

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Parts 2930, 3800, 6300, 8340, 8370, and 9260****[WO-250-1220-PA-24 1A]****RIN 1004-AD25****Permits for Recreation on Public Lands****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

SUMMARY: This final rule updates the regulations of the Bureau of Land Management (BLM) that tell how to obtain recreation permits for commercial recreational operations, competitive events and activities, organized group activities and events, and individual recreational use of special areas. It establishes a new system for determining costs for reimbursement to BLM, helping to ensure a fair return to the public for special uses of the public lands. It adds new regulations on how to obtain Recreation Use Permits for fee areas, such as campgrounds, certain day use areas, and recreation-related services.

The final rule also meets the policy goal of reorganizing the regulations in a more systematic way. The rule relocates the regulations to the subchapter dealing with other land use authorizations, reorganizes them into an order that flows more logically, and simplifies the language.

The final rule is necessary for several reasons. First, it emphasizes and highlights the cost recovery requirements for issuing recreation permits. Second, it updates BLM regulations to reflect changes over the last 15 years in recreational activities and large-scale events. Third, it provides guidance and standards for use of developed recreation sites.

EFFECTIVE DATE: October 31, 2002.

ADDRESSES: You may send inquiries or suggestions to: Department of the Interior, Bureau of Land Management, Mail Stop WO-250, 1849 C St., NW., Attention: Lee Larson, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452-5168. Persons who use a telecommunications device for the deaf (TDD) may contact Mr. Larson by calling the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

- II. Responses to Comments
- III. Final Rule as Adopted
- IV. Procedural Matters

I. Background

BLM published the regulations at 43 CFR part 8370 on September 12, 1978 (43 FR 40738). These regulations covered only Special Recreation Permits for use of lands other than developed recreation sites. BLM has reserved a separate subpart 8371 on use of fee areas and developed sites since 1978. BLM amended subpart 8372—Special Recreation Permits Other Than on Developed Recreation Sites—on August 29, 1984 (49 FR 34337), by defining “actual expenses,” by revising the section on “Enforcement,” by adding a section on exceptions to the Special Recreation Permit requirements, and by revising the section on “Fees.” They were amended again on March 31, 1988 (53 FR 10394), by adding a section on “Appeals” that allows appeals but places decisions in full force and effect pending appeal unless the Secretary of the Interior decides otherwise.

BLM published the proposed rule on Permits for Recreation on Public Lands in the **Federal Register** on May 16, 2000 (65 FR 31234). The proposed rule, while it revised and redesignated the entire subpart 8372 in the CFR, focused on how to obtain recreation permits for commercial recreational operations, competitive events and activities, organized group activities and events, and individual recreational use of special areas. It proposed a cost recovery system. It also proposed new regulations for campgrounds and other fee areas.

The period for public comment on the proposed rule expired on July 17, 2000. BLM received about 400 public comment letters or other communications during this comment period.

II. Responses to Comments

In this portion of the Supplementary Information, we will discuss the sections of the proposed rule upon which the public commented, or that need to be changed for some other reason. If we do not discuss a particular section or paragraph, it means that no public comments addressed the provision. However, we may change wording of other sections where we find clarification or style changes necessary or appropriate, and there is no other need for substantive amendment in the final rule.

Section 2931.3 Authorities

One comment suggested adding the Recreational Fee Demonstration

Program authorization (Pub. L. 104-134) to the authorities listed. This program allows BLM to keep fees generated at recreational sites, through a permanent appropriation, in a special Treasury account that carries over from year to year. It also allows more innovative fee collection approaches, including cooperation with other Federal agencies and State and local government, and collection of fees where we had not collected them before.

This Program is a temporary program established by Congress. Unless Congress makes the authority permanent, we cannot cite it as authorization for general fee and permit regulations.

Section 2932.5 Definitions

Actual expenses. One comment addressed the definition of “actual expenses.” The comment suggested that insurance and bonding costs, contingency funds (that trip organizers may set up to replace lost or damaged equipment, for example), and amortization should be counted in the calculation to determine whether an activity is noncommercial because the participants share the expenses.

BLM will consider amortization when the equipment being used belongs to all of the participants rather than just one. Otherwise, one person is receiving a financial benefit from the trip, making the trip commercial. We agree that insurance covering a group for a specific activity may conceivably be a shared expense, and have amended the definition of “actual expenses” so that the regulations would not prevent that. BLM does not require bonds for noncommercial, noncompetitive outings. The regulations do not disqualify trips from being noncommercial because of contingency funds, so long as they are used to defray actual expenses of the activity or returned to the participants.

Commercial use. Several comments questioned the definition of “commercial use.” One stated that the definition was not clear and might lead BLM to determine that an outdoor retailer must obtain a Special Recreation Permit (SRP) if any of their customers used public land for recreation. The comment urged that the text be amended to provide that only persons providing goods and services or both on public lands, as opposed to retail outlets on private land, will need SRPs.

Some comments disagreed that public advertising should be a criterion for deciding whether an event or activity was commercial. They suggested that BLM define the term “public advertising.” Some wanted

announcements to members of organizations included in the definition while others wanted communications within groups to be specifically excluded.

Two comments addressed paragraph (1)(iv) of the definition of "commercial use." One respondent found the paragraph ambiguous, unworkable, and dependant on the perception of the participant. The other comment supported the definition but suggested changing "participants pay for" to "the permittee receives payment for." The comment stressed that the requirement should bind the permittee, not the participant. Our response to this comment is that the section is a definition. It does not itself impose requirements on any party.

"Participants pay for * * *" is a good description of an action that would identify a use as commercial.

One comment suggested changing the definition to: "Commercial use is providing goods or services on BLM administered lands and related waters for compensation of any kind."

One comment agreed that the definition of "commercial" is appropriate, but stated that it should be modified to clarify that a fee or donation used to offset the administrative expenses of a trip program qualifies the activity as commercial in nature. Specifically, it urged that we add at the end of the sentence at (1)(ii): "including compensation for administrative expenses associated with the activity, whether those expenses are paid by contribution or by trip fees."

If the definition of "commercial use" is read in its entirety, the meaning is clear. It refers only to uses occurring on public lands and related waters. We have added language to the definition to make it clear that the commercial operator is the person or organization that leads or sponsors the activity, not the retailer who sells recreational equipment to the general public.

The common meaning of "public advertising" is generally well understood to include appeals and inducements to the general public through newspapers, broadcast media, Internet sites available to the general public, listing on public or community event calendars, publicly displayed signs, posters and flyers. Public advertising does not include communications within the known membership of an identifiable group. The proposed regulation specified but did not define "public advertising." In the final rule, we have changed the definition of "commercial use" to specify that it is paid advertising that qualifies a use as commercial. We

believe the suggestion in the comment to include announcements to group members in public advertising to be overly broad. If a private, social organization plans an activity on public land, information about the activity must be shared with the membership. This might take place in organization news letters, bulletins, posters in the club house, etc. All these communications tools could be considered advertising if we adopted the approach the comment suggested. Paid advertising outside the organization would be considered public advertising, but we do not consider that publicity such as a notice on a public bulletin board alone makes a trip commercial.

The definition as proposed provides an adequate description to allow BLM staff and members of the public to decide whether an activity is commercial.

The plain text of paragraph (1)(ii) is quite clear when it says that collection of a fee or other compensation that is not strictly a sharing of actual expenses or exceeds actual expenses incurred for the purposes of the activity, service or use, makes an event commercial. If an event organizer collects a fee to cover overhead or administrative costs, BLM would conclude that the use is commercial.

Organized group activity. We have amended the definition of "organized group activity" to make it clear that it covers only recreational use. See the discussion of section 2932.11, below, for an explanation.

Section 2932.11 When Do I Need a Special Recreation Permit?

Numerous comments addressed organized group permits.

Most of these comments were opposed to implementation of a group permit regulation. Most of them based their opposition on their interpretation of the definition of "organized group activity," contending that, as written, it could require a permit for anyone wishing to use public lands anywhere at any time. Most also mentioned the right to freedom of assembly, contending that the proposed regulation abrogates that right.

Several comments supported the elimination of the 50-vehicle ceiling for permit waivers, but suggested another threshold for when BLM should require group permits. Several other comments suggested that this is a new requirement, and therefore is a major action that requires further review.

The definition of "organized group activity" in § 2932.5 clearly concerned

many of the respondents. As proposed, the definition was:

"Organized group activity" means a structured, ordered, consolidated, or scheduled meeting on or occupation of the public lands for the purpose of recreational or other use that is not commercial or competitive.

