation, conservation, wilderness and other public purposes, as a result of R.S. 2477 right-of-way claims by individuals and local and state governments. The commenters believe that the FLPMA disclaimer-of-interest procedure was not intended to include R.S. 2477 claims within its scope and that BLM has no legal authority to employ the disclaimer provisions to process, acknowledge or determine the existence or extent of R.S. 2477 rights-of-way.

Revised Statutes (R.S.) 2477, first enacted as section 8 of the Mining Act of 1866, states that "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C. 932 (repealed 1976). R.S. 2477 was repealed by FLPMA on October 21, 1976 (Pub. L. 94-579, Sec. 706(a), 90 Stat. 2744, 2793). FLPMA did not terminate valid rights-of-way existing on the date of its approval (Sec. 509(a), 90 Stat. 2781, 43 U.S.C. 1769; Sec. 701(a), 90 Stat. 2786, 43 U.S.C. 1701 note). In most instances, R.S. 2477 rights-of-way were not recorded on the public land records or in official county records because R.S. 2477 did not require any formal approval from the Secretary of the Interior or other Federal government official. The uncertainty resulting from unrecorded rights-of-way under R.S. 2477 has created clouds on title.

FLPMA authorizes the Secretary of the Interior to issue recordable disclaimers of interest in lands in specified cases if the disclaimer will help remove a cloud on the title to lands or interests in lands and if the Secretary finds no Federal interest (43 U.S.C. 1745(a)). Recordable disclaimers may be issued where applicants assert title previously created under now expired authorities. For example, after adjudicating the claim, BLM may issue a recordable disclaimer of interest to disclaim the United States' interest in a highway right-of-way under R.S. 2477.

Many commenters, including a consortium of 14 environmental groups, expressed concern about the relationship of this rulemaking to the 1996 Congressional moratorium placed on the Department and other Federal agencies on R.S. 2477 rulemakings. The commenters expressed the view that the proposed rule would be illegal because section 108 of the Omnibus Interior Appropriations Act for Fiscal Year 1997 prohibits Federal agencies from placing into effect any final rule or regulation pertaining to the recognition, management or validity of a right-of-way pursuant to R.S. 2477 unless expressly authorized by an Act of Congress (110 Stat. 3009-200).

We do not believe that the Congressional moratorium on R.S. 2477 rulemaking precludes BLM from making effective this final rule implementing the Secretary of the Interior's authority to issue recordable disclaimers of interest in lands. On August 1, 1994, the Department of the Interior proposed new regulations (59 FR 39216) to create an administrative process for resolving right-of-way claims made under R.S. 2477. Before the R.S. 2477 proposed rule was published as a final rule, Congress enacted a moratorium prohibiting any Federal agency from preparing, promulgating, or implementing any rule or regulation regarding R.S. 2477 rights-of-way until September 30, 1996. This provision was an amendment to the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568, 617-18 (1995)). Congress extended the prohibition on "developing, promulgating, and thereafter implementing a rule concerning rights-of-way under section 2477 of the Revised Statutes" in the Fiscal Year 1996 Interior and Related Agencies Appropriations Act (Pub. L. 104-134, 110 Stat. 1321, 1321-177 (1996)). In section 108 of the Fiscal Year 1997 Department of the Interior and Related Agencies Appropriations Act (Interior Appropriations Act, 1997) (Pub. L. 104-208, 110 Stat. 3009, 3009-200 (1996)), Congress stated that:

No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.

Section 108 could be construed as either permanent legislation or as having expired at the end of fiscal year 1997. If section 108 is construed as permanent legislation, it would prohibit the Department from making effective a

final rule or regulation pertaining to the "recognition, management, or validity" of a right-of-way pursuant to R.S. 2477. In 1997, the General Counsel of the General Accounting Office (GAO) issued an opinion concluding that section 108 is permanent law and did not expire at the end of the 1997 fiscal year (Letter of Robert P. Murphy, General Counsel, GAO, B-277719, at 1 (Aug. 20, 1997)).

Even if section 108 is permanent legislation, it only applies to "final rules or regulations" relating to the "recognition, management, or validity of a right-of-way" pursuant to R.S. 2477. Because today's final rule merely amends BLM's existing regulations, which define the administrative process by which an entity can apply for a recordable disclaimer of interest under section 315 of FLPMA, the section 108 moratorium does not apply to this final rule.

If section 108 were interpreted to prevent BLM from promulgating a regulation relating to recordable disclaimers of interest, section 108 would, in essence, partially repeal sections 310 and 315 of FLPMA (43 U.S.C. 1740, 1745). Under section 310, BLM is authorized to "promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands." Section 315 is the specific substantive authority for BLM's disclaimer regulations (43 U.S.C. 1745(c)). As a general rule, courts do not favor repeals by implication. In *Morton v. Mancari* (417 U.S. 535, 550 (1974)), the Supreme Court stated: "In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." In *Tennessee Valley Authority v. Hill* (437 U.S. 153, 190 (1978)), the Supreme Court stated that the doctrine disfavoring repeals by implication applies with even greater force when the claimed repeal rests solely on an appropriations act.

