

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 6, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96-28595 Filed 11-7-96; 8:45 am]

BILLING CODE 6560-50-W

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Part 3820**

[WO-320-1990-01-24 1A]

RIN 1004-AC60

Surface Management of Mineral Activities Within the Bodie Bowl Under the Bodie Protection Act of 1994

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend

its regulations to carry out the Bodie Protection Act of 1994 (the Act). The Act withdrew Federal lands located around the historic former gold mining town of Bodie, California from availability under the mineral laws of the United States. The Act directs the Secretary of the Interior (Secretary) to determine the validity of and establish surface management requirements for all mining claims and sites within the Bodie Bowl.

DATES: Submit comments by January 7, 1997.

ADDRESSES: Submit comments or suggestions to: Director (420), Bureau of Land Management, Room 401 L, 1849 C Street, N.W., Washington, DC 20240. You may also send comments by Internet to WOCComment@wo.blm.gov. Please include "attn: AC60" and your name and address in your Internet message. Comments will be available for public review at Room 401, 1620 L Street, N.W., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, (202) 452-7784, or Roger Haskins (202) 452-0355.

SUPPLEMENTARY INFORMATION:**I. Public Comment Procedures**

Written comments on the proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. If possible, please reference the specific section or paragraph of the proposal that you are addressing. BLM may not consider or include in the Administrative Record for the final rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

The Bureau of Land Management (BLM) is adding this subpart to carry out Title X of the Act of October 31, 1994, The Bodie Protection Act of 1994 (108 Stat. 4471, 4509). This Act withdrew Federal lands in Mono County, California located around the historic gold mining town of Bodie from location, leasing and disposal of minerals and mineral materials under the mining, mineral leasing, and mineral material laws of the United States. The Bodie Protection Act designated this area as the Bodie Bowl and references a map dated June 12, 1992. This map is available at the Bakersfield District Office, 3801 Pegasus Avenue, Bakersfield, California 93308 and is included in the Administrative

Record for this proposed rule at the address listed above (see **ADDRESSES**). The Act provides that:

(a) The Secretary of the Interior, in consultation with the Governor of the State of California, must promulgate rules for management of mineral activities within the Bodie Bowl that are no less stringent than the rules promulgated by the National Park Service under the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), now codified at 36 CFR part 9. The BLM has consulted with the Governor of the State of California, acting by and through the State Department of Parks and Recreation, which administers the Bodie Historic Park. The Department of Parks assisted in the creation of this rule and will assist the BLM in the formulation of the final rule.

(b) The Secretary of the Interior must determine the validity of all mining claims and sites within the Bodie Bowl.

(c) Mineral patents will only be issued within the Bodie Bowl if the Secretary determines that for the claim concerned, a patent application was filed, and all requirements fully complied with, on or before January 11, 1993.

(d) Mining claims within the Bodie Bowl are prohibited from the performance of annual assessment work and must instead file an annual notice of intent to hold with the BLM.

(e) Mineral activities must be conducted so as to avoid adverse effects on historic, cultural, recreational and natural resource values of the Bodie Bowl.

III. Discussion of the Proposed Rule

The following section-by-section discussion of the proposed rule explains the requirements of the proposed rule.

Part 3820—Areas Subject to Special Mining Laws**Subpart 3826—Bodie Bowl California: Surface Management**

The proposed subpart is designed as the primary mechanism for obtaining approval to conduct mineral activities within the Bodie Bowl on claims or sites determined by the Secretary to have a valid existing right. To avoid a duplication of plan of operations requirements, BLM will use this subpart in conjunction with the National Park Services (NPS) Minerals Management regulations at 36 Code of Federal Regulations (CFR) part 9, subpart A. BLM will use the procedures, standards and requirements of 36 CFR part 9, which would be incorporated by reference, to process and approve plans of operations. Where provisions of part 9 are not intended to apply, exceptions

are noted in the proposed rule. Subpart 3826 of 43 CFR part 3820 contains additional requirements for mineral activities within the Bodie Bowl. If a conflict occurs between a procedure, standard, or requirement of 36 CFR part 9 and 43 CFR part 3820, subpart 3826, the requirements of subpart 3826 prevail in all cases.

Introduction and General Provisions

Section 3826.1 What is the Purpose of This Subpart?

This section explains that the purpose of this subpart is to carry out the requirements of the Act of October 31, 1994, for Federal lands and to protect and preserve the current and historic attributes of the Bodie Bowl. It would clearly set forth that the subpart does not apply to lands patented under the public land or general mining laws.