This definition does lend itself to the interpretation described by those who commented, by expanding the scope of the definition to include meetings and other non-recreational uses. We have amended the definition in the final rule to make it clear that it covers only recreational uses.

We have also amended § 2932.11 to provide that organizers of group events or activities need a permit only if required by a BLM management or activity plan or when we determine that resource concerns, potential user conflicts, or public health and safety concerns indicate that a permit is necessary. We have also amended the rule to treat small group events the same way we treat small competitive events. That is, we may waive the permit requirement (see § 2932.12) if an organized event is not commercial, not advertised, does not pose appreciable risks to people or the environment, and does not require special BLM management or monitoring.

Any threshold on the number of people making up a group that needs a permit would be difficult to establish on a national basis. BLM will determine the threshold, if any, for each area. (For example, 10 people in a sensitive riparian area may constitute an organized group, but a less sensitive upland area may be able to handle 200 people without special management attention.) BLM will base this determination on planning, resource concerns, potential user conflicts, public health and safety, or a combination of these factors.

The requirement for a group permit is not new. Our approach is similar to that of the National Park Service, which codified implementing regulations at 36 CFR 71.10 in 1974. BLM's authority for this type of permit is section 4 of the Land and Water Conservation Fund Act (LWCF) of 1965 (16 U.S.C. 460l-1 *et seq.*).

One comment addressed the effect of the proposed rule on institutional groups. It suggested that the permit waiver requirements are overly broad, and would essentially prevent any institution from qualifying for a waiver for any type of use.

We may require academic, educational, scientific, and research groups to obtain a permit, depending

upon how they structure their trips. For example, if BLM determines that the institutional group is commercial use or if the primary purpose of a use is recreational, and academic aspects are incidental, we would not waive the permit requirement. If the use is noncommercial, the primary purpose is academic, the use supports management objectives, and BLM has either requested the institution to complete a project or study, or BLM can benefit from a project or study that the institution proposes and intends to complete if permitted, BLM could issue an administrative use authorization. BLM may issue permits to use special areas to institutional groups making noncommercial use of these areas on a cost sharing basis. Where BLM has allocated access to particular kinds of uses and numbers of trips through land use planning, we may award additional, non-allocated permits on a space available basis.

Section 2932.14 Do I Need a Special Recreation Permit To Hunt, Trap, or Fish?

A number of comments questioned why hunting, fishing, and trapping were singled out as activities not needing a permit. Some described this section as arbitrary and capricious for including only these uses, and not other, less consumptive uses. One comment noted that these uses still need a permit if they meet the requirements of commercial, competitive, or organized group permits. One comment concerned the requirement for guides involved in hunting, fishing, and trapping to acquire an SRP. The respondent suggested that the provision should indicate that the guide would need an SRP only if the guiding is taking place on public lands and related waters. The comment writer also wanted the rule to provide that drop-off or air taxi service would not require an SRP.

The intent of this section is to reiterate that hunting, fishing, and trapping primarily fall under the purview of the States. However, both the proposed rule and the final rule require a commercial enterprise that provides guide or outfitter service in support of hunting, fishing, or trapping to have a Special Recreation Permit. However, we have amended this provision to make it clear that if an organized group wished to go on a hunting trip on public lands, or someone wanted to hold a fishing tournament as a competitive event, BLM would require a Special Recreation Permit. The point of this amendment is that if the subject of an activity or event is hunting or fishing, it does not excuse

the organizer or sponsor from obtaining a permit if the regulations otherwise require a permit because the event is commercial or competitive.

The title of the regulations, "Part 2930—Permits for Recreation on Public Lands," limits the content of the regulations to permits for recreational use of public lands. For the purposes of brevity, we do not repeat the phrase, "on public land and related waters," throughout the text.

Drop-off/pickup air taxi services that meet the definition of "commercial use" in § 2932.5 would need an SRP unless they had an airport lease or right of way for commercial use.

Section 2932.22 When Do I Apply for a Special Recreation Permit?

We received 6 comments that primarily addressed the requirement that applicants submit applications for Special Recreation Permits at least 180 days before their activities are to begin. Several other comments addressed this issue along with other concerns.

Most of these comments maintained that 180 days would be too far in advance, particularly for small competitive groups, or small organized groups and event sponsors, to have to apply.

Several of the comments also stated that it would not be fair to applicants to tell them as late as four months after they submitted their applications that we would not be able to issue a permit in time for their activity to take place, as provided in proposed § 2932.25.

On the other hand, none of the commercial outfitters who addressed this issue objected to the 180 day advance requirement.

While the preamble states that the local BLM office may provide for a shorter review period, this exception is not reflected in the regulation. The BLM handbook also specifies that we may be able to act on applications filed fewer than 180 days before your proposed activity or event.

We believe that 180 days is a reasonable requirement for permits that require environmental assessment beyond that already covered in a land use plan, programmatic EA, or categorical exclusion. If the proposed activity occurs in critical habitat for a threatened or endangered species, for example, BLM may have to engage in lengthy consultation with another agency. Therefore, we believe that the 180 day requirement reflects BLM's needs for most proposed competitive, commercial, and organized group or event activities. In some cases (for example, where there is great demand for access to the public lands), local

offices may need to require that applications be submitted in advance of 180 days. This may happen when it is necessary to schedule a series of separate annual events on succeeding weekends. However, we have amended the provision in the final rule to make it clear that BLM may reduce the time requirement for events or activities that do not require extensive environmental documentation or consultation. We have also revised section 2932.25 to provide for earlier warning from BLM that permit application will require more than routine review.

Section 2932.24 What Information Must I Submit With My Application?

Comments from the outfitter community suggested that we should amend § 2932.24(a)(3) by adding a provision for applications to include a statement of how the applicant's activity would contribute to the public's use and enjoyment of the land and resources that we manage.

While this information would be useful, and BLM would certainly consider it when evaluating an application (as provided in § 2932.26), it is not necessary. Further, it might be misleading to make it a requirement for applications. Lack of a concrete public benefit does not disqualify an activity that is the object of a Special Recreation Permit application. We do not want to suggest in the regulations that a general public benefit is a prerequisite for obtaining a permit under these regulations.

Section 2932.31 How Does BLM Establish Fees for Special Recreation Permits?

A few comments that addressed this section did not recommend any change to the Proposed Rule. However, they strongly urged BLM to seek professional guidance from the appraisal industry, user groups, and others concerned with or affected by how fees will be determined, when we compile our fee schedules.

We concur with these comments, and plan such consultation. No change in the rule is necessary to respond to these comments.

More than 200 comments addressed the cost recovery provisions in paragraph (d) of this section (paragraph (e) in the final rule). About 20 of these came from outfitters and commercial operators. However, most of these comments came from participants in a single event, Burning Man in Nevada. Nearly all the comments opposed imposition of both cost recovery and use fees for the same permit. Several comments suggested that the 50 hour

threshold for charging cost recovery is too low, and suggested that cost recovery should be charged after 75–100 hours of BLM staff time, or 200 hours, in the case of some comments. Nearly all the comments from participants in the Burning Man event agreed that BLM should recover our administrative costs. However, they thought that BLM should not “profit” by charging both cost recovery and use fees, which many dubbed “double dipping.”

Outfitters and commercial operators generally opposed cost recovery on permit renewals. Also, most of them raised the issue of how cost recovery should be applied in the case of multi-year permits.

Outfitters and several other respondents suggested that the costs of preparing programmatic environmental assessments (EAs) not be included in cost recovery charges, since the benefits fall to the general public and succeeding applicants, while the cost falls to one applicant.

There were a number of comments that asked us not to charge any fees for land which is publicly owned and already supported through taxes. Many of these comments also questioned whether BLM would wisely use the fees we collect.

BLM received its authority to seek cost recovery associated with issuing authorizations to use the public lands in 1976 from section 304(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1734(b)). We selected the 50-hour threshold for charging full cost recovery because it is consistent with the BLM’s Lands and Realty program, and is consistent with the approach of the U.S. Forest Service, which issues Special Use Permits to authorize general land uses as well as recreation. Cost recovery guidelines in Office of Management and Budget (OMB) Circular A-25 direct Federal agencies to limit cost recovery to situations when a service or privilege provides special benefits to an identifiable recipient, beyond those that accrue to the general public.

Consequently, costs associated with development of programmatic EAs would not normally trigger cost recovery fee, because BLM does not assign them to the single initial applicant.

As to permit renewals, the practical effect of the rule as written, with its 50-hour threshold, is that permit renewals will not trigger cost recovery, unless you propose a substantial change in your operation that would require additional environmental analysis.

