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43 CFR Part 3710

Use and Occupancy Under the Mining Laws; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

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RIN 1004–AC39

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is adopting regulations addressing the unlawful use and occupancy of unpatented mining claims for non-mining purposes. This rule sets forth the restrictions on use and occupancy of public lands open to the operation of the mining laws that BLM administers in order to limit use and occupancy to those involving prospecting or exploration, mining, or processing operations and reasonably incidental uses. The rule establishes procedures for beginning occupancy, standards for reasonably incidental use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for managing existing uses and occupancies. It also provides for penalties and appeals procedures. This rule is necessary to prevent unnecessary or undue degradation of the public lands from uses and occupancies not reasonably incident to mining. The rule does not adversely affect bona fide mining operations or alter BLM's regulations in 43 CFR Part 3800 pertaining to them. Terms used in this preamble have the meaning given to them in the rule.

EFFECTIVE DATE: August 15, 1996.

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

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Final Rule and Response to Comments.
III. Procedural Matters.

I. Background

The mining industry has played a key role in both the settlement and development of the American West. The problem of occupancy of mining claims on public lands by those who have no intention of conducting legitimate hardrock mineral prospecting, exploration or extraction activities has long been recognized. These occupancies waste valuable resources by hampering and discouraging the activities of those who are engaged in the legitimate development of our mineral resources or other legitimate uses of the public lands. This rule establishes a framework for distinguishing between bona fide uses and occupancies and those that represent abuse of the mining laws. The purpose of this rule is to strengthen BLM's use of its enforcement authority to combat abuse of the Mining Law of 1872 for non-mining pursuits.

The Mining Law of 1872

The Mining Law of 1872 is the Act of May 10, 1872 (17 Stat. 91, 30 U.S.C. 22 *et seq.*) together with its judicial interpretations. The law established the basic statutory framework governing the location of mining claims that is still in practice today.

Under the law, a person can acquire an interest in the public lands by the proper location of a mining claim. A prospector can go out on the public lands, search for minerals and, upon discovery of a valuable mineral deposit, locate a claim to the lands upon which the discovery is made. A prospector can locate a claim by staking the corners of the claim, posting a notice of the claim, and filing or recording the claim according to state and federal law.

The law did not operate without conflict and controversy. After all, the "claim jumper" has become as much a part of the folklore of the West as the prospector and his mule. Two noteworthy cases were decided in the early part of this century that helped define the scope of activities allowed on unpatented mining claims.

One, *Teller* v. *United States,* 113 F. 273 (8th Cir. 1901), involved the cutting of timber on an unpatented mining claim. The court found that the owner of the claim had the right to work the claim for its minerals, but had no right to cut timber or engage in other surface activities unless the activities were reasonably necessary to the mining operation. The second case, *United States* v. *Rizzinelli,* 182 F. 675 (D. Idaho 1910), involved the establishment of saloons on unpatented mining claims. This case stands for the principle that surface uses of a claim can only be for purposes "connected with or incident to" exploration for, and recovery of, minerals.

Surface Resources Act of 1955

In spite of all good intentions, by the 1950's it had become clear that widespread abuse of the general mining law was taking place. People were locating mining claims who either had no intention of mining or who never got around to it. Some of the uses taking place on unpatented claims included permanent residences, summer homes, townsites, orchards, farms, a nudist colony, restaurants, a rock museum, a real estate office, hunting and fishing lodges, filling stations, curio shops and tourist camps. To deal with this, Congress passed the Surface Resources Act of 1955 (69 Stat. 367, 30 U.S.C. 601–615), which included a provision that any unpatented mining claim may not be used for purposes other than prospecting, mining or processing operations and reasonably incident uses.

Federal Land Policy and Management Act of 1976

The Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701 *et seq.*), also known as FLPMA, directed the Secretary of the Interior to take any action necessary to prevent unnecessary or undue degradation of the public lands. FLPMA established a federal mining claim recording system, which requires an annual filing of an affidavit of assessment work or a notice of intention to hold a mining claim. It also strengthened the Secretary's enforcement authorities by authorizing the Secretary to issue regulations necessary to implement FLPMA, the violation of which are punishable by civil and criminal penalties. In 1980, BLM adopted regulations outlining procedures and standards designed to prevent hardrock mining operations from causing unnecessary or undue degradation of the public lands.

BLM's 1980 Regulations

The 1980 regulations, found at 43 CFR part 3800, address the management of surface impacts from exploration and mining operations, treating mining operations differently depending on the level of mining activity the operator proposes. At the lowest level of activity, called "casual use," prospectors or part-time miners who cause only negligible surface disturbance need not contact BLM. An operator who exceeds this negligible level of surface activity, but keeps the amount of surface disturbance below five acres per year, is required only to file a notice with BLM 15 days before commencing operations. The operator does not have to obtain BLM's approval of the notice, nor obtain bonding, except in special circumstances. Operators proposing mining operations causing more than five acres of surface disturbance per year are required to file a plan of operations which sets out the details of those operations. The operator must also file a plan of operations if special categories of land are involved, even if

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less than five acres per year will be disturbed. BLM must approve the plan before the operator may commence operations.

Development of Proposed Regulations

In August 1990, the General Accounting Office issued a report that found some holders of unpatented mining claims were using their claims for unauthorized residences, non-mining commercial operations, illegal activities, or speculative activities not related to legitimate mining. See *Unauthorized Activities on Hardrock Claims,* GAO/RCED–90–111. These unauthorized activities result in a variety of problems, including blocked access to public land; safety hazards, including threats of violence; environmental contamination; investment scams; and increased costs to reclaim the land. The report recommended that BLM revise its regulations to clearly state that residency and nonmining commercial activities are normally not authorized, thereby shifting the burden of proof to the claim holder to show that an activity is incidental to mining. At a follow-up hearing before the Subcommittee on Mining and Natural Resources, House Interior and Insular Affairs Committee, in September 1990, the Director of BLM and the Subcommittee agreed that while occupancy reasonably incident to prospecting, mining, and production is legitimate, BLM field staff need a satisfactory process for administering and enforcing legal requirements.

After the September 1990 hearing, BLM established a task force of headquarters and field staff to strengthen BLM's ability to prevent unauthorized uses and occupancies on the public lands under the mining laws. The task force drafted a proposal in late 1990 and discussed it in meetings with miners and environmentalists in Washington, D.C.; Denver, Colorado; Spokane, Washington; and Sacramento, California. Following these discussions, a proposed rule adding a new subpart 3715 to the regulations at 43 CFR part 3710 was published in the **Federal Register** on September 11, 1992 (57 FR 41846). Refer to the **Federal Register** notice cited above for a full discussion of the proposal. The 60-day comment period closed on November 10, 1992. BLM received 44 comments concerning the proposal: 16 from individuals, 4 from mining businesses, 7 from associations, 16 from offices of federal agencies, and 1 from a state government citizens' advisory commission. As discussed in the next portion of the preamble to this final rule, BLM gave full consideration to all comments received. Any changes in the final rule from the proposed rules are identified in the following detailed discussion of the final rule.

Regulatory Reform

In February 1995, the President outlined his regulatory reform initiative, which is intended to reduce unnecessary regulatory burden and overlap, create regulations with clearly stated goals and objectives and stimulate partnerships with regulated parties. BLM undertook a page-by-page review of its rules and identified about 1,000 pages in the Code of Federal Regulations that would be eliminated, streamlined or rewritten in "plain English." Plain English is a specific writing technique that communicates the information and legal requirements of regulations more effectively through the use of question-and-answer headings, active voice, short sentences, and tables, among other things.

Because the proposed rule was issued before the regulatory reform initiative, it was not written in plain English. Readers of the final rule will quickly note differences in the language and format of the final rule as compared to the proposal. Readers will also note that final § 3715.4 addresses existing occupancies. In the proposed rule, these provisions were generally located in § 3715.7. BLM changed the location of the existing occupancy provisions and renumbered the intervening sections accordingly as part of a reorganization of the final rule. The conversion to plain English does not affect the substantive content of the rule. These changes are intended to increase the clarity and understandability of the rule. Any substantive changes that BLM has made in the final rule are fully described in the following discussion.

