

**BLM Nevada Law Enforcement  
Drug and Alcohol  
Proposed Rule Changes**

The Proposed Supplementary Rules were published in the *Federal Register* on May 3, 2004. The comment period for the proposed rules is open until July 2, 2004.

The goal of the proposed rules is to help BLM reduce the illegal use of alcohol and drugs on public lands in Nevada, and improve cooperation between the BLM and state and local law enforcement officials. The proposed rules are patterned after current State of Nevada laws contained in the Nevada Revised Statutes.

The proposed rules would enable BLM law enforcement officers to enforce violations such as:

- Operating a motor vehicle under the influence of alcohol or drugs.
- Open container of alcohol within a motor vehicle.
- Possession of alcohol by a minor.
- Possession of drug paraphernalia.

Introducing the proposed rules were motivated by growing problems at popular BLM recreation sites throughout Nevada, including:

- Red Rock Canyon.
- Black Rock Desert.
- Sand Mountain.
- Little Ash Springs in Lincoln County.

BLM encourages people of all ages to enjoy their public lands and take advantage of the many recreational opportunities out there. But we also want the public to be safe when recreating on public lands.

People are urged to get a copy of the proposed rules, read them, and send comments to Erika Schumacher, BLM Nevada State Office, P.O. Box 12000, Reno, NV 89502 or email [Erika\\_Schumacher@nv.blm.gov](mailto:Erika_Schumacher@nv.blm.gov) by July 2, 2004.

EXHIBIT <u>N</u> Lands	Document consists of <u>16</u> pages
<input checked="" type="checkbox"/> Entire document provided.	
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.	
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).	
Meeting Date <u>06-25-04</u>	

To the Editor:

BLM Nevada's proposed law enforcement regulation changes to enforce federal drug and alcohol rules **only** on public land has caused some concern in our community.

From BLM's perspective, safety on public lands is the issue. We encourage citizens to get out and enjoy their public lands, and we want them to have a safe experience. Illegal drug and alcohol use while driving on public lands are potentially serious public safety issues. The fact that people may be off pavement and on a back road doesn't make their actions any less dangerous.

In response to these issues, the BLM Nevada Special Agent in Charge proposed changes to the supplemental rules, which are specific portions of the BLM law enforcement regulations that address law enforcement on public lands in Nevada. To prepare the draft supplemental rules BLM Nevada officers researched how federal agencies in other Western states and other federal agencies in Nevada were dealing with this issue on public lands.

BLM in Colorado has had similar rules in effect for the past two years statewide, for example, as does the BLM California Desert District, which covers the public lands in southern California. The proposed BLM Nevada rules are similar to those already in effect for the National Park Service at Lake Mead.

Population increases in Nevada and adjacent states have resulted in greater numbers of people enjoying the recreation opportunities on the public lands. The increase in recreational use, unfortunately, has brought increasing problems with drug and alcohol abuse. This has become a growing problem at popular BLM recreation sites throughout Nevada, including Red Rock Canyon, the Black Rock Desert, Sand Mountain, and Little Ash Springs in Lincoln County.

The proposed regulations would be done under the Federal Land Policy Management Act of 1976 which gives the Secretary of Interior the authority to generate regulations for public health and safety. The proposed regulations would mirror Nevada state law. Cross delegation of BLM rangers by County Sheriffs' Offices is not needed nor is BLM seeking this.

BLM's overriding concern is public safety. Drinking and driving impaired is an issue. It puts other at risk. Underage drinking is a concern as is illegal drug, manufacture, use or possession of drug paraphernalia. The bottom line is that the rules that govern safe behavior in town or while driving on paved roads will be applied on public lands.

Professional-trained BLM law enforcement rangers are the only BLM employees who are authorized to be armed or to enforce these proposed regulations. The number of such rangers in Elko is not expected to increase above the two we currently have. These two are responsible for patrolling 7+ million acres. BLM law enforcement rangers must attend the Federal Law Enforcement training facility in Glynco, Georgia. There are 20 BLM employees in Nevada who are law enforcement trained. The majority are near large population centers such as Las Vegas and Reno.

BLM has positive working relationships with law enforcement agencies in the Elko District. My intent is certainly not to damage those valued relationships, but rather to continue to work closely with them for public safety.