In response to the concerns expressed by the public about the appearance of

double charging, we have made several changes in paragraph (e). These changes should have the effect of clarifying when cost recovery charges apply and when permit fees apply to commercial, competitive, and organized group activities or events. We separated cost recovery requirements for commercial use from competitive or organized group/event use. We did this to distinguish between the commercial fee that BLM assesses for the privilege of using the public lands for a business, versus the need to assess cost recovery for either type of use to help pay for the preparation of an authorization and for its administration.

- The costs would have to reach the threshold in one year for cost recovery to be invoked on a multi-year permit;
- We specifically exclude programmatic or general land use plan documentation from cost recovery, except if the documentation work has been done because of or to benefit a specific applicant;
- In cases where we charge for cost recovery for recreational events (as opposed to commercial use), the final rule provides that the charges will be in place of permit fees.
- In some cases where we would normally charge for cost recovery, we may elect to charge a permit fee instead of cost recovery if the permit fee is greater than cost recovery would be.

Section 2932.33 When Are Fees Refundable?

Comments from the outfitter community suggest removing the prerequisite that BLM actually award a permit to someone else before we refund fees to an applicant who cancels or reduces his or her application for a Special Recreation Permit. They suggest that the standard should be whether the outfitter relinquished the use in time to make it available to others, not whether others have actually applied for the use and the agency is able to award it. (Note that this provision pertains to fees, not cost recovery requirements.)

We agree with the comment and have removed the words “and we are able to award such use.” The sentence in question only applies to areas where use is allocated to commercial or non-commercial use or both. An area where recreation use has been “allocated” is an area where demand has outstripped supply, or use needs to be restricted to protect the resources. Management or operations plans for allocated areas will determine the amount of time BLM would normally need to reallocate your use, and thus the deadline for you to notify us and qualify for a refund or

credit. However, whether to provide a refund is at the discretion of BLM.

Section 2932.34 When May BLM Waive Special Recreation Permit Fees?

One comment stated that this section made it too easy for organizers of activities that the comment described as clearly commercial to obtain fee waivers. The comment urged that organizers of activities that are commercial in nature should not be able to avoid paying fees merely because the users have certain characteristics, or label themselves in certain ways.

The language in the proposed rule was very similar to that in the previous regulation at 43 CFR 8372.4(c)(2)–(3), which directed that BLM not assess fees for scientific and educational outings. In the proposed rule, we attempted to clarify this provision to eliminate the possibility that recreational outings may obtain a fee waiver because they have educational aspects, such as a professor accompanying a group of tourists to explain the geology or history of an area. As a practical matter, BLM has granted very few fee waivers under this authority. An applicant’s status as an academic, scientific, research, or therapeutic institution is not, by itself, a basis for waiving fees. BLM has a responsibility to evaluate proposals to determine whether fee waivers are warranted. A professor proposing to take students onto public lands for research or study for academic credit would qualify for a waiver under this regulation. However, groups proposing activities meeting the definition of commercial use would not be granted fee waivers if they merely belong to an academic, scientific, research, or therapeutic institution. The key factor is whether the activity itself, rather than the sponsoring institution, qualifies for a waiver. We did not amend this provision in the final rule.

Section 2932.42 How Long Is My Special Recreation Permit Valid?

A comment from a trade association representing outfitters recommended that, considering the investment required by outfitters, the maximum term for SRPs should be 10 years, unless BLM finds that special circumstances require a shorter period.

As a practical matter, the renewal and transfer policies contained in the proposed rule improve tenure over that provided in the previous regulations. Section 2932.51 makes it clear that BLM will renew a permit if it is in good standing and consistent with our land use plans and policies, and if the permittee has a satisfactory record of performance. This regulation follows

existing BLM policy on permit renewal and transfers. Regardless of the term of the permit, BLM may cancel or amend it for cause as described in 2932.56.

However, BLM recognizes that the maximum of a 5-year permit is a matter of concern for the outfitting and guiding community. Elsewhere in today's **Federal Register** appears a proposed rule that would change the maximum term for a Special Recreation Permit to 10 years. Because this is a substantial change that was not discussed in the proposed rule, it is necessary and appropriate to allow a period of time for public comment.

Section 2932.43 What Insurance Requirements Pertain to Special Recreation Permits?

We received fewer than 10 comments addressing insurance and bonding issues. Outfitters and commercial interests generally supported the insurance requirements as they relate to their activities. However, other comments addressed bonding or insurance requirements for organized group activities or events. One comment was opposed to any insurance or bonding requirement. The others suggested changes to ensure that the requirements are based on the kind of event or activity for which BLM is issuing permits. According to these comments, there are many types of group activities or recreation events that may require a permit, but for which insurance or bonding should not be necessary because the event or activity poses no risk to participants or the environment. One respondent suggested that BLM establish criteria for when we would waive insurance and bonding requirements. Two comments suggested that any requirement for insurance for small groups would be onerous and would force small groups or events to either proceed without authorization (and risk prosecution) or cancel their proposed activity or event.

One comment suggested that there should not be an exception excusing vendors from obtaining insurance, and one comment suggested that BLM impose fines and penalties on permittees that cause environmental degradation or other damage rather than require insurance or bonding for possible damages occurring under an organized group or event Special Recreation Permit.

One comment suggested insurance coverage requirements should be published and updated in the same fashion as fees.

This section of the proposed rule was essentially unchanged from the previous regulations in subpart 8372. We added the provision that BLM may require

insurance or bonding for organized groups or events, leaving the final decision on insurance and bonding requirement for groups and events to the BLM. We realize and agree that many small scale activities and events will not and should not require insurance or bonding, but do not believe it is reasonable to establish national criteria for waiving insurance requirements.

BLM's Special Recreation Permit Handbook, which will be available in field offices and on the internet soon after the effective date of this final rule, will contain criteria for our determination of minimum insurance coverage requirements. The amounts of coverage we require vary based on the risk involved in the activity. That risk depends on the nature of the activity, the conditions where the activity will take place, the number of participants, skill level of the participants, and risk management implemented by the permittee. In other words, the local BLM office administering the event can best determine what coverage you need, as opposed to BLM headquarters setting limits on a national basis. Our actual experience is that most permittees carry more insurance than BLM would normally require.

As written, the exception for vendors is not a blanket exception. Rather, it gives the BLM the discretion to require insurance for vendors when necessary. Not all vending poses risks to the public (tee-shirt sales, for example), while others (such as food sales) will require insurance.

Imposition of fines and penalties on permittees who cause damage, rather than requiring up-front insurance or bonding, would not assure the public that its interests are being protected. Fines are often uncollectible. Civil judgments are difficult to obtain and collect. Damage repair in such cases would at best take longer.

Section 2932.52 How Do I Apply for a Renewal?

Some comments expressed concern about the requirement in the proposed rule that an application for renewal be made "in the same form as for a new permit." The concern is the regulation may imply a full, "from scratch" evaluation.

That is not the intent, and we have amended the text to say "on the same form." You must file renewals on the SRP application form, and should file updates to operations plans at the same time. You need only write "unchanged" on the parts of the form where permit needs and other information have not changed. We expect that processing renewals will be much less involved

than issuing new permits. For example, an application to continue a previously approved use usually does not require preparation of a new NEPA document. However, if field conditions have changed, we may need to conduct new environmental analyses.

Section 2932.54 When May I Transfer My Special Recreation Permit to Other Individuals, Companies, or Entities?

Comments from the outfitting community expressed concern that the language in this section may provide an avenue for a local manager to reduce or destroy the market value of an outfitting company by denying transfers or withholding approval of certain transfers to target specific operations or styles of operations.

BLM recognized the need for guidance on transfers and published its national Special Recreation Permit Policy in 1984 (49 FR 5300, February 10, 1984), which, among other things, authorized transfers. We process transfers under the following guidelines:

1. You must provide adequate documentation to BLM that you intend a bona fide business transfer or sale. The transfer or sale must include a substantial portion of the equipment and other tangible assets needed to conduct a business. BLM will not approve any attempted transfer or sale of authorized use alone.

2. The previous permittee generally should have operated at an acceptable standard for at least one full year.

3. BLM will evaluate the proposed business sale and transfer the permit privileges to a qualified buyer, if—

- The transfer is consistent with planning decisions; and
- The proposed sale includes tangible property necessary to conduct the activities authorized.

4. The proposed permittee must provide a written operation plan to BLM, including any anticipated operational changes from the present permittee.

This section of the final rule codifies and improves BLM's policy on permit transfers.

The discussion in the preamble of the May 16, 2000, proposed rule stated that BLM will allow a transfer as long as you meet the requirements of this section. This policy, that we will approve a permit transfer only if the business or a substantial part of it is sold, continues in this final rule.