Although repeals by implication are especially disfavored in the appropriations context, Congress nonetheless may amend substantive law in an appropriations statute if Congress does so clearly. (*Robertson v. Seattle Audubon Society*, 503 U.S. 429, 440 (1992)). The question depends on the intention of Congress as expressed in the statute. See *United States v. Mitchell*, 109 U.S. 146, 150 (1883). Therefore, unless Congress clearly intended to amend sections 310 and 315 of FLPMA, section 108 of the Interior Appropriations Act, 1997, and sections 310 and 315 of FLPMA are all effective.

Section 108 contains broad language and does not indicate which final rules or regulations are encompassed by the words "pertaining to the recognition, management, or validity of a right of way pursuant to Revised Statute 2477." The legislative history, however, indicates that Congress enacted section 108 to prevent the Department of the Interior from promulgating final rules and regulations setting out specific standards for R.S. 2477 rights-of-way. (See H.R. Rep. No. 104-625, at 58 (1996)). Instead, Congress itself wanted to enact legislation defining the key terms and scope of grants for R.S. 2477 rights-of-way. The House Committee on Appropriations stated that:

[T]he public interest will be better served if these grants [for highway rights-of-way across Federal land] to States and their political subdivisions are not put in jeopardy by the Department pending Congressional clarification of these issues. Section 109 does not limit the ability of the Department to acknowledge or deny the validity of claims under RS 2477 or limit the right of grantees to litigate their claims in any court.

Section 109 of H.R. 3662, the Department of the Interior and Related Agencies Appropriations Bill, 1997, was renumbered section 108 after the Senate Appropriations Committee deleted section 107, an unrelated section of H.R. 3662, in its entirety (S. Rep. No. 104-319, at 56 (July 16, 1996)). The Appropriations Committee reported the bill to the Senate and recommended it pass, as amended. Accordingly, when Congress enacted section 108, it did not intend to prohibit the promulgation of all final rules and regulations that may, directly or indirectly, address R.S. 2477 rights-of-way but, rather, those that provide standards for recognizing, managing or validating an R.S. 2477 right-of-way.

Today's rule on recordable disclaimers does not provide standards for recognizing managing, or validating an R.S. 2477 right-of-way. Rather, BLM's rule merely makes technical changes to the existing regulations under which an applicant may submit an application to remove a cloud on title to lands to which the United States asserts no ownership or interest. First, the rule amends the existing regulations to allow any entity claiming title, as opposed to only present owners of record, to apply for a recordable disclaimer of interest. This change eliminates inconsistent administrative interpretations of the owner-of-record requirement, a term that is not defined in the existing 1984 regulations. Second, the final rule eliminates the application deadline in

section 1864.1-3, as it applies to states. This change conforms the regulations to the Quiet Title Act, 28 U.S.C. 2409a(g), which exempts states, in most instances, from the twelve-year statute of limitations under that Act. These changes to the existing regulations do not expand the kinds of circumstances in which a disclaimer could be issued, expand or modify any rights created, or create any new rights under R.S. 2477. BLM may issue recordable disclaimers relating to valid R.S. 2477 rights-of-way under the existing 1984 regulations, and this capability will continue under today's final rule.

Even if BLM were to issue a disclaimer of the United States' interest in a valid right-of-way under R.S. 2477, the recognition of such right-of-way would not be the result of this notice-and-comment rulemaking but, rather, an informal agency adjudication resulting in a final decision. (See 5 U.S.C. 551(7)). The legislative history of section 108 expressly states that Congress "does not limit the ability of the Department to acknowledge or deny the validity of claims under RS 2477 or limit the right of grantees to litigate their claims in any court." (H.R. Rep. No. 104-625, at 58 (1996)). Because BLM's rule is not a final rule or regulation relating to the "recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477," this rule is not subject to the moratorium in section 108 of the 1997 Interior Appropriations Act.

Several commenters expressed concerns that today's rule will enable states to make "illegal" R.S. 2477 claims on "cow paths" and "foot trails" and turn them into major thoroughfares in sensitive areas.

We disagree that the changes to the existing rule will allow illegal claims. If an applicant does not have a valid, legal title, BLM will reject the disclaimer application. The existing 1984 rule and today's final rule are the same in this regard.

The Southern Utah Wilderness Alliance (SUWA) opposed the rulemaking because it did not mention any case law, particularly *SUWA and Sierra Club v. BLM*, (96-CV-836C (D. Utah); appeal pending, No. 01-4173 (10th Cir.)). SUWA believes this omission invites attempts to evade application of this case and others in an effort to validate R.S. 2477 claims which could never meet the legal prerequisites. The group also asserted that the proposed rule did not describe the standards BLM would apply in determining whether to grant recordable disclaimers.

