

Bureau of Land Management**43 CFR Parts 6300 and 8560****[WO-420-1060-00-24 1A]****RIN 1004-AB69****Wilderness Management****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to revise and update the regulations for management of designated wilderness areas. Since the original issuance of the regulations, BLM has developed new policies, Congress has required new procedures, and technologies have changed. The proposed revision would add new requirements based on changes in legislation or agency objectives and clarify use of wilderness areas, prohibited acts, special uses and access to non-Federal lands located within BLM wilderness areas.

DATES: You must submit comments by February 18, 1997. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: You must submit comments or suggestions to: Bureau of Land Management, Administrative Record, 401 LS, 1849 C Street, NW, Washington, DC 20240. You may also comment via the internet to

WOCComment@WO.blm.gov. Please include "attn: AB69" and your name and address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452-5030. You may review comments, including names and street addresses of respondents, at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address, except for the city or town, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. However, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Rob Hellie, Cultural Heritage, Wilderness, Special Areas & Paleontology Group, (202) 452-7703, Regulatory Management Team (202) 452-7785.

SUPPLEMENTARY INFORMATION:**I. Discussion of Proposed Rule**

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 *et seq.*) direct BLM to manage wilderness areas for the use and enjoyment of the American people in a manner that will leave them unimpaired for future use and enjoyment, provide for the protection of these areas, the preservation of their wilderness character, and the gathering and disseminating of information about their use and enjoyment as wilderness. In short, unless specified otherwise by Congress, BLM must ensure the preservation of wilderness character for all activities conducted within wilderness areas.

These proposed regulations govern the management of BLM wilderness areas outside Alaska. They tell you what wilderness areas are, how BLM is to manage them, and how you can use them. These regulations also tell you what activities BLM does not allow in wilderness areas, the penalties for doing prohibited acts, and the special provisions for some uses and access. When BLM has management responsibility for wilderness areas in Alaska, regulations for their management will be developed under the Wilderness Act (16 U.S.C. 1131 *et seq.*), and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101).

Since BLM issued the current wilderness management regulations in 1985, several legislative, policy, and technological changes have occurred that require their revision. Examples of legislative changes include the Americans with Disabilities Act (42 U.S.C. 12207) and the American Indian Religious Freedom Act (42 U.S.C. 1996). For ease of discussion in the preamble, we grouped the revisions into the following five categories: (1) Definitions, (2) use of wilderness areas, (3) prohibited acts, (4) special use provisions, and (5) access.

As discussed in an Advance Notice of Proposed Rulemaking published June 5, 1996 (61 FR 28546), some of BLM's regulations, particularly in the areas of recreation and resource preservation and conservation, are being reorganized. As part of that reorganization, the regulations on wilderness management would be renumbered in this rule as

part 6300 instead of part 8560. Also, we have attempted to write these regulations in plainer English.

(1) Definitions

The proposed rule in section 6301.50 amends several definitions included in the existing regulations. BLM also changed the definition of "mechanical transport" and "motorized equipment." The proposed rule would make it clear that sailboats, sailboards, parachutes, game carriers, carts, wagons, and similar devices are mechanical transports under Section 4(c) of the Wilderness Act. Similarly, the definition of motorized equipment now includes a list of items such as chain saws, power drills, and motor vehicles. BLM includes some new definitions in section 6301.50. Among these is a definition of "wheelchair." The proposed rule adopts the definition from the Americans with Disabilities Act of 1990. Definitions were also added for the terms "inholding" and "valid occupancy" to clarify the discussion of access to non-federal lands.

(2) Use of Wilderness Areas

The proposed rule in subpart 6302 amends the existing regulations concerning the use of wilderness areas.

The proposed rule references an existing provision of 43 CFR 8372 that BLM may require a permit and charge a fee for use of wilderness areas. This provision has applied in BLM wilderness areas for many years. It is not new policy.