Section 2932.55 When Must I Allow BLM To Examine My Permit Records?

One comment stated the section was overreaching, saying that it would attempt to authorize BLM to obtain

privileged material from attorneys, accountants, and other professionals.

The intent of the rule is to allow the BLM to meet its legislative and regulatory requirements in FLPMA, LWCF, and OMB Circular A-25. For BLM to meet its legislative requirements to protect natural resources and to help ensure public health and safety, we issue stipulations with each permit. We use monitoring and an evaluation process to help us ensure that permittees provide the public with qualified, experienced guides. It also helps to ensure that the permittee follows permit stipulations to protect natural and cultural resources. Finally, audits help ensure that the public receives fair compensation from businesses conducted on public lands by allowing us to review the financial aspects of their permit operations and make sure adequate fees are paid. OMB Circular A-25 emphasizes this requirement. We need to ensure that BLM has access to records regardless of the entity that physically possesses them. BLM would certainly respect items covered by attorney/client and other privileges. It is up to you or your attorney to assert that privilege if and when BLM requests documents you believe to be privileged. Accounting records relating to the SRP are precisely the types of information the BLM would seek to review. Such confidential information may be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 551 *et seq.*). BLM would protect it to the extent allowable by law.

Section 2932.56 When will BLM Amend, Suspend, or Cancel My Permit?

Several comments suggested removing the third reason for altering a permit, protection of the environment. These respondents found the requirement to be vague, given the contentious nature of determining carrying capacities of the land and associated waters and the environmental effects of various activities. The comments suggested that BLM should be obligated to perform some level of investigation or analysis to ensure that the outfitters' actions are responsible for undesired environmental impacts before imposing the sanctions provided for in this section.

BLM will not amend, suspend, or cancel a permit without a good reason. Doing so would be arbitrary and capricious, and could not bear the scrutiny of administrative or judicial review. BLM will only alter a permit for environmental protection reasons after we perform a thoroughly documented

analysis and the permittee has an opportunity to review it. The provision needs to remain in the regulations. Protecting the public lands from unnecessary or undue degradation is a core duty of BLM and we would be remiss in not including environmental considerations as a basis for modifying a permit. The same reasoning applies to suspensions and cancellations of permits.

BLM may suspend or amend a permit if—

- There is a problem with public safety;
- There are clear violations of permit stipulations to protect public safety or the environment; or
- Resource or legal conditions change during the permit period (for example, a threatened or endangered species listing occurs that affects the permit area).

The BLM will use the annual evaluation process to determine whether there is any failure to perform or any violation of a permit that would lead to canceling a permit. If the reason for the adverse action is out of your control, (such as the endangered species listing just mentioned) BLM will consult with you to come to an amicable solution, if possible. Administrative procedures are always available to a permittee affected by an adverse action. This includes appeal to IBLA under 43 CFR part 4, specifically § 4.410, and any other administrative remedy applicable to the permittee.

One comment suggested that BLM should have authority to suspend a permit or deny a new application for a permit because of violations of similar stipulations on another permit.

We agree with this comment. We have amended § 2932.56(b)(2) by removing the final phrase, "while exercising your privileges under your Special Recreation Permit." This removes the requirement that your disqualifying conduct is specific to the subject permit, rather than to any similar permit. Further, any action that violates environmental or natural resource law may also be disqualifying, whether you have a permit or not.

Issuing permits to individuals who have histories of violating the conditions of their permits is an ongoing problem for all Federal agencies. Additional authority is necessary to deny permits to individuals or companies that have habitually violated permit conditions. Authority is needed to deny permits to individuals that have had permits canceled by other agencies and to those individuals who have a demonstrated history of willful destruction of private, state, or Federal

properties, especially in relation to natural, cultural, and historical resources. We have had a number of former permittees who have had permits canceled for cause by one BLM office, or by another agency, who subsequently apply for and receive a BLM permit from another office, only to cause similar problems in the new area. BLM needs authority to stop this from occurring. It is our responsibility, as a regulatory agency, to give the public a reasonable assurance that businesses operating on the public lands are responsible and have a sense of stewardship and the duty of care for the lands they operate on and the clients they serve and who provide a safe and high quality experience to the public requesting these kinds of services.

Several comments addressed the language at paragraph (c): "If we suspend your permit, your responsibilities under the permit would continue during the suspension." In certain situations, it may be necessary for BLM to suspend assigned authorized use for a period of time. Examples of such instances include periods of high fire danger, flood conditions or high water, presence of health hazards, or high likelihood of degradation of environmental resources. These situations are usually temporary and will not normally extend the life of the permit. Situations could arise where only a portion of a permit would be suspended, and BLM would allow the permittee to continue operating in the areas not subjected to the suspension; in such cases permit obligations would continue. These suspensions may not have any affect on the reporting requirements, payment of fees, or expiration date of the permit.

III. Final Rule as Adopted

This portion of the Supplementary Information describes and explains section-by-section changes we have made in the final rule that were not prompted by public comments. The changes recognize—

- Longstanding field practice,
- Statutory law,
- Need for internal consistency in the final rule,
- Need for improved clarity in the regulations, or
- Some combination of these factors.

Section 2932.12 When May BLM Waive the Requirement To Obtain a Permit?

We have revised paragraph (c)(5) in the final rule. This paragraph states the final criterion for waiving the permit requirement for competitive events. We added the lack of need for specific

management by BLM personnel as a reason for waiving the permit requirement.

This change makes the text for competitive events consistent with the text changes resulting from public comment for organized group or event use. It recognizes that some competitive events are so small that they have such inconsequential effects that we do not need to exercise any control over them. The "requires no specific management" wording makes it clear that BLM recognizes no need to make any on-site management changes, *e.g.*, closing a recreation site to public use because it is reserved for an event. An example might be a Boy Scout orienteering competition with a limited number of participants. Although it would be technically competitive, it would not be commercial, award cash prizes, advertise, or appreciably affect the environment. It probably would not require monitoring under paragraph (c)(5), and in most circumstances would not require BLM management action before, during, or after the event. The local BLM manager would have discretion in this case to require or waive the permit, perhaps requiring one if only to be aware that there are a certain number of children on the public lands in a particular area, and possibly needing protection or rescue.

Section 2932.34 When May BLM Waive Special Recreation Permit Fees?

We have amended this section to make it clear that to have a fee waiver approved for educational, scientific, or research uses, you must be an accredited institution. Without this change, the provision would be unnecessarily vague.

Section 2932.52 How Do I Apply for a Renewal?

We have amended paragraph (b) by removing the requirement that BLM "establish and publish deadlines for submitting renewal applications." Instead, establishment of such deadlines for submitting renewal applications will be discretionary with the local BLM manager.

This change relieves BLM of the unnecessary burden of publishing deadlines for renewal applications in the **Federal Register** or newspapers. BLM mostly communicates directly with permittees, and if the renewal deadline is not stated in the original permit, we will alert the permittee as the deadline approaches. There is no need to publish application deadlines for renewal of permits. The change is also consistent with current language in

the Special Recreation Permit Manual/Policy Statement and Handbook.

Section 2932.54 When May I Transfer My Special Recreation Permit to Other Individuals, Companies, or Entities?

BLM has amended paragraph (b) of this section to make it clear that the transferee must meet all BLM requirements, including the payment of fees, before we will allow a transfer and issue a new SRP. Read in isolation, the proposed rule provision seemed to require only the payment of fees. The revised provision makes it clear that a transferee must meet all BLM requirements before we will allow a permit to be transferred.

Section 2932.57 Prohibited Acts and Penalties

We have added two provisions to the list of Prohibited acts. The first prohibits permittees from interfering with other users of the public lands. The second prohibits refusal to disperse when BLM has suspended or canceled a permit.

The first of these is based on 43 CFR 9239.2-5, which in turn implements an 1885 law prohibiting interference with persons using or traveling on public lands (23 Stat. 322; 43 U.S.C. 1063). The second addition is similar to a prohibited act already in the recreation regulations at §8365.1-4, which prohibits failure to disperse when directed by BLM. The prohibitions, in other words, are not new in this rule, and would apply to special recreation permittees whether they appear in part 2930 or not.

We have also made changes in the penalty provisions of paragraph (b) of this section. Paragraph (b)(1) is amended to refer to the penalties in 18 U.S.C. 3571 as well as FLPMA.

This will ensure that the fines that became applicable in 1987 under the alternative fines section in the U.S. Criminal Code are applicable. Also, any future increases in fines will also be applicable because they most likely will be increased in section 3571.