To assist the reader in understanding the difference between the proposed rule and the final rule adopted today, BLM has prepared the following table:

COMPARISON OF PROPOSED RULE AND "PLAIN ENGLISH" FINAL RULE

Proposed Rule	"Plain English" Final Rule
§ 3715.0–1	§ 3715.0–1
§ 3715.0–2	§ 3715.0–1
§ 3715.0–3	§ 3715.0–3
§ 3715.0–5	§ 3715.0–5
§ 3715.0–6	§ 3715.0–1
§ 3715.0–7	§ 3715.0–1
None	§ 3715.0–9
§ 3715.1	§ 3715.1
§ 3715.2 (a) and (b)	§ 3715.2
§ 3715.2(c)	§ 3715.2–1
§ 3715.2(d)	§ 3715.2–2
§ 3715.3 (a)–(e)	§ 3715.3

COMPARISON OF PROPOSED RULE AND "PLAIN ENGLISH" FINAL RULE—Continued

Proposed Rule	"Plain English" Final Rule
§ 3715.3(f)	§ 3715.3–2
§ 3715.3(g)	§ 3715.3–2 and § 3715.3–3
§ 3715.3(h)	§ 3715.3–4
§ 3715.3(h)(1)	§ 3715.3–5(a) and § 3715.7–1(a)
§ 3715.3 (h)(2) and (i)	§ 3715.3–5(b)
§ 3715.3(j)	§ 3715.3–6
§ 3715.3(k)	§ 3715.1
§ 3715.4(a)	§ 3715.5(a)
§ 3715.4(b)	§ 3715.3–1(b)
§ 3715.4 (c)–(e)	§ 3715.5 (b)–(e)
§ 3715.4(f)	§ 3715.5–1(a)
§ 3715.4(f)(1)	§ 3715.5–1(b)
§ 3715.4(f)(2)	§ 3715.5–2
§ 3715.5	§ 3715.6
§ 3715.6(a)	§ 3715.7 (a) and (b)
§ 3715.6(b)	§ 3715.7–1(a)
§ 3715.6(c)	§ 3715.4–3(c)
§ 3715.6(d)	§ 3715.7–1(c)
§ 3715.6(e)	§ 3715.7–1(d)
§ 3715.6(f)	§ 3715.7–2
§ 3715.7(a)	§ 3715.4(b)
§ 3715.7(b)	§ 3715.4–1
§ 3715.7(c)	§ 3715.4–2
§ 3715.7(d)	§ 3715.4(a)
§ 3715.7(e)	§ 3715.4–3
§ 3715.8(a)	§ 3715.8(a)
§ 3715.8(b)	§ 3715.8–1
§ 3715.9(a)	§ 3715.9
§ 3715.9(b)	§ 3715.9
§ 3715.9(c)	Deleted
§ 3715.9(d)	Deleted
§ 3715.9(e)	Deleted
3715.9(f)	§ 3715.9–1
§ 3715.9(g)	Deleted

II. Discussion of Final Rule and Response to Comments

Legal Basis and Purpose of the Final Rule

These regulations carry out the statutory requirements of section 4 of the Surface Resources Act of 1955, which states that mining claims are not to be used for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto (30 U.S.C. 612). Even before 1955, the courts had long held that the Mining Law of 1872 itself entitled the mining claimant to use the surface only for reasonably incident purposes. See, for example, *United States* v. *Rizzinelli,* 182 F. 675 (D. Id. 1910) and *Bruce W. Crawford,* 92 I.D. 208, 216 (1985).

Uses that are not reasonably incident are not authorized by the mining laws and should not be occurring on public lands, unless they are authorized under other authorities. Because illegal uses should never occur on public lands, the mere existence of an illegal use

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inherently constitutes "unnecessary or undue degradation" of the public lands. Consequently, these regulations clarify that unauthorized uses and occupancies on public lands constitute "unnecessary or undue degradation" of the public lands.

Section 302(b) of the Federal Land Policy and Management Act gives the Secretary of the Interior the duty to take *any action necessary* to prevent unnecessary or undue degradation of the public lands. This duty arises in section 302(b) in the context of the Secretary's obligation to manage the public lands by regulating the use, occupancy, and development of the public lands. Accordingly, as applied to this rule, "unnecessary or undue degradation" includes those uses that are not authorized by law, specifically those activities which are not reasonably incident and are not authorized under any other applicable law or regulation.

To the extent that uses are reasonably incident and do not involve occupancy, the surface management requirements of 43 CFR part 3800 govern the conduct of those uses.

The purposes of the regulations in this subpart are to—

(a) Distinguish between the allowable and prohibited uses and occupancies under the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), section 4(a) of the Surface Resources Act, (30 U.S.C. 612), the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), and other applicable law, to ensure that mining claims and millsites are not used, prior to issuance of patent therefor, for any purposes other than prospecting or exploration, mining, or processing operations, and uses reasonably incident thereto;

(b) Inform persons operating under the mining laws of their basic rights and responsibilities relative to use and occupancy of public lands;

(c) Identify mining laws and regulations applicable to use and occupancy of public lands;

(d) Enumerate instances where use and occupancy of public lands are authorized under the mining laws, and to set standards for such use or occupancy;

(e) Enumerate prohibited acts relating to use and occupancy of public lands under the mining laws; and

(f) Provide for administrative remedies and appropriate penalties for cases of non-compliance with the regulations in this subpart.

The rule does not adversely affect bona fide mining operations or alter BLM's regulations in 43 CFR Part 3800 pertaining to them.

General Comments

Several comments from individuals objected to the proposed rule as an undue infringement on their use of a mining claim. The rule does not, however, infringe on lawful uses of the public lands. Bona fide mining operations will not be adversely affected by the rule. The rule is necessary to carry out the statutory responsibility to manage the public lands and to enforce the statutory restrictions on the use and occupancy of the public lands for reasonably incident activities. Enforcement authority is found in sections 302(c), 303(a), and 303(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1201), and 18 U.S.C. 1001.

Section 3715.0–1 What are the Purpose and Scope of This Subpart?

Final § 3715.0–1(a) describes the purpose of subpart 3715. The purpose is to manage the use of the public lands for the development of locatable mineral deposits by limiting use and occupancy to that which is reasonably incident.

One comment suggested a change in the policy provision, proposed § 3715.0–6, to provide added protection for valid uses of mining claims. Another comment suggested a wording change in the policy provision, pointing out that some older unpatented mining claims may lie on lands that are withdrawn or otherwise not now open to the operation of the mining laws. However, these claims are still subject to regulation under the mining laws. BLM adopted these comments in the final rule, with language added to final § 3715.0–1 specifically to provide for protection of valid uses of valid claims, regardless of when created.

Final paragraph (b) states that the subpart applies to public lands BLM administers.

Final paragraph (c) states that these regulations do not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers. This paragraph was added in response to concerns from commenters that legitimate recreational activities would be affected by the regulations.

BLM formed this section of the final rule from proposed §§ 3715.0–2, 3715.0–6, and 3715.0–7.

Section 3715.0–3 What are the Legal Authorities for This Subpart?

This section enumerates the statutory authority for the promulgation of these regulations. The primary authorities include the Mining Law of 1872, the Surface Resources Act of 1955, the Federal Land Policy and Management Act, and the Unlawful Occupancy and Inclosures of Public Lands Act.

Section 1 of the Mining Law of 1872 (30 U.S.C. 22) provides that, except as otherwise provided by law, all valuable mineral deposits in lands belonging to the United States must be free and open to exploration and purchase. It also provides that the lands containing these deposits must be open to occupation and purchase under regulations prescribed by law and the local customs or mining district rules that are not inconsistent with the laws of the United States.

Section 15 of the Mining Law of 1872, as amended (30 U.S.C. 42), provides that a patent application for a lode claim may include nonmineral land not contiguous to the vein or lode only if it is used or occupied for mining or milling purposes. It also provides that a patent application for a placer claim may include nonmineral land only if it is needed, used and occupied by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with that claim.

Section 4 of the Surface Resources Act (30 U.S.C. 612) states that any mining claim located after July 23, 1955, under the mining laws of the United States must not be used, prior to issuance of patent, for any purposes other than prospecting, mining, or processing operations, and reasonably incident uses. Any such mining claim is also subject, prior to issuance of patent, to the right of the United States, its permittees, and licensees, to use so much of the surface as may be necessary for management and disposition of vegetative surface resources and management of other surface resources, or for access to adjacent land.

