DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2930

[WO–250–1220–PA–24 1A]

RIN 1004–AD45

Permits for Recreation on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations on Special Recreation Permits by changing the maximum term for these permits to 10 years instead of 5 years. The reason for this change is to add a reasonable expectation of continuity for outfitters, guides, and other small businesses that provide services to recreationists on public lands.

BLM also proposes to amend its regulations on Recreation Use Permits for fee areas by adding a section on prohibited acts and penalties. This new provision is necessary to give BLM law enforcement personnel authority to cite persons who do not pay fees or otherwise do not follow the regulations on Recreation Use Permits.

DATES: You should submit your comments by December 2, 2002. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date.

ADDRESSES:

Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153, Attn: RIN 1004-AD45.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

Direct internet response: *http://www.blm.gov/nhp/news/regulatory/index.html*

Internet e-mail: *WOComment@blm.gov.* (Include ''Attn: AD45'')

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452–5168 as to the substance of the proposed rule, or Ted Hudson at (202) 452–5042 as to procedural matters. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153, Attn: RIN 1004–AD45.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may comment via the Internet by accessing our automated commenting system located at *http://www.blm.gov/nhp/news/regulatory/index.html* and following the instructions there.
- You may also comment via email to *WOComment@blm.gov.* We intend this address for use by those who want to keep their comments confidential and for those who are unable, for whatever reason, to use the Internet site. Please submit email comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD45'' and your name and return address in your email message.

If you do not receive a confirmation that we have received your electronic message, contact us directly at (202) 452–5030.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

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

B. May I Review Comments Submitted By Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES:** Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We intend to post all comments on the Internet. If you are requesting that your comment remain confidential, do not send us your comment to the direct internet response website. Use mail, messenger, or email (include your request for confidentiality) to *WOComment@blm.gov.* We will post all electronically-received comments online as soon as we receive them.

II. Background

BLM published the proposed rule on Permits for Recreation on Public Lands in the **Federal Register** on May 16, 2000 (65 FR 31234). That proposed rule included a new subpart containing regulations on recreation use permits. These permits are for use of BLM fee areas. 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, places with guided tours, hunting blinds, and so forth. The final rule containing these regulations appears elsewhere in this issue of the **Federal Register**.

The final rule left substantially intact the existing regulations on the length of terms for commercial Special Recreation Permits. Those regulations provide for a maximum term of 5 years, allowing applicants to request permit terms up to that length and authorizing BLM to issue them for no more than that length of time.

One comment on the proposed rule from an association representing commercial outfitters and guides recommended that, considering the investment required by outfitters, the maximum term for Special Recreation Permits should be 10 years, unless BLM finds that special circumstances require a shorter period.

BLM recognizes that the 5-year maximum term for permits is a matter of concern for the outfitting and guiding community, and agrees that a 10-year

term may be more desirable from both a business and a land management perspective.

From the business perspective, the change would improve the ability of outfitters and guides to justify financing from lenders and would allow them to amortize equipment fully within the permit term, if BLM in fact sets their term at 10 years. It would improve the business climate for larger scale commercial permits and operations, in turn improving business stability and diversification within local economies.

From the perspective of the land manager, extending the maximum permit term from 5 to 10 years allows BLM greater range and flexibility to set a term for the permit appropriate for the activity in light of, and commensurate with—

- The level of investment required by the permittee;
- The geographic location and resource considerations;
- Anticipated changes or time frames in land use allocations or planning decisions;
- Our experience in managing and monitoring the type of permitted use; and
- The type, complexity, and extent of the proposed activity.

The rule would not automatically set the term of all permits at 10 years. Rather, it would simply allow the authorized officer to select an appropriate term for up to 10 years.

Finally, the change would lead to a small but real reduction in administrative costs by reducing the analysis and paperwork required for more frequent permit renewal.

However, since the matter was not raised in the 2000 proposed rule, it is appropriate to request public comment on the matter. Therefore, we are including this provision in this proposed rule.

III. Discussion of Proposed Rule

Section 2932.42 How Long Is My Special Recreation Permit Valid?

We propose to amend this section solely by changing the maximum Special Recreation Permit term to 10 years. BLM would consider each application separately, and could issue a permit for any period of time from the 10-year maximum term to down to a season or even a single day. We would consider the purpose of the permit, the needs of the permittee, and the public interest in determining the appropriate term.