This rulemaking pertains only to disclaimers and not to any assertions

made by various entities for R.S. 2477 claims. Therefore, a discussion of this case law is not germane to today's rulemaking.

An Alaskan environmental group believes the proposed rule is not necessary to provide appropriate access across Alaska lands because there exist statutory processes to determine rights-of-way for roads and other access across most of the land affected by R.S. 2477 assertions. The group also states that recognizing R.S. 2477 assertions under the proposed rule will undermine these established processes and frustrate land management efforts of responsible public and private landowners.

The existing regulations already allow applications for disclaimers for R.S. 2477 rights-of-way, and this has not undermined established processes for determining access. This rulemaking makes technical changes to the existing rule.

Many commenters, including the Idaho County Farm Bureau, and the consortium of environmental groups, expressed concern that BLM is proposing the rule to circumvent FLPMA and Congressional restrictions against implementing R.S. 2477 rights-of-ways. The commenters assert that Congress provided a means to grant rights-of-way under FLPMA, negating the need for R.S. 2477. The focus of their concern is that this proposed rule will allow states to acquire sensitive lands, the BLM to circumvent the environmental impact review process, and the BLM's ability to charge fair market value rentals under Title V of FLPMA.

FLPMA repealed R.S. 2477 and provided for applications for new rights-of-way. Sections 509(a) and 701(h) of FLPMA also preserved valid existing rights-of-way. Therefore, although FLPMA created more flexible authority to address right-of-way issues, it did not displace existing rights-of-way authorized by Congress.

States may seek disclaimers to sensitive lands for which they already hold title. For example, submerged lands under navigable bodies of water may be environmentally sensitive. Congress, however, granted states title to these lands. A disclaimer would merely provide evidence of an existing title. Because the state already owns such lands, there would be no need for environmental studies or rental payments.

A commenter opposed the proposed rule because the commenter believes that the proposed rule change is not necessary. The commenter also stated the BLM Questions and Answer sheet and press release accompanying the rule

were confusing and obfuscated facts relating to R.S. 2477. The commenter also expressed concern that the proposed rule could allow "counties and other 'sagebrush rebel' entities in the West to file claims for public lands, with minimal processing of claims and no time limitations." Lastly, the commenter believes the rule will result in increased trespass incidents and other illegal activity by those wishing to lay claim under the proposed rule change to public lands, creating long term effects on the entire western ecosystem and native species.

BLM regrets that the Question and Answer document was confusing to the commenter and did not create the clarity we intended. BLM intends that this preamble will clear up any misunderstanding regarding this rulemaking. As we have stated, this rulemaking does not change the requirements for asserting title to an R.S. 2477 right-of-way. The rulemaking is intended only to make it easier for BLM to clear up clouded titles when the United States has no interest in the lands in dispute. A disclaimer of interest does not convey an interest in land. It is an administrative determination that the United States does not have an interest in land.

The Local Highway Technical Assistance Council of Boise, Idaho, asked BLM to clarify the current means besides FLPMA that can be used to secure a right to an R.S. 2477 highway reservation.

FLPMA repealed R.S. 2477 in 1976. There is no longer any way to secure a new right to an R.S. 2477 right-of-way. An existing owner of an R.S. 2477 right-of-way may apply for a recordable disclaimer under existing regulations or as amended in this final rule. A quiet title action in federal court is the only other way to resolve R.S. 2477 claims with finality. The purpose of section 315 of FLPMA is to avoid litigation in Federal court.

The Nye County Commissioners, Nevada, believe that the proposed rule may resolve some questions relating to R.S. 2477 rights-of-way but are concerned that the proposed rule is inapplicable to R.S. 2477 rights-of-way (or any other rights-of-way), because the United States continues to hold a valid interest in underlying lands. The Commissioners expressed support for BLM's effort but did not support the proposed rule.

If a state made a valid R.S. 2477 right-of-way claim on public land, only the rights pertaining to the right-of-way are authorized for use. The commenter is correct that the BLM would retain all other rights, such as the right to sell the

land, allow mining claims to be filed, or administer the lands for appropriate purposes. BLM may issue recordable disclaimers for interests in land and is not limited to disclaiming only fee simple title.

An environmental group believes BLM has purposefully and incorrectly stated the purpose and intent of the proposed rule by citing it as a relatively minor revision to an obscure regulation with little substantive impact. The group believes this hampered the public review process by not informing the public about the importance of this proposed rule.

We disagree that this rulemaking is a major regulatory action. We believe that we adequately and accurately presented the purpose and intent of the proposed rule. The rulemaking makes technical changes to the existing rule. These changes are outlined within the **SUMMARY** section of this preamble. BLM has issued 62 recordable disclaimers since the enactment of FLPMA in 1976; on average, fewer than 3 recordable disclaimers annually.

