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MS-3630 Mineral Material Fair Market Value (FMV) Evaluation (P)

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All of MS3630 (Rel. 3-134, 3-116)

All of Revised MS-3630

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Chapter 1 – Introduction

1.1 Purpose

This Manual Section establishes the standards and policy for the evaluation of mineral materials required under 43 CFR Part 3600 for those lands administered by the Bureau of Land Management (BLM).

1.2 Objectives

The objective of an evaluation is to ensure that the BLM receives fair market value for mineral materials disposed of from land under its administration, as required in 43 CFR 3602.13 (“BLM will not sell mineral materials at less than fair market value. BLM determines fair market value by appraisal”). The evaluation of mineral materials provided for in this Manual serves as the appraisal of mineral material fair market value referenced in the regulation.

1.3 Authority

A. Laws

1. The Materials Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601 et seq.), as principally amended by:
 - a. The Act of July 23, 1955 (69 Stat. 367, 30 U.S.C. 601).
 - b. The Act of September 28, 1962 (76 Stat. 652, 30 U.S.C. 601).

The Department of the Interior evaluates commodities subject to disposal. The Materials Act of July 31, 1947 (61 Stat. 681) first authorized disposal of sand, stone, gravel, and common clay through a sales contract or free use permit, and was subsequently amended. The Act of July 23, 1955 (69 Stat. 367) removed common varieties of sand, gravel, cinders, pumice, pumicite or cinders from the category of locatable minerals and placed them under the Materials Act as salable minerals. The Act of September 28, 1962 (76 Stat. 652) removed petrified wood from the category of locatable minerals and brought those materials under the salable system. 30 U.S.C. 601 states,

“The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay)... on public lands of the United States,... if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, subchapter I of chapter 8A of Title 43, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this subchapter and upon the payment of adequate compensation therefor, to be determined by the Secretary: Provided, however, That, to the extent not otherwise authorized by law, the

Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchapter, for use other than for commercial or industrial purposes or resale.” (Emphasis added)

2. Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

Section 304(a) of FLPMA authorizes the BLM to charge fees for processing applications and other documents (“Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands”) (43 U.S.C. 1734(a))

3. Freedom of Information Act (5 U.S.C. 552)

Provides standards for public access to public records.

4. The Privacy Act of 1974 (5 U.S.C. 552a)

Safeguards individual privacy from the misuse of Federal records by governing the collection, maintenance, use, and dissemination of personally identifiable information about individuals. (43 CFR Part 2, Subpart K)

5. Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701

Authorizes a Federal agency to charge for a service or thing of value provided by the agency.

B. Regulations

1. 43 CFR Part 3600.

C. Delegations

1. Bureau Manual Section 3060.03
2. Bureau Manual Section 3600
3. Bureau Manual Section 1203

1.4 Responsibility

A. The Director The Director is responsible for establishing overall policy and guidance for the management of mineral materials administered by the BLM. This responsibility is exercised through the Deputy Director, Energy, Minerals and Realty Management.

B. State Directors State Directors are responsible for the management of mineral materials administered by the BLM, within their respective areas of jurisdiction including:

1. Developing statewide evaluation guidelines and procedures if necessary.
2. Identifying who is responsible for making evaluations, who is responsible for the technical review of evaluation reports, and who is responsible for management review.
3. Ensuring that only those Mineral Specialists (see Bureau Manual Section 3630, Glossary of Terms) who have received formal mineral material fair market value (FMV) evaluation training or have demonstrated the ability to make evaluations themselves, or other qualified Mineral Specialists, review mineral material evaluation reports.
4. Ensuring that FMV evaluations pertaining to trespass and split estate disposals are made by either Mineral Specialists who are qualified as expert witnesses in mineral material evaluation or by other qualified Mineral Specialists.
5. Ensuring that resources and staff are allocated and available to timely prepare FMV evaluations and that prices on existing contracts are timely updated.
6. Ensuring that offices are timely and accurately reporting performance and documenting completed work in case files and databases.

C. District Managers District Managers are responsible for ensuring that accurate FMV evaluations are prepared in their district by:

1. Ensuring that all mineral material FMV evaluations are prepared timely, accurately, and in compliance with established procedures by Mineral Specialists who have received formal evaluation training or by other qualified Mineral Specialists.
2. Ensuring that mineral material disposals are made at FMV.

D. Field Office Managers Field Office Managers are responsible for the timely preparation of mineral material evaluations where so delegated.

E. Mineral Specialists Mineral Specialists are responsible for administering the mineral material program functions, including processing sales contracts and permits, monitoring operations, performing production accounting and verification determinations, and conducting investigation and enforcement of unauthorized use. Mineral Specialists perform limited evaluation functions commensurate with their evaluation training and experience, including collecting market data, preparing short form evaluation reports for new uncomplicated/uncontroversial sale sites covered by an area-wide evaluation report, and updating contract prices and evaluation report prices using the Producer Price Index (PPI), and unintentional trespass cases.

F. Mineral Material Specialists Mineral Material Specialists are responsible for analyzing market data and preparing area-wide and individual fair market value evaluation reports, including those for complicated, controversial and willful trespass cases.

