Unfunded Mandates Reform Act of 1995

This final rule does not include any Federal mandate that may result in increased expenditures of $100 million in any one year by State, local, or tribal governments, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order 12612

BLM has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This final rule does not represent a government action that interferes with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12866

This final rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

Executive Order 12988

The Department has determined that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Report to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, BLM submitted a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the General Accounting Office before publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Author: The principal author of this final rule is Frances Watson, Regulatory Affairs Group, Bureau of Land Management, 1849 C Street, NW, Room 401 LS, Washington, D.C. 20240; Telephone 202/452–5006 (Commercial or FTS).

List of Subjects in 43 CFR Part 1860

Administrative practice and procedure, Public lands.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 1860 of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1860—[AMENDED]

1. The authority citation for part 1860 continues to read as follows:

Authority: R.S. 2450, as amended; 43 U.S.C. 1161.

Subpart 1862—[Removed and Reserved]

2. Subpart 1862 is removed and reserved.

Dated: October 28, 1997.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–29273 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

[WO–320–4130–02–24 1A]

RIN 1004–AC39

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations published in the **Federal Register** on Tuesday, July 16, 1996 (61 FR 37116). The regulations addressed the unlawful use and occupancy of unpatented mining claims for non-mining purposes.

DATES: The corrections are effective on November 5, 1997.

FOR FURTHER INFORMATION CONTACT: Richard E. Deery, (202) 452-0353.

SUPPLEMENTARY INFORMATION: On July 16, 1996, BLM published a final rule addressing the unlawful use and occupancy of unpatented mining claims for non-mining purposes. The definitions section of the final rule and its accompanying preamble contain the undefined phrases "hardrock mining" and "hardrock mineral development." Another section of the final rule and its accompanying preamble contain an erroneous cross reference. BLM must clarify the undefined phrases and correct the cross-referencing errors to avoid confusing those people whose activities are subject to the regulations.

Final § 3715.0–5 defines the term "mining laws" to mean, in pertinent part, "all laws that apply to *hardrock mining* on public lands and which make public lands available for *hardrock mineral development.* This includes, but is not limited to, the general authorities relating to *hardrock mining* or to the public lands on which this rule is based and case law which interprets those authorities." (Emphasis added.) Since the final rule became effective, BLM has learned from its field staff that use of the undefined terms, "hardrock mining" and "hardrock mineral development" in the definition of "mining laws" is causing confusion among some people whose activities are subject to the regulations. These people are arguing that BLM used these terms to exclude activities associated with mining of placer claims from the scope of these regulations. BLM does not agree with this position. Final § 3715.0–1 states in pertinent part that, "The purpose of this subpart is to manage the use and occupancy of the public lands for the development of *locatable mineral deposits* by limiting such use or occupancy to that which is reasonably incident. (Emphasis added.) It is well settled that the framework for locating valuable mineral deposits set up by the mining laws applies to claims both to minerals in veins or lodes (hardrock) and to minerals in alluvial, glacial, or marine deposits (placer). See 30 U.S.C. 23 and 35 respectively. However, to alleviate any possible confusion, both now and in the future, BLM is removing the undefined "hardrock" phrases and replacing them with phrases incorporating the concept of locatable minerals. This action will ensure consistency between the purpose and definitions sections and eliminate any confusion over the scope of the regulations.

The final rule also contains a provision that describes the four kinds of enforcement actions BLM can take if an occupant of an unpatented mining

HeinOnline -- 62 Fed. Reg. 59821 1997

claim does not meet the requirements of the use and occupancy regulations. See 43 CFR 3715.7–1.

Paragraph (a)(2) of the cited section provides, in pertinent part, that BLM may order an immediate, temporary suspension of a use or occupancy if necessary to protect health, safety, or the environment. Paragraph (a)(2)(ii) specifies that failure to meet any of the standards in 43 CFR 3715.3–1(b) or 3715.5(b), (c), or (d) will result in a presumption that a risk to health, safety, or the environment exists and issuance of an immediate, temporary suspension. (Emphasis added.). See 61 FR 37129, third column. The reference to 43 CFR 3715.5(d) is incorrect. The reference should be to 43 CFR 3715.5(e). The preamble to final section 3715.7–1 contains the same error. See 61 FR 37123, third column, third paragraph.