Several comments argued that pre-1955 claims should be exempt from the provisions of the rule. This position is not adopted in the final rule. Such claims are subject to the portions of the regulations establishing whether a use or occupancy is reasonably incident to prospecting, mining, milling, and so forth. While Section 4(a) of the Act of July 23, 1955 (30 U.S.C. 601 *et seq.*) (the 1955 Act), provides that claims located after that date are not to be used before patenting for any purpose other than prospecting, mining, or processing operations, or uses reasonably incident thereto, this provision merely restated the law as it existed prior to its enactment. (*Bruce Crawford,* 86 IBLA 325, 92 I.D. 208, 216, 221, n. 15). Cases

cited in *Crawford* held that, as long ago as 1910, uses of mining claims were required to be reasonably incident to mining. See *United States* v. *Rizzinelli,* 182 F. 675 (D. Id. 1910). The legislative history of the 1955 Act shows clearly that existing law prohibited uses of the Mining Law for non-mineral-related occupancies, and that a purpose of the 1955 Act was only to strengthen existing tools for dealing with these situations. See S. Rep. No. 554, 84th Cong., 1st Session (1955). The Mining Law of 1872 itself states that "all valuable mineral deposits in lands belonging to the United States . . . shall be free and open . . . to occupation . . . under regulations prescribed by law. . . ." 30 U.S.C. 22. The patenting authority for millsites also defines valid millsites as those used for mining, milling, processing, beneficiation, or other operations. 30 U.S.C. 42. The citation to that authority for millsites has been added to the rule. However, BLM concurrence that a use or occupancy on a millsite is authorized under this rule does not necessarily mean that the millsite is valid for purposes of complying with 30 U.S.C. 42. A validity determination for patenting or for establishing the underlying validity of a millsite is separate from a BLM concurrence in a proposed use or occupancy on a millsite under this subpart.

Section 302(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1732(b)) directs the Secretary to take all necessary actions to prevent unnecessary or undue degradation in managing the public lands to regulate use, occupancy, and development of the public lands.

Section 302(c) of FLPMA (43 U.S.C. 1732(c)) directs the Secretary to include in all land use instruments a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument. This section also provides that the Secretary may order an immediate temporary suspension of use, occupancy, or development prior to a hearing or final administrative finding if such a suspension is necessary to protect health, safety, or the environment.

Section 303(a) of FLPMA (43 U.S.C. 1733(a)) states that the Secretary must issue regulations necessary to implement the provisions of FLPMA with respect to the public lands, and sets forth basic penalties for violation of such regulations.

Section 303(g) of FLPMA (43 U.S.C. 1733(g)) states that the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued under any such regulation, is unlawful and prohibited.

Section 1 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1061 *et seq.*) prohibits inclosures and exclusive use and occupancy of the public lands, without claim or color of title as described in the Act. The same Act states, in summary, that no person, by force, threats, intimidation, or by any fencing or any other unlawful means, may prevent or obstruct peaceful entry, free passage or transit over or through the public lands by another person.

43 U.S.C. 1201 states that the Secretary of the Interior, or such officer as the Secretary may designate, is authorized to enforce and to execute, by appropriate regulations, every part of the provisions related to the public lands not otherwise specially provided for.

43 U.S.C. 1457 charges the Secretary with the supervision of public business relating to the public lands, including mines.

18 U.S.C. 1001 states that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, will be fined not more than $10,000 or imprisoned not more than 5 years, or both.

The Sentencing Reform Act of 1984 (18 U.S.C. 3571 *et seq.*) authorizes fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

Section 3715.0–5 How are Certain Terms in This Subpart Defined?

This section contains definitions of terms significant to this rule. These terms include "mining laws," "mining operations," "occupancy," "permanent structure," "public lands," "prospecting or exploration," "reasonably incident," "substantially regular work," and "unnecessary or undue degradation." BLM has not adopted the proposed definition of "authorized officer." To simplify the rule, BLM uses the term "BLM" instead of "authorized officer" in the final rule.

BLM has added a definition of "mining laws" to the final rule in order to make it clear that this term refers to all laws that apply to hardrock mining on public lands and which make public lands available for hardrock mineral development.

BLM has added a definition of "public lands" to the final rule in order to eliminate possible confusion or misinterpretation regarding the lands to which this rule applies. The definition also eliminates repetitious language included throughout the proposed rule regarding the rule's applicability to public lands, including mining claims and millsites. In the context of this rule, "public lands" are defined as BLM-administered lands open to the operation of the mining laws. These lands specifically include mining claims and millsites on which most mining activities occur. However, to the extent that mining-related activities may occur to a certain extent on the public lands before a proper mining claim or millsite is located, this rule also applies to those public lands. In addition, to the extent that unauthorized uses are occurring on public lands without the proper location of a mining claim or millsite under the guise of a mining operation or mining-related activity, this rule applies. Finally, to the extent unauthorized uses are occurring or may occur on mining claims or millsites located on public lands, this rule also applies.

One comment found the definition of "occupancy" overly broad and confusing, stating that it blurred the distinction between activities that justify occupancy and those that comprise occupancy. BLM does not agree, but did modify the wording of the definition for clarity.

One comment pointed out that other multiple uses of the public lands, such as recreation, are allowed as short-term temporary encampments, usually 14 days or less, while conducting that use. The comment suggested that mining-related activities should not be treated differently. BLM has adopted this comment in the final rule and will not treat temporary occupancies up to 14 days as occupancies required to conform to the standards contained in the final rule. As discussed below, §§ 3715.1 and 3715.2 of the final rule provide that this subpart is applicable only to occupancy for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site.

One comment stated that tents and lean-tos should be excepted from the definition of "permanent structure," so that they can be used for temporary encampments for assessment work or prospecting. Although, as another comment pointed out, temporary encampments may be subject to abuse through conversion or expansion to semi-permanent structures, BLM has

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adopted the comment in the final rule, which specifically excludes tents and lean-tos from the definition of "permanent structure." BLM will rely on monitoring to prevent abuse of this provision.

One comment suggested that the use of the "reasonably incident" standard should not be read to discourage the continued development of new technology, exploration techniques, or mining methods. It is not the intent of the rule that the standard be limiting in this way. The rule defines the uses of the public land authorized under the general mining law in terms of the prudent miner and appropriate methods, structures, and equipment, and is not designed to discourage the development of new technology, exploration techniques, or mining methods intended to discover, delineate, recover, or process locatable minerals. Such new technologies may be more efficient, cost effective, or environmentally sensitive. BLM will consider them to be reasonably incident if the activity is a good faith effort to improve the methods of prospecting or exploration, mining, or processing locatable minerals.

Several comments stated that the use of the phrase "substantially regular and steady work" in proposed § 3715.2 could be construed to prohibit occupancies associated with weekend or intermittent mining activities that would otherwise be legitimate under the general mining law. BLM has changed the phrase "substantially regular and steady work" to "substantially regular work" and included a definition in this section of the final rule. "Substantially regular work" means work on, or that substantially and directly benefits, a mineral property, including nearby properties under the control of the operator. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It also includes assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of this subpart. It may also include off-site trips associated with these activities. The term encompasses a seasonal, but recurring, work program. This provision does not prohibit weekend or intermittent mining activities. Such activities, if carried out in good faith, may warrant occupancy under certain circumstances. This requirement is not intended to preclude activities that are reasonably undertaken to carry out the justified occupancy.

One comment raised a concern that the rule was not adequately based on the "unnecessary or undue degradation" standard and raised a question about the ease of interpretation and enforcement of the "unnecessary or undue degradation" standard as applied to occupancy. BLM's regulations at 43 CFR parts 3802 and 3809 define "unnecessary and undue degradation" to mean, among other things, "surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character." The purpose of the 43 CFR parts 3802 and 3809 regulations is to establish procedures to prevent unnecessary or undue degradation of public lands by mining operations. 43 CFR 3802.0–1 and 3809.0–1. However, the purpose of this rule is to distinguish between those uses that are authorized by the mining laws and those that are not and to prohibit those that are not authorized. Because this rule covers regulation of those uses that are not authorized, BLM has added a definition of "unnecessary or undue degradation" to these rules to address unauthorized uses that are not covered by the 43 CFR parts 3802 and 3809 definitions of "unnecessary or undue degradation."

Section 3715.0–9 Information Collection

Final § 3715.0–9 explains that BLM has submitted to the Office of Management and Budget (OMB) the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995. BLM collects the information so that it may manage use and occupancy of the public lands by prohibiting unauthorized uses and occupancies. A response is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

BLM inadvertently omitted this section from the proposal, but is including it in the final rule because the Paperwork Reduction Act requires it. This section is technical in nature and imposes no requirements in addition to subpart 3715.

Section 3715.1 Do the Regulations in This Subpart Apply to My Use or Occupancy?

Final § 3715.1 consists of a table that provides information to enable persons to determine if this subpart governs their activities. This section of the final rule corresponds to § 3715.1 of the proposed rule, but has been reformatted for clarity. No comments were received on this portion of the proposal.

Proposed § 3715.3(k) exempted authorized occupancies from the time limits of 43 CFR 8365.1–2. BLM has made some minor editorial changes to that provision and moved it to the table in final § 3715.1.