Section 3826.2 What Standards Apply to My Mineral Activities Within the Bodie Bowl?

This section provides the standards that mineral activities must meet to protect and preserve the historic, cultural, recreational, and natural resources of the Bodie Bowl.

This section identifies the regulations under which surface management of mining claims and sites will occur on Federal lands within the Bodie Bowl.

It provides that the regulations in Title 43 of the Code of Federal Regulations continue to apply to Federal lands within the Bodie Bowl except where such regulations are inconsistent with proposed subpart 3826. For instance, all recording, transfers, annual fees, and waivers are processed pursuant to Part 3830; all claim or site definitions and location requirements are in Part 3840; and Parts 4 and 1840 will govern contests and appeals. As mentioned above, 36 CFR part 9, subpart A, as applied to and modified by subpart 3826, would apply to all surface management actions and approvals.

Section 3826.4 Are There BLM Definitions for Any of the Terms Used in This Subpart?

This section contains the proposed definitions for "Bodie Bowl", "Mineral Activities", and "Valid Existing Rights". The proposed definitions would track the definitions in sections 1003 and 1004(b) of the Act.

Section 3826.5 What is the Status of Federal Land Within the Bodie Bowl

This section explains that Federal land within the Bodie Bowl is withdrawn from all forms of mineral

location, leasing and disposal. It would implement section 1004 of the Act.

Section 3826.6 Are State Laws Applicable?

This section explains that State laws and regulations will apply on Federal lands within the Bodie Bowl as long as such laws and regulations do not conflict with established Federal law or regulations.

Section 3826.7 What Assessment Work or Annual Maintenance Requirements Affect my Mining Claims or Sites in the Bodie Bowl?

This section explains the options available to the owners of mining claims and sites in the Bodie Bowl to avoid forfeiture of those claims and sites under the Act of August 10, 1993; 30 U.S.C. 28 f-k. Under the proposed rule, mining claims and sites within the Bodie Bowl are subject to the payment of the annual \$100 per claim or site maintenance fees pursuant to 43 CFR part 3830, subpart 3833. If you own mining claims or sites within the Bodie Bowl you must either (1) pay the maintenance by August 31 of each year or (2) request a waiver from payment of the maintenance fee under 43 CFR 3833.1-6(d). Denial of access to the mining claims or sites concerned would constitute a sufficient basis for a waiver. You must also pay the \$5 fee required by 43 CFR 3833.1-6(d)(3) for each claim or site listed on your waiver document. The waiver document, accompanied by the proper payment, would satisfy the requirement for a notice of intention to hold, and BLM would not require you to file a separate notice of intention to hold. For details of the waiver requirements, see 43 CFR 3833.1-6(d)(3).

Section 3826.8 Will the Secretary of the Interior Issue Me a Mineral or Mill Site Patent Within the Bodie Bowl?

The Secretary will not issue mineral patents within the Bodie Bowl. Under the Act only those claimants that applied for a mineral patent on or before to January 11, 1993 are eligible to receive a mineral patent. According to BLM records, no one filed a mineral patent application meeting the requirements of the Act and none are pending.

Use Authorization Procedures

Section 3826.110 Do I Need a Plan of Operations Within the Bodie Bowl?

This section gives the information required and procedure for filing a plan of operations. Plans of operation would be required for all mineral activities other than casual use. Operations under

a notice, rather than approved plan, would not be allowed. This would be as stringent as the regulations applicable to National Park System, as required by section 1005(d) of the Act.

Section 3826.111 How Do I Obtain Access to My Mining Claims or Sites?

BLM will not approve your plan of operations until the mining claim(s) or site(s) covered by your plan are determined by the BLM or the Department to constitute valid existing rights. If BLM determines that a claim or site is not valid BLM would bring a contest action pursuant to 43 CFR 4.451. This section establishes the conditions for physical access to an operations area or claim/site.

Section 3826.120 How Do I Get My Plan of Operations Approved?

This section, along with 36 CFR 9.10, provides the process for approving a plan of operations within the Bodie Bowl.

Section 3826.130 Can I Change My Plan of Operations?

This section provides the process for revising or modifying an approved plan of operations. It is read in conjunction with 36 CFR 9.12.

Section 3826.140 Am I Required To Maintain Site, Structures and Facilities During Periods of Non-operation?

This section provides for maintenance of a safe operation and worksite if you temporarily suspend your mineral activities. It also requires reclamation of operations that are inactive for more than twelve months, unless you get BLM approval.