We also have added a new paragraph (b)(3) that imposes the penalties in 18 U.S.C. 3571 on failing to obtain any permit or pay any fee required in subpart 2932, pursuant to the Land and Water Conservation Fund Act, as amended.

This amendment places in subpart 2932 the penalty provisions already found in §9268.3(e)(1) of BLM's law enforcement regulations. This is needed to allow us to apply criminal penalties provided by the Land and Water Conservation Fund Act and to ensure that we have access to those infraction level penalties in locations where the

class A misdemeanor penalty may lead to procedural problems.

Subpart 2933—Recreation Use Permits for Fee Areas

Recreation use permits (RUP) are authorizations for short term recreational use of developed facilities, equipment, services, or specialized sites furnished at Federal expense. RUPs are most frequently used in BLM to authorize individual and group recreational use of these sites. Sites that charge a fee meet the fee criteria established by the LWCFA, as amended. BLM issues RUPs to ensure that the people of the United States receive a fair and equitable return for the use of these facilities and to help recover the cost of construction, operation, maintenance, administration, and management of the permits.

BLM has been able to administer and manage these types of sites through fee provisions in the LWCFA, 36 CFR Part 7, and policy. Keeping up with the growing demands of users and the complexity of uses, their compatibility or lack thereof, and conflicting types and amounts of use, is becoming more difficult without regulations. The purpose of this rule is to allow BLM to notify the public in a more detailed and formal way of our policies and the laws and regulations for administering and managing these areas.

This subpart codifies a permit system pertaining to "fee areas" on public lands managed by BLM. Fee areas are sites that provide specialized facilities, equipment, or services related to outdoor recreation. These include areas that are developed by BLM, receive regular maintenance, may have on-site staffing, and are supported by Federal funding. Not all fee areas necessarily have all of these attributes. Examples of fee areas are campgrounds that include improvements such as picnic tables, toilet facilities, tent or trailer sites, and drinking water; and specialized sites such as swimming pools, boat launch facilities, guided tours, hunting blinds, and so forth. The provisions in these regulations are codifications of existing procedures and policies. They are designed to allow the most efficient administration possible of the permit system, and the easiest access by the public.

The provisions in this subpart did not attract public comments. However, we have found it necessary to add a section on prohibited acts and penalties. We will propose this new section in a new proposed rule after publication of this final rule.

Cross-references

Finally, the final rule changes cross-references in other parts of Title 43 from subpart 8372 to part 2930.

IV. Procedural Matters

The principal author of this final rule is Lee Larson of the Recreation Group, Washington Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It 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.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

During fiscal year 1996, BLM issued just over 21,000 Special Recreation Permits, with revenues totaling a little over \$1.5 million deposited into the Land and Water Conservation Fund (LWCF). During fiscal year 1997, BLM issued just over 32,000 Special Recreation Permits, with revenues totaling about \$2.9 million, of which nearly \$1.9 million was deposited into the LWCF with the balance attributed to the Fee Demonstration Project and other miscellaneous accounts. During fiscal year 1998, BLM issued just over 37,500 such permits, and collected just over \$4.8 million in fees, of which nearly \$1.6 million was deposited into the LWCF, with the balance attributed to the Fee Demonstration Project and other miscellaneous accounts. (These numbers are derived from the Public Land Statistics; the variety of laws directing the revenues to numerous funds accounts for different average fees from year to year. We give these numbers to illustrate that the revenues charged under BLM's recreation program are minuscule compared with those realized by the overall national recreation industry.) Special Recreation Permits are generally obtained by commercial outfitters and guides (about 2,500), river running companies (about

800), sponsors of competitive events (about 1,000), "snow bird" seasonal mobile home campers who use BLM's long term visitor areas (about 14,000), and private individuals and groups using certain special areas. Under current regulations, use fees are to be collected according to a schedule established by the Director, BLM, and published periodically in the **Federal Register**. BLM may charge actual costs if they exceed the fee on the schedule. The schedule is based on 3 percent of the gross annual receipts of the permittee or an \$80 flat annual fee, whichever is greater. Snow birds pay a flat seasonal fee of \$100. The flat annual fee for commercial outfitters and guides is adjusted periodically in line with the Implicit Price Deflator. The final rule provides for use fees to equal fair market value, which can be determined through comparative market analysis, competitive bidding, or other means. The State of Colorado charges river outfitters 5 percent of gross receipts to run trips on the Arkansas River, which features the Royal Gorge. This may be an indication of the type of fee increase that may be phased in under the final rule. BLM will determine fair market values for outfitter permits on a local or regional level, based on comparative market analyses and considering public input.

During fiscal year 1996, BLM issued over 116,000 Recreation Use Permits for use of fee sites, with revenues totaling about \$600,000. During fiscal year 1997, BLM issued about 184,000 Recreation Use Permits for use of fee sites, with revenues totaling about \$705,000. During fiscal year 1998, BLM issued about 280,000 Recreation Use Permits for use of fee sites, with revenues totaling about \$1.3 million. The cost of such a permit averaged just over \$5.00 for 1996, just under \$4.00 for 1997, and a little over \$4.60 for 1998. The final rule allows BLM to charge fees based on the types of services or facilities provided at the fee site, the cost of providing them, and fees charged by public and private entities at similar sites nearby. Changes caused by this rule are not quantifiable in this document, but will not result in charges greater than fair market value. Any increase in prices for these users would have to have economic consequences of hundreds of dollars per permit for the effect on the economy to total \$100 million, the threshold for a major rule in the Executive Order.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). According to the president of the American Recreation Coalition, outdoor recreation is a \$350 billion industry made up of small businesses. As stated in the previous section, BLM fees collected for Special Recreation Permits in fiscal year 1997 were about \$2.9 million. BLM revenues collected thus amounted in that year to less than 1/1,000 of 1 percent of the gross industrial revenues, and not all of the BLM revenues were collected from commercial recreationists. The results in other years are similar. BLM considers that increases in these fees to fair market value could not create a significant impact on the outdoor recreation industry. However, BLM recognizes that most commercial recreation enterprises—outfitters, guides, river-running companies, local retail outlets—are small businesses, and that about 3,500 of them annually hold BLM commercial or competitive permits. For these reasons, any changes in fees to fair market value will be phased in, and fees will be set locally and only after opportunity for public participation leading to decisions on fair market value.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

Does not have an annual effect on the economy of \$100 million or more. See the discussion under Regulatory Planning and Review, above.

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will have no effect on the 3 percent basic use fee that BLM's fee schedule (set by the 1984 policy, not regulations) requires outfitters to pay. The rule imposes cost recovery requirements provided for in section 304 of FLPMA (43 U.S.C. 1734), and in the Land and Water Conservation Fund Act (16 U.S.C. 460l *et seq.*, 460l-5), and Office of Management and Budget Circular No. A-25. The cost increases under this rule will be de minimis in the context of the entire outdoor recreation industry, and even in the context of the small proportion of it that uses public lands managed by BLM. See the discussion above under Regulatory Flexibility Act.

Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to

compete with foreign-based enterprises. The adjustment of user fees to fair market value and the implementation of cost recovery should not affect the ability of mostly small businesses evenly treated to compete with one another. Recreationists are not likely to be driven to foreign recreation markets by finding an increase in user fees in the western part of this country, due to the insignificance of such increases compared to the costs of travel to comparable foreign recreation destinations. Much recreation equipment is manufactured in foreign countries, but it is sold by small business retailers in this country. The adjustment of user fees to fair market value should not affect buyers' choice of foreign versus domestic made equipment.

The Small Business Administration established the Small Business and Agricultural Regulatory Enforcement Ombudsman and ten Regional Fairness Boards to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates these enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on enforcement aspects of this rule, you may call 1-888-734-4247.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule has no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. While the final rule provides for permits to be canceled under certain circumstances, including violations of law or regulations, or failure to comply with permit stipulations, and while for some commercial permittees a Special Recreation Permit may be essential to the exercise of property rights in a business, the rule does not allow such a forfeiture without due process of law. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient

federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects 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 rule does not preempt State law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule does not limit land use by energy companies. It applies only to permits for recreational use of public lands, how BLM issues and administers them.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004-0110. The section of this final rule with information collection requirements is section 2932.24, and BLM estimates the public reporting burden of this section to average, respectively, one-half hour per response. This estimate includes 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 Information Collection Clearance Officer, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 401-LS, Washington, DC 20240, and Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: 1004-0110.