I urge people to get a copy of the proposed rules, read them, and send comments to Erika Schumacher, BLM Nevada State Office, P.O. Box 12000, Reno, NV 89502 or email [Erika\\_Schumacher@nv.blm.gov](mailto:Erika_Schumacher@nv.blm.gov) by July 2, 2004.

Thank you for the opportunity to provide more information about this issue.

Sincerely

Helen Hankins  
BLM Elko Field Manager

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-120-04-1630-PD]

Proposed Supplementary Rules for the Public Lands Administered by the Bureau of Land Management in Nevada Relating to the Unlawful Use of Alcohol and Drugs

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Supplementary rules for public lands within the State of Nevada.

SUMMARY: The Bureau of Land Management (BLM) is establishing these proposed Supplementary Rules for application to the public lands within the State of Nevada. The rules relate to the illegal use of alcohol and drugs on public lands. The BLM needs supplementary rules to protect natural resources and the health and safety of public land users. These supplementary rules will allow BLM Law Enforcement Officers to enforce regulations pertaining to alcohol and drug laws on public lands in a manner consistent with current State of Nevada State Laws as contained in the Nevada Revised Statutes.

DATES: Send your comments by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. 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 Erika Schumacher, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd. Reno, Nevada 89502 or to [Erika.Schumacher@blm.gov](mailto:Erika.Schumacher@blm.gov)

FOR FURTHER INFORMATION CONTACT: Donette Gordon, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520-0006, 775-861-6667.

#### I. Discussion of the Supplementary Rules

These proposed supplementary rules would apply to all BLM-administered public lands within the State of Nevada. In keeping with the BLM's performance goal to reduce threats to public health and safety and property, these proposed supplementary rules are 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. Unlawful consumption of alcohol and drugs, and abuses of alcohol and drugs, such as driving under the influence, poses a significant health and safety hazard to users and uses of the public lands. This may result in the destruction of natural resources and property, and/or cause physical injury or death. In addition, drug related offenses, including the possession of drug paraphernalia, may encourage the illegal use of controlled substances by making the drug culture more visible and enticing. Further, the presence of drug paraphernalia on public lands may tend to promote, suggest, or increase the public acceptability of the illegal use of controlled substances. These proposed supplementary rules will assist BLM in reducing illegal use of drugs and alcohol on public lands. These proposed supplementary rules would allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to alcohol and drug laws in a manner patterning current State of Nevada laws as contained in the Nevada Revised Statutes in an effort to further the working relationship and partnerships forms with numerous Sheriff's Departments throughout Nevada and the Nevada Highway Patrol.

## II. Procedural Information

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

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of \$100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands for purposes of protecting public health or safety, State, local or tribal governments or communities. These proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; the supplementary rules would not alter the budgetary effects of entitlements, grants, user fees or loan programs or the right or obligations of their recipients; would not raise novel legal or policy issues. The supplementary rules would merely enable BLM law enforcement personnel to enforce regulations pertaining to unlawful possession/use of alcohol and drugs in a manner patterning current State of Nevada laws as contained in the Revised Statutes, where appropriate on public lands.

### *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 put a burden on small entities. The RFA requires a regulatory flexibility analysis if a rules would have a significant economic impact, either detrimental or on a substantial number of small entities. The final supplementary rules do not pertain specifically to commercial or governmental entities of any size,

and do not regulate any legal business activity, but contain rules to 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)*

These proposed supplementary rules would not constitute a “major rule” as defined at 5 U.S.C. 804(2). Again, the proposed supplementary rules only pertain to individuals who may unlawfully use alcohol or drugs on the public lands. The proposed rule will assist in the protection of the public lands and facilities and those including small business concessionaires and outfitters, who use them. The proposed supplementary rules would have no effect on business, commercial or industrial use of the public lands.