Section 3826.150 Will the BLM Inspect My Mineral Activities?

This section provides that the site of operations is subject to periodic inspection by BLM to ensure compliance with the approved plan of operations and the regulations.

Section 3826.160 Can BLM Suspend or Revoke My Plan of Operations for Failure To Take Corrective Action?

This section explains the reasons for which BLM will revoke an approved plan and the procedures it will use to do so. It would provide for an immediate suspension of operations if such a suspension is necessary to protect health, safety or the environment. This provision would be based upon section 302(c) of the Federal Land Policy and Management Act, 43 U.S.C. 1732(c). Such decisions would remain in effect during any

administrative appeal, unless a stay were granted.

Section 3826.170 Are Documents I Submit Open to Public Inspection?

This section provides that with regard to the public availability of documents, the Department's Freedom of Information Act rules for such evaluation and release, contained in 43 CFR part 2, will be followed.

Reclamation of Lands

Section 3826.210 Am I Responsible for Reclamation of My Claims or Sites?

This section establishes the requirement for reclamation of Federal lands affected by mineral activities authorized under 43 CFR part 3820, subpart 3826. Such reclamation would have to begin no later than six months from completion of mining operations. It also requires those claimants whose mining claims or sites are determined by BLM or the Department not to have valid existing rights, to commence final reclamation within six months of such final administrative decision. In addition if a person has no present development plans for a mining claim determined by BLM or the Department to have valid existing rights, the proposal would require him to submit a plan to reclaim previous disturbances. Such plan would have to be submitted within one year of that determination.

This section also gives the form and manner of final reclamation BLM expects at the end of mineral activities, including restoration of natural processes and historic and scenic conditions to the extent economically and technologically practicable.

Section 3826.211 Am I Responsible for Damage to Federal Lands Caused by My Mineral Activities?

Proposed 43 CFR 3826.211 would clarify that you are responsible for damages or adverse effects upon the Federal lands within the Bodie Bowl resulting from a failure to comply with your approved plan of operations.

Bonds and Financial Guarantees

Section 3826.310 Do I Need Reclamation and Performance Bonds To Conduct My Mineral Activities?

This section establishes the form and type of bonds and financial instruments that the BLM will accept for plan of operations bonds, and gives the terms and conditions to be applied to such bonds. If BLM finalizes the proposed amendment to 43 CFR part 3800, subpart 3809 (see 56 FR 31602 (July 11, 1991)) before this rulemaking is completed, the final Bodie rule would

incorporate the new bonding requirements of that subpart, unless, based on public comments, BLM decides not to do so.

Prohibited Acts, Penalties, and Enforcement

Section 3826.410 What if I Fail To Comply With These Regulations?

This section explains the action that BLM will take when an operator fails to comply with these regulations. It specifies the procedures for service of a notice of noncompliance, the contents of such notices, and the consequences of the failure to comply. For instance, a record of noncompliance (one or more outstanding uncorrected notices of noncompliance) will subject the operator/claimant to a suspension or revocation of his plan of operations under 43 CFR 3826.160 and possible forfeiture of the bond or other financial guarantee by BLM to implement the corrective action specified in the notice(s) of noncompliance.

Section 3826.420 What Acts Am I Prohibited From Taking?

This section lists the actions or lack of action which are prohibited and are, therefore, subject to civil or criminal enforcement.

Section 3826.430 Will I Be Penalized if I Commit a Prohibited Act?

This section describes the civil and criminal penalties BLM may impose if you knowingly and willfully engage in a prohibited act or knowingly and willfully violate any requirement of proposed 43 CFR part 3820, subpart 3826. The criminal penalties described in this section are from the Sentencing Reform Act of 1994, as amended (18 U.S.C. 3551 *et seq.*), for Class A misdemeanors under that Act. Violations of FLPMA are Class A misdemeanor under that Act. Class A misdemeanors under the Sentencing Reform Act, as amended, provides for fines of up to \$100,000 for individuals and \$200,000 for organizations, or for imprisonment of individuals for not to exceed one year, or both. For paragraph (c) a conviction under the False Claims Act, 18 U.S.C. 1001, is a Class E felony under the Sentencing Reform Act of 1994. The penalty is a fine of \$250,000 or imprisonment for up to five years, or both.

Appeals

Section 3826.510 What if I Disagree With a Decision Made Under This Subpart?

This section explains where to find the administrative and procedural

requirements for filing a protest or appeal to an adverse decision of BLM and cross-references 43 CFR parts 4 and 1840. Proposed paragraph (b) would specify which decisions would remain in effect during the periods for appeal and during the pendency of an appeal unless a stay is granted.

