

DEPARTMENT OF THE INTERIOR – Bureau of Land Management

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Notice of Final Supplementary Rules Concerning Fireworks on Public Land in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules.

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

DATES: *Effective Date*: These rules are effective December 19, 2011.

ADDRESSES: You may send inquiries by mail to the Office of Law Enforcement, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; or by e-mail to john_bierk@blm.gov.

FOR FURTHER INFORMATION CONTACT: John Bierk, Chief Ranger, BLM Colorado State Office (see address listed above); or by phone (303) 239–3893. 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 individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion
- III. Procedural Matters

I. Background

The BLM proposed these Supplementary Rules in the Federal Register on May 10, 2010 (75 FR 25879). Under current regulations found in 43 CFR 8365.2–5 (a), no person shall discharge or use fireworks at 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 peak fire season. This action will 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 the BLM's 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. These rules complement 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 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 the definitions of fireworks found in Colorado Revised Statutes sections 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a), 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.

II. Discussion

The proposed supplementary rules received six public comments, four were in support of the proposed rule and two were against the proposed rule. One comment in opposition to the proposed rules cited a family tradition of fireworks use on public land. While the BLM recognizes the importance of family traditions, such traditions must be weighed against the need to protect the natural resources located on public lands and the need to protect public health and safety at the same time. Considering that there are appropriate and safe areas in Colorado where fireworks are allowed and there are a large number of professional fireworks displays available for public viewing throughout the year, the benefits of these rules outweigh the costs. The second comment received in opposition to the proposed rules cited a concern that the definition of an explosive device would eventually include firearms. The BLM definition of fireworks, which substantially relies on the definition under Colorado Revised Statutes 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a) does not include firearms and the BLM has no intention of including firearms in the definition of fireworks under this final rule.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The Final Supplementary Rules do not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They do not have an annual effect of \$100 million or more on the economy. They do 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. They do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do 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. They merely establish rules of conduct for public use of a limited area of public lands.

National Environmental Policy Act

The BLM has found that the Final Supplementary Rules comprise a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4; 43 CFR 26.210. Specifically, the promulgation of the Final Supplementary Rules is an action that is of an administrative, financial, legal, technical, or procedural nature within the meaning of 43 CFR 26.210(i), and none of the extraordinary circumstances listed at 43 CFR 26.215 are applicable. Therefore the BLM is not required to prepare an environmental assessment or an environmental impact statement for the Final Supplementary Rules.

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 Final 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 they will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These Final Supplementary Rules are not considered a ‘major rule’ as defined under 5 U.S.C. 804(2). They 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

The Final Supplementary Rules do 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 do they have a significant or unique effect on small governments. They have no effect on governmental or tribal entities and will impose no requirements on any of these entities. They 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 Final Supplementary Rules do not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that they will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The Final Supplementary Rules do 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 these rules will 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 Final Supplementary Rules do 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

In accordance with Executive Order 13175, the Final Supplementary Rules do not include policies that have tribal implications.

Information Quality Act

In developing the Final Supplementary Rules, 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

Under Executive Order 13211, the BLM has determined that the Final Supplementary Rules do not comprise a significant energy action and do not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The Final Supplementary Rules do 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 rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of the Final Supplementary Rules is John Bierk, Chief Ranger, BLM Colorado State Office.

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

SUPPLEMENTARY RULES FOR FIREWORKS USE AND POSSESSION ON PUBLIC LAND IN COLORADO

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 below.

“*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.

“*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 130 milligrams of explosive material, aerial shells containing more than 40 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 50 milligrams of salute powder.

“*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 75 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 50 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 60 grams for each driver unit or 200 grams for each complete wheel;

(IV) Ground spinner, a small device containing not more than 20 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 200 grams each;

(VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed 100 grams, of which the composition of any chlorate or perchlorate shall not exceed 5 grams;

(VII) Any of the following that do not contain more than 50 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 2 grams of pyrotechnic composition and packaged in retail packages of not more than 25 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 15 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 500 grams.

Prohibited Acts

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

1. The possession, discharge, or use of all fireworks as defined above; 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.

[**Authority:** FLPMA 43 U.S.C. 1740, 43 CFR 8364, 8365.1–6, 8365.2–5(a), and 9212.2]

Helen M. Hankins,
State Director

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