Section 3715.2 What Activities Do I Have To Be Engaged in to Allow Me To Occupy the Public Lands?

Final § 3715.2 describes the circumstances warranting occupancy of the public lands under this subpart.

In response to a comment on the definition of "occupancy" suggesting a need to treat uses and occupancies of less than 14-day duration in a consistent manner, the final rule indicates that subpart 3715 governs uses and occupancies lasting for more than 14 calendar days. In addition, the table in § 3715.1 states that this subpart does not apply to occupancy of 14 days or less in any 90-day period on the same site or within a 25-mile radius of that site. This section of the final rule is intended to prevent abusers of the mining laws from circumventing its requirements by moving illegal occupancies (for example, recreational vehicles) from one site to another nearby.

Section 3715.2–1 What Additional Characteristic(s) Must my Occupancy Have?

Final § 3715.2–1 provides that in addition to the requirements specified in § 3715.2, occupancies must involve at least one of five qualifying activities in order to warrant an occupancy.

One comment suggested that equipment that requires protection from theft or loss or that would constitute a danger to the public should warrant occupancy of a mining claim if the equipment is not otherwise readily portable, and if the equipment cannot reasonably be protected through means other than site occupancy, or if the hazard could not be prevented by reasonable means other than occupancy. BLM has adopted this comment in the final rule and has revised § 3715.2–1(b) accordingly. A certain minimum amount of appropriate, operable equipment is necessary to warrant an occupancy. This minimum amount may vary among operations. The equipment you assert to justify an occupancy should be in regular use and required for the operation. Equipment used only infrequently should normally be stored at an off-site equipment yard. Appropriate and operable equipment of such size and type that may be easily placed in a three-quarter ton pickup truck and/or towed utility trailer and

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hauled away at the end of a work day will not by itself normally justify an occupancy. Larger amounts of equipment may also be removable at the end of a work day, depending on the situation. On the other hand, nothing in this provision prevents the storage and use of portable equipment and personnel for prospecting and exploration for 14 days or less. Unused or infrequently used equipment cannot be stored on site or added to on-site equipment to justify an occupancy.

Final § 3715.2–1(e) has been revised editorially to make it clear that the work expected on an occupied site is that which is usual and customary, which is ordinarily not less than 8 hours but not necessarily an unbroken 8-hour shift or a rigid 8-hour shift every day. For example, the first and last days of an occupancy may be short for travel purposes, or shifts may be split overnight between two days.

Section 3715.2–2 How Do I Justify Occupancy by a Caretaker or Watchman?

Final § 3715.2–2 provides the conditions you must meet in order to justify a caretaker or watchman. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.2–3 Under What Circumstances Will BLM Allow Me To Temporarily Occupy a Site for More Than 14 Days?

Final § 3715.2–3 describes the circumstances under which BLM will allow you to remain on a site temporarily beyond 14 days without first having met all of the requirements in this subpart for beginning occupancy. This provision was not part of the proposed rule, but BLM added it to the final rule in response to a commenter's concern about site security.

Section 3715.3 Must I Consult With BLM Before Occupancy?

This section of the final rule is organized as a table that lists the requirements you must follow to consult with BLM regarding a proposed occupancy before occupancy may begin in connection with a plan of operations, notice-level activities, or casual use activities. The table also notes that in some cases you may propose both to occupy the public lands and to conduct notice-level or casual use activities that do not involve occupancy. In those cases, any notice-level or casual use activities that do not involve occupancy may proceed in accordance with authorizing regulations without consulting BLM. For example, you may propose both to build a cabin on a mining claim and to dig a small pit subject to the notice provisions of 43 CFR part 3800, subpart 3809. Under the final rule, you could dig the pit after giving notice to BLM under subpart 3809, but would have to consult with BLM before building the cabin.

One comment stated that, whereas the proposed rule is often directed toward new operations, the rule should also address modifications of plans of operations that are often necessitated by changed conditions or operations. BLM adopted this comment and added language to final § 3715.3 making it applicable to plan modifications as well as new plans. Plan modifications may call for new, additional, or enhanced occupancy.

Several comments suggested that certain activities that are incidental to justified occupancies, but are not themselves actually reasonably incident, should be allowed if they do not cause unnecessary or undue degradation. The activities of concern in this connection are recreational in nature, done after regular work on the mining claim during periods of occupancy. The rule is not intended to preclude such activities where they are reasonably undertaken together with the justified occupancy.

Section 3715.3–1 At What Point May I Begin Occupancy?

Final § 3715.3–1 describes the requirements you must meet before you may begin occupancy. This provision consolidates two proposed provisions related to restrictions on initiating occupancy, proposed §§ 3715.3(b) and 3715.4(b).

One comment stated that it was unreasonable for proposed § 3715.4(b) to require operators to obtain all necessary state permits before beginning use or occupancy of a claim. The comment pointed out that this would require that all permits conceivably necessary during the life of the mining operation be obtained in advance rather than as needed. BLM accepted this comment and changed final § 3715.3–1(b) to require only those permits necessary for the particular use or reasonably incident use justifying the occupancy. Requiring compliance with building codes is not a matter of technicalities; rather, it is important in protecting public health and safety. A 1982 report of the General Accounting Office (GAO), for example, described cases in which buildings on mining claims that did not meet local building codes burned and caused death and injury. See GAO, *Illegal and Unauthorized Activities on Public Lands—A Problem with Serious Implications,* No. RCED–8248 (1982), pp. 30–32.

Section 3715.3–2 What Information Must I Provide to BLM About My Proposed Occupancy?

Final § 3715.3–2 describes the kinds of information that you must provide to BLM regarding your proposed occupancy, including maps and written descriptions of your occupancy. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–3 How Does BLM Process the Information I Submit About My Proposed Occupancy?

Final § 3715.3–3 provides that BLM must review all proposed occupancies, enclosures, fences, gates, or signs intended to exclude the general public in order to make a concurrence or non-concurrence determination. This section also describes the timing of BLM's review, including any action that BLM must take to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes. For example, under NEPA, BLM will analyze the environmental impact of your proposed occupancy and document in writing its analysis and findings. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–4 How Will BLM Notify Me of the Outcome of Its Review Process?

Final § 3715.3–4 describes the written determination of concurrence or non-concurrence you will receive from BLM after its review is complete. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–5 What Will BLM's Notification Include?

Final § 3715.3–5 describes what information BLM's written determination of concurrence or non-concurrence will contain. BLM found that the second sentence of proposed § 3715.3(h)(1), which identified the circumstances under which BLM would order an immediate, temporary suspension of occupancy, to be redundant with the immediate, temporary suspension provision in final § 3715.7–1(a) and removed it from proposed § 3715.3. Also, BLM moved

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the provision describing when BLM will assume that a risk to health, safety, and the environment exists to final § 3715.7–1(a).

Several comments suggested that proposed § 3715.3(h)(2) should be amended to state that BLM will allow a proposed occupancy to be amended if the original proposal results in a non-concurrence. BLM adopted this suggestion in § 3715.3–5(b) of the final rule. It is in the public interest to permit appropriate activity under the general mining law if this activity can be planned through cooperation between you and BLM, avoiding costly administrative appeals, if possible, in cases where the initial proposal is not accepted.

Section 3715.3–6 May I Begin Occupancy if I Have Not Received Concurrence From BLM?

Final § 3715.3–6 prohibits beginning occupancy until a concurrence from BLM is received. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4 What if I have an Existing Use or Occupancy?

Final § 3715.4 describes how this subpart applies to existing uses and occupancies. This section of the final rule combines proposed §§ 3715.7 (a) and (d). BLM revised this section to make it clear that existing use or occupancy that is not reasonably incident may be subject to an immediate, temporary suspension, if necessary to protect health, safety, or the environment. BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–1 What Happens After I Give BLM Written Notification of My Existing Occupancy?

Final § 3715.4–1 describes the actions BLM will take after it receives a written notification of your existing occupancy. Paragraph (a) of this section, which provides that BLM will visit your site during the normal course of inspection to obtain the information required under § 3715.3–2, did not exist in the proposed rule. However, BLM added it to the final rule in an effort to reduce the paperwork burden on operators with existing occupancies. Final § 3715.4–1(b) was proposed as § 3715.7(b) and is adopted with minor editorial changes.

Taken together, §§ 3715.4 and 4–1 allow your existing occupancy a one-year grace period from compliance with this final rule if you timely notify BLM of the occupancy, with the expectation that BLM will visit your site within that one-year period to gather additional information. If the year passes and BLM has not yet visited your site, this final rule does not require you to take any further action with regard to obtaining BLM's concurrence in your occupancy. At that point, the ball would be in BLM's court.