National Environmental Policy Act

Based on an environmental assessment approved May 5, 2000, we have determined that this final rule does not constitute a major Federal action

significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

List of Subjects

43 CFR Part 2930

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas

43 CFR Part 6300

Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas

43 CFR Part 8340

Public lands, Recreation and recreation areas, Traffic regulations

43 CFR Part 8370

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds

43 CFR Part 9260

Continental shelf, Forests and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, Wildlife.

Dated: July 8, 2002.

Rebecca W. Watson,
Assistant Secretary of the Interior.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

1. Part 2930 is added to read as follows:

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

Subpart 2931—Permits for Recreation; General

Sec.

2931.1 What are the purposes of these regulations?

2931.2 What kinds of permits does BLM issue for recreation-related uses of public lands?

2931.3 What are the authorities for these regulations?

2931.8 Appeals.

2931.9 Information collection.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas

2932.5 Definitions.

2932.10 When you need Special Recreation Permits.

2932.11 When do I need a Special Recreation Permit?

2932.12 When may BLM waive the requirement to obtain a permit?

2932.13 How will I know if individual use of a special area requires a Special Recreation Permit?

2932.14 Do I need a Special Recreation Permit to hunt, trap, or fish?

2932.20 Special Recreation Permit applications.

2932.21 Why should I contact BLM before submitting an application?

2932.22 When do I apply for a Special Recreation Permit?

2932.23 Where do I apply for a Special Recreation Permit?

2932.24 What information must I submit with my application?

2932.25 What will BLM do when I apply for a Special Recreation Permit?

2932.26 How will BLM decide whether to issue a Special Recreation Permit?

2932.30 Fees for Special Recreation Permits.

2932.31 How does BLM establish fees for Special Recreation Permits?

2932.32 When must I pay the fees?

2932.33 When are fees refundable?

2932.34 When may BLM waive Special Recreation Permit fees?

2932.40 Permit stipulations and terms.

2932.41 What stipulations must I follow?

2932.42 How long is my Special Recreation Permit valid?

2932.43 What insurance requirements pertain to Special Recreation Permits?

2932.44 What bonds does BLM require for a Special Recreation Permit?

2932.50 Administration of Special Recreation Permits.

2932.51 When can I renew my Special Recreation Permit?

2932.52 How do I apply for a renewal?

2932.53 What will be my renewal term?

2932.54 When may I transfer my Special Recreation Permit to other individuals, companies, or entities?

2932.55 When must I allow BLM to examine my permit records?

2932.56 When will BLM amend, suspend, or cancel my permit?

2932.57 Prohibited acts and penalties.

Subpart 2933—Recreation Use Permits for Fee Areas

2933.10 Obtaining Recreation Use Permits.

2933.11 When must I obtain a Recreation Use Permit?

2933.12 Where can I obtain a Recreation Use Permit?

2933.13 When do I need a reservation to use a fee site?

2933.14 For what time may BLM issue a Recreation Use Permit?

2933.20 Fees for Recreation Use Permits.

2933.21 When are fees charged for Recreation Use Permits?

2933.22 How does BLM establish Recreation Use Permit fees?

2933.23 When must I pay the fees?

2933.24 When can I get a refund of Recreation Use Permit fees?

2933.30 Rules of conduct.

2933.31 What rules must I follow at fee areas?

2933.32 When will BLM suspend or revoke my permit?

Authority: 43 U.S.C. 1740; 16 U.S.C. 460l-6a.

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

Subpart 2931—Permits for Recreation; General

§ 2931.1 What are the purposes of these regulations?

The regulations in this part—
 (a) State when you need a permit to use public lands and waters for recreation, including recreation-related business;
 (b) Tell you how to obtain the permit;
 (c) State the fees you must pay to obtain the permit; and
 (d) Establish the framework for BLM's administration of your permit.

§ 2931.2 What kinds of permits does BLM issue for recreation-related uses of public lands?

The regulations in this part establish permit and fee systems for:

(a) Special Recreation Permits for commercial use, organized group activities or events, competitive use, and for use of special areas; and
 (b) Recreation use permits for use of fee areas such as campgrounds and day use areas.

§ 2931.3 What are the authorities for these regulations?

(a) The statutory authorities underlying the regulations in this part are the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and the Land and Water Conservation Fund Act, as amended, 16 U.S.C. 460l-6a.

(1) The Federal Land Policy and Management Act (FLPMA) contains the Bureau of Land Management's (BLM's) general land use management authority over the public lands, and establishes outdoor recreation as one of the principal uses of those lands (43 U.S.C. 1701(a)(8)). Section 302(b) of FLPMA directs the Secretary of the Interior to regulate through permits or other instruments the use of the public lands, which includes commercial recreation use. Section 303 of FLPMA contains BLM's authority to enforce the regulations and impose penalties.

(2) The Land and Water Conservation Fund (LWCF) Act, as amended, authorizes BLM to collect fees for recreational use (16 U.S.C. 460l-6a(a),

(c)), and to issue special recreation permits for group activities and recreation events, and limits the services for which we may collect fees (16 U.S.C. 460l-6a(a), (b), (g)).

(3) The Sentencing Reform Act (18 U.S.C. 3571) is the authority for the possible penalties for violations of these regulations.

(b) The regulations at 36 CFR part 71 require all Department of the Interior bureaus to use the criteria in that part to set recreation fees. These criteria are based on the LWCF Act and stated in §§ 71.9 and 71.10 of that part.

§ 2931.8 Appeals.

(a) If you are adversely affected by a decision under this part, you may appeal the decision under parts 4 and 1840 of this title.

(b) All decisions BLM makes under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted under § 4.21(b) of this title.

§ 2931.9 Information collection.

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0119. BLM will use the information to determine whether we should grant permits to applicants for Special Recreation Permits on public lands. You must respond to requests for information to obtain a benefit.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas

§ 2932.5 Definitions.

Actual expenses means money spent directly on the permitted activity. These may include costs of such items as food, rentals of group equipment, transportation, and permit or use fees. Actual expenses do not include the rental or purchase of personal equipment, amortization of equipment, salaries or other payments to participants, bonding costs, or profit.

Commercial use means recreational use of the public lands and related waters for business or financial gain.

(1) The activity, service, or use is commercial if—

(i) Any person, group, or organization makes or attempts to make a profit, receive money, amortize equipment, or obtain goods or services, as compensation from participants in recreational activities occurring on public lands led, sponsored, or

organized by that person, group, or organization;

(ii) Anyone collects a fee or receives other compensation that is not strictly a sharing of actual expenses, or exceeds actual expenses, incurred for the purposes of the activity, service, or use;

(iii) There is paid public advertising to seek participants; or

(iv) Participants pay for a duty of care or an expectation of safety.

(2) Profit-making organizations and organizations seeking to make a profit are automatically classified as commercial, even if that part of their activity covered by the permit is not profit-making or the business as a whole is not profitable.

(3) Use of the public lands by scientific, educational, and therapeutic institutions or non-profit organizations is commercial and subject to a permit requirement when it meets any of the threshold criteria in paragraphs (1) and (2) of this definition. The non-profit status of any group or organization does not alone determine that an event or activity arranged by such a group or organization is noncommercial.

Competitive use means—

(1) Any organized, sanctioned, or structured use, event, or activity on public land in which 2 or more contestants compete and either or both of the following elements apply:

(i) Participants register, enter, or complete an application for the event;

(ii) A predetermined course or area is designated; or

(2) One or more individuals contesting an established record such as for speed or endurance.

Organized group activity means a structured, ordered, consolidated, or scheduled event on, or occupation of, public lands for the purpose of recreational use that is not commercial or competitive.

Special area means:

(1) An area officially designated by statute, or by Presidential or Secretarial order;

(2) An area for which BLM determines that the resources require special management and control measures for their protection; or

(3) An area covered by joint agreement between BLM and a State under Title II of the Sikes Act (16 U.S.C. 670a *et seq.*)

Vending means the sale of goods or services, not from a permanent structure, associated with recreation on the public lands or related waters, such as food, beverages, clothing, firewood, souvenirs, photographs or film (video or still), or equipment repairs.

§ 2932.10 When you need Special Recreation Permits.

§ 2932.11 When do I need a Special Recreation Permit?

(a) Except as provided in § 2932.12, you must obtain a Special Recreation Permit for:

(1) Commercial use, including vending associated with recreational use; or

(2) Competitive use.

(b) If BLM determines that it is necessary, based on planning decisions, resource concerns, potential user conflicts, or public health and safety, we may require you to obtain a Special Recreation Permit for—

(1) Recreational use of special areas;

(2) Noncommercial, noncompetitive, organized group activities or events; or

(3) Academic, educational, scientific, or research uses that involve:

(i) Means of access or activities normally associated with recreation;

(ii) Use of areas where recreation use is allocated; or

(iii) Use of special areas.

