

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

[WO-120-04-1630-PD]

Proposed Supplementary Rule for the Public Lands Administered by the Bureau of Land Management, Arizona State Office, Relating to Possession of Open Container of Alcohol While Operating or Riding on/in Motor Vehicles

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Supplementary Rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule to apply to the public lands administered by the Arizona State Office. The rule addresses the illegal use of alcohol on public lands. The BLM needs this supplementary rule to protect natural resources and the health and safety of public land users. This supplementary rule will allow BLM Law Enforcement Officers to enforce a regulation prohibiting the possession of open containers of alcohol while operating or riding on/in motor vehicles on public lands in a manner consistent with current Arizona State law and BLM California supplementary rule.

DATES: Send your comments by January 25, 2005. In developing final rules, the BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Send comments to John McLaughlin, State Staff Ranger, Bureau of Land Management, Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004, (602) 417-9339.

FOR FURTHER INFORMATION CONTACT: Lyle Shaver, Special Agent-in-Charge, BLM Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004, (602) 417-9317.

I. Discussion of the Supplementary Rules

This proposed supplementary rule would apply to all public lands administered by BLM's Arizona State Office, *i.e.*, all public lands in Arizona. In keeping with the BLM's performance goal to reduce threats to public health and safety and property, this proposed supplementary rule is necessary to protect the natural resources and to provide for safe public recreation and public health. Alcohol related offenses are a growing problem on the public lands. Hundreds of people are injured each year while operating or riding on/in motor vehicles on public lands. A

large percentage of these injury accidents are alcohol related. This rule will provide BLM with a tool to increase law enforcement efforts related to driving under the influence and ultimately reduce the number of alcohol related incidents and deaths.

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

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an annual 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. It is directed at preventing unlawful personal behavior on public lands for purposes of protecting public health or safety.

This proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rule would not materially alter the budgetary effects of entitlements, grants, user fees or loan programs or the rights or obligations of their recipients, and would not raise novel legal or policy issues. The supplementary rule would merely enable BLM law enforcement personnel to enforce a regulation pertaining to unlawful possession of an open container of alcohol on public lands in a manner that mirrors current State of Arizona law and BLM California supplementary rule.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601-612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial on a substantial number of small entities. The supplementary rule proposed here would protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed supplementary rule would not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the proposed supplementary rule only pertains to individuals who may be unlawfully using alcohol on the public lands. The proposed rule will assist in the protection of the public lands and those who use them, including small business concessionaires and outfitters. The proposed supplementary rule would have no effect on costs, prices, competition, or commercial use of the public lands.

Unfunded Mandates Reform Act

This proposed supplementary rule 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 this proposed supplementary rule have significant or unique effect on small governments. The supplementary rule would be patterned on Arizona State law and the BLM California supplementary rule. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandate Reform Act (2 U.S.C. 1531 *et seq.*)

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

The proposed supplementary rule does not have significant takings implications, and does not cause the impairment of any property rights. The rule would not provide for the surrender or confiscation of any legal personal or real property. Therefore, the Department of the Interior has determined that the supplementary rule would not require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rule 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 the responsibilities among the various levels of government. The supplementary rule applies only to public lands administered by the Arizona State Office and does not address jurisdictional issues involving the Arizona State government. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rule does not have sufficient federalism

implications to warrant preparation of a federalism assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this proposed supplementary rule would not include policies that have tribal implications. Since the rule does not change BLM policy and does not involve Indian reservation lands or resources, we have determined that the government-to-government relationships should remain unaffected. The proposed supplementary rule only prohibits the unlawful possession of alcoholic beverages on public lands.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed supplementary rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed supplementary rule does 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.*

National Environmental Policy Act

BLM has determined the supplementary rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) Chapter 2, Appendix 1. In addition, the supplemental rule does not meet any of the ten criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal Agency, and for which neither an environmental assessment nor environmental impact statement is required.

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

This proposed supplementary rule is not a significant energy action. The rule would not have an adverse effect on energy supplies, production or consumption. It only addresses the possession of alcoholic beverages on public lands, and has no conceivable connection with energy policy.

Author

The principal author of this supplementary rule is State Staff Ranger John McLaughlin of the Arizona State Office, Bureau of Land Management, Department of the Interior.

Under the authority of 43 CFR 8365.1-6 and 43 U.S.C. 1733(a), the Arizona State Director, Bureau of Land Management, issues supplementary rules for public lands administered by the Arizona State Office.

Supplementary Rule on Possession of Open Containers of Alcoholic Beverages on Public Lands

The Arizona State Office issues this supplementary rule under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1733(a), 1740, and 43 CFR 8365.1-6.

No person shall have in their possession, or on their person, an open container that contains an alcoholic beverage while operating or riding on/ in a motor vehicle or off-road vehicle on public lands administered by the BLM, Arizona State Office.

1. Definitions

The following definitions will apply to the proposed supplementary rule, unless modified within a specific part or regulation:

a. A motor vehicle is defined as any self-propelled device in, upon, or by which a person is or may be transported, including a vehicle that is propelled by electric power. Exempt from this definition are motorized wheelchairs. "Off-road vehicle" is defined in 43 CFR 8340.0-5(a).

b. Operator means any person who operates, drives, controls, or otherwise has charge of a mechanical mode of transportation or any other mechanical equipment.

c. Public lands means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership. This includes, but is not limited to, a paved or unpaved parking lot or other paved or unpaved

area where vehicles are parked or areas where the public may drive a motorized vehicle, paved or unpaved roads, roads, routes or trails.

Open container means any bottle, can, jar or other receptacle that contains alcohol and that has been opened, has had its seal broken or the contents of which have been partially removed.

2. Limitations

- a. This section does not apply to:
- i. An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or
 - ii. An open container stored in the living quarters of a motor home or camper; or
 - iii. Unless otherwise prohibited, an open container carried or stored in a motor vehicle that is parked and the vehicle's occupant(s) are camping.
 - iv. For the purpose of paragraph (a)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

Penalties

Under the Federal Land Policy and Management Act of 1976 43 U.S.C. 1733(a), and the Sentencing Reform Act of 1984, as amended, 18 U.S.C. 3551, 3571, persons who violate this restriction are subject to arrest and, upon conviction, may be fined up to \$100,000 and/or imprisoned for not more than 12 months.

Elaine Y. Zielinski,
State Director, Arizona.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-150-1220-PA]

Notice of Proposed Supplementary Rules for Public Lands in Colorado: Escalante Canyon Area of Critical Environmental Concern (ACEC), Escalante Potholes Recreation Area, and Escalante Bridge Boat Launch Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The Bureau of Land Management's (BLM) Uncompahgre