1.5 References

- A. Bureau Manual Sections 1203, 1274, 1275, 3060, 3600, 3890
- B. Bureau Handbooks H-3630-1 and H-9235-1
- C. 43 CFR 3600

1.6 Policy

The BLM will ensure the receipt of “*the payment of adequate compensation*” (30 U.S.C. 601) for all mineral materials disposals (sale contracts and permits). In accordance with BLM regulations, the basis to be used for determining adequate compensation is the fair market value (FMV) of the mineral materials. 43 CFR 3601.6, 3602.13. Obtaining adequate compensation will emphasize two frequencies for reports – evaluation reports for prices for new disposals will be reviewed and updated every 2 years, and prices for existing contracts with terms longer than 2 years will be reviewed and adjusted, if needed, every 2 years and upon renewal.

Adequate compensation will be determined by preparing evaluation reports to identify the FMV of the materials. The FMV evaluation reports are valid for periods not exceeding 2 years unless updated by an index. The evaluation reports must be reviewed annually, and the market data collection for the review documented. Monitoring is required to determine whether the local markets are changing, and whether the report prices need to be updated more frequently to ensure that they reflect FMV. Every 2 years, the full analysis and evaluation of the need to adjust or not adjust the prices using the PPI or other means is mandatory and must be defensible and well documented in a short form report. The FMV evaluation reports with biannual updates are valid for a maximum of 6 years when the market data, information, and conclusions are reviewed, updated as needed, and determined to reflect current market conditions.

Table 1. Price Update Frequency			
Source of Base Price	Monitoring Frequency	Price Update Frequency	Maximum
Narrative Report	Annually	At least every 2 years	As often as needed; Replace every 6 years
Contract/permit	Annually	Every 2 years from date of issue, and upon renewal	4 updates per 10 year contract/permit

The Mineral Specialist should use methods for preparing evaluation reports that are recognized in the Mineral Materials Manual Section 3630-1 and H-3630-1 Handbook.

The policy provides standards to ensure nationwide consistency in the management and implementation of the Evaluation Program and to ensure the recognition and receipt of adequate compensation for the disposal of mineral materials, while still allowing a certain degree of

flexibility to accommodate local conditions. Preparing new evaluations and updating existing evaluations ensures that all disposals are being made at current FMV.

New Disposals Evaluation reports for new disposals can be prepared as often as needed, within the limits of available funding. New disposals of noncompetitive and nonexclusive sales from community pits and common use areas should use prices determined by area-wide reports that are not over 2 years old, or if older, that have been adjusted with an appropriate price index within 2 years. Reports older than 6 years must be replaced by a new area-wide or an individual narrative evaluation report.

For a minimum acceptable bid, competitive sales of up to 1 million cubic yards or weight equivalent can use the noncompetitive sale/purchase price from an area-wide evaluation report or an individual evaluation report, as long as the report is not over 2 years old, or if older, if it has been adjusted with an appropriate price index. Competitive sales with 1 million cubic yards or greater quantities require an individual site evaluation report to establish the minimum acceptable bid.

Existing Disposals Re-evaluation reviews and price adjustments for materials under sales contracts will be conducted at 2-year intervals and at contract renewals. Under 43 CFR 3602.13(b), the BLM may periodically re-evaluate the value of mineral materials not yet removed under existing contracts. However, to provide pricing stability, the BLM will not adjust contract prices during the first 2 years of the contract, nor will it adjust the contract price during the 2-year period following any adjustment.

Adjusting the price of materials on an existing contract will alter the unit price and total value of the remaining quantity of materials authorized for removal. Adjustment could also change the annual advance payments made on the contract (see 43 CFR 3602.21(a) (2) (iii) (B)). After the contract price is adjusted, the remaining quantity of mineral material authorized by the contract will be recalculated based on the adjusted price. If the purchaser wants to be held only to the original total purchase price, the remaining quantity of mineral material authorized by the contract will be recalculated based on the adjusted price to identify the remaining quantity of material authorized for removal. If the value of the materials under that contract was based on an existing area-wide evaluation report, then the adjustment will use either the area-wide evaluation price in effect at the time of the contract price review, if the report has been updated, or a direct PPI adjustment to the individual contract price. A new area-wide evaluation report may be prepared for the contract price adjustment, as needed. Similarly, if the value of the materials under a contract was based on an individual evaluation report, then the evaluation price must either be updated using a direct PPI adjustment made to the individual contract price, or a new individual evaluation report prepared for the contract price adjustment.

A. Priority. The first priority is updating and adjusting prices on existing contracts. State, district and field offices must annually identify all existing contracts with terms longer than 2 years, schedule reviews of those contract prices, and adjust prices where applicable.

B. Annual list. State offices must develop an annual list of individual and market area evaluation reports that need to be valued or re-valued according to the required adjustment interval. Where funding is insufficient to timely update all reports, rank the priority of the reports that need to be updated based on the estimated value of mineral materials that will be removed from areas covered by those reports and the overall benefits and risks to the Government.

C. Timeliness. Evaluation reports must be completed promptly and should be prepared for individual sites or focus on specific market areas. To reduce the complexity, cost, and preparation time, area-wide evaluation reports should focus on similar commodities. Priority will be given to commodities that comprise the majority of materials being sold by volume and value (e.g., sand and gravel/fill, or crushed stone) in an area. All evaluation reports must be prepared, reviewed and updated as needed in a timely manner to meet the required 2-year adjustments. Preparation of new area-wide evaluation reports will be scheduled for all reports after 4 years to ensure that the new reports are completed by the time the existing reports are 6 years old or sooner if annual reviews indicate replacements are needed due to local changes in prices.

