

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

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LVTF09C0020]

**Notice of Proposed Supplementary
Rules Concerning Fireworks on Public
Land in Colorado**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of proposed
supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule to restrict the possession and use of fireworks on public land within the State of Colorado. The rules are necessary to protect the area's natural resources and provide for public health and safety.

DATES: Comments on the proposed supplementary rules must be received or postmarked by August 9, 2010 to be considered. In developing final supplementary rules, the BLM is not obligated to consider comments postmarked or received after this date.

ADDRESSES: You may submit comments by any of the following methods:

Mail: Office of Law Enforcement, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Internet: http://www.co_proposed_rule@blm.gov (Attn: John Bierk).

FOR FURTHER INFORMATION CONTACT: John Bierk, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, telephone (303) 239-3893. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

- I. Authority
- II. Public Comment Procedures
- III. Background
- IV. Procedural Matters

I. Authority

43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1-6.

II. Public Comment Procedures

You may view an electronic version of the proposed supplementary rules at the following BLM Web site: <http://www.blm.gov/co/st/en.html>.

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any

recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider or include in the Administrative Record for the supplementary rules comments that the BLM receives after the close of the comment period (*See DATES*), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than one of the addresses listed above (*See ADDRESSES*).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 2850 Youngfield Street, Lakewood, Colorado 80215 during regular business hours (9 a.m. to 4 p.m.), Monday through Friday, except Federal holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Background

Under current regulations found in 43 CFR 8365.2-5(a), no person shall discharge or use fireworks in a developed recreation site. Seasonal fire prevention orders issued under the authority of 43 CFR 9212.2(a) are commonly used at the local level to reduce the chance of human-caused fires during the peak fire season. This action would supplement the existing regulations to prohibit the possession and use of fireworks on all public land in Colorado. Drought and subsequent insect kill of large stands of pine trees in Colorado have made the threat of wildfires greater each year. The challenges of fire protection and suppression increase as more people move into the wildland urban interface. Ensuring public and firefighter safety, while protecting property and natural resources, remain BLM priorities.

Under the National Fire Plan, the BLM works with other agencies and communities to ensure adequate preparedness for future fire seasons, restore landscapes, rebuild communities damaged by wildfire, and invest in projects to reduce fire risk. This action complements the National Fire Plan. Land management agencies have taken precautions to enhance public awareness, provide proactive pre-

suppression efforts, and implement fire restrictions that are reasonable and consistent among Federal, State, and local agencies. Federal, State, and local land management agencies should strive to implement fire restrictions and closures that are uniform across administrative and geographic boundaries. The restrictions contained in this rulemaking will help achieve that goal.

The proposed prohibition on the possession and use of fireworks is consistent with the other land management regulations designed to enhance fire prevention, and it is consistent with State definitions found in the Colorado Revised Statutes sections 12-28-101(1), 12-28-101(1.5), and 12-28-101(8)(a) and listed in the proposed rule under definitions with one exception. Under Colorado Revised Statutes section 12-28-101(8)(a)(VII)(D), strike-on-box matches are listed as a permissible firework. This section was dropped from the definitions so it would not interfere with visitor use of strike-on-box matches for normal campfire or other uses.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules would not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules would not have an annual effect of \$100 million or more on the economy. They would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. These supplementary rules would merely establish rules of conduct for public use of a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rules clearly stated?
2. Do the supplementary rules contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

This proposed supplementary rule in and of itself, does not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to the Department of the Interior regulations implementing NEPA 43 CFR 46.210(i). In addition, the supplementary rule does not meet any of the 10 criteria for exceptions to the categorical exclusions listed in 43 CFR 46.215.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules are not considered a “major rule” as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not

affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules would not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than \$100 million per year; nor would they have a significant or unique effect on small governments. The rules would have no effect on governmental or Tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect Tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

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

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

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, the proposed supplementary rules do not include policies that have Tribal implications.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the proposed supplementary rules would not comprise a significant energy action, and that they would not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The proposed supplementary rules would not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of these proposed supplementary rules is John Bierk, State Staff Ranger, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Proposed Supplementary Rules Concerning Fireworks on Public Land in Colorado

For the reasons stated in the preamble, and under the authorities for supplemental rules found at 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management (BLM) proposes supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Definitions

Fireworks means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks, or display fireworks, as defined by Colorado Revised Statutes 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a).