Permittees are subject to rigorous monitoring and may lose their permits for poor performance under other provisions of the regulations (see §2932.56 of the final rule published in today's **Federal Register**). This proposed rule would have no impact on our ability to ensure that permittees are well-qualified and carry out their activities in a manner that protects the health of the public lands and serves the recreating public. It would, on the other hand, allow outfitters, guides, and river-running enterprises to amortize their equipment fully within a permit term, avoid the expense and inconvenience of more frequent permit renewal, secure financing more easily (based on lenders knowing that permit terms are longer), and engage in long-term business planning.

This change should benefit existing permit holders, but it may reduce the ability of outfitters who currently do not hold a permit to obtain one, but only in areas where resource sensitivity or high demand for a limited recreational resource requires BLM to impose limits on use allocations. BLM is also seeking comments on, and may include in the final rule additional data about, the economic impact of this rule, including its effects on the availability of loans and investments that the outfitter industry needs to support its operations and provide recreational services to its customers. BLM does not expect this rule to present a substantial departure from current commercial outfitter operations on BLM lands or the ability of BLM staff to monitor and enforce permit compliance. However, BLM is seeking comments from the public on this issue to ensure that this rule will adequately address any outstanding concerns that may arise from its implementation. Specifically, we invite comments offering answers to the following questions:

- Is the proposed rule an appropriate way to encourage business stability while allowing appropriate levels of competition and ranges of services?
- What problems have outfitters had obtaining financing under the current permit term limitation? Have lenders cited short permit terms as a reason for denying longer-term financing?
- Is there specific guidance BLM should issue to its field offices to assure fair and uniform implementation of this rule, and reduce pressure for automatic approval of 10-year permit terms?
- How would the proposed rule affect BLM's ability to manage permits even if on-the-ground conditions change?
- What substantial or additional benefit would the proposed rule provide to small businesses that is not available under the current 5 year maximum term?

We are also interested in anecdotal information concerning the following issues:

- What has prompted BLM to deny permit renewal?
- What problems have outfitters had obtaining financing under the present permit term limitation?
- What may be the tax consequences of allowing permits to last 10 years?

Subpart 2933—Recreation Use Permits for Fee Areas

The May 16, 2000, proposed rule did not include enforcement language for fee areas. In this new proposed rule we would amend this subpart on Recreation Use Permits by adding a new section on prohibited acts and penalties. Under this new §2933.33, persons using campgrounds and other fee areas would be cited and penalized if they do not—

- Obtain a permit,
- Pay necessary fees, or
- Display proof of payment as required by BLM and posted at the site.

They may also be cited and penalized if they—

- Use forged permits, or
- Use another person's permit.

This new section would also state that failure to display proof of payment on a vehicle parked in a fee area is evidence of non-payment.

Finally, the new section would list the penalties that may be imposed upon conviction.

The existing regulation at 43 CFR 8365.2–3(a), which requires visitors to pay fees imposed under 36 CFR part 71, is insufficient because part 71 has not been amended since 1981, and thus does not include fees provided for in numerous amendments of the Land and Water Conservation Fund Act since that time. Further, fee areas now include many more facilities besides developed campgrounds, and methods and proof of payment have changed so radically that law enforcement has encountered difficulties in enforcing these requirements and seeking prosecution of violators. Field offices are trying to solve these problems, primarily with supplementary rules under 43 CFR 8365.1–6.

IV. Procedural Matters

The principal author of this proposed 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 rule is not a significant rule and is 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.

The first change in the proposed rule would be to increase the maximum term for Special Recreation Permits from 5 to 10 years. During fiscal year 2001, BLM issued about 34,500 Special Recreation Permits, and collected about $4 million in fees. We give these figures to illustrate that the revenues collected under BLM's recreation program are minuscule compared with those realized by the overall national recreation industry, which, according to industry sources, is a $350 billion industry. Special Recreation Permits are generally obtained by commercial outfitters and guides, including river-running companies (about 3,000), 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.

The proposal to increase the maximum term for Special Recreation Permits would affect primarily the first of these categories: commercial outfitters and guides, and river-running companies. The rule would not change the fee structure at all, but would benefit these businesses by giving them a more secure tenure in their permits. This in turn would help them justify financing from lenders and allow them to amortize equipment fully within the permit term.