*Unfunded Mandates Reform Act*

These proposed supplementary rules would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year; nor would these interim proposed supplementary rules have significant or unique effect on state, local, or tribal governments. The supplementary rules would be patterned on state law. 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 rules do not represent a government action capable of interfering with constitutionally protected property rights in any form, and so do not cause the impairment of any property rights. The rules would not provide for the surrender or confiscation of any legal personal or real property. Therefore, the Department of Interior has determined that the supplementary rules would not give rise of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

The proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and the responsibilities among the various levels of government. The supplementary rules apply only to one state, Nevada, and do not address jurisdictional issues involving the Nevada state government. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rules do 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 these proposed supplementary rules would not include policies that have tribal implications. Since the rules do not change BLM policy and do not involve Indian reservation lands or resources, we have determined that the government-to-government relationships should remain unaffected. The proposed supplementary rules only prohibit the unlawful use of alcoholic beverages and illegal drugs on public lands.



*Executive Order 12988, Civil Justice Reform*

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

*Paperwork Reduction Act*

These proposed supplementary rules 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.*

*National Environmental Policy Act*

BLM has determined the supplementary rules are 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 rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2 and Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of 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, Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

These proposed supplementary rules do not comprise a significant energy action. The rules would not have an adverse effect on energy supplies, production or consumption. They only address use of alcoholic beverages and drugs on public lands, and have no conceivable connection with energy policy.

*Author*

The principal author of these supplementary rules is State Staff Ranger Erika Schumacher of the Nevada State Office, Bureau of Land Management, Department of the Interior.

Under the authority of 43 CFR 8365.1-6, 43 USC 1733a, the Nevada State Director, Bureau of Land Management, issues supplementary rules for public lands in Nevada.

**Supplementary Rules on Possession and Use of Drugs and**

**Alcohol on Public Lands**

The Nevada State Office issues these supplementary rules under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740 and 43 CFR 8365.1-6.

The state law as it pertains to driving under the influence, minors in possession, open container and drug paraphernalia that is now or later to be in effect is adopted and made part of the regulation.

## *1. Definitions*

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

- a. Drug paraphernalia means equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance to include diluting agents or substances.
- b. Motor vehicle means any vehicle that is self-propelled by a non-living power source, including a vehicle that is propelled by electric power. Exempt from this definition are motorized wheelchairs.
- c. Operator means any person who operates, drives, controls, or otherwise has charge of a mechanical mode of transportation or any other mechanical equipment.
- d. 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, routes or trails.

2. *Operating a motor vehicle under the influence of alcohol or drugs*

a. You must not operate or be in actual physical control of a motor vehicle on public lands while:

- i. Under the influence of alcohol, or a drug, or drugs or any combination thereof, to a degree that renders the operator incapable of safe operation of that vehicle; or
  - ii. The alcohol concentration in your blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. If the State of Nevada establishes by statute a more restrictive standard of alcohol concentration than that defined in this supplemental rule, that more restrictive standard is hereby adopted and made a part of this supplemental rule and supersedes the standard specified in the preceding sentence.
- a. At the request or direction of a law enforcement officer who has probable cause to believe that you as an operator of a motor vehicle within public lands have violated a provision of paragraph (a) of this section, you must submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.
  - b. Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.
  - c. Any test or tests for the presence of alcohol and drugs will be determined by and administered at the direction of an authorized person.

- d. Any test will be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.
- e. The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(i) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.
- f. The provisions of paragraph (d) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

3. *Open container of alcoholic beverage*

- a. You must not carry or store a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle on public lands.
- b. Each person within a motor vehicle is responsible for complying with the provision in this section that pertains to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

c. 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, to 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 (c)(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.

4. Possession of Alcohol by Minor

a. The following are prohibited:

- i. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.
- ii. Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

b. This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

## 5. Possession of Drug Paraphernalia

- a. Possession of drug paraphernalia by any person on public lands is prohibited.
- b. Drug paraphernalia is defined as equipment, products and materials of any kind which are used, intended for use, or designed for use in

planting, propagating, cultivating, growing, harvesting, manufacturing,  
compounding, converting, producing, preparing, testing, analyzing,  
packaging, repackaging, storing, containing, concealing, injecting, ingesting,  
inhaling or otherwise introducing into the human body a controlled substance.

*Penalties*

Under the Federal Land Policy and Management Act of 1976 43 U.S.C.  
1733(a), if you violate or fail to comply with these supplementary rules, you may  
be subjected to imprisonment for not more than 12 months, or a fine in  
accordance with 43 U.S.C. 1733, or both, or an enhanced fine in accordance with  
the applicable provisions of 18 U.S.C. 3571.

Robert V. Abbey

State Director.