The Blue Ribbon Coalition supported the proposed rule and asked BLM to clarify whether a disclaimer of interest process must be followed for each and every right-of-way under consideration. The group also asked BLM to explain how difficult and complex the process would be for the applicant and the BLM for other types of interest that may be disclaimed under section 315.

An applicant may apply for as many disclaimers as it has clouded titles which may benefit from the process. The complexity of the process depends upon the nature of the ownership sought. Titles clouded by avulsion, reliction or accretion may require historic maps and patents and newly-created data, such as aerial photographs. State applications for disclaimers for submerged lands may require detailed studies of water levels and commercial traffic at the time of statehood.

A consortium of environmental groups believes the proposed rule changes would have a direct effect on private property land rights because it would lead to numerous rights-of-way crossing state and private land. The commenters also believe the proposed rule will "cloud title" to large amounts of public and private land by extending the time that states are allowed to file claims. The commenters are concerned that the rulemaking will affect private property owners and title insurance companies because BLM has not made any effort to notify them of these potential impacts.

Today's rule will not adversely affect private property land rights. As we have

stated, this rulemaking pertains to disclaimers of interest in federal lands. It does not apply to private or state lands. BLM does not anticipate that title to private land will become clouded by implementation of this final rule. We expect the opposite to occur—title issues arising from a variety of issues may now be resolved by means of issuing a disclaimer of interest.

Commenters asserted that the proposed rule would enable BLM to transfer large tracts of public lands to states and increase environmental impacts on sensitive areas.

BLM may issue a disclaimer only when an applicant can show that a specific property right is not held by the United States and the applicant has requested that BLM document this by means of a recordable disclaimer. The rule would not enable BLM to transfer vast tracts of land to states. Any land disclaimed would already be owned by the applicant, with or without the disclaimer. This rule would not result in either an increase or decrease in environmental impacts.

States may apply for recordable disclaimers for valid R.S. 2477 claims. Applications will be evaluated on their merits and, if the claims are valid, BLM may issue a disclaimer of interest.

Another environmental group was concerned that the rulemaking will circumvent the public comment procedure by placing the determination of “interest” in the hands of the agency. The group does not believe BLM has made provisions for public notice, comment, participation, or appeal of its disclaimers which they believe deprives the public of protections during the process of determining the ownership of federal lands.

Today’s rule does not impede or remove opportunities for public notice or appeal provisions for disclaimers. The existing regulations at Subpart 43 CFR 1864 address the group’s concerns about public input. Specifically, section 1864.2 provides that BLM must file a notice of the application and the grounds supporting it in the **Federal Register** at least 90 days before a decision is made on the application. Also, BLM publishes a notice describing the application and its justification in a newspaper serving the general vicinity of the lands that are the subject of application for three consecutive weeks during the 90-day time period. Today’s rule does not address this section. Under 43 CFR 1864.4, “an applicant or claimant adversely affected by a written decision of the authorized officer” may appeal to the Interior Board of Land Appeals under 43 CFR part 4.

Regarding the group’s suggestion that BLM seek public input to determine ownership of public lands, the point is not determining ownership of lands, but rather how to remove clouds on title to land to which the United States disclaims title. In this case we continue the existing process.

The Gilpin County Commissioners, Colorado, expressed concern about the rule’s potential to open “historic roads and tracks,” increase threats of erosion, and introduce noxious weeds into unroaded areas. The commissioners believe this rule could harm small ranchers who have rights on BLM lands.

This final rule will not result in the situations the commenters pose. The applicant would already own any land or interests disclaimed. With or without the disclaimer the same impacts would occur, so there is no environmental impact from this rule. The rule does not apply to private lands and does not affect grazing permits.

The San Bernardino County, Department of Public Works, California, and others, asked whether an applicant must apply and be denied a right-of-way under the FLPMA or other statute before requesting a disclaimer of interest.

The denial of a right-of-way application under FLPMA has no bearing on a request for a disclaimer of interest.

Several commenters, including The National Parks Conservation Association, and the Nye County Commissioners, Nevada, asked how the BLM can process disclaimers of interest on behalf of another surface management agency because BLM’s mandate may differ from that of other agencies. The commenters raised the following concerns:

- The final rule may alienate thousands of acres of park lands and instigate construction of roads and other structures on NPS lands.
- The proposed rule could frustrate Congressional intent for the protection and management of resources contained within the National Park system.
- It is not clear how the rule will apply to lands under the jurisdiction of DOI agencies other than BLM.
- How will the rule pertain to lands that were under BLM jurisdiction in 1976, but which have since been transferred by Congress to other DOI agencies?

Section 315 gives the Secretary of the Interior the authority to issue recordable disclaimers when a record interest of the United States in lands, whether managed by Interior or not, has terminated by operation of law or is otherwise invalid. The Secretary has delegated the authority to BLM to issue

disclaimer documents when BLM determines that a disclaimer of interest application is valid. Under the existing 1984 regulations, BLM will refer an application involving lands administered by another agency to that agency for review and comment.