D. Funding. Prioritizing evaluation report preparation will be based on the funding sources for the proposed evaluation. Federally-appropriated funds are to be used to update reports for all community pit and common use areas, exclusive and nonexclusive sale disposals, and all free use permits, focusing on those sites for which evaluations or re-evaluations would be most beneficial to the Government. Except in extraordinary circumstances, cost recovery fees should be used to develop and update evaluation reports for exclusive sales from public lands located outside of community pits and common use. Where the same area-wide report will be used for all of these locations, the report can be funded by Federal funds and cost recovery fees in proportion to the projected amount of disposals for each area.

E. Unauthorized Use. Mineral materials trespass is a high priority for the BLM. The BLM policy is to prevent unauthorized removal of mineral materials from all Federal mineral estate under BLM jurisdiction, and to recover payment for the value for all materials removed and other damages in accordance with the type of unauthorized use and the guidance in Handbook H-9235-1, Manual Section 3630, and Handbook H-3630-12.

1.7 File and Records Maintenance

A. Organization. The official case file must be organized and maintained in accordance with the applicable Bureau Records Schedule and standard Bureau procedure as given in the Manuals referenced in .05 above.

B. Timeliness. All of BLM's disposal actions or activities will be completely and timely documented in the appropriate case file(s) and within any applicable electronic database that includes, but is not limited to: the Legacy Rehost 2000 (LR2000) automated case recordation system, the Alaska Land Information System (ALIS), and the

Performance Management Data System (PMDS). Evaluation reports and updates will be documented in LR2000 case records (action code 132) within five working days of completion of the report and subsequent updates.

C. Proprietary data. Files or records containing proprietary information must be handled in accordance with the provisions of 43 CFR Part 2, 43 C.F.R, 3601.8, and BLM Manual 1273.

D. Retention. All data, documents, and analyses must be retained in a file until the relinquishment, termination, cancellation, or expiration of a contract or permit and all related appeals are resolved. These data, documents, maps, and analyses will be handled in accordance with the standard BLM record security and retention policies, BLM-H-1278.

E. Report filing. The mineral material FMV evaluation report and all information necessary for that report are to be kept in the mineral material disposal case file i.e., community pit case file, material sale case file, free-use permit case file, etc.

F. Reports used for multiple cases. If an area-wide FMV evaluation report is used for multiple disposals, it should be maintained in a separate file and a page referencing the report placed in each case file where the area-wide report is used.

Chapter 2 - Mineral Material Evaluation Categories

Two types of FMV evaluation (narrative) reports may be used to determine the value of the materials from each site. Either area-wide evaluation reports or individual site evaluation reports will be used to determine the value of the materials from each disposal site. Each type of report can be presented in two formats. The base area-wide or individual reports are presented in narrative format providing detailed analyses of markets and prices. Short form reports are used to document updates to the narrative reports and to contract prices. Short form reports can also be used to add a new site to an area-wide evaluation, provided that the site involves only noncompetitive sales that are uncomplicated and uncontroversial.

2.1 Area-wide Evaluation Reports

Area-wide evaluation reports will be used to determine sale/purchase prices for all nonexclusive and noncompetitive sales (200,000 cubic yards or less, or weight equivalent) from designated community pits and common use areas, and for all free use permits regardless of their location. In areas where numerous nonexclusive and noncompetitive sales and free use permits are anticipated, a blanket or area-wide FMV evaluation for all disposal sites within a specific geographic area (e.g., district or field office) may be appropriate for most disposals. An evaluation of community pits or common use areas should address all types of material sold from those areas, making evaluation of individual sales unnecessary. Area-wide market studies are used as a basis for future site specific evaluations, in as far as that information and data is accepted as current and representing current market conditions. Prices determined by area-wide evaluation reports can be used to set minimum bid prices for competitive sales involving less than 1 million cubic yards or weight equivalent.

States that have large mineral material programs or are finding cost inefficiencies in preparing site-specific evaluation reports for smaller sales should consider using area-wide evaluation reports for all nonexclusive and noncompetitive sales and free use permits. The area-wide evaluation reports should delineate zones within the state where the local market conditions will be evaluated and prepare separate evaluation reports for specific commodities from those market areas (e.g., sand and gravel, crushed stone). Area-wide evaluation reports should determine the specific prices for all existing BLM disposal sites in those areas unless site specific reports are needed due to the nature of the disposal, or if a purchaser chooses to pay for a site specific report.

Separate market-area evaluation reports should be used to determine values when sales involve dissimilar commodities (e.g., decorative stone, boulders, clay), pricing, and markets. Multiple smaller evaluation reports on specific commodities are preferred over large evaluation reports that involve many commodities and span multiple market areas. Site-specific evaluations funded through cost recovery procedures are preferred for special commodities and large sales (e.g., competitive sales of over 200,000 cubic yards). For evaluation reports that will be prepared under contract, offices must use standardized statements of work to improve the clarity and consistency of report requirements between states.

2.2 Individual Evaluation Reports

Individual narrative format evaluation reports are required for large competitive sales (1 million cubic yards or more), controversial cases, and trespass cases. Individual short form evaluation reports can also be used to add new sites not included in an existing area-wide evaluation report and for documenting updates to area-wide and individual site-specific narrative evaluation reports.

2.3 Mineral Material Disposal Types

Mineral material evaluations determine prices according to three types of disposals (i.e., sales, permits, or trespass).

- A. Mineral Material Sales and Free-Use Permit** The mineral material is evaluated in-place.
- B. Unauthorized Use** As stated in 43 CFR 9239.0-8, “[t]he rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of *Mason et al. v. United States* (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed, unless by Federal law a different rule is prescribed or authorized.” See *United States v. Marin Rock & Asphalt Co.*, 296 F. Supp. 1213 (C.D. Cal. 1969).