The second change in the proposed rule affects Recreation Use Permits. During fiscal year 2001, BLM issued about 670,000 Recreation Use Permits for use of fee sites, with revenues totaling about $3.9 million. The cost of such a permit averaged a little under $6.00.

This proposed rule will have no effect on fees, and should have no effect on the number of Recreation Use Permits BLM will issue. It would merely add a section—

- Making failure to obtain a permit, failure to pay for one, and fraudulent use of permits or other documents to avoid paying a fee, prohibited acts;
- Making failure to display a permit, where local rules require it, evidence of failure to pay; and
- Stating the standard statutory maximum penalties for violation that a magistrate could impose.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). According to the president of the American Recreation Coalition, outdoor recreation is a $350 billion industry made up of small businesses. None of these small businesses will be affected more than incidentally by making failure to pay for or obtain a fee area Recreation Use Permit a prohibited act. There is no way to quantify how many of these permits BLM issues to small entities, but it must be a minuscule share of the campground and similar permits BLM issues to the general recreating public.

Changing the maximum term for Special Recreation Permits from 5 to 10 years will benefit small businesses as explained in the previous section of this part of the Preamble. However, we cannot quantify the benefits accruing from increased permit tenure. The rule will benefit about 3,000 commercial outfitters and guides and river-running outfitters, all of whom operate small businesses, and some of whom hold multiple Special Recreation Permits.

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 does not change fees, but only provides a mechanism for enforcing their collection. 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. Recreationists are not likely to resort to foreign recreation markets because failure to pay a campground fee becomes a punishable offense.

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. The enforcement provision proposed does not include any language requiring or authorizing forfeiture of personal property or any property rights. 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.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have found that this final rule would not include policies that have tribal implications. The rule would not affect lands held for the benefit of Indians, Aleuts, and Eskimos. The rule would apply only to BLM campgrounds and other fee areas on BLM lands.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This proposed 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. We base this finding on an environmental assessment of the proposed rule dated August 22, 2002, which you will find in the administrative record for the rule.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

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

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; *for example,* § 2932.42 How long is my Special Recreation Permit valid?)

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION:** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

If you have any comments that concern how we could make this proposed rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES,** above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov.*

List of Subjects in 43 CFR Part 2930

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

Dated: August 30, 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, part 2930, chapter II, subtitle B of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

1. The authority citation for part 2930 continues to read as follows:

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

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

2. Revise §2932.42 to read as follows:

§ 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 10 years. BLM will determine the appropriate term on a case-by-case basis.

Subpart 2933—Recreation Use Permits for Fee Areas

3. Add § 2933.33 to read as follows:

§ 2933.33 Prohibited acts and penalties.

(a) *Prohibited acts.* You must not—

(1) Fail to obtain a use permit or pay any fees that this subpart or the Land and Water Conservation Fund Act, as amended, requires;

(2) Fail to pay any fees within a time that the local BLM office sets after you have begun occupying a designated use facility;

(3) Fail to display any required proof of payment of fees;

(4) Willfully and knowingly possess, use, publish as true, or sell to another, any forged, counterfeited, or altered document or instrument used as proof of or exemption from fee payment; or

(5) Willfully and knowingly use any document or instrument used as proof of or exemption from fee payment, that BLM issued to or intended another to use, or

(6) Falsely represent yourself to be a person to whom BLM has issued a document or instrument used as proof of or exemption from fee payment.

(b) *Evidence of nonpayment.* BLM will consider as evidence of non-payment failure to display proof of payment, where required, on your unattended vehicle parked within a fee area.

(c) *Responsibility for penalties.* If another driver incurs a penalty when using a vehicle registered in your name, you and the driver are jointly responsible for the penalty, unless you can show that the vehicle was used without your permission.

(d) *Types of penalties.* You may be subject to the following fines or penalties for violating the provisions of this section.

If you are convicted of	Then you may be subject to...	Under...
(1) Any act prohibited by paragraph (a) of this section.	A fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.	The Federal Land Policy and Management Act 1976 (43 U.S.C. 1733(a)).
(2) Violating any regulation in this subpart or any condition of a Recreation Use Permit.	A fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.	The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).
(3) Failing to obtain any permit or to pay any fee required in this subpart.	A fine in accordance with 18 U.S.C. 3571	The Land and Water Conservation Fund Act, as amended.

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