IV. Procedural Matters

National Environmental Policy Act

BLM prepared an environmental assessment (EA) and determined that the proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The EA and FONSI are on file in the Administrative Record for the proposed rule at the address specified previously (see ADDRESSES).

Federal Paperwork Reduction Act

This subpart relies upon previously approved OMB information collection requirements for mining claim location and annual maintenance procedures under 43 CFR part 3833 (OMB clearance number 1004-0114); for plans of operations and associated financial guarantees under 43 CFR part 3800, subpart 3809 (OMB clearance number 1004-0104); and plans of operations processing, approval, and reclamation under 36 CFR part 9 (OMB clearance number 1024-0064). This proposed rule does not contain additional information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

BLM determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are only six mining claimants present within the limits of the Congressional withdrawal, with the mineral rights controlled by or through one claimant, Galactic Resources, Inc. No one can locate new claims within the withdrawn area.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 since it will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year.

This regulation will not significantly or uniquely affect small governments.

Executive Order 12988

The Department conducted an Executive Order 12988 review of the proposed rule and determined that it meets the applicable standards of section 3 (a) and (b) of the Executive Order.

Executive Order 12866

BLM reviewed the proposed rule and determined that it is not a significant regulatory action under Executive Order 12866.

Authors

The principal authors of this proposed rule are Douglas Dodge of the Bishop Resource Area, Roger Haskins of the Solid Minerals Group, Bob Barbour of the Regulatory Affairs Group, and Joel Yudson of the Office of the Solicitor, Department of the Interior.

List of Subjects in 43 CFR Part 3820

Administrative practice and procedure, Environmental protection, Fees, Intergovernmental affairs, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Special mining acts, Surety bonds, Surface management.

Dated: October 2, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons discussed above 43 CFR part 3820 is proposed to be amended as follows:

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

1. The authority citation for part 3820 is revised to read as follows:

Authority: Secs. 1001–1007, Pub. L. 103–433, 108 Stat. 4509; 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1701 *et seq.*

2. Subpart 3826, consisting of § 3826.1 through 3826.510, is added to read as follows:

Subpart 3826—Bodie Bowl, California: Surface Management

Introduction and General Provisions

Sec.

3826.1 What is the purpose of this subpart?

3826.2 What standards apply to my mineral activities within the Bodie Bowl?

3826.4 Are there any BLM definitions for the terms used in this subpart?

3826.5 What is the status of the Federal land within the Bodie Bowl?

3826.6 Are state laws applicable to my mineral activities within the Bodie Bowl?

3826.7 What assessment work or annual maintenance requirements apply to my mining claims or sites in the Bodie Bowl?

3826.8 Will the Secretary of the Interior issue me a mineral patent within the Bodie Bowl?

3826.9 Does BLM have a new information collection requirement under this subpart?

Use Authorization Procedures

3826.110 Do I need a plan of operations within the Bodie Bowl?

3826.111 How do I obtain access to my mining claims or sites?

3826.120 How do I get my plan of operations approved?

3826.130 Can I change my plan of operations?

3826.140 Am I required to maintain my site, structures, and facilities during periods of non-operation?

3826.150 Will BLM inspect my mineral activities?

3826.160 Can BLM suspend or revoke my plan of operations if I fail to take corrective action?

3826.170 Are documents I submit open for public inspection?

Reclamation of Lands

3826.210 Am I responsible for reclamation of my claims or sites?

3826.211 Am I responsible for damage to Federal lands caused by my mineral activities?

Bonds and Financial Guarantees

3826.310 Do I need a reclamation bond or other financial guarantee to conduct my mineral activities?

Prohibited Acts, Penalties, and Enforcement

3826.410 What if I fail to comply with this subpart?

3826.420 What acts am I prohibited from taking?

3826.430 Will I be penalized if I commit a prohibited act?

Appeals

3826.510 What if I disagree with a decision made under this subpart?

Subpart 3826—Bodie Bowl, California: Surface Management

Introduction and General Provisions

§ 3826.1 What is the purpose of this subpart?

This subpart implements the requirements of the Bodie Protection Act of 1994 for all mineral activities conducted on or under mining claims, mill sites, or tunnel sites on Federal lands within the Bodie Bowl, California which result from the exercise of valid existing mineral rights on unpatented mining claims or sites. This subpart does not apply to lands patented under the public land or general mining laws.