Colorado Revised Statutes 12–28–101(1)

“Articles pyrotechnic” means pyrotechnic special effects materials and pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but are intended for theatrical performances and not intended for consumer use. Articles pyrotechnic shall also include pyrotechnic devices meeting the weight limits for consumer fireworks but are not labeled as such and are classified as UN0431 or UN0432 pursuant to 49 CFR 172.101, as amended.

Colorado Revised Statutes 12–28–101(1.5)

“Display fireworks” means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than one hundred thirty milligrams of explosive material, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks as defined in 16 CFR 1500.1 to 1500.272 and 16 CFR 1507.1 to 1507.12 and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 CFR 172.101, as amended, and including fused set pieces containing components that exceed fifty milligrams of salute powder.

Colorado Revised Statutes 12–28–101(8)(a)

“Permissible fireworks” means the following small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12, and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101:

(I) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(II) Cone fountains, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(III) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel;

(IV) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

(V) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed two hundred grams each;

(VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the

composition of any chlorate or perchlorate shall not exceed five grams;

(VII) Any of the following that do not contain more than fifty milligrams of explosive composition:

(A) Explosive auto alarms;

(B) Toy propellant devices;

(C) Cigarette loads;

(D) Other trick noise makers;

(VIII) Snake or glow worm pressed pellets of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units;

(IX) Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;

(X) Multiple tube devices with:

(A) Each tube individually attached to a wood or plastic base;

(B) The tubes separated from each other on the base by a distance of at least one-half of one inch;

(C) The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;

(D) Only one external fuse that causes all of the tubes to function in sequence; and

(E) A total pyrotechnic composition of no more than five hundred grams.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails, or waterways administered by the BLM in Colorado:

1. The possession, discharge, or use of all fireworks as defined by Colorado Revised Statutes 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a); and

2. The violation of the terms, conditions of use, or stipulations of any written authorization that may be exempted under this rule. The following person(s) are exempt from this order: Any Federal, State, or local officer, or member of an organized rescue or fire suppression or fuels management force or other authorized agency personnel while in the performance of their official duties.

Penalties

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district shall be punishable by a fine of not more than \$500 or,

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Colorado may be tried before a United States Magistrate and fined no more than \$1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to

the enhanced fines provided for by 18 U.S.C. 3571.

Helen M. Hankins,

State Director.

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

[AZA23294]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6801 for an additional 20-year period. This order withdrew approximately 61,356 acres of National Forest System land from the mining laws to protect the Smithsonian Institution's Fred Lawrence Whipple Observatory. The withdrawal created by PLO No. 6801 will expire on September 18, 2010, unless extended. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by August 9, 2010.

ADDRESSES: Comments and meeting request should be sent to the Coronado National Forest Office, Federal Building, 300 West Congress Street, Tucson, Arizona 85701, (520) 388–8348.

FOR FURTHER INFORMATION CONTACT: Karl Sandwell-Weiss, Minerals Resource Geologist, at the Forest Service address listed above, or Vivian Titus, Bureau of Land Management, Arizona State Office, One North Central, Suite 800, Phoenix, Arizona 85004, (602) 417–9598.

SUPPLEMENTARY INFORMATION: The USDA Forest Service has filed an application requesting that the Secretary of the Interior extend PLO No. 6801 (55 FR 38550, (1990)) which withdrew approximately 61,356 acres of National Forest System land located in Santa Cruz County, Arizona, from location and entry under the United States mining laws (30 U.S.C. ch. 2) for an additional 20-year term, subject to valid existing rights. PLO No. 6801 is incorporated herein by reference.

The purpose of the proposed extension is to continue to protect