Office of the Solicitor (SOL) consultation: The value of mineral materials will be determined according to the nature of the unauthorized use (unintentional or willful), after consulting with the SOL, to identify and recover the FMV of all damages from unauthorized activity and removals, including administrative costs of enforcement. All BLM offices will verify with the SOL that the Federal interests on all split-estate ownership tracts include mineral materials.

1. Innocent Trespass The mineral material is evaluated in-place. However, this does not preclude the authorized officer from using discretion to assess rehabilitation costs, other damages to minerals or other resources, and the BLM’s administrative costs. Computation of damages depends on state law, unless none exists. Consequently, damages should be determined on a case-by-case basis. For example, in some states, the sales/purchase price for noncompetitive sales from an area-wide narrative report can be used as the in-place value of mineral materials involved in unintentional trespass. In other states, calculations may be based upon the value of the minerals extracted less the cost of extraction. The authorized officer should seek to use the applicable method that is most advantageous to the Government.
2. Willful Trespass Unless otherwise determined by regulation or state law, the mineral material is evaluated f.o.b., the first point of sale or use.

Chapter 3 - Approaches to Value

Technical reviewers will approve only FMV evaluations which use one of the following evaluation approaches.

3.1 Market Data Approach

This is an evaluation method that relies on direct comparison of transactions between knowledgeable buyers and sellers in the open market. It is the simplest and ordinarily the most direct and reliable approach. Consequently, its use alone may be adequate where sufficient transaction data exist upon which to draw firm conclusions of value. It is particularly applicable to small volume sales. The two most frequently used market data approach methods are discussed below.

- A. Comparable Sales Method.** There are three ways in which to use this method.
1. Sales of mineral materials from the same property: A reasonably recent sale of mineral materials from the same property, if the economic character and attributes of the deposit have not materially changed since the last sale, provides the best evidence of FMV.
 2. Sales of comparable mineral materials: Reasonably recent sales of similar mineral materials that are comparable economically to the mineral materials to be evaluated are the next best evidence of FMV.
 3. Sales from a remote but similar market area: Reasonably recent sales of similar mineral materials that are comparable economically to the mineral materials to be evaluated are the next best evidence of FMV if in-place sale price data can be obtained. If a sale from a remote market is used, the evaluation must also demonstrate and document how the remote market area is comparable to the market area being evaluated.

- B. Purchase Price as a Percent of Retail (or Wholesale) Sales Price Method.** This method is a variation of the market approach that may be used in situations where there is insufficient local market data. Lack of local market data may require substantial and difficult-to-support adjustments of data from different areas. This method requires collection and analysis of transactions in similar areas (similar in value, overburden, rehabilitation costs, etc.) and in-place sale prices or private royalties where they can be obtained. The BLM's in-place purchase/sale prices can be used when the retail sale prices of the same materials can be obtained from the purchaser.

This data can then be used to derive a typical ratio of purchase price to the retail (or wholesale) selling price of the finished product f.o.b. the desired location (i.e., the production site, retail yard, delivery point, etc.). This ratio is then applied to the typical retail selling price of the finished product from other producers to arrive at an indication of the value of the in-place material from those sites. These derived in-place values can then be used to estimate the value of the BLM material being evaluated.

3.2 Income Approach

Any of the methods of evaluation that convert income into an estimate of value are income approaches. Discounted cash flow (DCF) is an example of this approach. Potential cash flows are discounted at a given rate to the time of the evaluation yielding the present value. The present values of the annual cash flows, in no case to exceed the expected life of the mining operation, along with salvage values, are added to obtain the net present value of a given mineral property. This method is most applicable to evaluation of large quantities of mineral materials sold under long term (e.g., 10 year) contracts.

Chapter 4 - Use of Producer Price Index (PPI) Adjustments

With many commodities, the useful life of an existing evaluation report can be extended by using the appropriate PPI, published by the U.S. Bureau of Labor Statistics, to adjust the estimate of the FMV where those adjustments are applicable to the local market. When making adjustments to FMV sale/purchase prices using PPI, the decision to adjust or not adjust the price based on the PPI MUST BE WELL DEFENDED in the decision. Depending on the commodity, the PPI may be based on regional or national data, or PPI may not exist for a specific commodity. If the analysis of local market data identifies substantial divergence from regional or national PPI trends (e.g., higher, lower or flat prices compared to the index); circumstances may warrant a new market area evaluation within the 6-year period to justify the deviation from an index adjustment.

The effective life of mineral materials evaluation reports may be extended to greater than 2 years by applying appropriate price indices. Instead of preparing a new evaluation report every 2 years, an evaluation report could include reference to making later adjustments (i.e., at the 4-year and 6-year anniversaries of the evaluation report) based on an appropriate PPI published by the U.S. Bureau of Labor Statistics. The PPI adjustments to sales prices should not be used for more than 6 years from the date of the original evaluation report. After 6 years, a new evaluation report must be prepared for sales. For free use permits, price indexing on evaluation reports may be used for longer than 6 years. If a PPI update is used for any evaluation report, the update must document the method(s) used and the reason why the PPI was or was not determined to be applicable to the subject disposal area. Where evaluation report prices have been updated using the PPI, those prices can be applied to individual contract price adjustments on their scheduled 2 year intervals instead of preparing separate PPI updates for each contract.

