

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[CO-913-1630-PD]

Notice of Proposed Supplementary Rules for Public Land Administered by the Bureau of Land Management in Colorado Relating to the Unlawful Use of Alcohol by Underage Persons, Driving Under the Influence of Alcohol and/or Drugs, and Drug Paraphernalia Use and Possession on Public Land**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed supplementary rules for public land within the State of Colorado.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules to apply to the public lands within the State of Colorado. The rules relate to the illegal use of alcohol and drugs on the public lands. The BLM needs the supplementary rules to protect natural resources and the health and safety of public land users. These supplementary rules will allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to Alcohol and Drug laws in a manner consistent with current State of Colorado laws as contained in the Colorado Revised Statutes.

DATES: Comments on the proposed supplementary rules must be received or postmarked by October 3, 2002 to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: *Mail:* Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Personal or messenger delivery: 2850 Youngfield Street, Lakewood, Colorado 80215.

Internet email:
John_Silence@co.blm.gov.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge, John Silence at (303) 239-3803.

Public Comment Procedures: Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. When possible,

your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Colorado State Office address listed in **ADDRESSES**, above, during regular business hours (9 a.m. to 4 p.m., Monday through Friday, except Federal holidays). Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. You may include reasons for your request. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

SUPPLEMENTARY INFORMATION:**I. Discussion of the Supplementary Rules**

These supplementary rules will apply to all the public lands within the State of Colorado. In keeping with the BLM's performance goal to reduce threats to public health, safety, and property, these supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health; to reduce the potential for damage to the environment; and to enhance the safety of visitors and neighboring residents. Alcohol-related offenses are a growing problem on the public lands. Unlawful consumption of alcohol and drugs, and abuses of alcohol and drugs, such as driving while under the influence, pose a significant health and safety hazard to all users and uses of the public lands and can result in the destruction of natural resources and property, and/or cause physical injury/death. In addition, drug-related offenses, including the possession of drug paraphernalia, result in the legitimization and encouragement of the illegal use of controlled substances by making the drug culture more visible and enticing. Further, the ready availability of drug paraphernalia tends to promote, suggest, or increase the public acceptability of the illegal use of controlled substances. In keeping with BLM's policy regarding the reduction of

illegal use of controlled substances on public lands, and due to undesirable impacts on the public lands, the greatest of which is the threat to visitor safety and the safety of BLM employees, the BLM Colorado Law Enforcement Program will continue aggressive pursuit of ways to eliminate the possession, use, manufacturing, and trafficking of controlled substances, as well as the use and availability of drug paraphernalia on public lands, and will seek prosecution of those persons responsible for such activity. These supplementary rules will allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to Alcohol and Drug laws in a manner patterning current State of Colorado laws as contained in the Colorado Revised Statutes in an effort to further the working relationship and partnerships formed with numerous Sheriff's Departments throughout Colorado and the Colorado State Patrol.

II. Procedural Information*Executive Order 12866, Regulatory Planning and Review*

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of \$100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands, for purposes of protecting public health and safety. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The supplementary rules merely enable BLM law enforcement personnel to enforce regulations pertaining to unlawful possession/use of alcohol and drugs in a manner patterning current State of Colorado laws, as contained in the Colorado Revised Statutes, where appropriate on public lands.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We

invite your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the interim final supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed supplementary rules will enable BLM law enforcement personnel to cite persons for unlawful possession/use of alcohol or drugs on public lands for the purpose of protecting public health and safety. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section, above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial,

on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a “major rule” as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who may wish to use alcohol or drugs on the public lands. In this respect, the regulation of such use is necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no effect on business, commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year; nor do these interim final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

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

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone’s property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules will not have a substantial direct effect on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in only one state, Colorado, and do not address jurisdictional issues involving the Colorado State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Colorado State Office of BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this supplementary rules is Special Agent David Moore of the Colorado State Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management, issues supplementary rules for public lands in Colorado, to read as follows:

Dated: July 1, 2002.

Ann Morgan,
State Director, Colorado.

Supplementary Rules on Possession and Use of Drugs and Alcohol on Public Lands

The Colorado State Office issues these supplementary rules under the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. 1740 and 43 CFR 8365.1–6. Enforcement authority for these supplementary rules is found in FLPMA, 43 U.S.C. 1733.