§ 2932.12 When may BLM waive the requirement to obtain a permit?

We may waive the requirement to obtain a permit if:

(a) The use or event begins and ends on non-public lands or related waters, traverses less than 1 mile of public lands or 1 shoreline mile, and poses no threat of appreciable damage to public land or water resource values;

(b) BLM sponsors or co-sponsors the use. This includes any activity or event that BLM is involved in organizing and hosting, or sharing responsibility for, arranged through authorizing letters or written agreements; or

(c) The use is a competitive event that—

(1) Is not commercial;

(2) Does not award cash prizes;

(3) Is not publicly advertised;

(4) Poses no appreciable risk for damage to public land or related water resource values; and

(5) Requires no specific management or monitoring.

(d) The use is an organized group activity or event that—

(1) Is not commercial;

(2) Is not publicly advertised;

(3) Poses no appreciable risk for damage to public land or related water resource values; and

(4) Requires no specific management or monitoring.

§ 2932.13 How will I know if individual use of a special area requires a Special Recreation Permit?

BLM will publish notification of the requirement to obtain a Special

Recreation Permit to enter a special area in the **Federal Register** and local and regional news media. We will post permit requirements at major access points for the special area and provide information at the local BLM office.

§ 2932.14 Do I need a Special Recreation Permit to hunt, trap, or fish?

(a) If you hold a valid State license, you do not need a Special Recreation Permit to hunt, trap, or fish. You must comply with State license requirements for these activities. BLM Special Recreation Permits do not alone authorize you to hunt, trap, or fish. However, you must have a Special Recreation Permit if BLM requires one for recreational use of a special area where you wish to hunt, trap, or fish.

(b) Outfitters and guides providing services to hunters, trappers, or anglers must obtain Special Recreation Permits from BLM. Competitive event operators and organized groups may also need a Special Recreation Permit for these activities.

§ 2932.20 Special Recreation Permit applications.

§ 2932.21 Why should I contact BLM before submitting an application?

If you wish to apply for a Special Recreation Permit, we strongly urge you to contact the appropriate BLM office before submitting your application. You may need early consultation to become familiar with BLM practices and responsibilities, and the terms and conditions that we may require in a Special Recreation Permit. Because of the lead time involved in processing Special Recreation Permit applications, you should contact BLM in sufficient time to complete a permit application ahead of the 180 day requirement (see § 2932.22(a)).

§ 2932.22 When do I apply for a Special Recreation Permit?

(a) For all uses requiring a Special Recreation Permit, except private, noncommercial use of special areas (see paragraph (b) of this section), you must apply to the local BLM office at least 180 days before you intend your use to begin. Through publication in the local media and on-site posting as necessary, a BLM office may require applications for specific types of use more than 180 days before your intended use. A BLM office may also authorize shorter application times for activities or events that do not require extensive environmental documentation or consultation.

(b) BLM field offices will establish Special Recreation Permit application procedures for private noncommercial

individual use of special areas, including when to apply. As you begin to plan your use, you should call the field office with jurisdiction.

§ 2932.23 Where do I apply for a Special Recreation Permit?

You must apply to the local BLM office with jurisdiction over the land you wish to use.

§ 2932.24 What information must I submit with my application?

(a) Your application for a Special Recreation Permit for all uses, except individual and noncommercial group use of special areas, must include:

(1) A completed BLM Special Recreation Application and Permit form;

(2) Unless waived by BLM, a map or maps of sufficient scale and detail to allow identification of the proposed use area; and

(3) Other information that BLM requests, in sufficient detail to allow us to evaluate the nature and impact of the proposed activity, including measures you will use to mitigate adverse impacts.

(b) If you are an individual or noncommercial group wishing to use a special area, contact the local office with jurisdiction to find out the requirements, if any.

§ 2932.25 What will BLM do when I apply for a Special Recreation Permit?

BLM will inform you within 30 days after the filing date of your application if we must delay a decision on issuing the permit. An example of when this could happen is if we determine that we cannot complete required environmental assessments or consultations with other agencies within 180 days.

§ 2932.26 How will BLM decide whether to issue a Special Recreation Permit?

BLM has discretion over whether to issue a Special Recreation Permit. We will base our decision on the following factors to the extent that they are relevant:

(a) Conformance with laws and land use plans;

(b) Public safety;

(c) Conflicts with other uses;

(d) Resource protection;

(e) The public interest served;

(f) Whether in the past you complied with the terms of your permit or other authorization from BLM and other agencies, and

(g) Such other information that BLM finds appropriate.

§ 2932.30 Fees for Special Recreation Permits.

§ 2932.31 How does BLM establish fees for Special Recreation Permits?

(a) The BLM Director establishes fees, including minimum annual fees, for Special Recreation Permits for commercial activities, organized group activities or events, and competitive events.

(b) The BLM Director may adjust the fees as necessary to reflect changes in costs and the market, using the following types of data:

(1) The direct and indirect cost to the government;

(2) The types of services or facilities provided; and

(3) The comparable recreation fees charged by other Federal agencies, non-Federal public agencies, and the private sector located within the service area.

(c) The BLM Director will publish fees and adjusted fees in the **Federal Register**.

(d) The State Director with jurisdiction—

(1) Will set fees for other Special Recreation Permits (including any use of Special Areas, such as per capita special area fees applicable to all users, including private noncommercial visitors, commercial clients, and spectators),

(2) May adjust the fees when he or she finds it necessary,

(3) Will provide fee information in field offices, and

(4) Will provide newspaper or other appropriate public notice.

(e)(1) *Commercial use.* In addition to the fees set by the Director, BLM, if BLM needs more than 50 hours of staff time to process a Special Recreation Permit for commercial use in any one year, we may charge a fee for recovery of the processing costs.

(2) *Competitive or organized group/ event use.* BLM may charge a fee for recovery of costs to the agency of analyses and permit processing instead of the Special Recreation Permit fee, if—

(i) BLM needs more than 50 hours of staff time to process a Special Recreation Permit for competitive or organized group/event use in any one year, and

(ii) We anticipate that permit fees on the fee schedule for that year will be less than the costs of processing the permit.

(3) *Limitations on cost recovery.* Cost recovery charges will be limited to BLM's costs of issuing the permit, including necessary environmental documentation, on-site monitoring, and permit enforcement. Programmatic or general land use plan NEPA

documentation are not subject to cost recovery charges, except if the documentation work done was done for or provides special benefits or services to an identifiable individual applicant.

(f) We will notify you in writing if you need to pay actual costs before processing your application.

§ 2932.32 When must I pay the fees?

You must pay the required fees before BLM will authorize your use and by the deadline or deadlines that BLM will establish in each case. We may allow you to make periodic payments for commercial use. We will not process or continue processing your application until you have paid the required fees or installments.

§ 2932.33 When are fees refundable?

(a) *Overpayments.* For multi-year commercial permits, if your actual fees due are less than the estimated fees you paid in advance, BLM will credit overpayments to the following year or season. For other permits, BLM will give you the option whether to receive refunds or credit overpayments to future permits, less processing costs.

(b) *Underuse.*

(1) Except as provided in paragraph (b)(2) of this section, for areas where BLM's planning process allocates use to commercial outfitters, or non-commercial users, or a combination, we will not make refunds for use of the areas we allocate to you in your permit if your actual use is less than your intended use.

(2) We may consider a refund if we have sufficient time to authorize use by others.

(c) *Non-refundable fees.* Application fees and minimum annual commercial use fees (those on BLM's published fee schedule) are not refundable.

§ 2932.34 When may BLM waive Special Recreation Permit fees?

BLM may waive Special Recreation Permit fees on a case-by-case basis for accredited academic, scientific, and research institutions, therapeutic, or administrative uses.

§ 2932.40 Permit stipulations and terms.

§ 2932.41 What stipulations must I follow?

You must follow all stipulations in your approved Special Recreation Permit. BLM may impose stipulations and conditions to meet management goals and objectives and to protect lands and resources and the public interest.

§ 2932.42 How long is my Special Recreation Permit valid?

You may request a permit for a day, season of use, or other time period, up

to a maximum of 5 years. BLM will determine the appropriate term on a case-by-case basis.

§ 2932.43 What insurance requirements pertain to Special Recreation Permits?

(a) All commercial and competitive applicants for Special Recreation Permits, except vendors, must obtain a property damage, personal injury, and public liability insurance policy that BLM judges sufficient to protect the public and the United States. Your policy must name the U.S. Government as additionally insured or co-insured and stipulate that you or your insurer will notify BLM 30 days in advance of termination or modification of the policy.

