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**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Part 8360**

[LLWO25000—L12200000.PM000—241A.00]

RIN 1004-AD96

**Visitor Services****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is amending its regulations to remove the Land and Water Conservation Fund Act as one of the authorities of its recreation regulations, in accordance with the Federal Lands Recreation Enhancement Act of 2004 (REA). The final rule amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application. The reordering is necessary to broaden the scope to include all areas where standard amenity, expanded amenity, and special recreation permit fees are charged under REA. The final rule also removes regulations that have been interpreted by the BLM Field Offices to require the BLM to publish supplementary rules for each area for failure to pay recreation fees, thus relieving the BLM from publishing separate rules for each area. Finally, this rule makes technical changes to maintain consistency with other BLM regulations.

**DATES:** This rule is effective on June 16, 2010.**ADDRESSES:** Inquiries or suggestions should be delivered to U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., Attention: RIN: 1004-AD96, Washington, DC 20240.**FOR FURTHER INFORMATION CONTACT:** For information on the substance of the rule, please contact Hal Hallett at (202) 912-7252 or Anthony Bobo Jr. at (202) 912-7248. For information on procedural matters, please contact Chandra Little at (202) 912-7403. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individuals during normal business hours. FIRS is available twenty-four hours a day, seven days a

week, to leave a message or question with these individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Final Rule as Adopted and Response to Comments
- III. Procedural Matters

**I. Background**

The BLM is revising its fee management regulations, policies, and procedures in accordance with the REA, 16 U.S.C. 6801 *et seq.*, 43 CFR part 2930 currently includes all recreation fee management regulations, including the requirement that visitors pay fees before occupying a campground or picnic area. The BLM is now amending 43 CFR part 8360 to add regulatory changes made necessary by the REA, including the removal of any language pertaining to recreation fees. In addition, the section addressing the collection of fossils is modified to include common plant fossils, reflecting long established BLM policies. The Omnibus Public Land Management Act (OPLMA) became law on March 30, 2009, after the publication of the proposed rule and includes provisions on Paleontological Resources Preservation (PRP) (Title VI, Subtitle D (Pub. L. 111-11, 123 Stat. 1172, 16 U.S.C. 470aaa *et seq.*)) The law requires that the Secretary of the Interior develop regulations to implement this subtitle. The OPLMA-PRP defines "casual collecting" as "\* \* \* the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth's surface and other resources." These regulations define terms as used in this definition. However, the OPLMA-PRP does not change the BLM's basic policy for allowing casual collecting of reasonable amounts of common invertebrate and common plant fossils from public lands for personal use without a permit, and therefore, the regulations at 43 CFR part 8360 do not conflict with the OPLMA-PRP.

Other changes were made that group related regulations in the same section to simplify language and clarify the intent, and to resolve inconsistencies between the existing provisions.

**II. Final Rule as Adopted and Response to Comments**

On October 3, 2008, the BLM published a proposed rule (73 FR 57564) to implement REA with a 60-day public comment period that ended on December 2, 2008. The BLM received

four comments on the proposed rule. These comments supported the proposed rule and suggested a few minor revisions to make the regulations consistent with other BLM regulations. The comments specifically addressed activities relating to the recreational collection of rocks and paleontological resources on BLM lands.

**Section 8360.0-3 Authority**

The final rule removes the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 4601-6a) as an authority for the regulations. The enactment of the REA changed the BLM's authority to collect recreation fees. Recreation fees that were previously authorized under the LWCFA are now authorized under REA. The BLM's policies and procedures have also been revised to reflect this new and revised authority. We received no comment on this section and therefore the final rule remains as proposed.

**Section 8360.0-5 Definitions**

In paragraph (c), the proposed rule added the word "recreation" as a modifier to the term "developed sites and areas" in order to clarify that the definition is specific to developed recreation sites and areas. The same language is inserted elsewhere in this rule to distinguish developed recreation sites and areas from other developed sites and areas used for non-recreation purposes. We received no comment on this section, thus the final rule remains as proposed.

**Section 8365.1-5 Property and Resources**

We received three comments on this section that stated that removing the term "rocks" from the current 43 CFR 8365.1-5(b)(2), as proposed, would lead to uncertainty about the collecting of rocks as a hobby without a permit on public lands. The commenters suggested that we retain the term "rocks" consistent with the current regulations and with the BLM's policy of allowing recreational collection of rocks and minerals on public lands. The BLM stated in the preamble to the proposed rule that the term "rocks" should be removed because it was already covered in regulations at 43 CFR 8365.1-5(b)(4) which by reference to 43 CFR subpart 3604 allows the recreational collection of "common" rocks without a permit. However, the regulations at 43 CFR part 3600 do not address the recreational collection of rocks on public lands without a permit. The Materials Act does not allow recreational collection of rocks and payment is required. Section 8365.1-5(b) makes an exception for the

recreational collection of rocks in reasonable quantities for personal use under Section 302(a) and (b) of the Federal Land Policy and Management Act. Because of this and to address the commenters' concern, in the final rule the BLM did not remove the word "rocks" from section 8365.1-5(b)(2).