A. Unlawful Possession, and/or Consumption of an Ethyl Alcohol Beverage

1. Definitions

a. As defined in Colorado Revised Statutes Title 18, Article 13, Section 122 (1)(b); “Etyhl alcohol” means any

substance which is or contains ethyl alcohol.

b. "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence or control.

3. Prohibited Acts

a. If you are under 21 years of age, you must not purchase, possess, or consume any ethyl alcohol beverages or products on public lands.

b. You must not misrepresent your age or the age of any other person for the purpose of purchasing or otherwise obtaining any ethyl alcohol beverages or products on public lands.

c. You must not sell, offer to sell, or otherwise furnish or supply any ethyl alcohol beverages or products to any person under the age of 21 years on public lands.

B. Driving Under the Influence of Alcohol and/or a Narcotic or Dangerous Drug

1. Definitions

a. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (1)(f): "Driving under the influence" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgement, sufficient physical control, or due care in the safe operation of a vehicle.

b. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (5)(c): If there was at such time 0.10 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, it shall be presumed that the defendant was under the influence of alcohol.

c. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (1)(g): "Driving while ability impaired" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs, affects the person to the slightest

degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

d. As defined in the Colorado Revised Statutes Title 42, Article 4, Section 1301 (5)(b): If there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, such fact shall give rise to the presumption that the defendant's ability to operate a vehicle was impaired by the consumption of alcohol, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

2. Prohibited Act

You must not operate a motor vehicle on public lands while under the influence, or while your abilities are impaired as described and defined above in items B.1.a-d.

C. Drug Paraphernalia

You must not possess any drug paraphernalia, as described by Colorado Revised Statutes Title 18, Article 18, Section 426, on public lands.

D. Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you violate or fail to comply with any of the provisions in sections A., B., and C. of these supplementary rules, you may be subject to a fine under 18 U.S.C. 3571 or other penalties under 43 U.S.C. 1733.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-020-1430-ET; NMM 103817]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 430.015 acres, more or less, of

public land in Taos County, New Mexico, to protect the riparian, scenic, and recreational values of the Rio Grande Wild and Scenic River. This notice closes the public land for up to 2 years from location under the United States mining laws. The public land will remain open to mineral leasing.

DATES: Comments must be received by December 2, 2002.

ADDRESSES: Comments should be sent to the Taos Field Office Manager, BLM, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM, Taos Field Office, 505-751-4709.

SUPPLEMENTARY INFORMATION: On May 13, 2002, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from location under the United States mining laws, subject to valid existing rights:

Parcel 2B

New Mexico Principal Meridian

A certain tract of land south of Ranchos de Taos, Taos County, New Mexico; within the Gijosa Grant; located within projected Sections 2, 11, 12, and 13, T. 24 N., R. 11 E., NMPM; described as part of Blocks 14, 24, 25, and 29 as shown on a survey for the Ranchos Orchard and Land Company; also described as part of Tract 1, Map 73, part of Tract 1, Map 78, part of Tract 1, Map 74, part of Tract 1, Map 77, and part of Tract 2, Map 75, all within Survey 2 of the 1941 Taos County Reassessment Survey; and more particularly described by metes and bounds as follows:

Beginning at the East corner of this tract, a 1/2 in. rebar set on the northwesterly right-of-way of State Road 68, from whence triangulation station "Gijosa 2", a 1958 USC & GS brass cap monument found, bears N 67°14'35" E, 8721.55 ft. distant, thence along said right-of-way; S 65°21'58" W, 1293.07 ft. to the South corner, a 1/2 in. rebar set, thence leaving said right-of-way; N 34°07'38" W, 8245.79 ft. to the West corner, a 1/2 in. rebar set on the easterly bank of the Rio Grande (the true boundary of the Gijosa Grant and of this tract is the medial line of the Rio Grande), thence along said bank the following meander courses; S 71°24'03" E, 35.79 ft. to a 1/2 in. rebar set, thence; S 78°45'26" E, 83.38 ft. to a 1/2 in. rebar set, thence; N 79°45'29" E, 77.51 ft. to a 1/2 in. rebar set, thence; S 85°06'12" E, 53.09 ft. to a 1/2 in. rebar set, thence; S 69°16'53" E, 126.66 ft. to a 1/2 in. rebar