§ 3826.2 What standards apply to my mineral activities within the Bodie Bowl?

(a) Your mineral activities must be conducted so as to:

(1) Ensure that operations and activities on mining claims and sites within the Bodie Bowl are conducted in a manner consistent with the Management Plan for the Bodie Bowl Area of Critical Environmental Concern;

(2) Avoid adverse effects on the historic, cultural, recreational, and natural resource values of the Bodie Bowl, including, but not limited to physical and aesthetic impacts to Bodie Bowl's historical integrity, cultural values, and ghost town character; and

(3) Minimize other adverse impacts to the environment.

(b) The regulations at 36 CFR 9.9 through and including 9.12 apply to mineral activities upon Federal lands within the Bodie Bowl, except as provided in this subpart. When applying 36 CFR part 9, the terms listed below have the following meanings:

(1) *Regional Director* means District Manager, Bakersfield District Office, Bureau of Land Management.

(2) *Significant* means any surface disturbance within the Bodie Bowl resulting from mineral activities other than casual use as defined in 43 CFR 3809.0–5(b).

(3) *Statement for Management* means the Management Plan for the Bodie Bowl Area of Critical Environmental Concern.

(4) *Superintendent* means Area Manager, Bishop Resource Area, Bureau of Land Management.

(5) *Unit* means the Bodie Bowl.

(c) The regulations in 43 CFR subtitle A and chapter II of subtitle B, including but not limited to groups 1800, 3700 and 3800, continue to apply to Federal lands within the Bodie Bowl unless their application is inconsistent with the provisions of this subpart.

§ 3826.4 Are there any BLM definitions for the terms used in this subpart?

(a) *Bodie Bowl* means the Federal lands and interests in lands within the area generally depicted as the Bodie Bowl on the map dated June 12, 1992, and designated as the Bodie Bowl by sections 1003 and 1004(a) of the Bodie Protection Act of 1994.

(b) *Mineral activities* means any activity involving mineral prospecting, exploration, extraction, mining, beneficiation, processing, and reclamation.

(c) *Valid existing rights* means in reference to the general mining laws that:

(1) A mining claim, mill site or tunnel site located on lands within the Bodie

Bowl that was properly located and maintained under the general mining laws on or before October 31, 1994; and

(2) (i) As to any mining claim, the claim was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on that date, and that such claim continues to be supported by such a discovery, properly maintained, and otherwise valid;

(ii) As to any mill site, the mill site was and still is being used or occupied for uses reasonably incident to mining or milling purposes and continues to be properly maintained and otherwise valid; or

(iii) As to any tunnel site, work on the tunnel site was and is being performed with reasonable diligence by its proprietors, and continues to be properly maintained and otherwise valid.

§ 3826.5 What is the status of Federal land within the Bodie Bowl?

On October 31, 1994 the Bodie Protection Act of 1994 withdrew all Federal land within the Bodie Bowl, subject to valid existing rights, from:

(a) All entry, location, and disposal under the general mining laws (30 U.S.C. 22 *et seq.*);

(b) Leasing under the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act (30 U.S.C. 1001 *et seq.*); and

(c) Disposal of mineral materials under the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

§ 3826.6 Are state laws applicable to my mineral activities within the Bodie Bowl?

Yes. State laws and regulations will apply to your operations on Federal lands within the Bodie Bowl as long as they do not conflict with Federal law or regulation.

§ 3826.7 What assessment work or annual maintenance requirements apply to my mining claims or sites in the Bodie Bowl?

If you hold mining claims and mill or tunnel sites within the Bodie Bowl, you are:

(a) Prohibited from performing annual assessment work under 43 CFR part 3850, subpart 3851 and must instead file an annual notice of intent to hold with the BLM under 43 CFR part 3830, subpart 3833. Under 43 CFR 3833.1–5(f), payment of the \$100 annual maintenance fee satisfies the requirement to file a notice of intention to hold.

(b) Subject to the annual \$100 per claim or site maintenance fees required under 43 CFR part 3830, subpart 3833. In this case, you must either:

(1) Pay the maintenance fees to BLM on or before each August 31; or

(2) Apply for a waiver from the maintenance fee requirement under 43 CFR 3833.1–6(d); denial by the United States of access to the mining claims or sites concerned will constitute a sufficient basis for a waiver. If you file a waiver request you must submit the \$5 fee required by 43 CFR 3833.1–6(d)(3) for each mining claim, mill, or tunnel site listed on your waiver document. The filing of a waiver document with the proper service charges satisfies the requirement to file a notice of intention to hold, and a separate notice of intention to hold will not be required to be filed with the BLM.