The U.S. Forest Service provided comments generally supporting the proposed rule. We believe its comments are also helpful in responding to the above concerns. The Forest Service stated:

If implemented the proposed rule could improve our abilities to resolve certain forms of land title claims by states, such as title to the beds and banks of navigable streams, and for rights-of-way for highways under the Revised Statute (“RS”) 2477 (repealed). Currently there is no administrative process available for states or land management agencies like the Forest Service, to resolve such title claims; the process is time consuming and requires expensive litigation in Federal Courts. \* \* \* [T]he proposed rule for recordable disclaimers of title would provide a useful tool in resolving some state land title claims. With the addition of a provision stating BLM will not authorize any application over the objections of the Forest Service for claims on National Forests, we would strongly support the proposal.

BLM has responded to the Forest Service’s comments by adding language to the final rule clarifying that BLM will not issue a disclaimer of interest over the valid objections of the surface managing agency having jurisdiction over the affected lands.

Gilpin County, Colorado, and Valley County, Idaho, expressed concern that the proposed \$100 fee is ambiguous and excessive. Valley County asked if the application fee would apply to each route upon which an assertion is made. They are concerned that this could result in hundreds of dollars in fees for large counties. Gilpin County requests that BLM consider a one-time processing fee for a block of applications.

We disagree that the \$100 application fee, which exists in the current regulations, is ambiguous and excessive. The existing regulations at 43 CFR 1864.1–2(b) provide that “a nonrefundable fee of \$100 shall accompany the application.” This fee will not change as a result of this rulemaking. Subpart 1864 distinguishes between filing fees and administrative processing costs. Neither the proposed rule nor today’s final rule alter these requirements.

The San Bernardino County Department of Public Works in

California criticized any potential cost recovery that the rulemaking may impose because the number of claims the county might potentially file could create a financial burden on San Bernardino County.

This rulemaking does not change BLM's application procedures or fee structures and does not involve cost recovery. Each application would be subject to the \$100 application fee unless BLM waives it. Section 304(c) of FLPMA authorizes the Secretary, through BLM, to either reduce or eliminate charges for administrative costs. BLM will continue to place the money it collects into the U.S. Treasury for use for various public purposes. If BLM receives multiple applications, the individual case costs should be less, or BLM may waive the processing costs if many applications cover similar types of filings.

A commenter stated the proposed rule does not specify how to process the application or reference what the application requirements will be. The commenter says BLM must be specific about these and reference them in the final rule.

BLM has addressed the application requirements in the existing regulations at 43 CFR 1864.1-2. The final rule does not alter these requirements.

Another commenter asked how the public will know whether the fee and deposit are fair, if only BLM determines what fees the applicant must pay.

BLM is planning to issue guidance to field offices on how to establish fees and parameters to ensure fairness. The guidelines will include a provision that returns a portion of the fee if the application is denied. (Until those guidelines are completed, 43 U.S.C. 1735(a) provides an explanation of how BLM handles deposits and forfeitures.)

43 CFR 1864.1-3(c) (Action on application) and 43 CFR 1864.2(a) (Decision on application) explain BLM's procedure for billing an applicant for a disclaimer of interest application. BLM has chosen not to estimate an average cost to process a disclaimer of interest application because of the variable factors in each application. However, on a case-by-case basis, we inform the applicant of the estimated costs. When the application processing is completed, BLM will give the applicant a final accounting, which will either require payment of additional fees, or, if an applicant has overpaid BLM, we will issue a refund. Today's rule does not change the process.

A commenter asked whether BLM State Directors should have the authority to issue disclaimers of interest. Otherwise, subsequent

administrations will have the authority to change the rule.

The Secretary has already delegated the authority to process disclaimers of interest to the BLM Director, who in turn has delegated this authority to State Directors. Delegations of authority are always subject to change.

A commenter asked if the rule would apply to unpatented mining claims or other mineral interests.

The rule will not apply to a mining claim title. Title to mining claims is determined under the General Mining Law of 1872, as amended, and BLM regulations at 43 CFR Part 3800. BLM will determine whether the rule applies to clouded private mineral interests on a case-by-case basis. In general, the public obtains Federal mineral interests through leases BLM issues under the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), or sales authorized by the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

#### *Section 1864.0-5 Definitions*

In response to several comments we are adding language to section 1864.0-5 in today's rule to clarify that the term "state." As used in this rule, we define "state" as "the state and any of its creations including any governmental instrumentality, within a state, including cities, counties, or other official local governmental entities."

The Commissioners of Valley County, Idaho, believe the term "state" as used in the proposed rule to determine who would receive the benefit of the waiver of the 12-year filing deadline, is too restrictive because the state may not always support local government assertions and could prevent local government's from filing applications for disclaimers of interest. The Commissioners recommended that the regulations provide for local governments to apply directly.