Section 3715.4–2 What if I Do Not Notify BLM of My Existing Occupancy?

Final § 3715.4–2 (proposed § 3715.7(c)) states that you are subject to the penalty and enforcement provisions of this subpart if you do not file the written notice required in § 3715.4. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–3 What if BLM Does Not Concur in My Existing Use or Occupancy?

Final § 3715.4–3 describes the actions BLM may take after inspection if it determines that your use or occupancy, or portion thereof, is not reasonably incident. Final § 3715.4–3 consolidates provisions proposed at §§ 3715.6 (b) and (c) as they apply to existing operations. BLM moved proposed § 3715.6(c) to final § 3715.4–3(b) because it deals with existing use and occupancy. BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–4 What if There is a Dispute Over the Fee Simple Title to the Lands on Which My Existing Occupancy is Located?

Final § 3715.4–4 describes BLM's discretion in deferring a determination regarding the status of your occupancy if the lands on which the occupancy occurs are involved in a title dispute with the United States regarding the underlying fee simple title to the land. This provision was not part of the proposal, but BLM added it to the final rule to make it clear that BLM has discretion to defer the point at which it deals with occupancy on lands over which a title dispute exists.

Section 3715.5 What Standards Apply to My Use or Occupancy?

Final § 3715.5 describes the laws and standards which you must comply with while engaging in any use or occupancy of the public lands. Paragraph (b) of this section refers to the federal and state standards that apply to uses of public lands under the mining laws. Paragraph (c) refers to the standards applicable to occupancies. The paragraphs are identical, except that occupancies are subject to the standards of this final rule, while uses are not.

These provisions were included in the proposal as §§ 3715.4 (a), (c), (d), and (e) respectively. One comment addressed proposed § 3715.4(e), pointing out that, normally, residential structures need only be in compliance with building and other codes in effect at the time of construction, rather than, as the proposed rule implied, with current codes. The final rule has been changed to require structures to conform with "applicable" state or local codes. If, in some areas, structures need only be in compliance with codes in effect at the time of construction, those codes will be the only ones applicable.

Several comments objected to BLM's adoption of state and local building codes rather than promulgation of its own regulatory requirements. BLM does not agree and did not adopt these comments in the final rule. State and local building codes are a function of the police powers held by state and local governments. In addition, the building codes already exist and are tried and tested.

One comment pointed out that it may be a burden for state or local officials to visit remote claims to inspect for code compliance, and another suggested that the rule allow BLM to waive compliance with such codes in truly remote areas. BLM does not agree and did not adopt these comments in the final rule. If state or local agencies wish to waive code compliance, BLM will recognize that waiver, but BLM has no authority to independently allow you to ignore code requirements.

One comment called on the BLM to adopt a standard that combines the reasonably incident standard with a "required" standard, that is, to disallow use and occupancy that is not required in order to conduct mining activities. The comment argued that *United States* v. *Richardson,* 599 F.2d 290 (9th Cir.), *cert. denied,* 444 U.S. 1014 (1980), serves as a precedent for using this combined standard. BLM chooses to adopt the standard of "reasonably incident to" rather than "required for" prospecting, mining, or processing operations. The statutory language quoted in the comment is in section 4(c) of the 1955 Act and relates to the severance and use of vegetative and other surface resources. Such use must be required for mining, prospecting, or processing operations and uses reasonably incident thereto. However, the general standard applied in this rule is found in section 4(a) of the 1955 Act, which prohibits the use of the claim itself for any purposes other than

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prospecting, mining or processing operations and uses reasonably incident thereto. Under section 4(c) of the 1955 Act, surface resources may be used only if "required" for uses "reasonably incident" to mining. The tighter standard for removal and use of trees and other surface resources in section 4(c) is built upon the standard in section 4(a). The applicable standard for activities on the claims is the basic "reasonably incident" standard rather than the "required" standard that is applicable only to removal and use of trees and other surface resources. The burden of proving that activities are reasonably incident to mining will remain on you, as it is under existing law, and occupancies that are not reasonably incident will not be allowed.

Section 3715.5–1 What Standards Apply to Ending My Use or Occupancy?

Final § 3715.5–1 describes what you must do with structures, material, equipment or other personal property placed on the public lands during your use or occupancy when your use or occupancy ends.

These provisions were included in the proposal as §§ 3715.4 (f) and (f)(1) respectively. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.5–2 What Happens to Property I Leave Behind?

Final § 3715.5–2 describes what BLM will do with property you leave on the public lands after your use or occupancy ends. This provision was included in the proposal as § 3715.4(f)(2). BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.6 What Things Does BLM Prohibit Under This Subpart?

Final § 3715.6 (proposed § 3715.5) describes those activities, uses, or occupancies that are prohibited under this subpart.

Two comments pointed out drafting errors in proposed § 3715.5. Paragraph (a), as proposed, would have required a violation of both the conditions of occupancy under proposed § 3715.2 and one or more of the standards of occupancy under proposed § 3715.4. The intent of the rule is that uses or occupancies are not permitted that violate any provision of § 3715.2, § 3715.2–1 *or* § 3715.5. Also, paragraph (b) as proposed could have been read to imply that occupancy might be initiated after rejection of a plan of operation. Paragraphs (a) and (b) of § 3715.6 in the final rule have been revised to correct these errors.

Some comments argued that claimants with claims located before 1955 are not barred from blocking access to or through the claims. The *Crawford* case, *supra,* at pages 216–217, stated that section 4(b) of the 1955 Act substantially changed the mining law with regard to access. Actions by owners of such claims to block reasonable access by the public will, however, prompt a determination of surface rights under section 5 of the 1955 Act and 43 CFR part 3710, subpart 3712, and/or a validity examination.

One comment stated that proposed § 3715.5(f) would not allow an operator to exclude the public from hazardous areas or areas that need to be secure for proprietary reasons. BLM has corrected this provision at § 3715.6(f) of the final rule to allow operators to take reasonable security measures. Mining claimants have the right to exclude the public from use of the land within the operation in order to prevent material interference with the operation or to comply with relevant state or federal law or regulations.

One comment noted that proposed § 3715.5(i) should be amended to prohibit non-mining related animal maintenance or pasturage. BLM has adopted this comment, but has also revised § 3715.6(i) of the final rule to make it clear that the acts listed are prohibited unless they are allowable under other applicable law or regulation. For example, a non-mining activity on a mining claim could be authorized under 43 CFR part 2920 under appropriate circumstances.

Section 3715.7 How Will BLM Inspect My Use or Occupancy and Enforce This Subpart?

Final § 3715.7 provides that BLM field staff is authorized to physically inspect all structures, equipment, workings and uses located on public lands and will not inspect the inside of structures used solely as residences without permission from the occupant or a proper court.

BLM included these provisions in the proposal at § 3715.6(a). One comment suggested that proposed § 3715.6(a) should be amended to provide BLM with discretion to inspect all occupancies on public lands rather than obligate BLM to inspect all such occupancies. The proposed rule language was not intended to obligate BLM to conduct inspections within a certain timeframe. The language is merely to establish BLM's authority to conduct inspections of all structures, equipment, workings and uses located on public lands. Final § 3715.6(a) has been amended to make it clear that there is no time limitation placed on BLM for inspections.

Section 3715.7–1 What Types of Enforcement Action Can BLM Take if I Do Not Meet the Requirements of This Subpart?

Final § 3715.7–1 discusses the four types of orders that BLM can issue to you, depending on the circumstances, for not complying with the provisions of this subpart.

Final paragraph (a) describes the circumstance under which BLM can order an immediate, temporary suspension of use or occupancy prior to a hearing if you are not in compliance with §§ 3715.2, 3715.2–1, 3715.3–1(b), 3715.5 or 3715.5–1, if necessary to protect health, safety or the environment. If you fail at any time to meet any of the standards in paragraphs §§ 3715.3–1(b) and 3715.5 (b), (c) and (d), BLM will presume that a risk to health, safety or the environment exists. BLM's assumption that breach of those sections creates a risk to health, safety, or the environment is based on the nature of those requirements. Readers should note that an appeal of an order issued under this paragraph does not stay the effect of the order. This means that if BLM orders you under this paragraph to immediately suspend your occupancy, you must comply even if you file an appeal. Your activity must remain suspended until the appeal has been decided.