§ 3826.8 Will the Secretary of the Interior issue me a mineral patent within the Bodie Bowl?

The Secretary will not issue a mineral patent within the Bodie Bowl. If you have mining claims within the Bodie Bowl you were required by the Bodie Protection Act of 1994 to file your patent applications on or before January 11, 1993. BLM records show that no one met this requirement.

§ 3826.9 Does BLM have a new information collection requirement under this subpart?

No new information collection is required by this subpart over and above what is already provided for under the current OMB approvals. We are required by the Paperwork Reduction Act, as amended (44 U.S.C. 3507) to provide you with an explanation of why information contained in this subpart is required of you. This subpart relies upon previously approved OMB information collection requirements for mining claim location and annual maintenance procedures under 43 CFR part 3830, subpart 3833 (OMB clearance number 1004–0114); for plans of operations and associated financial guarantees under 43 CFR part 3800, subpart 3809 (OMB clearance number 1004–0104); and plans of operations processing, approval, and reclamation under 36 CFR part 9 (OMB clearance number 1024–0064). Please refer to the referenced CFR parts and subparts for the necessary information collection disclosures and points of contact for comments on such information collections.

Use Authorization Procedures

§ 3826.110 Do I need a plan of operations within the Bodie Bowl?

(a) You must have an approved plan of operations to conduct mineral activities within the Bodie Bowl. You do not need a plan of operations for

casual use as defined in 43 CFR 3809.0–5(b). BLM will not approve your plan of operations until the mining claim(s) or site(s) covered by your plan are determined by the BLM or the Department to constitute valid existing rights.

(b) You must file your plan of operations in accordance with 36 CFR 9.9. The following exceptions to 36 CFR 9.9 apply:

(1) In paragraph (b)(5), only the first sentence applies;

(2) Paragraph (b)(8) does not apply; and

(3) Paragraph (d) does not apply.

§ 3826.111 How do I obtain access to my mining claims or sites?

Your plan of operations must specify the location of access routes for mineral activities and other purposes necessary under this subpart. BLM may require you to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a transportation or utility corridor.

§ 3826.120 How do I get my plan of operations approved?

BLM will process your plan of operations in accordance with 36 CFR 9.10 except for the following:

(a) Paragraph (a)(1) does not apply;

(b) The proviso at the end of paragraph (a)(3) does not apply;

(c) Paragraph (a)(5) shall not apply;

(d) The date of January 26, 1977 in 36 CFR 9.10(a)(2) and (a)(3) does not apply. Instead, for purposes of significant surface disturbances under this subpart, the date of October 31, 1994 applies; and

(e) References to 36 CFR 9.4 are not applicable to this subpart.

§ 3826.130 Can I change my plan of operations?

You can modify, supplement, or revise your plan of operations in accordance with 36 CFR 9.12, except that the reference in the last sentence of 36 CFR 9.12 to 36 CFR 9.14 does not apply. Instead, you may appeal under 43 CFR 3826.510.

§ 3826.140 Am I required to maintain my site, structures, and facilities during periods of non-operation?

You must maintain your site, structures and other facilities in a safe condition during any non-operating periods. You must, after an extended period of non-operation for other than seasonal operations, remove all structures, equipment and other facilities and reclaim the site of operations, unless you receive permission in writing from BLM to do

otherwise. BLM will consider your operation complete when you cease to operate for a period of 12 months or more. At that time, you are required to close and reclaim your site under 43 CFR 3826.210, unless you receive written permission from BLM to do otherwise.

§ 3826.150 Will BLM inspect my mineral activities?

BLM will periodically inspect your operations to determine if you are complying with these regulations and your approved plan of operations. You must permit BLM access for this purpose.

§ 3826.160 Can BLM suspend or revoke my plan of operations if I fail to take corrective action?

(a) After giving you notice and opportunity for a hearing, (except as provided in paragraph (b) of this section), the BLM may suspend or revoke approval of your plan of operations if you have any uncorrected noncompliance that violates the terms of your approved or revised plan of operations or if you have uncorrected noncompliance with any other provision of this subpart.

(b) BLM will issue an order for the immediate suspension of your operations if we determine that such a suspension is necessary to protect health, safety or the environment. You may not resume operation until you correct the situation and receive written permission from the BLM to recommence operations.

§ 3826.170 Are documents I submit open for public inspection?

Any document you submit is available for public inspection, subject to the terms of 43 CFR Part 2, the Interior Department rules implementing the Freedom of Information Act.