Section 6302.40 of the proposed rule changes the requirements for the collection, disturbance, or removal of animals, plants, rocks, or other natural resources from BLM wilderness areas. The existing regulations in 43 CFR part 8560 prohibit only the cutting of trees and the removal of common variety mineral materials from BLM wilderness areas. The proposed rule in § 6302.40 provides that BLM may, by authorization, allow persons to gather information in wilderness areas about natural resources, including collecting physical specimens or samples, provided they do it in a manner compatible with the preservation, protection, and maintenance of the wilderness environment. While a single activity or a small number of such activities might not result in degradation of the wilderness area, it is possible that many or cumulative occurrences could result in damage to wilderness resources. Accordingly, BLM proposes to prohibit certain activities in BLM wilderness areas unless the user obtains an authorization from BLM. The rule would not impose similar restrictions on public lands other than

wilderness areas. Public lands would continue to be open to those activities allowed by statute, regulation, permit, or other forms of authorization.

(a) Use of Wheelchairs

The proposed rule in section 6302.50 is consistent with the Americans with Disabilities Act of 1990 (ADA) (104 Stat. 327, 42 U.S.C. 12207), which provides for the use of wheelchairs in wilderness areas by an individual whose disability requires use of a wheelchair. The ADA does not require BLM to provide any special treatment or accommodation, or to construct any facilities, or modify any conditions of lands within a wilderness area in order to facilitate such use by wheelchairs. Such special accommodation would be inconsistent with the purposes of the Wilderness Act.

(b) Traditional Religious Purposes

The proposed rule at section 6302.60 contains special provisions allowing BLM to grant Native American people access to BLM wilderness areas for traditional religious purposes.

These provisions specify that the BLM may temporarily close portions of wilderness areas to public use to protect the privacy of people engaged in religious uses.

(3) *Prohibited Acts and Penalties*

The proposed rule at section 6302.70 includes a list of prohibited actions and activities.

(a) Competitive Events

BLM retains in the proposed rule at section 6302.70 a prohibition against holding or conducting competitive events in wilderness areas. Such events typically involve animal, foot, or water craft races and other similar activities. These events are not compatible with the stated purposes of wilderness areas, which are to be places of solitude. Such events intrude upon the solitude of wilderness visitors. Also, these events are often, although not always, commercial enterprises, prohibited by Section 4(c) of the Wilderness Act. Other commercial activities in wilderness areas, where specifically authorized by statute or regulations, such as outfitting for hunting, recreation, river running, and similar uses, are not affected by this policy provision. The proposed rule at section 6302.70 combines existing provisions of the regulations that prohibit landing aircraft and dropping materials, supplies, or skydivers from them. The new provision specifies that "aircraft" also includes helicopter, hang-glider, hot air balloon, parasail, and parachute.

(b) Rock Climbing

The proposed rule at section 6302.70 prohibits, unless it is provided for in the management plan, the use of any type of permanent fixed anchor, including expansion bolts, construction or placement of permanent artificial hand and footholds, and the use of glues, epoxies, or other fixatives on a natural surface to facilitate mountain climbing, rock climbing, or cave exploration. This provision of the proposed rule is similar to the approach used by the National Park Service and provides BLM with the ability to manage such use through the land use planning process. Individual rock climbing and bolting activities may not adversely affect the wilderness environment, but taken collectively a number of such activities could have a detrimental affect in an individual BLM wilderness area. BLM is not proposing restrictions on or prohibitions of rock climbing activities in areas of the public lands other than BLM wilderness areas. Rock climbing is a legitimate recreational use of the public lands and should be allowed as one of the many forms of recreation activities permissible on BLM lands.

(c) Penalties

Penalty provisions would be revised in section 6302.80 to accommodate amendments of the Sentencing Reform Act of 1984 (18 U.S.C. 3571 et seq.), and to avoid the misleading impression that criminal penalties are limited to the minimum amounts provided for in FLPMA. The Criminal Fine Improvements Act of 1987 substantially increased the maximum fine that may be levied on violators of Federal law and regulations.