Chapter 5 - Data Collecting and Processing

Preparers of evaluation reports will follow the guidance and procedures in Handbook H-3630-1. Technical reviewers will approve only those FMV evaluations that use either market data or income data collected expressly for the evaluation.

5.1 Market Data

The Mineral Specialist and technical reviewer will ensure that any market data collected is from acceptable sources; is comparable in terms of quality, quantity, and market demand to the material being evaluated; involves terms and conditions of sale comparable to the BLM disposal, and comes from only active or recently active operations.

- A. Private Transactions** Data from private companies on materials of a similar nature under similar conditions and terms is the most accurate. Operators that offer data from private transactions for use in evaluations may request that the Bureau keep such data confidential and the Mineral Specialist and managers must ensure that it is properly safeguarded. (See Bureau Manual Section 1273.) Ensure that private transactions are true sales and not simply sales between companies within the same corporate structure. Such sales values could be higher or lower than the real fair market value.
- B. Public Transactions** Because prices can be administratively set, data from transactions involving governmental bodies, either as buyers or sellers, are less reliable sources of data. The Mineral Specialist and technical reviewer must ensure that data from such transactions are carefully analyzed to determine if the value placed on the material was administratively set or represents a FMV.
- C. Documentation** The Mineral Specialist and technical reviewer will ensure that data from either private or public transactions is documented in the form of a copy of the contract or rate schedule, and that the evaluation analysis is documented in the report.
- D. Recording and Maintaining Data** The Mineral Specialist and technical reviewer will ensure that the data obtained to support an FMV evaluation is recorded in a suitable format and copies of the data are included as part of a FMV evaluation report.

5.2 Income Data

The Mineral Specialist and technical reviewer will ensure that all necessary data is collected from the operator to make an accurate discounted cash flow analysis and that this information is verifiable.

Chapter 6 - Field Examination of the Mineral Material Site and Comparable Sites

All mineral material sites being evaluated and all sites considered as comparables are subject to field examination.

6.1 Examination of the Deposit

The Mineral Specialist and technical reviewers will ensure that only those items which have a bearing on the FMV of the material, such as the quality and quantity of the material, amount of overburden, probable mining and processing methods, and costs and feasibility of reclamation, and terms and conditions of sale affecting operations and costs are considered by the mineral specialist. A major factor affecting FMV is distance from market. The Mineral Specialist must make special note of haul distance and grade and type of road(s) that must be used. Photographs of the mineral materials to be evaluated will be taken for inclusion in the FMV evaluation report. Maps, flow sheets, and sketches of the deposit and any operations should be included.

Chapter 7 - The FMV Evaluation Report

Each area-wide or individual site narrative evaluation report is a separate document and must be complete enough to stand alone. Abbreviated short form formats are appropriate for individual disposals of 200,000 cubic yards or less or for using the PPI to update prices of general market analyses in area-wide narrative reports. More detailed reports will be done for competitive sales and trespass cases, and for sites where multiple noncompetitive sales will be issued cumulatively exceeding 200,000 cubic yards. Narrative reports are required for all area-wide analyses.

7.1 Minimum Requirements

At a minimum, an FMV evaluation report contains:

- A. A statement as to the purpose and function of the evaluation.
- B. A statement of assumptions and limiting conditions affecting the evaluation.
- C. An adequate description of the material site and material being evaluated.
- D. A description of the terms and conditions affecting the costs and value of the disposal.
- E. A description of, or reference to, market data considered and an explanation of analyses used to estimate value.
- F. The effective date of FMV evaluation and signatures of the Mineral Specialist.
- G. The date and signature of the management acknowledgement of the evaluation.

See Handbook H-3630-1 for detailed guidance.

Chapter 8 - Special Considerations

8.1 Sales Selection

Certain types of transactions are not normally considered acceptable evidence of FMV. Some of these types are not allowed to be used in evaluations while others may be used, provided no better evidence exists. However, if any of these "questionable" types of transactions are used, the Mineral Specialist must explain the basis for the prices paid and discuss rationally why the transaction represents the best available indicator of FMV. Examples of questionable transactions and transactions which are not acceptable evidence are shown below.

A. May Be Used With Justification

1. Sales between family members.
2. Negotiated purchases by governmental bodies such as state highway departments, etc., provided they represent true FMV transactions.
3. Sales between interrelated corporations.
4. Sales where price is set by administrative decisions and unrelated to FMV (e.g., State Land Board, etc.).
5. Noncompetitive sales by BLM, Forest Service, and other Federal agencies provided they represent FMV transactions (e.g., for use with the *Purchase Price as a Percentage of Retail (or Wholesale) Sales Price Method.*)

B. Must Not Be Used

1. Condemnation sales or sales where the threat of condemnation entered into the negotiations.
2. Unsupported opinions of value.
3. Trades and exchanges.
4. Sales in which the price was not fully paid in cash or equivalent.

8.2 Federal Mineral Estate with Nonfederal Surface Estate

The evaluation of reserved federally owned mineral materials on land with private or other non-Federal surface estate requires special consideration and title review with assistance from the Office of the Solicitor (SOL). Mineral materials may or may not have been reserved by the United States in patents for land sales or exchanges. Under certain Federal laws, mineral materials are included with the mineral estate. In some instances, the United States acquires or reacquires the surface estate of lands that were originally patented in fee.

The Mineral Specialist, in consultation with the SOL, must determine what rights of access and surface use, if any, were reserved by the United States with the minerals at the time the surface was transferred to non-Federal ownership and any limitations on compensation for damages to the surface estate. Where the United States has reacquired the surface estate only, the Mineral Specialist must confirm the ownership of the mineral materials.