We have defined the term "state" to include local governments. We do not believe the rule will create restrictions upon states or other governmental instrumentalities within the state. States may file an application for a disclaimer where a title defect appears to exist. Because counties and other entities of local government are within the jurisdiction of a state, they will have the same rights as a state. The waiver applies to counties by definition.

#### *Section 1864.1-1 Filing of Application*

Current section 1864.1-1 (a) provides, in part, that any "present owner of record may file an application to have a disclaimer of interest issued." The phrase "present owner of record" is not defined in Subpart 1864.

FLPMA neither uses nor defines this phrase. In real property parlance, the term "present owner of record" usually refers to a property owner in whose name the title appears in the official records of a county recorder's office or other office of record. Thus, it appears that the phrase "present owner of record" in section 1864.1-1 potentially could limit applications for a disclaimer of interest in a way that would unduly restrict the Secretary's broad authority under section 315 of FLPMA.

Today's rule amends this paragraph by removing the phrase "present owner of record" and replacing it with "any entity claiming title to lands." This change clarifies that it is the interest in the lands, rather than record ownership, that determines whether an entity is eligible to apply for a disclaimer of interest. This change also broadens the class of potential applicants for disclaimers of interest, which could include, among others, a state, corporation, county, or a single individual. The language is unchanged from the proposed rule.

Several commenters did not think BLM was clear on the standards we will apply when determining whether or not to issue a disclaimer of interest. The commenters urged BLM to apply standards that are "crisp, rigorous, and conform to recent federal case law." The commenters believe that because an applicant doesn't need to have color of title to request a disclaimer of interest, this makes the proposed rule an "illegal land granting statute." The commenters state that BLM must also correct the language of the original 1984 regulation (section 1864.0-5) purporting to define lands to include lands "now or formerly forming a part of the reserved or unreserved public lands."

We disagree with the commenters. BLM did not identify specific standards because applicants can make a wide variety of disclaimer applications. The issuance of a disclaimer does not grant land to anyone. It merely documents that the United States has no valid interest in the land. Requirements for how and what an applicant must file are found in the existing regulations at 43 CFR 1864.1-2.

We also disagree that we should change our definition of "lands." Often lands have been transferred from Federal to private ownership, but a residual interest in the lands remains with the Federal government either by design or error. The disclaimer of interest rule is in place to correct such errors if they are found to cause a cloud on a title.



#### *Section 1864.1-3 Action on Application*

Section 1864.1-3(a)(1) currently provides, in part, that the BLM will deny an application for a disclaimer if “[m]ore than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States.” This deadline was modeled after the statute of limitations in the Quiet Title Act, which also includes a disclaimer provision (28 U.S.C. 2409a(e)). The Quiet Title Act now provides that “any civil action under this section, except for an action brought by a state, will be barred unless it is commenced within twelve years of the date upon which it accrued. Such action will be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.” (28 U.S.C. 2409a(g)).

As enacted in 1972, the Quiet Title Act subjected all parties, including states, to the 12-year limitation period. In 1986, Congress amended the Quiet Title Act to exempt states from this 12-year statute of limitations in most instances. However, BLM has not updated 43 CFR 1864.1-3(a), issued in 1984, to reflect the 1986 change in the Quiet Title Act. Thus, today’s rule amends this section to be more consistent with the Quiet Title Act.

Today’s rule adds language exempting states from the 12-year filing deadline to allow states, as we have defined this term in this rule, to apply for disclaimers of interest under FLPMA at any time. We also made editorial changes to this section and brought up-to-date a reference to another section.

#### *Section 1864.1-4 Consultation With Other Agencies*

The existing regulations at 43 CFR 1864.1-4 direct BLM to refer disclaimer applications to the affected Federal agency for comment before making a decision on the application. As a result of comments BLM added provisions to today’s rule stating that if a surface management agency has a valid objection to an application, BLM will reject the application. If the application is approved by the surface management agency, then BLM can issue a recordable disclaimer of interest.

We specifically made the change in response to the U.S. Forest Service comments by clarifying in this final rule how BLM will handle disclaimer of interest applications for lands managed by another land managing agency.

#### **IV. How Did BLM Fulfill Its Procedural Obligations?**

##### *E.O. 12866, Regulatory Planning and Review*

This regulation is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866. Therefore it does not require an assessment of potential benefits and costs, nor does it require an explanation pertaining to the manner in which the regulatory action is consistent with a statutory mandate and, to the extent allowed by law, promotes the President’s priorities and avoids undue interference with state, local, and tribal governments in the exercise of their governmental functions. Because this rule is not a “significant regulatory action” the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

Commenters asserted that the rulemaking is a significant regulatory action because it relates directly to R.S. 2477 claims and will, therefore, cause adverse impacts to the environment; presents novel legal issues; and is inconsistent with the actions of another agency.