(4) *Special Provisions*

The Wilderness Act makes special provision for some uses. The proposed rule in subpart 6303 discusses how these special provisions may affect you if you engage in one of these uses.

(a) Use of Aircraft

Unless Congress specifies otherwise in the statute designating a particular wilderness area, the designation of BLM areas as components of the National Wilderness Preservation System would not by itself preclude low-level overflight by military aircraft, designation of new units of special use airspace, or establishment of military flight training routes over BLM wilderness areas.

(b) Mining, Mineral Leasing and Material Sales

The proposed rule in part 6303 would not change BLM policies regarding

mineral development, mineral leases or permits in wilderness areas. The changes included in the proposed rule are essentially remedial changes to eliminate errors and clarify valid existing rights for mineral and geothermal leases, licenses, and permits.

(c) Livestock Grazing

Under the Wilderness Act and the proposed rule, grazing activities including the associated use and maintenance of livestock management facilities may continue at the levels existing at the time of wilderness designation. Construction, replacement, or reconstruction of deteriorated grazing support facilities is permissible if in conformance with the management plan. Any operation or maintenance of facilities must ensure protection of wilderness resource values. Under the proposed rule, grazing of livestock in wilderness areas will be governed by the guidelines found in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101-405).

(5) *Access*

The proposed rule at subpart 6304 would clarify the procedure used to provide access to non-Federal land affected by wilderness designation.

In conformance with the Wilderness Act, section 6304.20 of the proposed rule assures that owners of non-Federal lands completely surrounded by wilderness areas will be given rights necessary to assure adequate access. The proposed regulations at section 6304.20 also cover access to valid mining claims or other valid occupancies within wilderness areas.

II. Procedural Matters

National Environmental Policy Act

BLM has prepared a draft environmental assessment (EA) and made a tentative finding that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). BLM anticipates making a Finding of No Significant Impact for the final rule in accordance with BLM's procedures under NEPA. The draft EA is on file in the BLM Administrative Record at the address specified previously (see ADDRESSES). BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

Paperwork Reduction Act

The provisions for collection of information contained at 43 CFR part 8500 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004-0119 and 1004-0133. This rule does not contain additional information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities. Changes from the existing regulations are few: The rule would provide for access to inholdings, allow temporary closure of areas to accommodate Native American religious activities, expand slightly the requirement for authorization before engaging in research in wilderness, prohibit or limit certain recreational activities, and clarify the rules on access by wheelchair. None of these changes are expected to have more than marginal economic impacts on anyone, and should not unnecessarily or disproportionately affect small entities.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Executive Order 12612

The proposed rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment.

Executive Order 12630

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Executive Order 12988

The Department conducted an Executive Order 12988 review of the proposed rule and determined that it meets the applicable standards of section 3 (a) and (b) of the Executive Order.

Executive Order 12866

BLM has determined that the proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The cost of complying with the requirements of the proposed rule is indistinguishable from the cost of complying with the requirements imposed by the existing Wilderness Management regulations. The changes in the proposed rule are primarily not economic: They would provide a way of obtaining access to inholdings; they would impose certain limited restrictions on some recreational uses; they would broaden slightly the requirement for obtaining authorization before information gathering and research in wilderness; they would provide privacy for Native Americans engaging in religious activities in wilderness; and they would clarify to what extent wheelchairs are allowed in wilderness.

Authors: The principal authors of this proposed rule are Rob Hellie, Jeff Jarvis, Keith Corrigan (retired), Bob Barbour, and Ted Hudson of the BLM, assisted by Wendy Dorman of the Office of Solicitor.

List of Subjects in 43 CFR Parts 6300 and 8560

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

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

1. Group 8500, consisting of part 8560 (§§ 8560.0–1 through 8560.5) is removed.

2. The heading for subchapter F is revised to read as follows:

SUBCHAPTER F—PRESERVATION AND CONSERVATION (6000)

3. A new part 6300 is added to read as follows:

Part 6300—Management of Designated Wilderness Areas**Subpart 6301—Introduction**

Sec.