A. Market Data Approach In using the market data approach, the Mineral Specialist will look for transactions which involve rights to the mineral materials and comparable rights of access and surface use and comparable liability for surface damages, including limitations on compensation pertaining to Federal reserved mineral estates.

1. The most comparable transactions would be those in which the mineral and surface estates are in separate ownerships. The rights to the mineral materials and the rights to use the surface would have been handled as separate transactions.
2. There may be situations where the mineral and surface estates are in the same ownership, but in which the rights to minerals and surface use have been handled as separate transactions and the payment for each of the components (mineral-surface) has been specified. The mineral transaction in this situation could be used directly as a comparable, provided that the payments for the different components have not been intentionally loaded or skewed for tax purposes or other reasons and the provisions for surface damage and access are similar.
3. Where the mineral and surface estates are in the same ownership; payment for the in-place material is typically a combination of mineral resource depletion; surface use rent; and surface resource depletion, alteration, or destruction. The payment is seldom broken down or allocated to the various components (i.e., minerals, access, and surface use). Such transactions are not allowed to be used as comparables without making appropriate adjustments to reflect differences in rights to surface use.

B. Income Approach In using the income approach, the Mineral Specialist will deduct appropriate charges for access and surface use (if applicable) as costs in calculating net income attributable to the in-place mineral material. Derive these costs or charges by using standard approaches for estimating value of access and surface use.

Chapter 9 - Evaluation Review Requirements

9.1 Mandatory Review

Each mineral materials evaluation report, and all supporting reports, and documentation, must be reviewed by a qualified technical reviewer. If none is available from the BLM offices within the state, arrangements for the review must be made with another BLM office. Reviews by the Division of Minerals Evaluation (DME), Office of Appraisal Services, Department of the Interior, are required for evaluation of individual sales of 1 million cubic yards or more, area-wide sales that will total 1 million cubic yards or more in a year, and controversial site-specific reports (e.g., willful trespass evaluations). The review will assure that:

- A. The FMV estimate in the report has been prepared in accordance with BLM standards and procedures and with available and applicable nationally accepted standards.
- B. The evaluation report contains and refers in its file to the information necessary to fully explain, substantiate, and document the FMV estimate, and includes, as appropriate, analysis of applicable economic and local, regional, and national market data for the commodities evaluated.
- C. The reported FMV estimate is an objective and reasonable estimate of the mineral material's value and appropriately considers and analyzes relevant information on markets.
- D. The case file(s) supporting the FMV evaluation are complete.

9.2 Reviewer Comments

All questions or comments from a technical review concerning the FMV evaluation, the report, or the supporting documentation must be in writing and returned to the preparer of the evaluation report for response. The BLM and/or DME reviewer will not independently revise mineral material evaluation estimates.

The preparer must provide a written response to BLM and/or DME's concerns and comments that explain and document the preparer's response to each concern or comment including:

- A. Why the preparer agrees or disagrees with the comment; and
- B. Actions the preparer has or has not taken to address the comments or concerns of the BLM and/or DME reviewer.

9.3 Contract Sale or Offer

Completion of a review of the FMV estimate is documented by an official approval from the BLM and DME (where applicable) reviewer and incorporation of all recommendations provided by the reviewer(s). A contract sale or renewal will not be offered to the public or an applicant prior to completion of the technical review of the FMV estimate.

9.4 Reviewing Agency

The DME is the designated reviewing agency for mineral material evaluations where such reviews are required.

Table 2. – Technical Review Guideline Goal

TYPE OF EVALUATION	REPORT FORMAT	REPORT MAGNITUDE 1/	TECHNICAL REVIEW BY 1/
AREA-WIDE (AW)	NARRATIVE	1 Mcy/year or more	BLM + DME
AREA-WIDE (AW)	NARRATIVE	Less than 1Mcy/year	BLM
AREA-WIDE (AW)	SHORT FORM	PPI Update	BLM
AREA-WIDE (AW)	SHORT FORM	New noncompetitive site added to AW	BLM
INDIVIDUAL SITE	NARRATIVE	1 Mcy or more	BLM + DME
INDIVIDUAL SITE	NARRATIVE	Controversial	BLM + DME
INDIVIDUAL SITE	NARRATIVE	Willful Trespass	BLM + DME
INDIVIDUAL SITE	NARRATIVE	Less than 1 Mcy	BLM
INDIVIDUAL SITE	SHORT FORM	200Kcy Noncompetitive site	BLM
INDIVIDUAL SITE	SHORT FORM	PPI Update	BLM
INDIVIDUAL SITE	SHORT FORM	Unintentional trespass	BLM

1/Extent of Reviews by DME to be adjusted over time by Memorandum of Understanding with BLM, based on BLM performance under the new guidance. Initial reviews will involve more reports.