Reclamation of Lands

§ 3826.210 Am I responsible for reclamation of my claims or sites?

(a) You must reclaim Federal lands affected by your mineral activities as soon as possible, but in no case begin later than six (6) months after completion of mining operations. If your approved mining, reclamation or closure plan has a specified time frame for reclamation, you must meet that time frame.

(1) You must perform your reclamation in accordance with 36 CFR 9.11, except that paragraphs (a)(1), (a)(2)(iii), and (c) of 36 CFR 9.11 do not apply.

(2) You must to the extent economically and technologically

practicable replace overburden and spoil material to restore natural processes.

(3) You must return the area to a condition which does not jeopardize visitor safety or public use, and to the extent economically and technologically practicable return the historic and scenic landscape to a condition equivalent to that which existed before your operations.

(b) You must submit a reclamation plan meeting the requirements of paragraph (a) of this section for all mining claims or sites that are determined by the BLM not to have valid existing rights. You will have six calendar months from the date of BLM's determination, or, if that decision is appealed under 36 CFR 3826.510 and upheld, the Department's decision to submit a reclamation plan for your claims or sites.

(c) If you have mining claims or sites that are determined by BLM or the Department to have valid existing rights and do not plan to operate on these claims or sites within one year of that determination, you must submit a reclamation plan within one year of that determination. That plan must meet the requirements of paragraph (a) of this section for disturbances caused by previous mineral activities.

§ 3826.211 Am I responsible for damage to Federal lands caused by my mineral activities?

You are responsible for any damage or adverse effects upon the Federal lands within the Bodie Bowl resulting from your failure to comply with the terms of the approved plan of operations and/or reclamation plan.

Bonds and Financial Guarantees

§ 3826.310 Do I need a reclamation bond or other financial guarantee to conduct my mineral activities?

(a) Before you begin any surface disturbance under your plan of operations, you must submit and obtain approval for a financial guarantee meeting the requirements of 43 CFR 3809.1-9. In addition to the types of bonds listed in 43 CFR 3809.1-9, you may file an irrevocable letter of credit acceptable to BLM. Your financial guarantee must be sufficient in amount to cover the estimated cost of full reclamation under your approved reclamation plan. You must file your financial guarantee in the California State Office of the Bureau of Land Management.

(b) If you revise or supplement your approved plan of operations in accordance with § 3826.130, BLM will adjust the amount of the financial

guarantee to conform to the modified plan of operations.

(c) BLM may review the amount of the bond and make an adjustment based upon the outcome of our review.

Prohibited Acts, Penalties, and Enforcement

§ 3826.410 What if I fail to comply with this subpart?

(a) If you fail to comply BLM may send you a notice of noncompliance. BLM will serve a notice of noncompliance either by:

(1) Personal service (delivery) to you or your authorized agent of record; or
(2) Certified or registered mail, return receipt requested.

(b) The notice of noncompliance will specify:

(1) The regulation you violated;
(2) The corrective action you must take; and
(3) How much time you have to take the corrective action.

(c) Failure to take the necessary corrective actions within the specified time frame may subject you to:

(1) A court order enjoining continuation of operations;
(2) Penalties specified under 43 CFR 3826.430;
(3) A record of noncompliance;
(4) A suspension or revocation of your plan of operations, in accordance with § 3826.160; and
(5) Forfeiture of your bond or other financial guarantee by BLM to implement the corrective actions required in the notice of noncompliance.

§ 3826.420 What acts am I prohibited from taking?

You must not:

(a) Conduct mineral activities without the approved plan of operations required in 43 CFR part 3800, subpart 3809 and 43 CFR 3826.110.

(b) Fail to comply with a notice of noncompliance issued under 43 CFR 3826.410, unless BLM extends the time frame or otherwise modifies in writing the requirements set forth in your notice of noncompliance.

(c) Fail to complete reclamation required in your approved plan of operations and 43 CFR 3826.210.

(d) Fail to allow inspection of your mineral activities by BLM under 43 CFR 3826.150.

(e) Conduct operations which use cyanide or other leachates not described in the approved plan of operations required by 43 CFR 3826.110.

(f) Conduct operations without a financial guarantee accepted by BLM under 43 CFR 3826.310.

(g) Fail to prevent adverse effects to the historical, cultural, recreational or

natural resource values under 43 CFR 3826.2.

(h) Fail to notify BLM of, and leave intact, newly discovered cultural resources as required under 43 CFR 3826.2 (incorporating the relevant terms of 36 CFR 9.10).