Section 3715.3–1(b) requires you to be in possession of all requisite federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations before beginning an occupancy. Sections 3715.5 (b) and (c) require your use or occupancy to conform to all applicable federal, state and local environmental standards and have all requisite permits and authorizations. In addition, § 3715.5(e) requires your buildings and structures to comply with state and local building, fire and electrical codes and occupational safety and health and mine safety standards. To the extent that you do not possess the proper mining, reclamation, waste disposal, building, fire, electrical or occupational safety or mine safety permits or have not met related standards, BLM may reasonably assume that you are creating a risk to health, safety or the environment. This provision was included in the proposal at §§ 3715.3(h)(1) and 3715.6(b). The final rule has been revised editorially at § 3715.7–1(a)(3) to make clear the corrective actions BLM may require you to take to correct the noncompliance in

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addition to suspension of the use or occupancy.

Final paragraph (b) was not included in the proposal, but BLM added it to the final rule because, while the final rule provides for immediate, temporary suspensions, no provision specifically provided for cessation of unlawful use or occupancy, subject to normal appeal procedures or for failure to comply with BLM notices of noncompliance.

Final paragraph (c) describes the circumstances under which BLM can issue notices of noncompliance. BLM included paragraph (c) of the final rule in the proposal at § 3715.6(d). BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Final paragraph (d) describes the circumstances under which BLM can order you to apply within 30 days for authorization under the regulations of 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560.

Section 3715.7–2 What Happens if I Do Not Comply With a BLM Order?

Final § 3715.7–2 describes the legal remedies the Interior Department may seek if you do not comply with a BLM order. This relief may be in addition to the penalties described in § 3715.8. BLM included this paragraph in the proposal at § 3715.6(f). BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.8 What Penalties Are Available to BLM for Violations of This Subpart?

Final § 3715.8 describes the penalties BLM may seek against individuals or corporations for knowingly and willfully violating requirements of this subpart.

One comment suggested that the penalty provisions in proposed § 3715.8 be amended to incorporate the maximum penalties provided for in the Sentencing Reform Act of 1984, as amended (18 U.S.C. 3571 *et seq.*). BLM adopted this comment and made the penalties described in the final rule consistent with the penalties that a court could otherwise impose under the Sentencing Reform Act. Penalty provisions such as those in both FLPMA and the Unlawful Occupancy and Inclosures of Public Lands Act, which provide for up to a year in jail or a fine of $1,000 for violations, are classified as Class A misdemeanors under 18 U.S.C. 3559. The Sentencing Reform Act authorizes fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

Section 3715.8–1 What Happens if I Make False Statements to BLM?

Final § 3715.8–1 describes possible legal consequences if you make false statements to BLM. BLM included this paragraph in the proposal at § 3715.8(b). BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.9 What Appeal Rights Do I Have?

Final § 3715.9 describes the way in which you may appeal BLM decisions, orders or determinations made under this subpart.

BLM has removed provisions included in the proposal which allowed for appeals to the State Director. This change is made to make the appeals provisions in this rule consistent with BLM's other appeals provisions. In addition, because appeals from a BLM non-concurrence or a cessation order may require a hearing, an appellant's rights are best preserved by providing an opportunity for a hearing before an administrative law judge or an administrative appeals board.

Section 3715.9–1 Does an Appeal to IBLA Suspend a BLM Decision?

Final § 3715.9–1 describes the conditions under which a BLM decision may be suspended while IBLA considers an appeal of that decision.

BLM included these paragraphs in the proposal at §§ 3715.9 (b) and (f). BLM received no comments on this portion of the proposal and adopts it with minor editorial changes into the final rule. BLM did not include proposed § 3715.9(g) in the final rule because it is subsumed in the right to appeal a BLM decision to IBLA.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that this final 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. BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. This categorical exclusion includes rules that are of a financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a categories of actions that 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.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. No discernible economic impacts on operations involving occupancy are expected from this final rule. All operations involving occupancy are expected to occur under notices or plans covered by 43 CFR part 3800, subparts 3802 or 3809. The BLM is unaware of any specific casual use occupancies. The cost of complying with the requirements of the final rule is indistinguishable from the requirements imposed by the existing surface management regulations found in 43 CFR part 3800, because the requirements of the final rule limit uses and occupancies to those that are governed by 43 CFR part 3800. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The effect of the rule will be to curtail occupancy activities by those whose occupancy of the public lands is not reasonably incident to mining, prospecting or exploration, or processing operations. Such activities are already, and have long been, prohibited by law. Therefore, the only activities that would be curtailed are those that are already unlawful.

Federal Paperwork Reduction Act

Under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995, the Office of Management and Budget (OMB) has approved the information collection requirements contained in this subpart. OMB has assigned clearance number 1004–0169. BLM

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collects the information so that it may manage use and occupancy of the public lands under the mining laws. A response is mandatory and required to obtain the benefit of occupying the public lands for reasonably incidental activities.

BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW–110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225–0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0169, Washington, DC 20503.

Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will not adversely affect lawful occupancies. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Authors

The principal author of this final rule is Richard E. Deery, Solid Minerals Group, BLM. Patrick W. Boyd, Regulatory Management Team, BLM, prepared the plain English version. Staff of the Division of Mineral Resources, Office of the Solicitor, Department of the Interior, provided assistance.

List of Subjects in 43 CFR Part 3710

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

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Under the authorities cited below, and for the reasons stated in the preamble, part 3710, group 3700, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is amended by adding a new subpart 3715 to read as follows:

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

Subpart 3715—Use and Occupancy Under the Mining Laws

Sec.

3715.0–1 What are the purpose and the scope of this subpart?
3715.0–3 What are the legal authorities for this subpart?
3715.0–5 How are certain terms in this subpart defined?
3715.0–9 Information collection.
3715.1 Do the regulations in this subpart apply to my use or occupancy?
3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?
3715.2–1 What additional characteristic(s) must my occupancy have?
3715.2–2 How do I justify occupancy by a caretaker or watchman?
3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?
3715.3 Must I consult with BLM before occupancy?
3715.3–1 At what point may I begin occupancy?
3715.3–2 What information must I provide to BLM about my proposed occupancy?
3715.3–3 How does BLM process the information I submit about my proposed occupancy?
3715.3–4 How will BLM notify me of the outcome of its review process?
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3715.4 What if I have an existing use or occupancy?
3715.4–1 What happens after I give BLM written notification of my existing occupancy?
3715.4–2 What if I do not notify BLM of my existing occupancy?
3715.4–3 What if BLM does not concur in my existing use or occupancy?
3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?
3715.5 What standards apply to my use or occupancy?
3715.5–1 What standards apply to ending my use or occupancy?
3715.5–2 What happens to property I leave behind?
3715.6 What things does BLM prohibit under this subpart?
3715.7 How will BLM inspect my occupancy and enforce this subpart?
3517.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?
3715.7–2 What happens if I do not comply with a BLM order?
3715.8 What penalties are available to BLM for violations of this subpart?
3715.8–1 What happens if I make false statements to BLM?
3715.9 What appeal rights do I have?
3715.9–1 Does an appeal to IBLA suspend a BLM decision?

Subpart 3715—Use and Occupancy Under the Mining Laws

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

§ 3715.0–1 What are the purpose and the scope of this subpart?

(a) *Purpose.* 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. The Bureau of Land Management (BLM) will prevent abuse of the public lands while recognizing valid rights and uses under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*) and related laws governing the public lands, regardless of when those rights were created. BLM will take appropriate action to eliminate invalid uses, including unauthorized residential occupancy of the public lands.

(b) *Scope.* This subpart applies to public lands BLM administers. They do not apply to state or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though those lands may be subject to the operation of the mining laws.

(c) This subpart does not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers.

§ 3715.0–3 What are the legal authorities for this subpart?

The authorities for this subpart are 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

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

As used in this subpart the term:

Mining laws means 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.

Mining operations means all functions, work, facilities, and activities reasonably incident to mining or processing of mineral deposits. It includes building roads and other means of access to a mining claim or millsite on public lands.

Occupancy means full or part-time residence on the public lands. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Permanent structure means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term also includes a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving. The term does not apply to tents or lean-tos.

Public lands means lands open to the operation of the mining laws which BLM administers, including lands covered by unpatented mining claims or millsites.

Prospecting or exploration means the search for mineral deposits by geological, geophysical, geochemical, or other techniques. It also includes, but is not limited to, sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present.

Reasonably incident means the statutory standard "prospecting, mining, or processing operations and uses reasonably incident thereto" (30 U.S.C. 612). It is a shortened version of the statutory standard. It includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

Substantially regular work means work on, or that substantially and directly benefits, a mineral property, including nearby properties under your control. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It may also include assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of §§ 3715.2 and 3715.2–1. It may also include off-site trips associated with these activities. The term also includes a seasonal, but recurring, work program.