6301.10 What is the purpose of this part?

6301.30 What is a BLM wilderness area?

6301.50 What are the definitions of terms used in this part?

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

6302.10 May I use wilderness areas?

6302.20 Do I need and where do I obtain an authorization to use a wilderness area?

6302.30 When and how does BLM close or restrict use of wilderness areas?

6302.40 May I gather information, do research, or collect things such as rocks, animals, plants, or other types of natural or cultural resources in wilderness areas?

6302.41 Will BLM authorize me to use a motor vehicle, motorized equipment, or mechanized transport to conduct research or gather resource information?

6302.50 May wheelchairs be used in a wilderness area?

6302.60 May wilderness areas be used for traditional religious purposes?

6302.70 What activities does BLM prohibit in wilderness areas?

6302.80 What penalties am I subject to if I commit one or more of the prohibited acts?

Subpart 6303—Special Provisions

6303.10 Are there special provisions for some uses of wilderness areas?

6303.20 Are there special provisions for aircraft and motorboat use within wilderness areas?

6303.30 What special provisions apply to operations under the mining laws?

6303.31 How will BLM determine the validity of unpatented mining claims or sites?

6303.40 What special provisions apply to mineral leasing and material sales?

6303.50 What special provisions apply to water and power resources?

6303.60 What special provisions apply to livestock grazing?

6303.70 What special provisions apply to other commercial use?

6303.80 What special provisions apply to administrative and emergency functions?

Subpart 6304—Access to State and Private Lands Within Wilderness Areas

6304.20 How will BLM give access to State and private land within wilderness areas when the access is affected by wilderness designation?

Authority: 16 U.S.C. 1133; 43 U.S.C. 1733, 1740, 1782.

Subpart 6301—Introduction

§ 6301.10 What is the purpose of this part?

This part governs the management of BLM wilderness areas outside of Alaska. They tell you what wilderness areas are, how BLM is to manage them, and how you can use them. These regulations also tell you what activities BLM does not allow in wilderness areas, the penalties for performing prohibited acts, and the special provisions for some uses and access.

§ 6301.30 What is a BLM wilderness area?

A BLM wilderness area is an area of public lands designated by Congress for BLM to manage as a component of the National Wilderness Preservation System. The Wilderness Act provides an extensive definition of wilderness and wilderness area. See 16 U.S.C. 1131.

§ 6301.50 What are the definitions of terms used in this part?

Terms used in this part have the following meanings:

Access means the ability of property owners to have ingress and egress to and from State or private inholdings, valid mining claims, or other valid occupancies. It does not include rights-of-way or permits under section 501 of FLPMA (43 U.S.C. 1761).

Inholding means State-owned or privately-owned land or an interest in land that is completely surrounded by congressionally designated wilderness areas.

Mechanical transport means any contrivance for moving people or material in or over land, water, snow, or air that has moving parts and is powered by a living or nonliving power source. This includes, but is not limited to, sailboats, sailboards, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. The term does not include wheelchairs when used as necessary medical appliances, nor does it include skis, snowshoes, non-motorized river craft including, but not limited to, driftboats, rafts, and canoes, or sleds, travois, or similar primitive devices without moving parts.

Mining operations means all functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses of the land reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether the operations take place on or off mining claims.

Motor vehicle means any vehicle that is self-propelled or any vehicle that is propelled by electric power obtained from batteries.

Motorized equipment means any machine that uses or is activated by a motor, engine, or other power source. This includes, but is not limited to, chain saws, power drills, aircraft, generators, motor boats, motor vehicles, snowmobiles, tracked snow vehicles, snow blowers or other snow removal equipment, and all other snow machines. The term does not include shavers, wrist watches, clocks, flashlights, cameras, camping stoves, cellular telephones, radio transceivers,

radio transponders, radio signal transmitters, ground position satellite receivers, or other similar small handheld or portable equipment.

