DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–660–4120–02–24 1A]

RIN: 1004–AD36

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is publishing this final regulation on bonding requirements for mining claims to comply with a Federal District Court order. This final rule is needed to remove regulatory provisions that were invalidated by the court and to restore the previously existing provisions that are currently in effect as a result of the court order. This rule does not affect a pending proposed rule regarding changes to Subpart 3809.

EFFECTIVE DATE: October 1, 1999.

ADDRESSES: Inquiries or suggestions should be sent to the Solid Minerals Group at Director (320), Bureau of Land Management, Room 501 LS, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 452–0350, or Ted Hudson, (202) 452–5042.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1997 (62 FR 9093), BLM published a final rule amending 43 CFR subpart 3809. This final rule amended the bonding requirements for unpatented mining claims under the Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*), and codified the penalties imposed by the Sentencing Reform Act of 1989 (18 U.S.C. 3571 *et seq.*).

The Northwest Mining Association (NMA) sued the BLM alleging violations of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and the Regulatory Flexibility Act, as amended, 5 U.S.C. 601 *et seq.* (*Northwest Mining Association* v. *Babbitt*, 5 F.Supp.2d 9 (D.D.C. 1998)) On May 13, 1998, the court ruled in favor of the NMA, granted its motion for summary judgment, and remanded the final rule to the Department of the Interior for appropriate action consistent with the court's opinion.

The Department of the Interior did not appeal the decision of the District Court. On August 21, 1998, BLM issued an instruction memorandum to its field offices instructing them to act under the regulations that had been in place until March 31, 1997, the effective date of the remanded rule.

While the litigation was pending, the challenged rule was published in Title 43 of the Code of Federal Regulations (CFR), and the old rules were removed from the published volumes. The purpose of this final rule is to remove from the CFR the judicially invalidated regulatory provisions that were promulgated on February 28, 1997, and to restore verbatim to the CFR the previous regulatory provisions that were removed and/or replaced by that rule, and that now are back in effect as a result of the court invalidating the new rulemaking. Absent this action, the CFR would contain regulations that are no longer valid, potentially confusing those subject to these regulations as to the requirements for bonding of hardrock mining operations.

Under 5 U.S.C. 553(b), the Department of the Interior finds good cause to issue this final rule without notice and opportunity for public comment. Removing the invalid rule and restoring the previously existing rule is required by a final judicial determination. Therefore, notice and public comment is unnecessary. Under 5 U.S.C. 553(d), the Department also finds good cause, to waive the 30-day period between publication of a final rule and its effective date for the same reason.

This rule has no effect on the proposed rule published on February 9, 1999 (64 FR 6422), which would comprehensively amend the hardrock mining regulations in 43 CFR Subpart 3809. However, that proposed rule could make changes to the reinstated bonding regulations, if a final rule is issued.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. The rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. However, because this final rule merely restores to the CFR regulations that were in effect before March 31, 1997, and proposed regulations are pending that, if adopted, will affect this whole subpart, which will be rewritten in plain language, we have not rewritten this regulation into plain language.

National Environmental Policy Act

BLM has determined that this final rule is an administrative action. It merely restores regulatory language that was changed or removed by a previous final rule that was invalidated by the District Court. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact on a substantial number of small entities. Although small entities are bound by the regulations being restored by this final rule, BLM has determined under the RFA that this rule would not have a significant economic impact on a substantial number of small entities. The rule is an administrative action restoring to the CFR regulations that BLM and industry are currently following. The rule makes no changes in

the procedures that any small entity must follow.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2) for the reasons stated in the previous two sections.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does this rule have a significant or unique effect on State, local, or tribal governments or the private sector. The rule is an administrative action restoring to the CFR regulatory text that was removed or changed by a previous final rule invalidated by the District Court. This rule makes no changes in the restored text. Therefore, BLM does not need to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

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

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. It is an administrative action restoring text removed or changed by a previous final rule that was invalidated by a Federal court. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12612, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not change the role or responsibilities between Federal, State, and local governmental entities, nor does it relate to the structure and role of States or have direct, substantive, or significant effects on States.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Department has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in Subpart 3809 under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., and has assigned clearance number 1004–0176. This rule does not impose any additional information collection requirements.