We received two comments on this section that asked that the final rule show that the regulation applies to "common plant fossils" as well as "common invertebrate fossils." The commenters said that the intent of this revision is to make clear the BLM's longstanding policy to allow the recreational collection of "common invertebrate fossils" as well as "common plant fossils." Adding "common" in front of "plant" clarifies the BLM's intent that only "common plant fossils" may be collected. The commenters also suggested that by specifically mentioning fossil plants in the regulations, the BLM gives equal regulatory weight to both types of fossils and more clearly states the BLM's intent in a single place. We agree with the commenters and have revised the final rule. Allowing the hobby collections of "common fossil plants" would not cause a significant loss of paleontological information since the public is currently allowed to collect common plant fossils, and it would provide the public continued opportunities to pursue this aspect of recreational collecting. In addition to responding to the comment, this change will correct an oversight in this provision and clarify what has been a long-standing BLM policy to allow the recreational collecting of common invertebrate and common plant fossils, not just common invertebrate fossils. This policy was previously incorporated into BLM Handbook H-8270-1, "General Procedural Guidance for Paleontological Resources Management," which provides that, subject to the provisions of 43 CFR subpart 8365, and unless otherwise prohibited by land use plans or other authorities, common invertebrate and common plant fossils may be collected in reasonable amounts for noncommercial purposes without a permit. Furthermore, this clarification is in agreement with the new law for paleontological resources preservation (OPLMA-PRP), and will benefit the public when casually collecting common invertebrate and common plant fossils from public lands.

Therefore, in the final rule we revised section 8365.1-5(b)(2) to read as set forth in the regulatory text of this final rule.

Two comments suggested the need to clarify the BLM's policy of prohibiting

the sale or barter not only between commercial fossil dealers, but also to hobby collectors. This revision would clarify the BLM's policy of prohibiting the sale of fossils. However, the new paleontological resources preservation provision in (OPLMA-PRP) defines "casual collecting" as "\* \* \* the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth's surface and other resources." The BLM will propose regulations in the near future that will implement the OPLMA-PRP and will define the terms in that rulemaking. Therefore, the BLM does not believe that it is necessary to provide clarifying language at this time.

#### *Section 8365.2-3 Occupancy and Use*

The provisions in this section have been reordered to separate those that apply specifically to campgrounds and picnic areas from those that apply to all developed recreation sites and areas, including campgrounds and picnic areas. The restructuring is in response to a need to include all areas where standard amenity, expanded amenity, and special recreation fees are authorized under the REA. This also brings this section into compliance with 43 CFR part 2930, which was previously rewritten in response to the REA.

The rule also amends this section by removing as a prohibited act the failure to pay fees. This prohibition is already included in 43 CFR 2933.33, so it is unnecessary in these regulations. As a result of this rule change, it is also no longer necessary to include fee requirements in supplementary rules issued under section 8365.1-6. We received no comments on these revisions and therefore the final rule remains as proposed.

### **III. Procedural Matters**

#### *Executive Order 12866, Regulatory Planning and Review*

These final regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866.

(1) These final regulations will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

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

(3) These final regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients.

(4) These final regulations do not raise novel legal or policy issues.

The BLM policies and procedures have merely been amended to reflect new statutory authority, and to remove inconsistencies in previous language.

#### *National Environmental Policy Act (NEPA)*

The BLM has determined that this final rule merely amends the statutory authority of our recreation regulations from the LWCFA to the REA. This final rule will bring the BLM's recreation regulations into compliance with the REA. The final rule amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application, but does not change their effect. It clarifies that common plant fossils are available to recreational collectors, without changing the BLM's policy. This rule also resolves minor inconsistencies between existing provisions. The BLM has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500. The CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions (40 CFR 1507.3). The BLM has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 43 CFR 46.210(i), which categorically excludes "[p]olicies, directives, regulations and guidelines: that are an administrative, financial, legal, technical, or procedural nature. \* \* \*" In addition, the BLM has determined that none of the extraordinary circumstances listed in 43 CFR 46.215 applies to this rule.

#### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 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

will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final rule pertains to individuals and families recreating on the public lands and not to small businesses or other small entities. Therefore, the BLM has determined under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This final rule is not a “major rule” as defined at 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. That is, it will not have an annual effect on the economy of \$100 million or more; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will 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 final rule merely amends the regulations to change the statutory authority of the BLM’s recreation regulations from the LWCFA to the REA, makes technical changes to bring our recreation regulations into compliance with the REA, and makes them internally consistent. The rule also amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application.

#### *Unfunded Mandates Reform Act*

This final rule will not impose an unfunded mandate on state, local, or Tribal governments or the private sector, in the aggregate, of \$100 million or more per year; nor does this rule have a significant or unique effect on state, local, or Tribal governments. The rule imposes no requirements on any of these entities. The BLM has already shown, in the previous paragraphs of this section of the preamble, that the change in this rule will not have effects approaching \$100 million per year on the private sector. 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)*

This final rule is not a government action capable of interfering with constitutionally protected property rights. It merely updates the regulations

to reflect changes in authority for the BLM recreation program covered by the regulations, and makes editorial changes as discussed in this preamble. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

#### *Executive Order 13132, Federalism*

This final rule will not have a substantial direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the levels of government. It will not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does 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 this final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, the BLM has found that this rule does not include policies that have tribal implications. This rule has no effect on Tribal lands, and it affects members of Tribes only to the extent that they use public lands and facilities for recreation. This rule will bring our recreation regulations into compliance with the REA.

#### *Information Quality Act*

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

In accordance with Executive Order 13211, the BLM has determined that this final rule will not have substantial direct effects on energy supply, distribution, or use, including a shortfall in supply or price increase. The rule has no bearing on energy development, but merely changes the authority provisions

for and rearranges certain prohibited act provisions for recreational visitors on the public lands. This rule should have no effect on the volume of visitation or on consumption of energy supplies.

#### *Executive Order 13352, Facilitation of Cooperative Conservation*

In accordance with Executive Order 13352, the BLM has determined that this rule is administrative in nature and only reflects changes in authority, and reorganizes and clarifies certain provisions. It does not impede facilitating cooperative conservation. It does not affect the interests of persons with ownership or other legally recognized interests in land or other natural resources, improperly fail to accommodate local participation in the Federal decision-making process, or relate to the protection of public health and safety.

#### *Paperwork Reduction Act*

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

#### *Authors*

The principal authors of this rule are Hal Hallet and Anthony Bobo, Jr. of the Recreation and Visitor Services Division, Washington Office, BLM, assisted by Chandra Little of the Division of Regulatory Affairs, Washington Office, BLM.

#### **List of Subjects in 43 CFR Part 8360**

Penalties, Public lands, reporting and recordkeeping requirements, and Wilderness areas.

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

#### **PART 8360—VISITOR SERVICES**

■ 1. Revise the authority citation for part 8360 to read as follows:

**Authority:** 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, and 16 U.S.C. 1241 *et seq.*

#### **Subpart 8360—General**

■ 2. Revise § 8360.0–3 to read as follows:

#### **§ 8360.0–3 Authority.**

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing

Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877 *et seq.*), and the National Trails System Act (16 U.S.C. 1241 *et seq.*).

■ 3. Amend § 8360.0–5 by revising paragraph (c) to read as follows:

**§ 8360.0–5 Definitions.**

\* \* \* \* \*

(c) *Developed recreation sites and areas* means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: Delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

\* \* \* \* \*

**Subpart 8365—Rules of Conduct**

■ 4. Revise § 8365.1–5(b)(2) to read as follows:

**§ 8365.1–5 Property and resources.**

\* \* \* \* \*

(b) \* \* \*

(2) Nonrenewable resources such as rock and mineral specimens, common invertebrate and common plant fossils, and semiprecious gemstones;

\* \* \* \* \*

■ 5. Revise § 8365.2–3 to read as follows:

**§ 8365.2–3 Occupancy and use.**

In developed camping and picnicking areas, no person shall, unless otherwise authorized:

(a) Pitch any tent, park any trailer, erect any shelter or place any other camping equipment in any area other than the place designed for it within a designated campsite;

(b) Leave personal property unattended for more than 24 hours in a

day use area, or 72 hours in other areas. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m));

(c) Build any fire except in a stove, grill, fireplace or ring provided for such purpose;

(d) Enter or remain in campgrounds closed during established night periods except as an occupant or while visiting persons occupying the campgrounds for camping purposes;

(e) Occupy a site with more people than permitted within the developed campsite; or.

(f) Move any table, stove, barrier, litter receptacle or other campground equipment.

**Wilma A. Lewis,**

*Assistant Secretary, Land and Minerals Management.*

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