(i) Fail to protect or report damage to survey and other monuments as required under 43 CFR 3826.2 (incorporating the relevant terms of 36 CFR 9.10).

(j) Fail to mark hazardous sites or conditions resulting from operations as required under 43 CFR 3826.2 (incorporating the relevant terms of 36 CFR 9.10).

(k) Fail to reclaim operations following an extended period of non-operations as required by 43 CFR 3826.210.

(l) Submit false or fictitious information or other misrepresentation.

§ 3826.430 Will I be penalized if I commit a prohibited act?

(a) If you knowingly and willfully commit one or more of the prohibited acts listed in 43 CFR 3826.420 or knowingly and willfully violate any other requirement of this subpart you are subject to criminal prosecution on each offense. Upon conviction, if you are an individual, you will be subject to a fine of not more than \$100,000, or the alternate fine provisions of 18 U.S.C. 3571, or imprisoned for no more than twelve months, or both.

(b) Any organization that knowingly and willfully commits one or more of the prohibited acts of 43 CFR 3826.420 or violates any other requirement of this subpart is subject to criminal prosecution on each offense. If convicted, the organization will be subject to a fine of not more than \$200,000, or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571.

(c) For each offense arising under 18 U.S.C. 1001, persons or organizations committing the offense may be fined \$250,000 or imprisoned for up to 5 years, or both.

Appeals

§ 3826.510 What if I disagree with a decision made under this subpart?

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

(b) Decisions issued under 43 CFR 3826.160(b) which order the immediate suspension of your operations will go into effect immediately and will remain in effect while appeals are pending

unless a stay is granted in accordance with 43 CFR 4.21(b).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300-6300-01; I.D. 101696D]

RIN 0648-AJ30

Magnuson Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is in the process of developing guidelines, by regulation, to implement the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as mandated by the Sustainable Fisheries Act. These guidelines would assist Fishery Management Councils (Councils) in the description and identification of essential fish habitat (EFH), including adverse impacts on EFH, in fishery management plans (FMPs) and in the consideration of actions to conserve and enhance EFH. NMFS invites interested persons to submit written comments, information, and suggestions on all aspects of the EFH mandate. Comments from Councils, interstate fishery management commissions, state fishery management agencies, commercial and recreational fishing interests, environmental groups, and other interested parties are of particular interest.

DATES: Written comments must be received on or before December 9, 1996.

ADDRESSES: Comments should be sent to the Director, Office of Habitat Conservation, Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: Lee R. Crockett, 410-267-5672.

SUPPLEMENTARY INFORMATION: NMFS invites comments and information that will assist with the implementation of the new Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) mandates to: (1) Develop guidelines to assist Councils in

the description and identification of EFH (including adverse impacts, and conservation and enhancement actions) for fisheries managed by any Council; (2) develop and provide information and recommendations to the Councils to assist in the identification of EFH in FMPs, adverse impacts to EFH (including adverse impacts from fishing), and actions to ensure the conservation and enhancement of EFH; and (3) recommend conservation and management measures for actions undertaken by any state or Federal agency that would adversely affect any EFH. NMFS is soliciting information on the habitat requirements, including the EFH, of fish species managed under the Magnuson-Stevens Act and the distribution of those habitats. NMFS is also soliciting information on the threats to EFH (including threats from fishing activities), the distribution of those threats, ways to prevent or mitigate the adverse impacts of those threats, and ways to conserve and enhance EFH.

Background

The Sustainable Fisheries Act, among other mandates, requires the Secretary of Commerce (Secretary), acting through NMFS, to carry out a number of activities to describe, identify, conserve, and enhance EFH. Below is a summary of the new EFH mandates of the Magnuson-Stevens Act.

Definition of EFH

EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity."

Contents of FMPs

Several provisions were added to section (16 U.S.C. 1853(a)(7)) requiring that FMPs describe and identify EFH for the fishery based on guidelines established by the Secretary under section (16 U.S.C. 1855(b)(1)(A)). FMPs are also required to minimize the adverse effects on EFH caused by fishing, to the extent practicable. Finally, FMPs should identify other actions that encourage the conservation and enhancement of EFH.

Actions by the Secretary

- Develop guidelines, by regulation, to assist the Councils in the description and identification of EFH (including adverse impacts) in FMPs, and conservation and enhancement measures of such habitat, within 6 months of the date of enactment of the Magnuson-Stevens Act.

- Provide each Council, after consulting with the fishing industry, with recommendations and information