Primitive and unconfined recreation means nonmotorized types of outdoor recreation activities that do not require developed facilities.

Public lands means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership.

Valid occupancy means a current permit, lease, or other written authorization from BLM to occupy public lands.

Wheelchair means a device designed solely for use by a mobility-impaired person for locomotion and suitable for use in an indoor pedestrian area.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties**§ 6302.10 May I use wilderness areas?**

Unless otherwise designated by BLM, all wilderness areas will be open to uses consistent with the preservation of their wilderness character and their future use and enjoyment by the American people as wilderness, including, but not limited to, primitive recreation, rock climbing, orienteering, cave exploration, and scientific study. In subpart 6303 you will find an explanation of special provisions that apply to specific uses of wilderness areas. In § 6302.70 you will find a list of acts that are explicitly prohibited within wilderness areas.

§ 6302.20 Do I need and where do I obtain an authorization to use a wilderness area?

(a) In general, use of wilderness areas does not require an authorization. BLM may require an authorization and charge fees for some uses of wilderness areas. You must obtain authorization from BLM to use a wilderness area when required by:

(1) The regulations in this part (see §§ 6302.40, 6302.41, and 6304.20);

(2) A BLM order issued under § 6302.30; or

(3) The management plan for the wilderness area involved.

(b) To determine whether an authorization is needed, you should refer to the applicable BLM regulations for that activity.

(c) You may request an authorization to use a wilderness area from the BLM field office with jurisdiction over the wilderness area you want to use.

§ 6302.30 When and how does BLM close or restrict use of wilderness areas?

When necessary to carry out the provisions of the Wilderness Act, BLM

may issue an order to close or restrict the use of lands or waters within the boundaries of any component of the National Wilderness Preservation System. See § 8364.1, Closure and Restriction Orders.

§ 6302.40 May I gather information, do research, or collect things such as rocks, animals, plants, or other types of natural or cultural resources in wilderness areas?

(a) You may conduct research, gather information, and collect natural or cultural resources in wilderness areas provided—

(1) You do it in a manner compatible with the preservation of the wilderness environment;

(2) Your proposed activity is in conformance with the applicable management plan; and

(3) You have an authorization from BLM.

(b) If your proposed activity meets the requirements of paragraph (a) of this section, you may collect, disturb, destroy to the extent necessary to accomplish the proposed activity, or remove:

(1) Animals or animal parts, including but not limited to insects, reptiles, birds, or fish, that are not regulated by applicable State or Federal law;

(2) Plants or plant parts, including but not limited to flowers, berries, nuts, seeds, cones, leaves, lichens, algae, and fungi, that are not regulated by applicable State or Federal law;

(3) Soil, rocks, stones;

(4) Mineral specimens, gemstones;

(5) Fossils, petrified wood;

(6) Cave and cave resources;

(7) Archaeologic, historic, and other cultural resources; and

(8) Forest and vegetative products and resources.

(c) Where campfires are allowed, you may gather a reasonable amount of forest and vegetative products for use in campfires.

§ 6302.41 Will BLM authorize me to use a motor vehicle, motorized equipment, or mechanized transport to conduct research or gather resource information?

If you wish to use motor vehicles, motorized equipment, mechanized transport, or land aircraft for mineral prospecting, gathering information about mineral or other resources, or for resource management purposes, you must receive written approval from BLM. If BLM issues you an authorization, the authorization will provide for the protection of public land resources, including wilderness characteristics. BLM may require you to reclaim disturbed areas and post a performance bond.

§ 6302.50 May wheelchairs be used in a wilderness area?

An individual whose disability requires the use of a wheelchair may use a wheelchair in a wilderness area. Consistent with the Wilderness Act and the Americans with Disabilities Act of 1990 (42 U.S.C. 12207), no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area, in order to facilitate such use.

§ 6302.60 May wilderness areas be used for traditional religious purposes?