We disagree and stand by our analysis that the rule is not a significant regulatory action. Today’s rule does not change the basic process for issuing recordable disclaimers and will not have additional environmental impact, will better conform to existing statutes, and better explains how the disclaimer process relates to other agencies.

##### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. 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.*). The changes to the current rules will have no impact on an applicant’s costs for filing or processing an application for a disclaimer of interest which currently consist of a one-time filing fee of \$100 and fact-specific processing costs with provisions for a fee waiver.

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This regulation is not a “major rule” as defined at 5 U.S.C. 804(2) because it

will not have an annual effect on the economy greater than \$100 million, nor will it result in major cost or price increases for consumers, industries, government agencies, or regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act*

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, because it will not result in state, local and tribal government, or private sector expenditures of \$100 million or more in any one year. This rule will not significantly or uniquely affect small governments.

##### *Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)*

In accordance with Executive Order 12360, BLM has found that the rule does not have significant takings implications. No takings of personal or real property will occur as a result of this rule. The rule broadens the opportunity for the United States to issue disclaimers of interest in land, thereby making it easier to remove clouds on title to certain lands. A takings implication analysis is not required.

##### *Executive Order 13132, Federalism*

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact assessment. The rule does not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt state law. The rule broadens the opportunity for states and other entities to apply for a disclaimer of interest in land, thereby removing clouds on the title to certain lands.

A commenter believes the rulemaking will impact the public under Executive Order 13132 because the rulemaking would change Federal and state land ownership.

We disagree. Although states will gain an additional ability to apply for disclaimers because we are removing the states’ 12-year filing deadline, no substantive changes in ownership would occur because recordable disclaimers may only be issued for



interests which the Federal government no longer claims.

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

In accordance with Executive Order 13175, BLM finds that this rule does not propose significant changes to BLM policy and that Tribal Governments will not be unduly affected by this rule.

The State of Alaska supported the proposed rule and asked if a disclaimer of interest could be applied to Indian trust or restricted Indian lands.

BLM will reject all applications for a disclaimer of interest on trust or restricted Indian lands (43 CFR 1864.1-3(b)(2) of today's rule). Indian trust lands are defined in 25 CFR 150.2(h) as "an inclusive term describing all lands held in trust by the United States for Individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to the Federal restrictions against alienation or encumbrance, for all lands which are subject to the rights of use, occupancy, and/or benefit of certain tribes." For purposes of this part, the term "Indian land" also includes land for which title is held in fee status by Indian tribes and U.S. Government-owned lands under the Bureau of Indian Affairs jurisdiction. This rulemaking has no bearing on these lands.

*Executive Order 12988, Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

BLM has determined this rulemaking does not contain any new information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*National Environmental Policy Act*

BLM has determined that this rulemaking is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, under 516 Departmental Manual (DM), Chapter 2, Appendix I, Item 1.10, and has concluded that the rule does not meet any of the ten exceptions to the categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Under 516 DM, Chapter 2, Appendix 1, § 1.10, this rule is categorically excluded because it is procedural in nature, therefore its

environmental effect is too broad, speculative or conjectural to analyze.

A commenter believes BLM was incorrect in asserting that the proposed rule is categorically excluded from review under NEPA, arguing that there are several exceptions requiring the proposed rule to undergo NEPA review, including the potential adverse effects on parks, recreation, wilderness, and refuge lands, and the proposed rule's potentially controversial environmental effects.

We disagree. BLM believes that the rule, as written, is exempt from NEPA for the reasons stated in the proposed rulemaking. It is not possible to determine the number of filings under the FLPMA provision, nor can BLM determine where such filings will be made.

*Executive Order 13211, Action Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, BLM finds that this rule will not have a significant adverse effect on the supply, distribution, or use of energy. The supply, distribution or use of energy will not be unduly affected by this rule.

*Clarity of the Regulations*

Each Federal agency is required to write regulations that are simple and easy to understand and to solicit comments and suggestions from the public on the readability of the rule.

A commenter stated the rulemaking was unclear because it does not mention R.S. 2477, although BLM's Questions and Answers and Press Release pertain specifically to R.S. 2477.

We disagree. This rulemaking pertains to the issues of recordable disclaimers and, therefore, we saw no need to address specific R.S. 2477 rights-of-way types of recordable disclaimers in the preamble to the proposed rule. Our mention of R.S. 2477 in BLM's Questions and Answers and Press Release generated significant comments about the relationship of this rule to R.S. 2477, which we have addressed in today's preamble.

**List of Subjects in 43 CFR Part 1860**

Administrative practice and procedure, Public lands.

Dated: December 31, 2002.