Author: The principal author of this rule is Ted Hudson of the Regulatory Affairs Group, Washington Office, Bureau of Land Management.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental affairs, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas

For the reasons stated in the preamble, and under the authorities cited below, Part 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAW

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

Authority: 16 U.S.C. 351; 16 U.S.C. 460y-4; 30 U.S.C. 22; 31 U.S.C. 9701; 43 U.S.C. 154; 43 U.S.C. 299; 43 U.S.C. 1201; 43 U.S.C. 1740; 30 U.S.C. 28k.

Subpart 3809—Surface Management

2. Section 3809.1–8 is added to read as follows:

§ 3809.1–8 Existing operations.

(a) Persons conducting operations on January 1, 1981, who would be required to submit a notice under § 3809.1–3 or a plan of operations under § 3809.1–4 of this title may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1–3 of this title for operations where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1–4 of this title. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the Federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

3. Section 3809.1–9 is revised to read as follows:

§ 3809.1–9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1–2) or that are conducted under a notice (§ 3809.1–3 of this title).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1–5 of this title may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1–7 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in

accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6 of this title).

4. Section 3809.3–1 is amended by revising paragraph (b) to read as follows:

§ 3809.3–1 Applicability of State law.

* * * * *

(b) After November 26, 1980, the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

5. Section 3809.3–2 is amended by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 3809.3–2 Noncompliance.

* * * * *

(e) Failure of an operator to take necessary actions on a notice of non-compliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1–5 of this title, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1–3 of this title.

Dated: September 24, 1999.

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Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 99–25430 Filed 9–30–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 2, 4, 10, 12, 15, 31, 34, 38, 52, 53, 54, 56, 57, 58, 59, 61, 63, 64, 67, 68, 69, 76, 91, 95, 98, 105, 107, 108, 109, 118, 125, 133, 147, 151, 153, 160, 161, 162, 167, 169, 177, 181, 189, 193, 197, and 199

[USCG–1999–6216]

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes editorial and technical changes throughout Title 46 of the Code of Federal Regulations (CFR) to update the title before it is recodified on October 1. It corrects addresses, updates cross-references, makes conforming amendments, and makes other technical corrections. This rule will have no substantive effect on the regulated public.

EFFECTIVE DATE: This rule is effective on September 30, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1999–6216), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Janet Walton, Standards Evaluation and Development Division (G–MSR–2), Coast Guard, telephone 202–267–0257. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Discussion of the Rule

Each year Title 46 of the Code of Federal Regulations is recodified on October 1. This rule makes editorial changes throughout the title, corrects addresses, updates cross-references, and makes other technical and editorial corrections. Some editorial changes are discussed individually in the following paragraphs. This rule does not change any substantive requirements of existing regulations.

Section and Part Discussion

Section 2.01–25 and Subparts 31.40, 91.60, and 189.60

In these sections, we replaced both ''Cargo Ship Safety Radiotelegraphy Certificates'' and ''Cargo Ship Safety Radiotelephony Certificates'' with ''Cargo Ship Radio Certificates'' to conform to Resolution 1 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System adopted on November 9, 1988. Since there were identical paragraphs on application and issuance for both Cargo Ship Safety Radiotelegraphy Certificates and Cargo Ship Safety Radiotelephony Certificates, we removed duplicate sections 31.40–20, 91.60–20, and 189.60–20.

Section 15.805

In this section, we added the phrase ''other than a vessel with only a recreational endorsement'' to paragraph (b) to conform to 46 U.S.C. 12110, Limitations on operations authorized by certificates.

Sections 118.400, 177.410, and 181.400

We corrected these sections by removing the word ''grills'' in section 118.400, the words ''type grilles'' in section 177.410, and the word ''grills'' in section 181.400 and added, in their place, in each case, the word ''griddle'' to correctly reflect cooking appliances with a solid flat metal cooking plate surface. The restaurant industry defines grills as appliances with an open grid cooking rack suspended above an open flame heat source such as wood or charcoal briquettes. Open flame systems for cooking and heating are not allowed aboard small passenger vessels by 46 CFR 177.410(c)(1).

Sections 162.050–5 and 162.050–7

In both sections, we removed ''100 p.p.m.'' (parts per million) to conform with IMO Resolution MEPC.60(30), Guidelines and specifications for pollution prevention equipment for machinery space bilges of ships, adopted on October 30, 1992. The resolution states that effluent from oil filtering equipment should not exceed 15 ppm.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not