In accordance with the American Indian Religious Freedom Act (42 U.S.C. 1996), American Indians, Eskimos, Aleuts, and Native Hawaiians may use wilderness areas for traditional religious purposes where these uses of an area preceded wilderness designation. BLM may temporarily close to general public use specific portions of the wilderness area that are not subject to valid existing rights in order to protect the privacy of native people engaged in religious activities in such areas. Any such closure will be made so as to affect the smallest practicable area for the minimum period necessary.

§ 6302.70 What activities does BLM prohibit in wilderness areas?

BLM may prohibit any use, activities, or actions that harm wilderness values. Except as specifically provided in the Wilderness Act, the following things are prohibited in wilderness areas managed by BLM:

- (a) Operating a commercial enterprise;
- (b) Constructing temporary or permanent roads;
- (c) Constructing aircraft landing strips, heliports, or helispots;
- (d) Use of motorized equipment; or motor vehicles, motorboats, or other forms of mechanical transport. For an exception see §§ 6302.41 and 6303.20;
- (e) Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter, hang-glider, hot air balloon, parasail, or parachute. For an exception see § 6303.20;
- (f) Structures or installations, including motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures;
- (g) Cutting of trees;
- (h) Entry into or use of wilderness areas without a permit, where permits are required by the BLM;
- (i) Competitive use as defined in section 8372.0–5(c) of this chapter, including those activities involving physical endurance of a person or

animal, foot races, water craft races, survival exercises, war games, or other similar exercises;

(j) Unless allowed in the applicable BLM management plan, or pursuant to a BLM authorization, physical alteration or defacement of a natural rock surface for any purpose, including the use of any type of drill, permanent fixed anchor or expansion bolt; construction of permanent artificial hand and footholds; use of glues, epoxies, or other fixatives to facilitate mountain climbing, rock climbing, or cave exploration; and

(k) Violating any regulation, authorization or order established by the BLM.

§ 6302.80 What penalties am I subject to if I commit one or more of the prohibited acts?

(a) If you knowingly and willfully commit a prohibited act listed in § 6302.70, you are subject to criminal prosecution on each offense. If convicted, you are subject to a fine of not more than \$100,000 or the alternate fine provisions of 18 U.S.C. 3571, or imprisonment for not more than 12 months, or both.

(b) At the request of the Secretary of the Interior, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent you from using public lands in violation of the regulations of this part.

Subpart 6303—Special Provisions**§ 6303.10 Are there special provisions for some uses of wilderness areas?**

Some uses are specifically addressed in the Wilderness Act. Below is a discussion of these uses and how Wilderness Act provisions may affect you if you engage in any of these activities.

§ 6303.20 Are there special provisions for aircraft and motorboat use within wilderness areas?

(a) BLM may authorize you to land aircraft and use motorboats at places within any wilderness area if these uses were established before the date the area was designated by Congress as a unit of the National Wilderness Preservation System, and where such uses have continued, subject to such restrictions as necessary to protect wilderness values. BLM may also authorize you to maintain aircraft landing strips, heliports or helispots that existed when the area was designated a unit of the National Wilderness Preservation System.

(b) The designation of wilderness areas as components of the National Wilderness Preservation System will not

by itself preclude low-level overflights by military aircraft, designation of new units of special use airspace, or use or establishment of military flight training routes over such areas.

§ 6303.30 What special provisions apply to operations under the mining laws?

The general mining laws will apply to each BLM wilderness area for the period specified in the legislation designating the area as wilderness. The mining laws will apply to valid existing rights only to the extent provided in the legislation designating the area as wilderness.

(a) You cannot establish any right to or interest in any mineral deposits discovered after the date on which the general mining laws cease to apply to the specific wilderness area.

(b) You must conduct your mining operations in BLM wilderness areas in conformance with the applicable standards provided in the legislation designating the wilderness and your approved plan of operations as required by subpart 3809 of this chapter.

