

Plain English in Department of Interior Rules

By George Hathaway

Editor's Note: While editing this article, I entered "plain English" on the Federal Register database in WESTLAW[®] and up came over 160 entries. What a nice surprise: in one proposed rule after another, the agency says that the rule "has been rewritten in plain English" or that the agency is "committed to writing the final rule in plain English." The Department of the Interior seems to be the most active agency, with dozens of rewritten rules. But there are also new plain-English rules from the Department of Labor, the Environmental Protection Agency, the Department of Commerce, the Small Business Administration, and many others. And we discussed in last month's column the activities by the Securities and Exchange Commission.

So it seems that this month's column discusses one part of a larger, hopeful picture. The federal government may have finally seen the light.

—JK

On October 18, 1996, the Bureau of Land Management of the U.S. Department of Interior published a proposed rule in 60 Federal Register 54384. See Figure 1. This page should be matted, framed, and hung on the wall with the Magna Carta, Declaration of Independence, Constitution, and other documents in the halls of court houses and public schools—because this is among the first rules "to comply with President Clinton's government-wide regulatory reform initiative to

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

eliminate, streamline, or rewrite regulations in plain English." Consequently, we are very happy to give this rule a Clarity Award.

General Background

For some time now, the federal government has been trying to reform the regulatory process. A seminal event, on September 30, 1993, was President Clinton's Executive Order No. 12866 (3 CFR 638 (1993)). As one of its directives among many, the order stated: "Each agency shall draft its regulations to be simple and easy to understand, with a goal of minimizing the potential for uncertainty and litigation arising from such uncertainty."

President Clinton has continued to sound this theme of simplifying and streamlining federal rules and the regulatory process. For instance, on March 4, 1995, he issued a memorandum to heads of federal departments and agencies (31 Weekly Compilation of Presidential Documents 363). He directed them to "conduct a page-by-page

Question: What's the difference between a rule and a regulation?

Answer: There isn't any. They are both administrative rules. And that's what state government calls them. The Michigan Administrative Code contains Michigan administrative rules. But the federal government calls them *regulations* (*regs* for short) and compiles them in the well-known Code of Federal Regulations (CFR). This creates the common redundancy *rules and regulations*. If you use plain English 1) avoid the redundancy and 2) use *rule* unless you are referring to specific federal regulations. Finally, the federal government should eliminate the term *regulation* and change the title to *Code of Federal Rules*. But first things first.

review of all your agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform." For another instance, on June 5, 1996, the President stated as follows in a message to the Congress on the state of small business (32 Weekly Compilation of Presidential Documents 999):

Regulation and paperwork continue to be a key concern of America's small business owners, and I am proud of the progress my Administration has made in addressing this concern. For example, the SBA is streamlining all its regulations and converting them to plain English. An application form for the most common SBA loans used to be an inch thick and take 5 to 6 weeks to approve. We've reduced the form to one page and cut turnaround time to 3 days.

Background of the Proposed Rule

Now back to the proposed rule from the Bureau of Land Management. The "Background" section states:

In response to the President's directive, BLM analyzed 43 CFR part 3500 through 43 CFR part 3570 to determine whether the regulations were current and written in clear and understandable terms. As a result, BLM decided that we could reorganize the regulations to achieve significant reductions in length while greatly improving the clarity of the document... [W]e... decided to consolidate and to eliminate the duplicative presentation of processes. BLM understands that our readers want to be able to find particular subject matter easily in our regulations. However, we believe that the plain English approach, particularly the expanded table of contents, will make it easy for readers to find material that is of concern to them.

Plain English Techniques

The first thing you notice about the rule is its unusual format—a question-and-answer format. The table of contents is simply an organized list of questions about the rule. Each question is the title of a separate section. See Figure 2. Each section

then answers the question that is asked by the title of the section. For example, the title of Sec. 3501.1 is "What is the scope of this part?" And the section then answers this question. See Figure 3. In some other cases, the section answers the question by using a table. See Figures 4 and 5.

(Continued on page 198.)

Figure 1

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
43 CFR Parts 3500, 3510, 3520, 3530,
3540, 3550, 3560, and 3570
Leasing of Solid Minerals Other Than
Coals and Oil Shale

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations governing leasing of solid minerals other than coal and oil shale. The purpose of the amendment is to comply with President Clinton's government-wide regulatory reform initiative to eliminate, streamline, or rewrite regulations in plain English. The current rule includes separate sections for all the solid minerals commodities, and the resulting language is repetitive in many instances. The proposed rule will reorganize these solid minerals regulations to eliminate redundant language and streamline the regulations. The proposed rule will also clarify the responsibilities of interested parties.

Figure 2

Subpart 3501—Leasing of
Solid Minerals Other Than Coal
and Oil Shale—General

Sec.

- 3501.1 What is the scope of this part?
- 3501.5 What terms do I need to know to understand this part?
- 3501.10 What types of mineral use authorizations are allowed under this part?
- 3501.16 Does my permit or lease grant me an exclusive right to develop the lands covered by the permit or lease?
- 3501.17 Are there any general planning or environmental considerations that affect my permit or lease?
- 3501.20 If BLM approves my application for a use authorization under this part, when does it become effective?
- 3501.30 Can I appeal BLM's decisions under this part?

Figure 3

§ 3501.1 What is the scope of this part?

This part applies to certain minerals leased under the mineral leasing acts and hardrock minerals leased under Reorganization Plan No. 3 of 1946 on any unclaimed, undeveloped area of available public domain or acquired lands where leasing of these specific minerals is allowed by law. Some areas allow only leases, not prospecting permits. Special areas identified in 43 CFR part 3580 are leased under this part. Check that part to identify any special provisions that apply to those special areas.

Figure 4

Subpart 3510—Lease Terms and Conditions

- 3510.15 How long will my lease be in effect?
- 3510.20 Do certain leases allow me to mine other commodities as well?
- 3510.21 If I am mining calcium chloride, can I obtain a noncompetitive mineral lease to produce the commingled sodium chloride?
- 3510.25 What is meant by lease readjustment and lease renewal?
- 3510.26 What if I object to the terms and conditions BLM proposes for a readjusted lease?
- 3510.27 How will a lease renewal affect my priority as lessee?
- 3510.30 If I appeal BLM's proposed new terms, do I have to continue paying royalties or rentals while my appeal is being considered?
- 3510.50 How do I renew my lease?

Figure 5

§ 3510.15 How long will my lease be in effect?

Your lease will be issued for the term specified in the table.

Lease term	Phosphate	Sodium	Potassium	Sulphur/hardrock	Gilsonite
(a) Initial lease term (years).	Indeterminate...	10.....	Indeterminate...	20.....	20 years, and as long thereafter as Gilsonite is produced in paying quantities.
(b) Periods of renewal or readjustment.	Readjustment at the end of each 20-year period.	Renewal for 10-year term at end of initial term and each 10-year period.	Readjustment at the end of each 20-year period.	Renewal for 10-year term at end of initial term and each 10-year period.	Readjustment at the end of each 20-year period.

Claims Against Stockbrokers

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INTEREST RATES FOR MONEY JUDGMENTS

FOR COMPLAINTS FILED BEFORE JUNE 1, 1980

[See MCL 600.6013(2) & (3)]

- Judgments Based on a Written Instrument

If a written instrument has an interest rate over 6% per year, the rate specified (if legal when the instrument was signed) in the instrument shall be charged from the date of filing the complaint until date of satisfaction of judgment.

However, the interest rate after the date judgment is entered shall not exceed:

- 1) 7% per year compounded annually for any period of time between date judgment is entered and date of satisfaction of judgment which elapses before June 1, 1980.
- 2) 13% per year compounded annually for any period of time between date judgment is entered and date of satisfaction of judgment which elapses after May 31, 1980.

- Other Money Judgments

From date of complaint to June 1, 1980—6% per year simple interest. On or after June 1, 1980 to date of satisfaction—12% per year compounded annually.

FOR COMPLAINTS FILED ON OR AFTER JUNE 1, 1980

BUT BEFORE JANUARY 1, 1987

[MCL 600.6013(4)]

- Judgments Based on a Written Instrument

12% per year compounded annually unless instrument had a higher legal rate.

However, after the date judgment is entered, the rate shall not exceed 13% per year compounded annually.

- Other Money Judgments

12% per year compounded annually from date of filing complaint to the date of satisfaction of the judgment.

FOR COMPLAINTS FILED ON OR AFTER JANUARY 1, 1987

[MCL 600.6013(5) & (6)]

- Judgments Based on a Written Instrument

12% per year compounded annually unless instrument had a higher legal rate.

However, after the date judgment is entered, the rate shall not exceed 13% per year compounded annually.

- Other Money Judgments

Interest rate shown below calculated at six-month intervals from the date of filing the complaint compounded annually.

Effective Date	Average Certified by State Treasurer	Statutory 1%	Interest Rate
January 1, 1987	6.66%	1%	7.66%
July 1, 1987	7.50%	1%	8.50%
January 1, 1988	8.39%	1%	9.39%
July 1, 1988	8.21%	1%	9.21%
January 1, 1989	9.005%	1%	10.005%
July 1, 1989	9.105%	1%	10.105%
January 1, 1990	8.015%	1%	9.015%
July 1, 1990	8.535%	1%	9.535%
January 1, 1991	8.26%	1%	9.26%
July 1, 1991	7.715%	1%	8.715%
January 1, 1992	7.002%	1%	8.002%
July 1, 1992	6.68%	1%	7.68%
January 1, 1993	5.797%	1%	6.797%
July 1, 1993	5.313%	1%	6.313%
January 1, 1994	5.025%	1%	6.025%
July 1, 1994	6.128%	1%	7.128%
January 1, 1995	7.38%	1%	8.38%
July 1, 1995	6.813%	1%	7.813%
January 1, 1996	5.953%	1%	6.953%
July 1, 1996	6.162%	1%	7.162%
January 1, 1997	6.340%	1%	7.340%

The rule is a great example of three elements of user-friendly writing: 1) an understandable format (questions and answers, graphic devices like tables, lots of lists), 2) reasonably short sentences (an almost unbelievable average of 12 words a sentence), and 3) strong active verbs (you must pay, BLM will notify you, BLM will issue).

Comments from Those Involved

According to Jim Horan, the principal author of this rule:

I've been dealing with federal rules for a long time. This new format should be much easier for the reader to follow. It particularly benefits the new reader by explaining the permit application process in a logical and clear manner.

The plain English activities within the Bureau of Land Management have been led by Annetta Cheek, Manager of the Regulatory Management Group. According to Dr. Cheek:

BLM believes that writing its rules in plain English is an important customer service. Furthermore, by clarifying for us what we are requiring, plain English helps ensure that we design our programs in a logical manner. In the future, we intend to do all our rules this way. . . . We use the question and answer format in all our training material about plain English. I now use it in all BLM's rules, and when I advise other agencies I use it in their rules as well. . . . We stay conscious of the word count, and strive for sentences of about 20 words, with no more than 25.

The plain English activities within the federal government have been actively supported by Vice-President Gore's National Performance Review organization. According to Jean Logan of the National Performance Review:

Plain English is a great blend of customer service and regulatory reinvention, two of our biggest initiatives. By making rules clear and understandable, we assist the reader to fulfill our requirements, and help ourselves implement our programs in the most efficient and effective way.

Amen. ■

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