Glossary of Terms

A

- Acceptable Source - types of transactions that are normally considered acceptable evidence of fair market value, such as arms-length transactions and competitive sales. Some transactions are not acceptable and must not be used in evaluations, while others may be used, provided no better evidence exists. If any "questionable" types of transactions are used, the Mineral Specialist must explain the basis for the rates paid and discuss rationally why the transaction represents the best available indicator of fair market value.
- Adjustments - most mineral material sales from other sites are not completely comparable to the site being evaluated. In the comparison process, small incremental additions or subtractions for each factor (adjustments of either dollar amounts or percentages) are made to the sales price at a site for each factor evaluated (e.g., haul distance) to identify the extent to which the site is comparable to the site being evaluated.
- Area-wide Market Study - an evaluation made to cover all the disposals of one or more mineral material commodities from all the sites within a specific jurisdiction or geographic area.
- Arms-Length Transaction - a transaction between unrelated parties, under no duress, who are acting in their own best interest.
- Assumption - a statement or condition that is presumed or assumed to be true and from which a conclusion can be drawn, such as that the sale will be made under the current regulations and procedures, or that data, opinions, estimates, statistics, etc., obtained from outside sources during the course of gathering information are assumed to be reliable and accurate.

C

- Cash Flow - the actual or prospective revenue from a mineral materials site, less operating and capital costs and taxes over the investment period.
- Community Pit - formally designated areas for all types of BLM mineral materials disposals that involve intensive surface disturbance. They are established based on an indicated need for multiple disposals of a particular type of commodity in a given area. There is no limitation on the size of community pits, although they usually confine the disturbance to a relatively small, defined area. Community pits operate under a BLM designed management plan for mining, operations, and reclamation.
- Common Use Area (CUA) - a formally designated area for BLM disposals that require negligible surface disturbance, such as collection of boulders or flagstone from the surface. The CUAs generally cover broad geographic areas. The use is disbursed throughout the area. After removal of the minerals, collection areas require little or no reclamation, and mining plans are typically not required.

- Comparables - reasonably recent sales from private, state or Federal sites that involve mineral material commodities of similar quality, quantity, composition, and physical features under terms and conditions that are comparable to the Federal regulations, procedures, and costs for the site being evaluated.

D

- Defensible - well documented with all commodity evaluation calculations being transparent, based on the latest and accurate relevant data, using accepted methods and practices as identified in the H-3630-1 Handbook. The operator(s) providing information may be invited to review the BLM summary page for their own comparable site and asked to concur that BLM's summary is accurate before the data is used in the evaluation.
- Discounted Cash Flow (DCF) - a method used to estimate the value of an operation today, based on projections of how much money it is projected to make over the term of the operation. DCF analysis says that an operation is worth all of the cash that it could make available to investors in the future. It is described as "discounted" cash flow because cash in the future is worth less than cash today due to risk and inflation of costs over time. DCF analysis uses projections of cash flow in the future and discounts them to arrive at an estimate of present value, which is used to evaluate the potential for investment. If the value arrived at through DCF analysis is higher than the current cost of the investment, the opportunity may be a good one.
- Discount Rate - an annual percentage rate of return on invested capital used to determine present worth factors in discounting future cash flows. The reasonableness of a rate may be tested by comparison with rates in the present market place. The discount rate can include a percentage for a real rate of return, risk, and inflation.

E

- Effective Date (of Evaluation) - the date that the evaluation report signed by the Mineral Specialist is approved.
- Evaluation- an analytical judgment of the value or condition of something in a careful and thoughtful way. "Evaluation of mineral materials", within the broad, generic meaning of the term "appraisal", means a determination of adequate compensation.

F

- Fair Market Value (FMV) - a price at which buyers and sellers with a reasonable knowledge of pertinent facts and not acting under any compulsion are willing to do business (Merriam-Webster). The price a buyer will pay. All parties are willing and aware of the property (mineral materials commodity) and its value (Black's Law Dictionary).

- Formal Evaluation Training - documented training courses in mineral economics, comparable sales, and DCF analysis offered by the BLM, colleges, universities, and private educational institutes.
- Free On Board (F.O.B) - refers to point of sale cost without charge for delivery to, and placing on board, a carrier at a specified point.

I

- Income Approach - a commodity evaluation method that allows investors to estimate the value of the mineral materials based on the income produced. The income approach is computed by taking the net operating income of the site and dividing it by the capitalization rate (the investor's rate of return). It is most typically used for income producing properties and the formula is: $\text{Market Value} = \text{Net Operating Income}$. Also called the "income capitalization approach."
- Index – a typical number or price for some good or service, calculated from an array of prices and quantities. It uses various factors such as trend analysis of population, construction, transportation, which will provide the necessary information to determine if prices need to be indexed or not. The Producer Price Index measures the average change over time in prices received by domestic producers for their output, and it is used to calculate updates of recently valued materials to reflect the current fair market value.
- Innocent Trespass (also called unintentional or non-willful) - innocent trespass refers to taking of mineral materials inadvertently, and in good faith.
- In-place Evaluation - the price of the “in-place” mineral materials in the ground (if unmined) or “in-place” in its current configuration (stockpiles of abandoned excavated unprocessed loose material, or of processed material in its current stage of processing, such as washed or crushed to size). In-place evaluation is derived from (1) legal theories of trespass as they relate to state law; and (2) distinctions between good faith trespassers and willful or bad faith trespassers.

L

- Limiting Conditions - criteria that limit the use of the evaluation for particular purposes, and constrain or define the scope or work and investigation in performing the evaluation.
- Local Market - a market that involves short haul distances from the point of sale due to haul costs, such as sand and gravel hauled 10 to 40 road miles from a pit for use in the vicinity of a road project, or urban developments in a town or county.