(c) If you hold a valid mining claim, mill site, or tunnel site located on any BLM wilderness area before the general mining laws ceased to apply to that area, you may maintain your mining claim or site in accordance with the general mining laws and the legislation designating the wilderness.

(d) If you are a mining claimant, you must comply with all reasonable requirements established by BLM regarding your mining activities to protect wilderness values consistent with the use of your valid claim or site for mineral activities.

(e) You must remove all structures, equipment, and other facilities as soon as feasible after mining operations cease, but not more than 1 year thereafter. You must begin reclamation no more than 6 months after mining operations cease. You must complete reclamation, including appropriate revegetation, within a reasonable time as determined by BLM. Whenever possible and feasible, your reclamation activities must restore the surface to a contour which appears to be natural. Where such measures are impractical or impossible, as determined by BLM, reclamation must result in the maximum achievable slope stability.

(f) BLM will require you to post a financial guarantee as provided in subpart 3809 of this chapter in order to assure completion of reclamation.

(g) In conducting mineral activities on your mining claims and sites, you must prevent, to the extent practicable as determined by BLM and consistent with the use of your valid claim or site for mineral activities, erosion, deterioration

of the lands, impairment of wilderness characteristics, and the obstruction, pollution, or siltation of streams, lakes, and springs.

(h) BLM will allow the gathering of mineral information in wilderness areas after the date on which the general mining laws cease to apply in designated wilderness only to the extent such activities are conducted in a manner compatible with the preservation of the wilderness environment.

§ 6303.31 How will BLM determine the validity of unpatented mining claims or sites?

(a) BLM will conduct a mineral examination to determine if your claim or site was valid prior to the date that lands within the wilderness area were withdrawn from appropriation under the mining laws and whether your claim or site remains valid. BLM must complete this validity determination before approving your plan of operations or allowing you to continue previously approved operations on unpatented mining claims or sites.

(b) If BLM concludes that your mining claim lacks a discovery of a valuable mineral deposit or your claim or site is invalid for any other reason, BLM will either deny the plan of operation or, in the case of an existing approved operation, issue a notice ordering cessation of operations and begin contest proceedings to determine the status of your mining claim as provided in subpart 3870 of this chapter.

(c) If a final administrative decision is rendered declaring your claim or site null and void, you must complete all reclamation required under subpart 3800 of this chapter.

§ 6303.40 What special provisions apply to mineral leasing and material sales?

(a) BLM will not issue any mineral or geothermal leases, licenses, or permits under the mineral leasing, geothermal leasing, and material sales laws in any wilderness area on public lands.

(b) If you hold a valid mineral or geothermal lease, license, or permit for land in any BLM wilderness area issued before the date the area was included in the National Wilderness Preservation System, you may continue the activities for which the lease, license, or permit was issued in accordance with the terms and conditions of the specific lease, license, or permit.

(c) Subject to valid existing rights, you may not establish any right to or interest in any mineral or geothermal resources that may be discovered in a wilderness area after the date on which the laws pertaining to mineral leasing,

geothermal leasing, or material sales cease to apply to the specific wilderness area.

§ 6303.50 What special provisions apply to water and power resources?

If you are specifically authorized by the President, pursuant to Section 4(d)(4)(1) of the Wilderness Act, you may be permitted to prospect for water resources and establish new reservoirs, water-conservation works, power projects, transmission lines and other facilities needed in the public interest, and to maintain such facilities.

§ 6303.60 What special provisions apply to livestock grazing?

If you hold a BLM grazing permit or grazing lease for land within a wilderness area, you may continue to graze your livestock provided that such use was initiated before the wilderness area was established. Your grazing activities within wilderness areas, including the construction, use, and maintenance of livestock management improvements must comply with the livestock grazing regulations in part 4100 of this chapter. You may maintain or reconstruct grazing support facilities that existed prior to designation of the wilderness area if allowed by the management plan for the area. You may not construct new support facilities for the purpose of increasing your number of livestock. The construction of new livestock management facilities must be for the purposes of protection and improved management of resources. You may increase livestock numbers only when you can demonstrate that the additional use will not have adverse impact on wilderness values.