Unnecessary or undue degradation, as applied to unauthorized uses, means those activities that are not reasonably incident and are not authorized under any other applicable law or regulation. As applied to authorized uses, the term is used as defined in 43 CFR 3802.0–5 and 3809.0–5.

§ 3715.0–9 Information collection.

(a) BLM has submitted to the Office of Management and Budget the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995 and assigned clearance number 1004–0169. BLM collects the information so that it may manage use and occupancy of public lands under the mining laws by prohibiting unauthorized uses and occupancies. A response to BLM is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

(b) BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW–110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225–0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0169, Washington, DC 20503.

§ 3715.1 Do the regulations in this subpart apply to my use or occupancy?

To determine if the regulations in this subpart apply to your activities, refer to Table 1 in this section.

TABLE 1

Applicability of this subpart	
If your proposed use of the public lands—	Then—
Includes occupancy and is "reasonably incident" as defined by this subpart.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Involves the placement, construction, or maintenance of enclosures, gates, fences, or signs.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Is reasonably incident, but does not involve occupancy	The provisions of this subpart do not apply to you, except for §§ 3715.4, 3715.5 and 3715.7. You are subject to the applicable regulations in 43 CFR part 3800.
Is *not* reasonably incident (involving rights-of-way, for example), but may be allowed under the public land laws.	The occupancy consultation provisions of this subpart do not apply to you. Your use is not allowed under this subpart. You must seek authorization under 43 CFR Group 2900.
Is not allowed under the public land laws, the mining laws, the mineral leasing laws, or other applicable laws.	Your use is prohibited. You must not begin or continue unauthorized uses.
Involves occupancy of a site, or any subsequent site within a 25-mile radius of the initially occupied site, for 14 days or less in any 90-day period.	The provisions of this subpart do not apply to you. Refer to the applicable regulations in 43 CFR part 8360 and pertinent State Director supplementary rules. 43 CFR part 8360 will not otherwise apply to a reasonably incident use or occupancy that this subpart allows.

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§ 3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?

In order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site, you must be engaged in certain activities. Those activities that are the reason for your occupancy must:

(a) Be reasonably incident;

(b) Constitute substantially regular work;

(c) Be reasonably calculated to lead to the extraction and beneficiation of minerals;

(d) Involve observable on-the-ground activity that BLM may verify under § 3715.7; and

(e) Use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

§ 3715.2–1 What additional characteristic(s) must my occupancy have?

In addition to the requirements specified in § 3715.2, your occupancy must involve one or more of the following:

(a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss;

(b) Protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy;

(c) Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;

(d) Protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or

(e) Being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length. A full shift is ordinarily 8 hours and does not include travel time to the site from a community or area in which housing may be obtained.

§ 3715.2–2 How do I justify occupancy by a caretaker or watchman?

If you assert the need for a watchman or caretaker to occupy the public lands to protect valuable or hazardous property, equipment, or workings, you must show that the need for the occupancy is both reasonably incident and continual. You must show that a watchman or caretaker is required to be present either whenever the operation is not active or whenever you or your workers are not present on the site.

§ 3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?

BLM may allow temporary occupancy at a single site to extend beyond the 14-day period described in § 3715.1 if you need to secure the site beyond 14 days through the use of a watchman as allowed by § 3715.2–2, and you have begun consultation with BLM under § 3715.3. If BLM decides not to concur in the occupancy, the temporary occupancy must stop.

§ 3715.3 Must I consult with BLM before occupancy?

Before beginning occupancy, you must consult with BLM about the requirements of this subpart. See Table 2 in this section.

TABLE 2

Consultation requirements	
If you are proposing a use that would involve occupancy	Then.
Under a plan of operations or a modification submitted under 43 CFR part 3800, subpart 3802 or subpart 3809.	You must include in the proposed plan of operations the materials required by § 3715.3–2 describing any proposed occupancy for BLM review concurrently with review of the plan of operation. BLM will determine whether you have complied with the requirements of this subpart together with its decision approving or modifying the plan.
Under the notice provisions of 43 CFR part 3800, subpart 3809.	You must submit the materials required by § 3715.3–2 together with the materials submitted under 43 CFR 3809.1–3 for BLM review concurrently with its review of the proposed activity. Any activities in the notice that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
And is a "casual use" under 43 CFR 3809.1–2 or does not require a plan of operations under 43 CFR 3802.1–2 and 3809.1–4 or a notice under 43 CFR 3809.1–3.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM. Any casual use activities that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
Or enclosures, fences, gates, or signs intended to exclude the general public.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM.

§ 3715.3–1 At what point may I begin occupancy?

You must not begin occupancy until—

(a) You have complied with either 43 CFR part 3800, subpart 3802 or 3809 and this subpart, and BLM has completed its review and made the required determinations under the applicable subparts, and

(b) You have obtained all federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations for the particular use or occupancy as required under this subpart.

§ 3715.3–2 What information must I provide to BLM about my proposed occupancy?

You must give BLM a detailed map that identifies the site and the placement of the items specified in paragraphs (c), (d), and (e) of this section, and a written description of the proposed occupancy that describes in detail:

(a) How the proposed occupancy is reasonably incident;

(b) How the proposed occupancy meets the conditions specified in § 3715.2 and § 3715.2–1;

(c) Where you will place temporary or permanent structures for occupancy;

(d) The location of and reason you need enclosures, fences, gates, and signs intended to exclude the general public;

(e) The location of reasonable public passage or access routes through or around the area to adjacent public lands; and

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(f) The estimated period of use of the structures, enclosures, fences, gates, and signs, as well as the schedule for removal and reclamation when operations end.

§ 3715.3–3 How does BLM process the information I submit about my proposed occupancy?

BLM will review all proposed occupancies and all proposed enclosures, fences, gates, or signs intended to exclude the general public to determine if your proposed occupancy or use will conform to the provisions of §§ 3715.2, 3715.2–1 and 3715.5. BLM will complete its review of a proposed occupancy not involving a plan of operations within 30 business days of receipt of the materials, unless it concludes that the determination cannot be made until:

(a) 30 business days after it prepares necessary environmental documents, and

(b) 30 business days after it has complied with section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes, if applicable.

§ 3715.3–4 How will BLM notify me of the outcome of its review process?

At the conclusion of the review, BLM will make a written determination of concurrence or non-concurrence, and will send it to you. For operations conducted under a plan of operations, BLM will include this written determination in the decision that approves, modifies, or rejects the plan.

§ 3715.3–5 What will BLM's notification include?

(a) BLM will include in each determination of concurrence a statement requiring you to continue to comply with §§ 3715.2, 3715.2–1 and 3715.5.

(b) BLM will specify in each determination of non-concurrence how the proposed occupancy fails to meet the conditions of § 3715.2, § 3715.2–1 or § 3715.5, and will provide you an opportunity to modify the proposed occupancy or appeal the determination under § 3715.9.

§ 3715.3–6 May I begin occupancy if I have not received concurrence from BLM?

If you have not received concurrence from BLM, you must not begin occupancy even though you have submitted, or plan to submit, an amended occupancy proposal or an appeal.

§ 3715.4 What if I have an existing use or occupancy?

(a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under § 3715.7–1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.

(b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year after that date, without being subject to the procedures this subpart imposes, if:

(1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; and

(2) BLM has no pending trespass action against you concerning your occupancy.

(c) The one-year grace period provided in paragraph (b) of this section will not apply if at any time BLM determines that your use or occupancy is not reasonably incident and the continued presence of the use or occupancy is a threat to health, safety or the environment. In this situation, BLM will order an immediate temporary suspension of activities under § 3715.7–1(a).

(d) If you have no existing occupancies, but are engaged in uses of the public lands under the mining law, you are subject to the standards in § 3715.5. BLM will determine if your existing uses comply with those standards during normal inspection visits to the area and during BLM review of notices and plans of operations filed under 43 CFR part 3800.

§ 3715.4–1 What happens after I give BLM written notification of my existing occupancy?

(a) BLM will visit your site during the normal course of inspection to obtain the information described in § 3715.3–2. After the visit, BLM will make a determination of concurrence or non-concurrence.

(b) You must provide the information described in § 3715.3–2 to BLM. You may provide it either in writing or verbally during a site visit by BLM field staff.

§ 3715.4–2 What if I do not notify BLM of my existing occupancy?

If you do not provide the written notice required in § 3715.4, you will be subject to the enforcement actions of § 3715.7–1, the civil remedies of § 3715.7–2, and the criminal penalties of § 3715.8.

§ 3715.4–3 What if BLM does not concur in my existing use or occupancy?