(b) We may also require vendors and other applicants, such as organized groups, to obtain and submit such a policy. BLM may waive the insurance requirement if we find that the vending or group activity will not cause appreciable environmental degradation or risk to human health or safety.

§ 2932.44 What bonds does BLM require for a Special Recreation Permit?

BLM may require you to submit a payment bond, a cash or surety deposit, or other financial guarantee in an amount sufficient to cover your fees or defray the costs of restoration and rehabilitation of the lands affected by the permitted use. We will return the bonds and financial guarantees when you have complied with all permit stipulations. BLM may waive the bonding requirement if we find that your activity will not cause appreciable environmental degradation or risk to human health and safety.

§ 2932.50 Administration of Special Recreation Permits.

§ 2932.51 When can I renew my Special Recreation Permit?

We will renew your Special Recreation Permit upon application at the end of its term only if—

- (a) It is in good standing;
- (b) Consistent with BLM management plans and policies; and
- (c) You and all of your affiliates have a satisfactory record of performance.

§ 2932.52 How do I apply for a renewal?

(a) You must apply for renewal on the same form as for a new permit. You must include information that has changed since your application or your most recent renewal. If information about your operation or activities has not changed, you may merely state that and refer to your most recent application or renewal.

(b) BLM will establish deadlines in your permit for submitting renewal applications.

§ 2932.53 What will be my renewal term?

Renewals will generally be for the same term as the previous permit.

§ 2932.54 When may I transfer my Special Recreation Permit to other individuals, companies, or entities?

(a) BLM may transfer a commercial Special Recreation Permit only in the case of an actual sale of a business or a substantial part of the business. Only BLM can approve the transfer or assignment of permit privileges to another person or entity, also basing our decision on the criteria in § 2932.26.

(b) The approved transferee must complete the standard permit application process as provided in § 2932.20 through 2932.24. Once BLM approves your transfer of permit privileges and your transferee meets all BLM requirements, including payment of fees, BLM will issue a Special Recreation Permit to the transferee.

§ 2932.55 When must I allow BLM to examine my permit records?

(a) You must make your permit records available upon BLM request. BLM will not ask to inspect any of this material later than 3 years after your permit expires.

(b) BLM may examine any books, documents, papers, or records pertaining to your Special Recreation Permit or transactions relating to it, whether in your possession, or that of your employees, business affiliates, or agents.

§ 2932.56 When will BLM amend, suspend, or cancel my permit?

(a) BLM may amend, suspend, or cancel your Special Recreation Permit if necessary to protect public health, public safety, or the environment.

(b) BLM may suspend or cancel your Special Recreation Permit if you—

- (1) Violate permit stipulations, or
- (2) Are convicted of violating any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities.

(c) If we suspend your permit or a portion thereof, all of your responsibilities under the permit will continue during the suspension.

§ 2932.57 Prohibited acts and penalties.

(a) *Prohibited acts.* You must not—

- (1) Fail to obtain a Special Recreation Permit and pay the fees required by this subpart;

(2) Violate the stipulations or conditions of a permit issued under this subpart;

(3) Knowingly participate in an event or activity subject to the permit requirements of this subpart if BLM has not issued a permit;

(4) Fail to post a copy of any commercial or competitive permit where all participants may read it;

(5) Fail to show a copy of your Special Recreation Permit upon request by either a BLM employee or a participant in your activity.

(6) Obstruct or impede pedestrians or vehicles, or harass visitors or other persons with physical contact while engaged in activities covered under a permit or other authorization; or

(7) Refuse to leave or disperse, when directed to do so by a BLM law enforcement officer or State or local law enforcement officer, whether you have a required Special Recreation Permit or not.

(b) Penalties.

(1) Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you are convicted of committing any prohibited act in paragraph (a) of this section, or of violating any regulation in this subpart or any condition or stipulation of a Special Recreation Permit, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

(2) You may also be subject to civil action for unauthorized use of the public lands or related waters and their resources, for violations of permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit.

(3) If you are convicted of failing to obtain a permit or paying a fee required in this subpart, you may be subject to a fine under 18 U.S.C. 3571, pursuant to the Land and Water Conservation Fund Act, as amended.

Subpart 2933—Recreation Use Permits for Fee Areas

§ 2933.10 Obtaining Recreation Use Permits.

§ 2933.11 When must I obtain a Recreation Use Permit?

You must obtain a Recreation Use Permit for individual or group use of fee areas. These are sites where we provide or administer specialized facilities, equipment, or services related to outdoor recreation. You may visit these areas for the uses and time periods BLM specifies. We will post these uses and limits at the entrance to the area or site, and provide this information in the local BLM office with jurisdiction over the area or site. You may contact this

office for permit information when planning your visit.

§ 2933.12 Where can I obtain a Recreation Use Permit?

You may obtain a permit at self-service pay stations, from personnel at the site, or at other specified locations. Because these locations may vary from site to site, you should contact the local BLM office with jurisdiction over the area or site in advance for permit information.

§ 2933.13 When do I need a reservation to use a fee site?

Most sites are available on a first come/first serve basis. However, you may need a reservation to use some sites. You should contact the local BLM office with jurisdiction over the site or area to learn whether a reservation is required.

§ 2933.14 For what time may BLM issue a Recreation Use Permit?

You may obtain a permit for a day, season of use, year, or any other time period that we deem appropriate for the particular use. We will post this information on site, or make it available at the local BLM office with jurisdiction over the area or site, or both.

§ 2933.20 Fees for Recreation Use Permits.

§ 2933.21 When are fees charged for Recreation Use Permits?

You must pay a fee for individual or group recreational use if the area is posted to that effect. You may also find fee information at BLM field offices or BLM Internet websites.

§ 2933.22 How does BLM establish Recreation Use Permit fees?

BLM sets recreation use fees and adjusts them from time to time to reflect changes in costs and the market, using the following types of data:

- (a) The direct and indirect cost to the government;
- (b) The types of services or facilities provided; and
- (c) The comparable recreation fees charged by other Federal agencies, non-

Federal public agencies, and the private sector located within the service area.

§ 2933.23 When must I pay the fees?

You must pay the required fees upon occupying a designated recreation use facility, when you receive services, or as the BLM's reservation system may require. These practices vary from site to site. You may contact the local BLM office with jurisdiction over the area or site for fee information.

§ 2933.24 When can I get a refund of Recreation Use Permit fees?

If we close the fee site for administrative or emergency reasons, we will refund the unused portion of your permit fee upon request.

§ 2933.30 Rules of conduct.

§ 2933.31 What rules must I follow at fee areas?

You must comply with all rules that BLM posts in the area. Any such site-specific rules supplement the general rules of conduct contained in subpart 8365 of this chapter relating to public safety, resource protection, and visitor comfort.

§ 2933.32 When will BLM suspend or revoke my permit?

(a) We may suspend your permit to protect public health, public safety, the environment, or you.

(b) We may revoke your permit if you commit any of the acts prohibited in subpart 8365 of this chapter, or violate any of the stipulations attached to your permit, or any site-specific rules posted in the area.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

2. The authority citation for part 3800 continues to read as follows:

Authority: 5 U.S.C. 552; 16 U.S.C. 1131–1136, 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21a, 22 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*; 62 Stat. 162.

3. Section 3802.1–1(d) is amended by removing the phrase “subpart 8372 of

this title” and adding in its place the phrase “part 2930 of this chapter.”

PART 6300—MANAGEMENT OF DESIGNATED WILDERNESS AREAS

4. The authority citation for part 6300 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 16 U.S.C. 1131 *et seq.*

5. Section 6302.20(i) is amended by removing the phrase “section 8372.0–5(c)” and adding in its place the phrase “section 2932.5.”

PART 8340—OFF-ROAD VEHICLES

6. The authority citation for part 8340 is revised to read as follows:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460l–6a, 16 U.S.C. 1241 *et seq.*, and 43 U.S.C. 1701 *et seq.*

7. Section 8344.1 is amended by revising the cross-reference “subpart 8372” to read “part 2930.”

PART 8370—USE AUTHORIZATIONS [REMOVED]

8. Part 8370 is removed.

PART 9260—LAW ENFORCEMENT—CRIMINAL

9. The authority citation for part 9260 continues to read as follows:

Authority: 16 U.S.C. 433; 16 U.S.C. 460l–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 18 U.S.C. 3551 *et seq.*; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

10. Section 9268.3 is amended by removing from the first sentence of paragraph (e)(1) the phrase “subpart 8372 of this title” and adding in its place the phrase “part 2930 of this chapter.”

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