M

- Management Review – an evaluation report is produced by the collection and analysis of mineral material geologic, technical, and economic data. The conclusion drawn from this analysis is the professional opinion of the Mineral Specialist who

gathered the information and prepared the report. The manager's signing of the acknowledgement block on the mineral report cover sheet will indicate they have read and understand that the report has undergone technical review and that they are aware of the conclusions of the evaluation of the commodity. Once reviewed and approved by the BLM, and where applicable, DME technical reviewers, the report's technical conclusions are not subject to revision by management. A manager - if qualified, can serve as a technical reviewer, but the same manager should not serve as both functions; instead, another manager should sign the management acknowledgement.

- Market - a specific industry to which a mineral material commodity can be sold. A market can be local, regional, national or international.
- Market Area - the geographic region where a specific mineral material commodity is purchased or offered for sale. The market area may or may not be in the area where the material is offered for sale. A market can be local, regional, national or international.
- Market Data - current and historical price and trade-related data on dates, types, quality, and quantity of materials bought and sold, the production costs, the uses the materials, and other associated information.
- Material - refers to a raw mineral material commodity such as sand and gravel or in-place rock prior to excavation, washing, crushing, screening, and other processing.
- Mineral Materials - earth and stone materials that include, but are not limited to, petrified wood, clay, and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clinker, and caliche. The term "common varieties" is defined as deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits.
- Mineral Materials Evaluation - a written estimate of the fair market value, expressed as a sale/purchase price of an accurately described mineral material commodity as of a specific date and supported by the presentation and analysis of factual and relevant data.
- Mineral Specialist - typically a geologist, mining engineer, mineral economist, adjudicator, or contractor with formal education, training, and experience in identifying mineral materials and the processes for their development, extraction, processing and use, and the associated laws, regulations, and administrative policy and procedures for mineral materials disposals and operations. The specialist who prepares an evaluation also requires knowledge of accepted evaluation methods and techniques as used by the Bureau, and a working knowledge of the mineral material industry and economics.

N

- Narrative Evaluation - a detailed evaluation report prepared for trespass cases or complicated evaluation issues, such as individual sales with large volumes and longer terms, and area-wide market studies covering multiple disposal locations. The narrative evaluation provides details and explanations of the sources of the information used, the analysis of the data, and the conclusions of value.
- Net Operating Income - all revenue from the site minus all reasonably necessary operating expenses.
- Net Present Value (NPV) or Net Present Worth - the sum of the present values of future years cash flows over the economic life of a mineral site, after being discounted at a specified discount rate. The present value takes into account the earning power of money over time. It is an indicator of the worth of mineral materials at a site for its projected life.

P

- Producer Price Index (PPI) - refers to a family of indices compiled and calculated by the Bureau of Labor Statistics. The PPI measures average changes in prices received by domestic producers for their output.
- Product - refers to material that has been processed and sized to meet the specifications for marketing for its intended use.

R

- Rate Schedule - a summary of sale/purchase prices to be used for commodity sales over a general area that does not identify or make adjustments for the characteristics of the individual disposal sites.
- Regional Market - a market for one or more mineral materials commodities that extends over a large portion of a state or several states.
- Royalty – Any share of production or payment based on the value or volume of production of mineral materials that is paid to the property owner in exchange for the privilege of extracting and selling the mineral materials. Private and state royalties for mineral materials may involve leases with unlimited production quantities and indefinite lease term lengths. Royalty payments may be based on a percentage of the retail value of finished products removed from the site and/or sold after processing and do not include quantities of materials discarded as waste.
- Sale/Purchase Price – for BLM disposals, this is the price of in-place raw mineral materials prior to extraction and processing, including quantities discarded as waste during processing. Instead of being tied to the subsequent retail price of the actual material, a BLM disposal is an outright sale (or permit) of 100 percent of the specified

quantity of in-place material at a fixed price, usually based on the market value of comparable materials. Disposal authorizations (contracts and permits) involve fixed periods of time at essentially fixed prices for the materials, subject to periodic updates of those prices. BLM sale/purchase prices may be compared to private or state royalty rates. From the perspective of the seller (BLM), they are called sale prices; from the perspective of the buyer, they are called purchase prices on contracts.

- Salvage Value - the amount that can be realized from the sale of an asset after useful life has ended.
- Short Form Evaluation - an abbreviated evaluation report prepared for uncomplicated, non-controversial situations such as disposals of noncompetitive and nonexclusive sales of gravel, flagstone or boulders, periodic updates of narrative evaluation prices using the PPI, or uncontroversial unintentional trespass involving noncompetitive sale size. A short form uses very basic information and does not go into the detail of a narrative evaluation report.
- Split Estate Disposals - sales or permit authorizations from land where the titles to the surface estate and the mineral estate are owned by different entities.

T

- Technical Review - a review of each mineral evaluation performed by a qualified technical reviewer upon completion of the report before it can be approved. The technical review will ensure that the Mineral Specialist followed the Handbook and has fully documented their methods.
- Technical Reviewer - equivalent qualifications as a Mineral Specialist or higher. Must be someone other than the Mineral Specialist that performed the evaluation. A Manager, if qualified, can also serve as a technical reviewer.
- Trespass - the unauthorized use or removal of material under varying situations, such as overproduction from a contract, removal of material after the expiration date of a contract, or removal of material from an unauthorized location.

U

- Uncomplicated/Uncontroversial Mineral Material Sale - sales of small quantities (noncompetitive sales limit) of materials from an existing or new site that does not involve trespass or resource conflict issues.

V

- Value - as used in this handbook, the monetary worth of mineral materials, expressed as a sale/purchase price of something.

W

- Willful Trespass – refers to a trespass done deliberately, intentionally, or willfully with knowledge that it was in violation of law.