If BLM determines that all or any part of your existing use or occupancy is not reasonably incident:

(a) BLM may order a suspension or cessation of all or part of the use or occupancy under § 3715.7–1;

(b) BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800; and

(c) BLM may order you to apply within 30 days after the date of notice from BLM for appropriate authorization under the regulations in 43 CFR Group 2900.

§ 3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?

BLM may defer a determination of concurrence or non-concurrence with your occupancy until the underlying fee simple title to the land has been finally determined by the Department of the Interior. During this time, your existing occupancy may continue, subject to § 3715.5(a).

§ 3715.5 What standards apply to my use or occupancy?

(a) Your use or occupancy must be reasonably incident. In all uses and occupancies, you must prevent or avoid "unnecessary or undue degradation" of the public lands and resources.

(b) Your uses must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under 43 CFR part 3800.

(c) Your occupancies must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under this subpart and 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery

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Act (42 U.S.C. 6901 *et seq.*), as required under this subpart and 43 CFR part 3800.

(d) If your prospecting or exploration activities involve only surface activities, you must not place permanent structures on the public lands. Any temporary structures you place on the public lands during prospecting or exploration will be allowed only for the duration of the activities, unless BLM expressly and in writing allows them to remain longer. If your prospecting or exploration activities involve subsurface activities, you may place permanent structures on the public lands, if BLM concurs.

(e) All permanent and temporary structures you place on the public lands must conform with the applicable state or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If state or local codes require, you must obtain a certificate of occupancy or its equivalent before you begin use or occupancy involving permanent structures. If state or local law requires, you must also acquire appropriate sewerage and sanitation permits before the occupancy or use of a permanent structure placed on the public lands.

§ 3715.5–1 What standards apply to ending my use or occupancy?

Unless BLM expressly allows them in writing to remain on the public lands, you must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during authorized use or occupancy under this subpart. You have 90 days after your operations end to remove these items. If BLM concurs in writing, this provision will not apply to seasonal operations that are temporarily suspended for less than one year and expected to continue during the next operating season or to operations that are suspended for no longer than one year due to market or labor conditions.

§ 3715.5–2 What happens to property I leave behind?

Any property you leave on the public lands beyond the 90-day period described in § 3715.5–1 becomes property of the United States and is subject to removal and disposition at BLM's discretion consistent with applicable laws and regulations. You are liable for the costs BLM incurs in removing and disposing of the property.

§ 3715.6 What things does BLM prohibit under this subpart?

Except where other applicable laws or regulations allow, BLM prohibits the following:

(a) Placing, constructing, maintaining or using residences or structures for occupancy not meeting:

(1) The conditions of occupancy under §§ 3715.2 or 3715.2–1; or

(2) Any of the standards of occupancy under § 3715.5;

(b) Beginning occupancy before the filing, review, and approval or modification of a plan of operation as required under 43 CFR part 3800, subparts 3802 or 3809;

(c) Beginning occupancy before consultation with BLM as required by § 3715.3 for activities that do not require a plan of operations under 43 CFR part 3800, subpart 3802 or that are defined as casual use or notice activities under 43 CFR part 3800, subpart 3809;

(d) Beginning occupancy without receiving a determination of concurrence because the proposed occupancy or fencing will not conform to the provisions of § 3715.2, § 3715.2–1 or § 3715.5;

(e) Not complying with any order issued under this subpart within the time frames the order provides;

(f) Preventing or obstructing free passage or transit over or through the public lands by force, threats, or intimidation; provided, however, that reasonable security and safety measures in accordance with this subpart are allowed;

(g) Placing, constructing, or maintaining enclosures, gates, or fences, or signs intended to exclude the general public, without BLM's concurrence;

(h) Causing a fire or safety hazard or creating a public nuisance;

(i) Not complying with the notification and other requirements under § 3715.4 relating to an existing occupancy; and

(j) Conducting activities on the public lands that are not reasonably incident, including, but not limited to: non-mining related habitation, cultivation, animal maintenance or pasturage, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of non-mineral, hazardous or toxic materials or waste that are generated elsewhere and brought onto the public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; searching for buried treasure, treasure trove or archaeological specimens; operating hobby and curio shops; cafes; tourist stands; and hunting and fishing camps.

§ 3715.7 How will BLM inspect my use or occupancy and enforce this subpart?

(a) BLM field staff is authorized to physically inspect all structures, equipment, workings, and uses located on the public lands. The inspection may include verification of the nature of your use and occupancy to ensure that your use or occupancy is, or continues to be, reasonably incident and in compliance with §§ 3715.2, 3715.2–1, 3715.4–1 and 3715.5.

(b) BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

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

BLM has four types of orders that it can issue depending on the circumstances:

(a) *Immediate suspension.*

(1) BLM may order an immediate, temporary suspension of all or any part of your use or occupancy if:

(i) All or part of your use or occupancy is not reasonably incident or is not in compliance with §§ 3715.2, 3715.2–1, 3715.3–1(b), 3715.5 or 3715.5–1, and

(ii) an immediate, temporary suspension is necessary to protect health, safety or the environment.

(2) BLM will presume that health, safety or the environment are at risk and will order your use or occupancy to be immediately and temporarily suspended if:

(i) You are conducting an occupancy under a determination of concurrence under this section; and

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

(3) The suspension order will describe—

(i) How you are failing or have failed to comply with the requirements of this subpart; and

(ii) The actions, in addition to suspension of the use or occupancy, that you must take to correct the noncompliance and the time by which you must suspend the use or occupancy. It will also describe the time, not to exceed 30 days, within which you must complete corrective action.

(4) The suspension order will not be stayed by an appeal.

(b) *Cessation order.*

(1) BLM may order a temporary or permanent cessation of all or any part of your use or occupancy if:

(i) All or any part of your use or occupancy is not reasonably incident but does not endanger health, safety or the environment, to the extent it is not reasonably incident;

(ii) You fail to timely comply with a notice of noncompliance issued under paragraph (c) of this section;

(iii) You fail to timely comply with an order issued under paragraph (d) of this section; or

(iv) You fail to take corrective action during a temporary suspension ordered under paragraph (a) of this section.

(2) The cessation order will describe—

(i) The ways in which your use or occupancy is not reasonably incident; is in violation of a notice of noncompliance issued under paragraph (c) of this section; or is in violation of an order issued under paragraphs (a) or (d) of this section, as appropriate;

(ii) The actions, in addition to cessation of the use or occupancy, that you must take to correct the noncompliance;

(iii) The time by which you must cease the use or occupancy, not to exceed 30 days from the date the Interior Board of Land Appeals affirms BLM's order; and

(iv) The length of the cessation.

(c) *Notice of noncompliance.*

(1) If your use or occupancy is not in compliance with any requirements of this subpart, and BLM has not invoked paragraph (a) of this section, BLM will issue an order that describes—

(i) How you are failing or have failed to comply with the requirements of this subpart;

(ii) The actions that you must take to correct the noncompliance and the time, not to exceed 30 days, within which you must start corrective action; and

(iii) The time within which you must complete corrective action.

(2) If you do not start and complete corrective action within the time allowed, BLM may order an immediate suspension under paragraph (a) of this section, if necessary, or cessation of the use or occupancy under paragraph (b) of this section.

(d) *Other.* If you are conducting an activity that is not reasonably incident but may be authorized under 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560, BLM may order you to apply within 30 days from the date you receive the order for authorization under the listed regulations.

§ 3715.7–2 What happens if I do not comply with a BLM order?

If you do not comply with a BLM order issued under § 3715.7–1, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to prevent you from using or occupying the public lands in violation of the regulations of this subpart. This relief may be in addition to the enforcement actions described in § 3715.7–1 and the penalties described in § 3715.8.

§ 3715.8 What penalties are available to BLM for violations of this subpart?

The penalties for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)) and/or section 4 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1064). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense.

(b) *Organizations.* If an organization or corporation knowingly or willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

§ 3715.8–1 What happens if I make false statements to BLM?

You are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal or cover up by any trick, scheme or device a material fact, or make any false, fictitious or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious or fraudulent statement or entry. If you are convicted, you will be fined not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

§ 3715.9 What appeal rights do I have?

If you are adversely affected by a BLM decision, order or determination made under this subpart, you may appeal the decision, order or determination to the Interior Board of Land Appeals (IBLA) under the provisions of 43 CFR part 4.

§ 3715.9–1 Does an appeal to IBLA suspend a BLM decision?

(a) An appeal to IBLA does not suspend an order requiring an immediate, temporary suspension of occupancy issued under § 3715.7–1(a) before the appeal or while it is pending. In this case, the provisions of 43 CFR 4.21(a) do not apply.

(b) The provisions of 43 CFR 4.21(a) apply to all other BLM decisions, orders or determinations under this subpart.

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