The effect of this correction is to provide that if a permanent or temporary structure placed on public lands fails to conform with the applicable State or local building, fire, or electrical codes; occupational safety and health standards; or mine safety standards, BLM will presume that health, safety, or the environment is at risk and will order the user or occupant of the structure to immediately suspend use or occupancy.

Under the Administrative Procedure Act, an agency does not have to issue a notice of proposed rulemaking when the agency for good cause finds that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b). Because the amendments adopted today are technical corrections to clarify the applicability of the final rule, BLM finds that publishing the amendments for comment would be unnecessary. BLM adopted the rules being amended after notice and the opportunity for public comment. The proposed rule did not contain the cross-reference error. See proposed § 3715.6(b) (57 FR 41846, Sept. 11, 1992). The changes are responsive to concerns raised with BLM relating to ambiguity in the current language of the rules created by use of the undefined "hardrock" phrases and the erroneous cross reference. If BLM delayed making these changes so as to allow notice and the opportunity for comment, there is the danger of confusion regarding the applicability of regulations and the type of enforcement action BLM will take if a person fails to comply with State and local building, fire, and electrical codes; occupational safety and health standards; or mine safety standards for permanent and temporary structures placed on public lands.

Under the Administrative Procedure Act, an agency must publish a substantive rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. See 5 U.S.C. 553(d). For the same reasons described above with respect to notice and opportunity for comment, BLM finds that there is good cause for having these correcting amendments become effective immediately on publication in the **Federal Register**.

List of Subjects in 43 CFR Part 3710

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

Dated: October 28, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, BLM is correcting 43 CFR 3710 by making the following correcting amendments:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3715—Use and Occupancy under the Mining Laws

1. The authority citation for subpart 3715 continues to read as follows:

Authority: 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; and 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732(b) and (c), 1733(a) and (g).

2. In § 3715.0–5, revise the definition of "Mining laws" to read as follows:

§ 3715.0–5 How are certain terms in this subpart defined?

* * * * *

Mining laws means all laws that apply to mining of locatable minerals on public lands and which make public lands available for development of locatable minerals. This includes, but is not limited to, the general authorities relating to mining of locatable minerals or to the public lands on which this subpart is based and case law which interprets those authorities.

* * * * *

3. In § 3715.7–1, revise paragraph (a)(2)(ii) to read as follows:

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

(a) * * *

(2) * * *

(ii) You fail at any time to meet any of the standards in § 3715.3–1(b) or § 3715.5(b), (c), or (e).

* * * * *

[FR Doc. 97–29281 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–384]

Assessment and Collection of Regulatory Fees for Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments. First, permittees, licensees or other entities subject to a regulatory fee and claiming an exemption from regulatory fees based upon its status as a nonprofit entity, shall make a one-time filing with the Secretary of the Commission written documentation establishing the basis for its exemption with 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director. Second, for-profit purchasers or assignees of licenses, stations or facilities previously owned by non-profit entities not subject to regulatory fees must notify the Secretary of the Commission of such purchase or reassignment within 60 days of the effective date of the purchase or assignment. Third, the Commission is requiring licensees of Commercial Mobile Radio Service (CMRS) stations to retain for two years, and submit to the Commission upon request, documentation used in calculating their fee payments. Finally, the Commission is delegating authority to the Managing Director to publish annually in the **Federal Register** lists of those commercial communications firms and businesses for commercial purposes that have paid a regulatory fee for the preceding fiscal year.

EFFECTIVE DATE: November 5, 1997.

ADDRESSES: Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Chief, Billings & Collections Branch, (202) 418–1995.

SUPPLEMENTARY INFORMATION:

1. In the *Further Notice of Proposed Rulemaking* in this proceeding, the Commission proposed to adopt several new procedures in order to more efficiently and equitably collect the annual regulatory fees required by

HeinOnline -- 62 Fed. Reg. 59822 1997