**Rebecca W. Watson,**

*Assistant Secretary of the Interior.*

Accordingly, for the reasons stated in the preamble and under the authority of the FLPMA (43 U.S.C. 1740), BLM amends Subpart 1864 of Title 43 of the

Code of Federal Regulations as set forth below:

**PART 1860—CONVEYANCES, DISCLAIMERS, AND CORRECTIONS DOCUMENTS**

**Subpart 1864—Recordable Disclaimers of Interest in Land**

1. The authority citation for subpart 1864 is added to read as follows:

**Authority:** 43 U.S.C. 1201, 1740, and 1745.

2. Amend Section 1864.0-5, by adding paragraph (h) to read as follows:

**§ 1864.0-5 Definitions.**

\* \* \* \* \*

(h) *State* means "the state and any of its creations including any governmental instrumentality within a state, including cities, counties, or other official local governmental entities."

3. Revise § 1864.1-1 to read as follows:

**§ 1864.1-1 Filing of application.**

(a) Any entity claiming title to lands may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim of the United States and that such lands are not subject to any valid claim of the United States.

(b) Before you actually file an application you should meet with BLM to determine if the regulations in this subpart apply to you.

(c) You must file your application for a disclaimer of interest with the proper BLM office as listed in § 1821.10 of this title.

4. Revise § 1864.1-3 to read as follows:

**§ 1864.1-3 Action on application.**

(a) BLM will not approve an application, except for applications filed by a state, if more than 12 years have elapsed since the applicant knew, or should have known, of the claim of the United States.

(b) BLM will not approve an application if:

- (1) The application pertains to a security interest or water rights; or
- (2) The application pertains to trust or restricted Indian lands.

(c) BLM will, if the application meets the requirements for further processing, determine the amount of deposit we need to cover the administrative costs of processing the application and issuing a disclaimer.

(d) The applicant must submit a deposit in the amount BLM determines.

(e) If the application includes what may be omitted lands, BLM will process

it in accordance with the applicable provisions of part 9180 of this title. If BLM determines the application involves omitted lands, BLM will notify the applicant in writing.

5. Revise § 1864.1-4 to read as follows:

**§ 1864.1-4. Consultation with other Federal agencies.**

BLM will not issue a recordable disclaimer of interest over the valid objection of another land managing agency having administrative jurisdiction over the affected lands. A valid objection must present a sustainable rationale that the objecting agency claims United States title to the lands for which a recordable disclaimer is sought.

[FR Doc. 02-33147 Filed 12-31-02; 12:48 pm]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 02-3484, MB Docket No. 02-20, RM-10368]

**Digital Television Broadcast Service; Traverse City, MI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Central Michigan University, allots DTV channel \*23 at Traverse City, Michigan. See 67 FR 6905, February 14, 2002. DTV channel \*23 can be allotted to Traverse City in compliance with the geographic spacing criteria of Section 73.623(d) and the principle community coverage requirements of Section 73.625(a) at coordinates (45-10-40 N. and 85-05-57 W). Due to a short-spacing conflict, the Canadian government has concurred with the allotment of DTV channel \*23 as a specially negotiated allotment limited to 1 kW ERP and 390 meter HAAT or the equivalent in order to avoid prohibited overlap in the direction of DTV channel 23B at Sault Ste. Marie, Ontario, Canada. With this action, this proceeding is terminated.

**DATES:** Effective February 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 02-20, adopted December 17, 2002, and

released December 20, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan, is amended by adding DTV channel \*23 at Traverse City.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 03-163 Filed 1-3-03; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 02-3505; MB Docket No. 02-274, RM-10560; MB Docket No. 02-275, RM-10561]

**Radio Broadcasting Services; Jasper, FL and Tigerton, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Powerline NA, Inc., allots Channel 298A at Jasper, Florida, as the community's first local FM transmission service. See 67 FR 63876, October 16, 2002. Channel 298A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements with a site restriction 2.2 kilometers (1.4 miles) northwest of the community to avoid a short-spacing to the vacant allotment site of Channel 299C3, Perry, Florida. The reference coordinates for Channel 298A at Jasper are 30-31-49 North

Latitude and 82-57-58 West Longitude. The Audio Division, at the request of Starboard Broadcasting, Inc. allots Channel 295A at Tigerton, Wisconsin, as the community's first local FM transmission service. See 67 FR 63876, October 16, 2002. Channel 295A can be allotted to Tigerton in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.7 miles) northeast to avoid a short-spacing to the license sites of Station WLJY, Channel 293C1, Marshfield, Wisconsin, Station WJLW, Channel 294C3, Allouez, Wisconsin, and Station WUPM, Channel 295C1, Ironwood, Michigan. The reference coordinates for Channel 295A at Tigerton are 44-50-07 North Latitude and 88-56-41 West Longitude. Filing windows for Channel 298A at Jasper, Florida and Channel 295A at Tigerton, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

**DATES:** Effective February 3, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02-274 and 02-275, adopted December 18, 2002, and released December 20, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.