§ 6303.70 What special provisions apply to other commercial use?

You may only conduct commercial uses specifically permitted in wilderness areas by the Wilderness Act and subsequent laws in a manner that will preserve the wilderness character of the land, unless otherwise provided in the Wilderness Act and other applicable laws. BLM may permit temporary structures and commercial services such as those provided by packers, outfitters, and guides within wilderness areas to the extent necessary to realize the recreational or other wilderness purposes of the area.

§ 6303.80 What special provisions apply to administrative and emergency functions?

To the extent authorized by law, BLM may:

(a) Use, construct or install motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations or structures in

designated wilderness areas, and prescribe conditions under which such items may be used, transported or installed by other Federal, State or county agencies or their agents to meet the minimum requirements for protection and administration of the wilderness area, its resources and users;

(b) Authorize occupancy and use of wilderness areas by officers, employees, agencies or agents of the Federal, State and local governments to carry out the purposes of the Wilderness Act or other statutes;

(c) Prescribe measures to be taken, as necessary, to control fire, noxious weeds, insects, and diseases where these threaten human life, property or wilderness resources within the wilderness area or on adjacent non-wilderness lands; or

(d) Prescribe measures that may be used in emergencies involving the health and safety of persons or damage to property, including, but not limited to, the conditions for use of motorized equipment, mechanical transport, aircraft, installations, structures, rock drills, and fixed anchors. BLM will require restoration activities necessitated by such emergency measures to be undertaken concurrently with or as soon as practicable upon completion of the measures, events, or activities.

Subpart 6304—Access to State and Private Lands Within Wilderness Areas

§ 6304.20 How will BLM allow access to State and private land within wilderness areas when the access is affected by wilderness designation?

(a) If you own land completely surrounded by a wilderness area, BLM will give you such rights as may be necessary to ensure adequate access to your lands, or you may enter into an exchange with BLM under part 2200 of this chapter. If you have existing access or a right of access to your property over non-public lands or over public roads that is adequate or that can be made adequate, the Secretary is not required to provide access through wilderness areas. If your access is not adequate, BLM will issue an authorization under part 2920 of this chapter to give you access. Each authorization you receive will specify the applicable terms and conditions. Adequate access is that combination of routes and modes of travel to non-Federal inholdings that BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and, at the same time, cause impacts of least duration and degree on wilderness character. Section 501(a) of FLPMA (43

U.S.C. 1761 *et seq.*) prohibits BLM from issuing rights-of-way under Section 501 on lands designated as wilderness. BLM will consider voluntary acquisition of land or interests in land by exchange, purchase, or donation to reduce or eliminate the need to use wilderness areas for access purposes.

(b) If you hold a valid mining claim or other valid occupancy wholly within a wilderness area, you will be permitted access by means that are consistent with the preservation of wilderness and that have been or are being customarily used with respect to other similar occupancies surrounded by wilderness. Plans approved by BLM under subpart 3809 of this chapter will prescribe the routes of travel that you may use for access to occupancies surrounded by wilderness. These plans will also identify the mode of travel, and other conditions reasonably necessary to preserve the wilderness area.

(c) Before issuing any access authorization, BLM will make certain that:

(1) You have demonstrated a lack of any existing access rights or alternate routes of access available by deed or under State or common law and that access across non-federally owned routes is not reasonably obtainable;

(2) You are allowed to use the combination of routes and modes of travel, including non-motorized modes, that will cause the least impact on the wilderness but, at the same time, will permit the reasonable use of the non-Federal land;

(3) The route that BLM approves is located and constructed to minimize adverse impacts on natural resource values of the wilderness area; and

(4) The location and method of access BLM approves are as consistent as possible with the management of the wilderness area and the management plan for the area.

Dated: December 11, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96-31957 Filed 12-18-96; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7195]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency
Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: