

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Parts 6300 and 8560**

[WO-250-1220-PA-24 1A]

RIN: 1004-AB69

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

**SUMMARY:** In this final rule, the Bureau of Land Management (BLM) revises and updates the regulations for management of designated wilderness areas. In February of 1985, BLM issued the existing regulations. Since the original issuance of the regulations, BLM has developed new policies, Congress has required new procedures, and technologies have changed. The final rule meets the need for updated regulations by adding new requirements based on changes in legislation or agency objectives, clarifying what uses BLM allows and authorizes in wilderness areas, what acts BLM prohibits, and explaining special uses the Wilderness Act explicitly allows, and how BLM allows access to non-Federal lands located within BLM wilderness areas.

**EFFECTIVE DATE:** January 16, 2001.**ADDRESSES:** You should send any inquiries or suggestions to:

Department of the Interior, Bureau of Land Management, Mail Stop WO-172, 1849 C St., NW., Attention: Jeff Jarvis, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jeff Jarvis, Wilderness, Rivers and National Trails Group, (202) 452-5189. Persons who use a telecommunications device for the deaf (TDD) may contact him by calling the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Responses to Comments
- III. Final Rule as Adopted
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**I. Background**

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701-1785) and the Wilderness Act (16 U.S.C. 1131-1136) direct BLM to manage wilderness areas for the public's use and enjoyment in a manner that will leave these areas unimpaired for future use and enjoyment as wilderness by providing for:

- Protection of these areas,
- Preservation of their wilderness character, and

- The gathering and disseminating of information about their use and enjoyment as wilderness.

Unless Congress specifies otherwise, BLM must ensure the preservation of wilderness character in managing all activities conducted within wilderness areas.

The proposed rule on Wilderness Management was published in the **Federal Register** on December 19, 1996 (61 FR 66968). The proposed rule covered the management of BLM wilderness areas outside Alaska. The rule explained—

- What wilderness areas are,
- How BLM manages them, and
- How you can use them.

The proposed rule also explained what activities BLM would 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, we will develop regulations for their management, if necessary.

The proposed rule, while it revised and redesignated the entire part in the CFR, focused on the following five areas: (1) definitions, (2) use of wilderness areas, (3) prohibited acts, (4) special use provisions, and (5) access.

The period for public comment on the proposed rule originally expired on February 18, 1997. In response to public requests, BLM extended the comment period until April 21, 1997. BLM received nearly 1,600 public comment letters or other communications during this four-month comment period.

**II. Responses to Comments***A. General Comments*

A number of comments addressed the proposed rule in general terms, without addressing any specific provision or section. Some opposed or supported the rule, others asked for general clarification, still others questioned underlying authorities. We will address these general comments in this section of the Supplementary Information.

One respondent asked BLM to clarify its authority over activities on non-BLM lands adjacent to BLM wilderness areas. BLM has authority to protect Federal lands and resources under its jurisdiction by virtue of section 302(b) of FLPMA (43 U.S.C. 1732(b)). This includes the authority to regulate activities on adjacent private or State lands to protect public lands, including BLM wilderness areas. The final rule does not expand BLM's authority to manage wilderness areas in a way that will affect activities on adjacent non-BLM lands.

Several respondents criticized the proposed rule for not covering extensively enough the responsibility of BLM wilderness managers to monitor and otherwise manage activities and land uses affecting wilderness. Management of activities within wilderness are thoroughly covered in BLM Manuals or handbooks and other internal guidance, which are available to the public in any field office that manages wilderness. The regulations need not explain these internal procedures to BLM managers. The principal purpose of regulations is to provide guidance and direction to the public and other regulated parties.

One comment asked for clarification of how the rule applies to wilderness study areas. The regulations in this rule apply only to congressionally-designated wilderness areas, not to wilderness study areas.

One comment asked what regulations apply when specific provisions in this rule refer to applicable management plans as allowing, limiting, or prohibiting an activity, but BLM has not completed its management plans for a particular area. The regulations in this final rule apply regardless of the status of plans. The plans referred to in these regulations include not just Resource Management Plans or Plan Amendments covering large areas of public lands, but also local BLM field office plans and other decision documents.

Some comments asserted that the proposed regulations were too permissive or conflict with law, including the Wilderness Act, saying they would diminish wildness, reduce challenge and risk, and increase mechanization. The comments said that the language in the proposed rule is ambiguous, allows for inconsistent interpretation and too much discretion on the part of BLM managers. One respondent concluded that the "special provisions" in the proposed rule provided loopholes for uses incompatible with the preservation of wilderness character.

BLM believes that the proposed rule and the final rule are fully consistent with the requirements of the Wilderness Act and other laws. The Wilderness Act specifically provides for limited commercial use and resource development in wilderness areas in the "special provisions" of the Act (16 U.S.C. 1133). A certain amount of discretion on the part of local BLM managers is necessary because circumstances and conditions vary from area to area, and no national regulation could cover every situation. BLM has made every effort to see that these regulations will ensure preservation of

the wilderness character of the subject lands while recognizing the specific statutory protections for valid existing rights and the specified uses.

Other comments stated, by contrast, that the regulations are too restrictive, oppressive, or heavy-handed, that they have an adverse effect on the rights of the general public, or that they are unconstitutional. The comments stated that they would reduce the level of enjoyment of wilderness, eliminate or restrict traditionally acceptable uses, generate too much paperwork, and be overly complex or unresponsive to public needs. One comment asserted that the proposed rule gives BLM too much flexibility and reduces individual rights.

BLM does not agree with these assessments of the proposed rule. The regulations are no more restrictive than necessary to carry out the requirements in the Wilderness Act and FLPMA, including—

- Managing wilderness so as to leave it unimpaired for future use and enjoyment as wilderness;
- Providing for its protection and the preservation of wilderness character; and
- Providing for the gathering and dissemination of information regarding wilderness use and enjoyment.

One comment stated that the proposed rule did not consider the special provisions of the California Desert Protection Act of 1994 (16 U.S.C. 410aaa *et seq.*). The special provisions of that Act apply only to those BLM-managed areas designated as wilderness in the California Desert Protection Act. It would be inappropriate for a regulation with nationwide effect to implement these special provisions. These special provisions in the Act stand alone, and do not need regulations to make them effective. If any aspect of these regulations were inconsistent with the special provisions of the California Desert Protection Act, that Act would prevail over these regulations to the extent of the inconsistency.

Some comments urged that National Environmental Policy Act of 1969 (NEPA) analysis of the proposed regulations be done. BLM prepared an environmental assessment (EA) and found that the regulations cause no significant impact (FONSI). Notwithstanding the statement in the preamble of the proposed rule that the EA was still in draft form, BLM approved the EA and FONSI on September 13, 1996. Also, BLM has updated these documents in new versions approved June 19, 2000. These documents are available for review in the administrative record of this rule.

One comment stated that BLM has no authority to enact these regulations and that Federal laws must conform to State and local laws. BLM has ample authority to issue these regulations (see sections 310 and 302(b) of FLPMA, 43 U.S.C. 1740 and 1732(b), for examples). Federal law prevails over inconsistent State laws. The Constitution of the United States provides at Article VI that the Constitution and the laws enacted under it are the supreme law of the land.

Some comments maintained that the proposed rule unnecessarily restricts wildlife management and public enjoyment of wildlife. Others stated that the rule does not address fish and wildlife management activities or hunting, or recognize State management authority for fish and wildlife resources that is contained in Section 4(d) of the Wilderness Act (16 U.S.C. 1133) and Section 302(b) of FLPMA. In this rule, BLM does not alter the existing roles of Federal and State governments in managing wildlife on any public lands, including wilderness. As section 4(d)(8) of the Wilderness Act provides, “Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish \* \* \*.” States will continue to have jurisdiction over fish and wildlife management.

Comments stated that BLM’s present and proposed regulations deny aboriginal, traditional land rights, and urged that the rule should require BLM to work with Native Americans for management of motorized vehicle use, wood cutting, water, and archaeological sites. As stated earlier, the regulations are no more restrictive of traditional practices than necessary to carry out the requirements of law. There is no authority in the Wilderness Act for public use of motor vehicles, for example, or for cutting trees in wilderness areas. BLM does cooperate with Native Americans and others in the management of archaeological sites under other laws and regulations.

A number of comments expressed general support for the proposed rule, saying that the regulations are necessary to protect the character of wilderness for the long term, and that they are balanced, reasonable, well-crafted, and faithfully implement Congressional wilderness goals.

Several comments addressed the style of the proposed rule, either opposing or supporting the question-and-answer format. We did not change the basic format in the final rule because the style follows current Federal Government policy. The final rule somewhat reorders and reorganizes the regulations.

We explain this in detail in the section of this preamble discussing the final rule.

#### B. Specific Comments

In this discussion, section names and numbers refer to those in the proposed rule. Where appropriate, we have inserted the new section numbers in parentheses at the beginning of each section discussion. In the final rule, many numbers have been changed both to improve the organization of the regulations and to respond to public comments. We will explain this reorganization and renumbering in Section III of this preamble. If this portion of the Supplementary Information does not discuss a particular section or paragraph, it means that no public comments addressed the provision, and there is no other need to amend it in the final rule.

#### Preamble of the Proposed Rule

Regarding the discussion of livestock grazing, one comment questioned the reference to an appendix of a Report of the Committee of Interior and Insular Affairs (H.Rept. 101–405, Appendix A) regarding grazing in wilderness and urged that the Report be published in the **Federal Register**. The proposed rule used the principles and findings in the Report as the basis for the text of the livestock grazing section of the rule. The Report itself is in the administrative record for the rule and is published in the BLM wilderness management manual.

One comment suggested that either the preamble or the regulatory text should refer to the International Association of Fish and Wildlife Agencies document, “Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wildernesses.” Such a reference is unnecessary because—

(1) neither the proposed nor the final rule alters the fish or wildlife management roles of State and Federal Government, and

(2) guidance for BLM field managers for cooperating with State wildlife management officers, including a reference to the document in question, is in the BLM Manual.

#### Subpart 6301—Introduction

*Section 6301.30 What is a BLM wilderness area?* (Section 6301.3 in the final rule)

One comment objected to this section as a subjective definition of wilderness. BLM intends this section to be an objective, simple, factual, and

unobjectionable statement that wilderness is what Congress says it is, with a reference added to the Wilderness Act itself for a detailed definition.

*Section 6301.50 What are the definitions of terms used in this part?* (Section 6301.5)

A few comments addressed the proposed definitions as a group. One suggested that they were vague and overly broad and could lead to inconsistent decisions. BLM's position is that our definitions are similar to those of the other Federal wilderness managing agencies, and that they are broad enough to illuminate terms in a set of regulations with a nationwide effect. Nevertheless, in some instances we have changed the definitions to make them clearer in light of specific comments.

Other comments suggested that we define additional terms, including: Primeval, natural condition, untrammled, solitude, wilderness character, commercial use, American Indian, religious ceremony, emergency, unimpaired, motorized vehicles, permanent improvement, and all non-pedestrian traffic. We have not added definitions for any of these terms. Some of them do not appear at all in the regulations. Others appear once, but with sufficient explanation in their context to make a definition unnecessary. Others are familiar enough that their dictionary definitions provide adequate description of their meaning.

*Access*

Several comments criticized the definition of "access," stating that it did not make clear what constitutes adequate access. Others stated that access should include R.S. 2477 rights-of-way, guarantee landowners logical and appropriate methods of travel, or allow legal access under Section 501 of FLPMA.

Section 501(a) of FLPMA expressly excludes designated wilderness from land across which BLM may grant a right-of-way. Therefore, BLM is forbidden by law to grant new rights-of-way across wilderness. BLM recognizes valid R.S. 2477 rights-of-way in wilderness areas, as it does all valid existing rights.

Finally, the regulatory provisions on access in the final rule (subpart 6305) are designed to provide inholders with logical and appropriate access within the limitations of the Wilderness Act. Definitions themselves are not intended to have regulatory content.

*Inholding*

A few comments addressed the definition of "inholding," stating that the definition is too narrow to include non-Federal lands surrounded by other lands along with BLM wilderness. The additional lands bounding the inholding might, for example, be national forest lands or wilderness study areas. Some comments asked for clarification of what constitutes an interest in land under the "inholding" definition. Others stated that this definition, as well as the definitions of "valid occupancy" and "mining operations," improperly limited access rights of owners.

The definition of "inholding" in the proposed rule is consistent with definitions used by other Federal wilderness land managing agencies. However, the concept of "interest in land" has been removed from the definition in the final rule as unnecessary. We address the effects of different degrees of ownership—fee simple ownership, surface ownership only, mining claims, and so forth—in the access provisions of the final rule, not in the definitions.

*Mechanical Transport*

A number of comments addressed the definition of "mechanical transport," particularly as it affects the use of game carriers. A majority of these comments said that the definition should not include game carriers, or only include motorized ones. They said that a prohibition of game carriers in wilderness would be an unnecessary hardship for hunters and would increase environmental impacts—due to dragging big game—from hunting, would discriminate against the elderly, and would limit the ability to retrieve downed game. They said that animal carriers are traditional, compatible, and legitimate in wilderness and could be considered the minimum tool, especially in desert situations, and that prohibition may discourage legal hunting of big game, limiting management efforts by State government agencies.

A few comments urged that the definition of "mechanical transport" should not include wheelbarrows because they are necessary for trail construction and maintenance work.

BLM's position is that we must include wheeled game carriers or wheelbarrows in the definition of mechanical transport, or it will conflict with the letter and spirit of the Wilderness Act. This position is also consistent with Forest Service policy. Trail work is an administrative function

that is adequately addressed in section 4(c) of the Wilderness Act. This section allows BLM to use the minimum tools necessary for such administrative work.

A large number of comments stated that the definition of "mechanical transport" should not include horses and other pack livestock like mules and llamas. BLM never intended to ban horses from wilderness areas, and we have amended the definition specifically to make it clear that horses and other pack stock are allowed in wilderness. Horses are not mechanical transport, and neither are their saddles and bridles and other tack.

A small number of comments raised other concerns about the definition of "mechanical transport." One asked for clarification of the word "contrivance" as used in the definition. BLM used this term to emphasize the human-origin aspect of the means of transportation by relying on a dictionary definition of "contrivance" as "a mechanical device." We have expanded the definition by adding the words "device or vehicle" to improve its clarity. Another comment stated that the definition could be misinterpreted to include a number of devices such as fishing and hunting equipment, and even persons such as land users and administrative and law enforcement personnel. The intent of the final rule is that mechanical transport refers to man-made devices with moving parts and an internal or external power source (even if the power source is environmentally benign, such as solar cells), that are commonly used to carry people or cargo. It would be impractical, and potentially misleading, to include an exhaustive list of inclusions and exclusions, because questions may be raised as to items omitted from the list.

Some comments urged that the definition of "mechanical transport" should not include horse-drawn wagons and carts. Another urged that the definition should include canoes, rafts, bicycles, and travois, and that unless the enabling legislation specifies otherwise, BLM must prohibit all assisted transportation. Wagons, carts, and bicycles clearly fall within the definition of mechanical transport and are excluded from wilderness. Canoes, rafts, and travois, on the other hand, are not included in the definition—they lack moving parts. There is no authority in the Wilderness Act to disallow all assisted transport.

One comment maintained that the definition of "mechanical transport" violates the Americans with Disabilities Act (ADA). The proposed rule excluded wheelchairs from the definition, but with the qualification that a wheelchair

is allowed only as necessary medical equipment. BLM has amended the definition in the final rule to remove this qualification. The final rule specifically allows wheelchairs to be used in wilderness areas. The definition of "wheelchair" in the proposed rule has also been changed in the final rule to repeat the definition in the ADA.

One comment asserted that the definition of "mechanical transport," by including the reference to living power sources, is more restrictive than the Arizona Desert Wilderness Act of 1990 and is inconsistent with the Wilderness Act, and alleged that the definition significantly affects recreation. The reference to a living power source was designed to encompass bicycles and horse-carts and similar mechanical means of transportation, and not backpackers and horse packers, which, though they may employ living power sources, do not use mechanical contrivances for transport. However, since the power source itself is not a critical element in defining "mechanical transport," we removed the reference to "living power source" in the final rule.

One comment urged that the rule should restrict the use of wheeled devices to only those specifically permitted in the Wilderness Act. The Wilderness Act makes no mention of wheeled vehicles or devices as such, and it is unnecessary to amend the definition.

A couple of comments addressed a definition not in the proposed rule, "mechanized equipment," apparently confusing it with "mechanical transport" or "motorized equipment." One asked whether rock climbing hardware is mechanized equipment, and another urged that rifles be considered mechanized equipment. Power drills for installing bolts in support of climbing would be considered motorized equipment and are banned from BLM wilderness areas, as are chainsaws and other large power tools. Rifles and shotguns are not motorized, and are not mechanical means of transportation. Therefore, they are not affected by the restrictions on motorized equipment or mechanical transport in section 6302.20(d) of the final rule.

#### *Mining Operations and Valid Occupancy*

A few comments stated that the proposed definitions of these terms infringe on the access rights of owners. BLM has changed the definition of "mining operations" to make it a cross reference to the definition in the use and occupancy regulations in 43 CFR subpart 3715. Also, BLM has added to

the definition of "valid occupancy" a cross-reference to the use and occupancy regulations in subpart 3715 of this title. These definitions rely entirely on existing BLM regulatory definitions, and therefore do not affect the rights of land owners or mining claimants.

#### *Motorized Equipment*

A small number of comments addressed this definition, most of them listing devices that they thought should or should not be considered motorized equipment and accordingly banned from or allowed in wilderness. One comment urged that chain saws be allowed. Chain saws are always motorized and therefore are banned specifically by the Wilderness Act. One comment stated that the definition could be interpreted to include battery-powered devices such as shavers, watches, and the others specifically excluded in the definition. We do not believe this to be a reasonable interpretation, and have not changed the definition in the final rule.

A few comments asked for a more expansive definition of "motorized equipment," one that would include propane heaters, stoves, Global Positioning Systems, Geiger counters, cellular telephones, metal detectors, or radios. They maintained that such devices should have no place in primitive or unconfined use of wilderness, that wilderness is a place for primitive travel skills. The comment suggested that technological advances represented by some of these devices would lead to further mechanization of wilderness, and concluded that exemptions should be limited to flashlights, wristwatches, cameras, and gas stoves. While this view of wilderness may be shared by some, the impacts of the devices proposed for inclusion in the definition by the respondent do not warrant their prohibition in wilderness. We have made no change in the final rule in response to this comment.

#### **Wheelchair**

A small number of comments criticized this definition as being too restrictive, and urged that the term be defined as other agencies do. In the final rule, we have amended the definition slightly to conform it exactly to the definition found in Section 507 of the Americans with Disabilities Act, 42 U.S.C. 12207(c)(2).

#### **Temporary Structure**

One comment suggested adding a definition for this term and offered language: "Temporary structure" means

any structure that can be readily and completely dismantled and removed from the site between periods of actual use, and must be removed at the end of each season of use." We have not adopted this comment in the final rule. BLM generally cannot allow permanent or temporary structures in wilderness, so there is no need for a definition of this term. However, we have added a cross reference to the use and occupancy regulations for mining operations in 43 CFR part 3715, because you may erect structures under certain circumstances on mining claims in wilderness areas. We have also added language making it clear that you may use tents and other such equipment for overnight camping.

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

##### *Section 6302.10 May I use wilderness areas? (Section 6302.11)*

A small number of comments addressed this general section on use of wilderness, most suggesting uses that should be specifically listed, such as: education, conservation, scenic and historic appreciation, ecology, philosophy, photography, art, spirituality, hunting, fishing, trapping. Most of these uses are expressly mentioned or at least implied in the Wilderness Act, and need not be recited in the regulations. To avoid any appearance of excluding such recognized wilderness uses by naming some uses and omitting others, we removed the list of examples of allowable uses from this section in the final rule. As for hunting, fishing, and trapping, these are managed by State government, and BLM does not seek to change this management role in these regulations.

One comment suggested that this section should emphasize that wilderness is for non-motorized, non-mechanized use. This need not be stated explicitly here; the regulations make this clear in other sections.

##### *Section 6302.20 Do I need and where do I obtain an authorization to use a wilderness area? (Sections 6302.12 and 6302.13)*

Several comments addressed this section. One objected to the requirement for authorization if the BLM management plan for the wilderness area involved requires it, arguing that BLM has no authority to prepare management plans in the existing BLM wilderness regulations or the regulations in 36 CFR 283.1. It continued that BLM therefore cannot promulgate or enforce plans, or include

them in our budget. BLM's general land use planning authority may be found in Section 202 of FLPMA (43 U.S.C. 1712). We have made no change in the final rule in response to this comment.

One comment stated that the proposed rule contained no provision for timely and efficient response to requests for authorizations. Another comment asserted that the permitting process could be used to restrict use unreasonably. A third comment requested clarification as to the type(s) of authorization needed and who issues them, and clarification that BLM requires a permit for any activity that is not consistent with wilderness management.

This rule makes possession of an authorization a prerequisite for certain activities, but does not itself provide for the issuance of authorizations. If this rule requires you to have a permit or other authorization, you must obtain it under the specific BLM regulation for your use or activity. The authorization may be a general use permit under 43 CFR part 2920, a notification of practices and procedures for geophysical exploration under an existing fluid mineral lease under 43 CFR 3151.1, or a special recreation permit under subpart 8372, for example. We have not changed the final rule.

One comment noted that designations of individual wilderness areas by Congress may contain statutory provisions that supersede the Wilderness Act or FLPMA. This is true, and in such a case the statutory provision would also supersede these regulations. It is not our intent to account for every such exception to the general requirements of the Wilderness Act.

The comment went on to state that lands must be managed as provided in the Multiple Use and Sustained Yield Act of 1960. The Wilderness Act provides that its purposes are within and supplemental to the purposes for which national forests and other units of Federal lands are managed. Therefore, the Wilderness Act and these regulations are consistent with the purposes of the Multiple Use and Sustained Yield Act.

One comment urged that fees BLM charges for permits should be used to pay for law enforcement rather than restoring user-caused damage. It went on to say that users should pay for such restoration. There is no need to change the regulation as a result of this comment, because it neither provides for specific fees nor directs where specific fees are to go. Other regulations provide for fees and their administration.

*Section 6302.30 When and how does BLM close or restrict use of wilderness areas?* (Section 6302.19)

A few comments addressed this section of the proposed rule. One noted that only Congress can alter the use of wilderness areas, and stated that temporary closures should be for no more than one year. Another urged that the regulation should clearly state that the law permits BLM to restrict areas within wilderness without issuing an order. We have amended this provision in the final rule to make it clear that closures will affect the minimum area for the minimum amount of time necessary, likely in most cases to be less than three months. (A typical reason for such restrictions will be wildlife protection.)

Another comment stated that closure or restrictions on use of public lands for mining, grazing, logging, recreation, and so forth, would cause a significant economic impact on small communities if wilderness guidelines are not carefully administered. BLM's intent is that we will carefully administer the regulations, guidelines, and handbooks relating to wilderness management.

*Section 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?* (Sections 6302.15 and 6302.16)

A number of comments addressed this section. Some challenged the proposed language because of perceived undue effects on the wilderness environment, asserting: uses that damage the environment should be banned; fuel gathering for campfires should be prohibited; collection should be limited to scientific research; commercial collection should be prohibited; and the regulations should be as restrictive as possible for uses inconsistent with the purposes of the Wilderness Act. Others said that the section imposed restrictions on activities that are too stringent or not authorized, maintaining: the rule should allow "incidental use (surface collection with small hand tools)"; the rule should not require a plan to be in place before collecting can be allowed; the rule conflicts with State authority for wildlife management and control of hunting and fishing; and the rule should allow traditional aboriginal land uses, such as wood gathering and pottery shard collection.

To help address some of these comments, we have divided this section into two sections in the final rule: section 6302.15 on collecting or disturbing specimens, and section

6302.16 on scientific information gathering. Thus, we have separated scientific from casual collecting. In the final rule we have tried to minimize the impacts of these activities, within the limits of the law.

This division of the proposed provision into two sections recognizes that scientific research under section 6302.16 is generally a more intensive use of lands and resources than casual or recreational collecting or disturbance of resources, or even the mineral prospecting authorized by the Wilderness Act. Scientific research may involve surface disturbance, long-term use of the land, and larger numbers of people. Of course, BLM will permit scientific research that does not involve these elements as well, but not impose the reclamation and other requirements stated in section 6302.16. Examples of this kind of research would be wildlife population counts that do not involve surface disturbance or lengthy stays in the wilderness.

Under section 6302.15, you may remove small mineral samples for purposes of prospecting, or souvenir items such as pine cones or attractive stones. This provision recognizes that such activities conducted by persons without mechanized transportation or power tools are likely to create considerably smaller impacts on the wilderness environment than scientific research, which may involve base camps, organized crews of scientists and staff, more extensive equipment, and surface disturbance.

In the final rule we have also removed proposed paragraph 6302.40(b), which consisted of several lists of resources and materials that may be collected in wilderness for non-commercial purposes. The lists are not necessary and may have been misleading because most collecting would require an authorization not provided for in the wilderness management regulations. For such collecting, you would need an authorization from other Federal agencies, State agencies, or from BLM under other regulations.

The final rule provides that for scientific information gathering (section 6302.16) in a wilderness area—

- Similar research opportunities must not be reasonably available elsewhere;
- The activity must be compatible with wilderness preservation and the pertinent BLM management plan;
- You must minimize ground disturbance and use of motorized equipment and mechanical transport, including the landing of aircraft; and
- The activity must be authorized by BLM before you may begin.

For information gathering and resource collection or disturbance not related to scientific research, section 6302.15 requires the activity to be—

- Non-commercial as required by section 4(c) of the Wilderness Act;
- Characterized by methods that preserve the wilderness environment; and
- Either in conformance with the pertinent BLM management plan or specially authorized by BLM.

Also, information gathering related to minerals, including prospecting under the mining laws, is specifically allowed under the terms of section 4(d)(2) of the Wilderness Act (16 U.S.C. 1133(d)(2)).

Some measures suggested in comments were: to require campers to carry campfire fuel with them; to limit collecting to education or scientific research; and to require that information and specimen gathering be for the purpose of benefitting wilderness. These activities are not occurring at levels that are harmful to wilderness, and there is no need at present to impose such limits. Some of the activities that respondents suggested we allow in wilderness are prohibited by law. For instance, section 6 of the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470ee(a), prohibits taking pottery shards and similar artifacts from public lands without a permit: “No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit. \* \* \*”

Several comments addressed the specific issue of hobby mineral collecting in the context of this section. They said that the proposed rule would severely limit the hobby, and that collecting specimens preserves them from erosion. One comment stated that closing public lands to mineral collection is unfair when mining may still occur. Another asserted that the proposed rule would impose an excessive restriction of traditional family recreation activities. In response to these comments, we have amended the final rule to allow hobby collecting in BLM wilderness if it is compatible with wilderness preservation and if either the activity conforms with the applicable BLM plan or the hobbyist has an authorization from BLM. The proposed rule would have required both plan conformance and an authorization.

*Section 6302.41 Will BLM authorize me to use a motor vehicle, motorized equipment, or mechanized transport to conduct research or gather resource information? (Section 6302.16)*

About 20 comments addressed this section. Respondents criticized the provision, stating that it implied motor vehicles could be allowed in wilderness, that it could be interpreted to preclude airborne research over wilderness, and that it did not necessarily require a bond in every case. One comment stated that the rule should clearly prohibit motorized equipment and mechanical transport with certain exceptions: access to valid mining claims, construction and maintenance of wildlife watering devices, maintenance of range improvements, or other uses that BLM cannot prohibit, and that research is not grounds for allowing motorized equipment or mechanical transport. Another comment asked for clarification of how BLM will determine reclamation needs, and another asked whether BLM will give verbal or written authorization for motorized or mechanical information gathering.

Many of these issues are addressed in either other BLM regulations governing specific activities or uses of the public lands, or the BLM Manual if they relate more to BLM internal procedure than to user activity. The type of authorization required is usually covered in the regulations dealing with the subject matter of the research or information gathering. The Wilderness Act governs access to mining claims. Such access need not be by mechanized transport in every case.

We have removed most of the section in the final rule because it is unnecessary. The final sentence has been moved to section 6302.16(b). It requires reclamation, but still provides for discretion on the part of local BLM managers as to whether we will require a bond.

Most human activity in wilderness disturbs the surface in some way. There is no need for bonding in a case where there is likely to be no appreciable impact. The regulations give local managers the power and discretion to require bonding.

*Section 6302.50 May wheelchairs be used in a wilderness area? (Section 6302.17)*

A few comments addressed this section. Some supported the notion, with which we agree, that adventure and untrammelled nature should be available to the wheelchair user. Another contended that the rule does

not meet the spirit of the Americans with Disabilities Act (ADA) because it does not provide for additional facilities for wheelchair users. We disagree with this comment. Special facilities are not required for wheelchair users in wilderness under Section 507 of the ADA (42 U.S.C. 12207(c)(1)).

Another comment stated that the regulation should permit motorized wheelchairs. In the final rule, “wheelchair” is defined in the same way as in Section 507 of the ADA (42 U.S.C. 12207(c)(2)). If a motorized wheelchair meets this definition, so that it is suitable for use in an indoor pedestrian area, it qualifies as a wheelchair under the final rule and may be used in BLM wilderness. One comment asserted that if wheelchairs are allowed in wilderness, game carriers should also be allowed. However, wheelchair users are protected by statute from exclusion, while wheeled game carriers, being mechanical transport, are barred from wilderness by statute.

*Section 6302.60 May wilderness areas be used for traditional religious purposes? (Section 6302.18)*

A number of comments addressed this section, some of them focusing on the issue of temporary closure to protect privacy of American Indian ceremonies, and others focusing on whether the regulations should even address the issue of religious use of wilderness. We will discuss the latter issue first.

Several comments objected to the provision for temporary closure to the public of portions of wilderness areas being used by Native Americans for religious practices. They stated that persons who engage in such ceremonies on public land should accept the possibility of public discovery of their ceremony. Others said that any closure in support of religious activities is discriminatory, that it is a race-based regulation, and that it violates the Establishment Clause of the First Amendment. On the other hand, several comments supported temporary closure for this purpose, saying that temporary closure is compatible with wilderness values and is needed to protect privacy. One comment tied closure to need, saying that if an area has a history of ceremonies being consistently invaded, BLM should permit temporary closure. Partly because of these comments, and partly because it is unnecessary, BLM has removed this provision in the final rule. Such a special provision for temporary closures to accommodate Indian religious observances is unnecessary because, under 43 CFR subpart 8364 and the general land

management authority in Section 302 of FLPMA, the BLM local land manager can temporarily close an area to protect or accommodate this or any other use in appropriate circumstances.

The final rule allows American Indians to use wilderness areas for traditional religious purposes, implementing the American Indian Religious Freedom Act (42 U.S.C. 1996) (AIRFA), and other applicable law. It does not specifically allow closure. However, it recognizes the limits provided for in the Wilderness Act, so that Indians using wilderness areas for traditional wilderness purposes may not use motorized equipment or mechanical transportation, and must behave in such a way as to minimize impacts on the wilderness environment.

Comments suggested that the rule should specifically allow mechanical transport for Indian access; however, there is no authority in the Wilderness Act or AIRFA to allow this use. One comment suggested that BLM restrict the manner and degree of this religious activity to that of such activities carried on before designation of the wilderness. There is also no authority to restrict the manner and degree of such Indian religious activity so long as it otherwise comports with the Wilderness Act and these regulations.

One comment stated that the regulations should include the provisions from Executive Order No. 13007 for access, ceremonial use, protection and confidentiality of sacred sites, and notification of proposed management actions potentially affecting these sites. The Executive Order is binding on Federal agencies, and its provisions need not be repeated in these regulations. One comment urged that the regulations should ensure physical access into wilderness for Native Americans for ceremonial, medicinal, cultural, and traditional collecting. We address collecting of materials in wilderness areas in section 6302.15 of the final rule. Native Americans wishing to collect materials for these purposes must do so in a manner compatible with the preservation of the wilderness environment, and the collection must conform with the applicable management plan or be separately authorized by BLM. One comment stated that the term "American Indian" should be replaced by "enrolled member of a federally recognized tribe." This comment is not adopted in the final rule—the terms used in the rule are those used in AIRFA.

*Section 6302.70 What activities does BLM prohibit in wilderness areas? (Sections 6302.20 and 6302.14)*

Our discussion of the comments on this section will address each paragraph separately, as did most of the comments. But first, a few comments addressed the section as a whole. One comment asked for clarification as to the applicability of the rule to individuals as opposed to State agencies. The rule does not distinguish between States and individuals. For example, State agencies may not use motor vehicles to track wildlife in BLM wilderness any more than individual hunters may, even though States have primary responsibility for wildlife management. Another comment maintained that the treatment in the proposed rule of Wilderness Act prohibitions was inadequate. We disagree with this assessment: Each prohibition in the Wilderness Act is thoroughly covered in this section, along with others that implement the general authority of BLM to regulate public lands, including wilderness. One comment stated that persons wishing to carry on activities that are exceptions to prohibitions should be encouraged in the regulations to use non-wilderness land, or their activities should be narrowly delineated. This comment appears to be directed more to the special provisions of the Act that were covered in subpart 6303 of the proposed rule. Section 4(c) of the Wilderness Act provides for strictly limited exceptions to wilderness prohibitions. BLM believes that subpart 6304 of this final rule properly implements this statutory authority.

Some comments supported the prohibited acts section as a whole, stating that the restrictions imposed are consistent with the purpose and preservation of wilderness, places that are quiet, pristine, and unspoiled. One comment urged that we remove the language in the introductory text giving BLM discretion to enforce these prohibitions in favor of absolute prohibitions. BLM made this change in the final rule.

A small number of comments addressed the issue of road closures, a matter that is not covered in the proposed or final rule. Subject to valid existing rights and special provisions in individual statutes designating wilderness areas, wilderness designation closes jeep trails and similar routes on public lands, but the wilderness management regulations themselves do not close any roads. Wilderness designation or these regulations do not affect roads that are outside wilderness, even those adjacent

to wilderness boundaries. If there are routes to wildlife water developments within wilderness, they are closed to mechanical transport except for administrative use. The Wilderness Act prohibits four-wheel drive, off-highway, or other vehicle use of wilderness.

The final rule contains a provision omitted from the proposed rule—a protection of valid existing rights—that is necessary as a matter of law. Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) specifically preserves existing private rights.

*Paragraph (a).* This paragraph prohibits operating a commercial enterprise in BLM wilderness. A small number of comments addressed this provision. A few urged that BLM not prohibit commercial activities such as outfitting and guiding for hunting, fishing, and recreational pack trip. These activities are not prohibited. The rule excepts from the prohibition those activities specifically provided for in the Wilderness Act; Section 4(d)(6) of the Act allows commercial services related to the recreational or other wilderness purposes of the particular area.

One comment asked whether the use of helicopters for wildlife management activities is a commercial activity. Whether such use of helicopters is commercial or not is irrelevant, because BLM claims no authority in this final rule to regulate activities in airspace. Section 4(c) of the Wilderness Act, however, specifically prohibits the landing of aircraft. This does not apply to emergency landing of aircraft.

*Paragraph (c).* This paragraph prohibits landing strips and helicopter landing facilities. A few comments supported this section, and none objected to it. BLM has made no change in the final rule.

*Paragraph (d).* This paragraph prohibits the use of motorized equipment. Several comments addressed this prohibition, different respondents raising different points:

- objecting to any motorized and mechanized use of wilderness,
- stating that State wildlife management activities, predator control, fire suppression, emergencies, trail work, delivery of construction materials where delivery is not feasible without mechanical transportation, all require use of mechanized vehicles, motorized equipment, and low-level flights, and
- stating that modern, efficient Native American range management requires use of mechanized vehicles, motorized equipment, and low-level flights.

In response, BLM does not assert authority to regulate overflights of public land in this rule. The other mechanized uses urged in these



comments are prohibited by Section 4(c) of the Wilderness Act, except in the event of emergencies involving the health and safety of persons within the area.

Section 6303.1 of this final rule covers administrative use and emergency situations. The Preamble discussion of that section addresses the merits of allowing or prohibiting use of mechanical transportation and motorized equipment for administrative purposes.

*Paragraph (e).* This paragraph prohibits landing aircraft, and the dropping and picking up of persons or things by aircraft. A few comments addressed this provision, some in opposition and some in support. One said that the regulations should never allow the use or landing of aircraft unless specifically authorized by Congress for particular wilderness areas. One comment said that the regulations should not restrict the use of aircraft for the administrative uses listed in the discussion of paragraph (d), above, and another urged an exception for search and rescue activities.

Again, BLM does not assert any regulatory authority over airspace. The regulations do allow the landing of aircraft for administrative purposes, and allow BLM to prescribe conditions in which aircraft, as well as other modes of transportation, may be used in emergency situations.

*Paragraph (f).* This paragraph prohibits structures and installations in BLM wilderness. A few comments addressed this provision, one saying that it did not go far enough and should also specifically prohibit permanent corrals, tent frames, caches, spring boxes, and piped water systems, new grazing structures other than fences intended for wilderness protection, and maintenance of existing dams and other water catchments, unless they are to benefit wilderness. The comment also suggested the addition of "transmission lines" to the list of examples of prohibited structures. Another comment asked that we make our prohibition of structures consistent with that of the U.S. Forest Service. We have added "transmission lines" and "sheds" to the prohibition, in part to be consistent with the policy of the Forest Service, and also in response to the comments. Finally, one comment asked that the regulations not prohibit milepost and trail marker signs. This was not the intent of the proposed rule in prohibiting structures, and milepost and trail signs are allowed in BLM-managed wilderness.

*Paragraph (g).* This paragraph prohibits cutting trees in BLM wilderness areas. A few comments

addressed this prohibition. One questioned whether the prohibition conflicted with section 6302.40(c) of the proposed rule, which specifically allowed the gathering of firewood in reasonable quantities for campfires. (This provision is found at section 6302.15(b) of the final rule.) BLM intends a distinction between gathering firewood and cutting trees. The prohibition of tree cutting does not extend to dead fall and dead branches in reasonable quantities to be used for firewood. One comment stated that the regulations should include an exception for cutting trees to improve habitat if provided for in applicable BLM management plans or under BLM authorization. As a matter of policy, BLM does not permit this kind of habitat management in the wilderness environment.

*Paragraph (i).* This paragraph prohibits competitive events in wilderness areas. A few comments addressed this section. Some agreed with the notion that the prohibition of competitive use is in keeping with the spirit of the Wilderness Act. Some maintained that some competitive events, such as Eco-Challenge, do not permanently harm the character of wilderness land or reduce the opportunity for solitude, and argued that the prohibition of such events is not consistent with the special provisions section of the Wilderness Act and these regulations. Some questioned the authority for the prohibition.

As a matter of policy, to carry out our responsibility to preserve the wilderness character of the land under the Wilderness Act and FLPMA, BLM does not allow competitive events such as races and time trials in wilderness areas. This is not a change from the existing wilderness management regulations.

Another comment asserted that hunting is a competitive event that BLM should prohibit. In general, hunting is not a competitive sport, but the regulations do prohibit organized competitive hunting events. The regulations treat orienteering in the same way—prohibiting it only if competitive.

*Paragraph (j).* This paragraph of the proposed rule prohibited "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," unless allowed under the applicable BLM management plan or a BLM authorization. This provision of

the proposed rule attracted the most voluminous public response, over 1,300 comments, most opposing what was perceived as a ban on using existing or new fixed anchors for climbing, or a ban on temporary fixed anchors such as slings on trees.

On June 1, 1998, the Forest Service issued a discretionary review decision in separate letters to the Access Fund and Wilderness Watch, finding that fixed anchors are "installations" prohibited by Section 4(c) of the Wilderness Act. On October 29, 1999, the Forest Service published a notice of intent to establish a negotiated rulemaking advisory committee to help develop regulations on the placement, use, and removal of fixed anchors in national forest wilderness areas. Pending the outcome of this Forest Service effort, BLM is reserving paragraph (j) in this final rule. In light of this reservation, we also withhold further discussion of the comments until such time as we publish a final rule addressing the use of fixed anchors in BLM wilderness.

As a point of clarification, climbers do not need authorization to use existing fixed anchors. BLM will not prosecute anyone for using them. However, the final rule also reaffirms the prohibition of power drills used for climbing or any other purpose.

*Section 6302.80 What penalties am I subject to if I commit one or more of the prohibited acts? (Section 6302.30)*

A few comments opposed this section, stating that penalties are not expressly provided for in the Wilderness Act, or that we should have used the penalties in FLPMA rather than the Sentencing Reform Act in the U.S. Criminal Code (18 U.S.C. 3551–3586). As one of the comments pointed out, FLPMA provides ample authority for penalizing those who violate BLM regulations. The enforcement authority in Section 303(a) of FLPMA (43 U.S.C. 1733(a)) establishes Federal criminal penalties, including fines and imprisonment. The Sentencing Reform Act of 1984, as amended, raises the upper limits on these and all Federal criminal penalties. These new maximums automatically apply to all existing criminal penalty statutes. Of course, magistrates and judges will not necessarily impose the maximum penalties for minor infractions—the penalties are neither mandates nor guidelines. They are the maximum allowed. We have changed this provision in the final rule to make it clear that the imprisonment penalty is based on FLPMA. We have removed the reference to the Sentencing Reform Act.



Subpart 6303—Special Provisions  
(Subpart 6304)

One comment suggested that BLM add a provision to this subpart specifically authorizing hunting, fishing, and trapping in BLM wilderness areas, so long as the person doing so does it in accordance with applicable State and Federal law. We have not added such a provision in the final rule. These activities are managed by States, not BLM or other Federal agencies, and are not specifically authorized or prohibited by the Wilderness Act.

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

The few comments addressing this section objected that the activities—mining, grazing, development of mineral leases, and so forth—allowed in these special provisions are not compatible with wilderness. They asked that the regulations state that wilderness is a place where such activities are prohibited to preserve wilderness values.

BLM is obligated to allow these activities in wilderness areas because they are specifically allowed by the “special provisions” of Section 4(d) of the Wilderness Act. In most cases the regulations allow the uses only if they pre-existed wilderness designation.

*Section 6303.20 Are there special provisions for aircraft and motorboat use within wilderness areas? (Section 6303.21)*

A few comments addressed this section, some questioning the need for regulations on aviation, others suggesting controls on aviation noise, and others suggesting that low level flights by government agencies for wildlife management, search and rescue, and so forth, should not be prohibited. One comment asked for clarification as to how the prohibition of motorized equipment relates to aviation. One comment questioned the right of BLM to infringe on the regulatory authority of the Department of Transportation and the Federal Aviation Administration. Another questioned the need for regulations on aviation, including lighter-than-air craft and skydiving. Still another stated that the provision on military overflights should be expanded to apply to private and commercial aviation.

BLM asserts no authority in this rule to regulate the use of airspace or any form of aviation, including military, regardless of altitude. The rule only prohibits the landing of aircraft in wilderness, subject to various exceptions.

One comment asserted that BLM’s proposed rule would be too permissive and inconsistent with the Wilderness Act. It said that BLM should use its regulatory authority to restrict these uses as the Secretary of the Interior “deems reasonable” or desirable, not just for protection of wilderness values. It concluded that the regulations should not expand aircraft and motorboat use. The final rule retains, in paragraph (a), a somewhat revised provision allowing BLM to impose other reasonable restrictions necessary to protect wilderness values. The rule includes an amendment, in new paragraph (b), requiring that maintenance of existing wilderness airstrips be done without motorized equipment.

One comment suggested that the regulations should provide that existing but abandoned airstrips cannot be used or maintained after wilderness designation. We have adopted this idea in the final rule.

Several comments addressed the issue of military overflights, most suggesting that such flights should be regulated, reduced, or eliminated. BLM has no authority in this regard, and paragraph (b) of the proposed rule has been removed in the final rule to avoid any suggestion that BLM is trying to regulate any kind of overflight.

*Section 6303.30 What special provisions apply to operations under the mining laws? (Section 6303.11)*

A few comments addressed this section. One comment argued that subordination of mining activities to the provisions of the Wilderness Act violates section 102(b) of FLPMA (43 U.S.C. 1701(b)). Section 102(b) limits only the effectiveness of the policies of FLPMA, not any other legislation, including the Wilderness Act. This provision has no effect on the relationship between the Wilderness Act and the mining laws.

One comment stated that either casual use (a term defined in 43 CFR 3809.0–5) in a wilderness area should not be exempt from having a plan of operations under 43 CFR subpart 3809, or this rule should include a requirement that casual use be conducted in a manner that preserves the wilderness character of the land.

Amendment of the requirements of subpart 3809 is beyond the scope of this rule. This rule has no effect on subpart 3809, except that it imposes additional requirements on mining operations in wilderness. However, the proposed rule at section 6303.30(b) and (d) required all mining operations, which would include casual use, to be conducted under the standards in the wilderness

designation legislation, and to comply with BLM’s requirements imposed to protect wilderness values. These provisions are renumbered and consolidated into one paragraph in the final rule. We do not believe a special provision for casual use is necessary.

One comment pointed out that the wording of paragraph (d) in the proposed rule requiring compliance “with all reasonable requirements established by BLM” implies that some BLM requirements may be unreasonable and that miners need not comply with those. This paragraph also raises the question of who determines reasonableness, to the extent that it would provide a legal basis for appeals. BLM has removed this provision in the final rule because paragraph (b)(1) makes it redundant.

One comment asserted that paragraphs (a), (b), (c), and (f) substantially restate the law and are not needed, that paragraphs (d) and (e) may be considered a taking under Executive Order 12630, and that paragraph (h) is unnecessary. BLM promulgates regulations to implement the law. Consequently, all regulations reflect the laws on which they are based, and these paragraphs are included for completeness. Requiring that mining claimants protect wilderness values consistent with use of a mining claim or site for mineral activities, and requiring reclamation and removal of improvements within a reasonable time after termination of mining activities, do not constitute takings of private property under the cited Executive Order. The information in subparagraph (h) was removed because it was substantially covered in the sections on information gathering.

We have also amended this section in the final rule to consolidate in paragraph (b) portions of paragraphs (b), (d), and (g) of the proposed rule that duplicate each other. These three paragraphs address how you must conduct your mining operations to protect wilderness.

One comment stated that the one-year deadline for removal of equipment and improvements, and the six-month deadline for beginning reclamation, may not be long enough, especially at high altitudes or latitudes. It claimed that the reclamation and environmental protection requirements are too vague, and asked for clarification as to time for completion of activities, reclamation standards, ending operations, and the relationship of the requirement that structures be removed with historic preservation requirements.

To answer these concerns, we have amended paragraph (e) to link the

reclamation requirements in the final rule to the regulations in 43 CFR subpart 3809. The final rule requires claimants and operators to remove their equipment and structures and begin reclamation within the time frames established in their plan of operations approved by BLM, but no later than 18 months after they have ceased mining and extraction operations. The regulatory provisions are somewhat flexible to accommodate regional differences, keeping in mind the direction in the Wilderness Act to restore the surface as soon as operations are ended. We believe that the environmental protection requirements in the regulations are appropriate for mining in a wilderness setting. As for historic preservation and other legislative requirements, a mining operator who is ready to reclaim must prepare a reclamation plan that addresses such issues.

One comment said that mining should be prohibited in BLM wilderness. As of midnight, December 31, 1983, the location of new mining claims became statutorily prohibited in wilderness, but the Wilderness Act specifically recognizes valid existing rights, including the right to mine valid claims that existed at the time the wilderness was designated and have been properly and continuously maintained since that time. Another comment suggested that BLM require miners to use the minimum tools necessary, in order to protect the land and wilderness values. The Wilderness Act does not provide authority to impose this requirement.

On May 22, 1998, the Solicitor of the Department of the Interior issued an opinion entitled "Patenting of Mining Claims and Mill Sites in Wilderness Areas," M-36994. Consistent with established case law interpreting comparable statutes restricting patenting, the Solicitor's Opinion concludes that section 4(d)(3) of the Wilderness Act requires a reservation of the surface estate to the United States in all patents where the claimant had not established a right to a patent as of the date the lands on which the claim is situated are designated as wilderness. The Solicitor strongly recommended that BLM amend its wilderness regulations to provide guidelines for patenting that comport with the Opinion. Accordingly, BLM will publish shortly a new proposed rule proposing to amend part 6300 as promulgated in today's final rule. This new proposed rule would set forth the patenting limitation and related requirements and clarify BLM's patenting procedures. This final rule reserves a subparagraph in the mining

law administration section for this proposed subparagraph.

The final rule also reserves a subparagraph in the mining law administration section for a proposed subparagraph on timber use for mining activities. The proposed rule would have removed from the regulations paragraph (i) of section 8560.4-6, which specified that owners of patented mining claims located after the lands were included in the National Wilderness Preservation System could use timber growing on the patented claims only for mining and mineral extraction and beneficiation purposes, and only if timber otherwise reasonably available is insufficient for these needs. This provision appears in the wilderness regulations in the 1997 edition of the Code of Federal Regulations, but the proposed rule omitted it. No public comments addressed its removal. Because the existing section 8560.4-6(i) could be read to imply a conflict with the Solicitor's Opinion, BLM chose not to incorporate the language from the existing regulations into this final rule. Instead, we will propose, as part of the new rule mentioned above, a revised timber use for mining operations on both patented and unpatented claims.

*Section 6303.31 How will BLM determine the validity of unpatented mining claims or sites?* (Section 6304.12)

This section attracted few comments. One comment stated that validity examinations should not be imposed on mining claimants because they would interfere with valid existing rights. The Wilderness Act allows mining under valid existing rights only, and thus by implication authorizes determination by the appropriate administrative authority whether the rights claimed are, in fact, valid.

Another comment requested that BLM make clear (1) whether existing approved mining operations are allowed to continue during the validity examination; (2) that BLM reserves the right to impose mitigation measures; and (3) that BLM must verify the validity of all lode and placer claims affected by a proposed plan of operations. In response to the first concern, we have amended the final rule to allow BLM to determine on a case-by-case basis whether operations may begin or continue pending a validity examination. As to the second part of the comment, operational standards are covered in 43 CFR subpart 3809. Finally, as to the third part, the final rule requires BLM to make a

validity determination before approving a plan of operations.

One comment suggested re-wording paragraph (a) of this section to make it clear that the claim must be valid when the area becomes wilderness, not just on some date "prior to" the wilderness designation. BLM adopts this comment, in part, in the final rule to make it clear that the validity must be "as of" the date of wilderness designation.

*Section 6303.40 What special provisions apply to mineral leasing and material sales?* (Section 6304.23)

A few comments addressed this section. One asserted that the proposed rule did not clearly recognize rights under valid existing leases, licenses, and permits. It went on to say that such authorizations should continue under existing legal requirements or the government should compensate the owner. We disagree with the initial premise of the comment: the regulatory text clearly recognizes valid existing rights. There is no need to provide for compensation, since the regulations allow development of valid existing rights.

One comment suggested that BLM should amend paragraph (b) to provide that activities for which a lease, license, or permit was issued may continue but must be conducted in a manner that preserves the wilderness character of the land. There is no authority in the Wilderness Act for such a provision.

Finally, we removed paragraph (c) of the proposed rule because paragraph (a) renders it redundant.

*Section 6303.50 What special provisions apply to water and power resources?* (Section 6304.24)

A few comments addressed this section, which deals with the specific authority in the Wilderness Act for the President of the United States to authorize certain water resource prospecting and development. The comments raised issues relating to wildlife water development and State government prerogatives. One comment said that the provision should be removed from the proposed rule because its implementation would damage public lands wilderness. Since the regulation is based directly on a Wilderness Act provision, it is not changed in the final rule except to substitute a codification of the cite to the Act. The provision has no bearing on State water development authority.

*Section 6303.60 What special provisions apply to livestock grazing?* (Section 6304.25)

A number of comments addressed this section, some objecting to grazing in wilderness, an activity specifically allowed by the Wilderness Act, and others suggesting various limitations on grazing and related developments. A few of the comments questioned BLM's authority to restrict existing uses or to limit maintenance and reconstruction of grazing support facilities. Under the Wilderness Act, the Federal land managing agency with jurisdiction over a wilderness area will permit you to continue grazing livestock, subject to reasonable regulations, where your grazing authorization was already established when Congress designated the wilderness and has continued since. We consider it to be reasonable regulation to restrict livestock increases, and to prohibit construction of additional facilities, unless they can be shown necessary for purposes of protection and improved management of wilderness resources.

One comment suggested that the regulations include provisions for prevention and correction of resource damage and for allocation of forage among livestock, wildlife, and pack stock. Another asked that the regulations include authority for reduction of grazing levels if resources are being damaged. These matters are covered in BLM's regulations on range management. See 43 CFR subparts 4130 and 4180.

One comment asked for special accommodations for grazing by livestock of Indian tribes, and recommended that the regulations provide for tribal consultation as to grazing decisions on BLM lands adjacent to tribal lands. It also addressed a specific development concern in a wilderness study area.

The final rule has no bearing on wilderness study areas, and the respondent's concern will have to be addressed in the wilderness study process. As for consultation, it is often provided for in other laws and regulations. There is no authority either in the Wilderness Act or in BLM's range management regulations or other grazing authority for special treatment for Indian tribes as to grazing in wilderness areas or on any other public lands. We have not changed the final rule in response to this comment.

One comment suggested that BLM remove the final sentence of the section, allowing increases in grazing levels if they will not adversely affect wilderness values. Removal of the provision would

leave no standard in the regulations for deciding whether to allow a requested increase in grazing in wilderness. We believe that no "adverse impact on wilderness values" is a standard sufficiently strict to apply in such cases.

*Section 6303.70 What special provisions apply to other commercial uses?*

Fewer than 10 comments addressed this section. The Wilderness Act provides that commercial services may be performed in wilderness to the extent necessary for activities proper for realizing the recreational and other wilderness purposes of the area (16 U.S.C. 1133(d)(5)). One comment said that the regulations should require wilderness management plans to include a needs assessment for such commercial activities. BLM planning regulations, which apply to wilderness as well as other public lands, already require a needs analysis. See 43 CFR 1610.4. Such a provision is unnecessary in these regulations.

One comment suggested that the regulations should prohibit permanent or seasonal structures or caches for recreation, or only allow very primitive and ephemeral base camps. Another comment asked that the regulations require NEPA analysis and public review for all decisions on temporary structures. Again, this is covered in BLM's planning regulations—see the previous paragraph. The final rule does not allow temporary structures in BLM wilderness except under the regulations in 43 CFR subpart 3715 on use and occupancy of mining claims.

One comment asked that "wilderness education" or "educational" be added as one of the permissible purposes for commercial use of wilderness. This addition is unnecessary—education is included in "other wilderness purposes."

One comment suggested that commercial hunting be prohibited. We assume the comment refers to commercial guiding and outfitting for hunters. Commercial outfitters often serve as guides for hunters, and this activity is considered among the recreational purposes contemplated in the Wilderness Act.

Upon reviewing these comments, and because the final rule does not permit either permanent or temporary structures in BLM wilderness, we have concluded that this section is unnecessary. We have removed it from the final rule.

*Section 6303.80 What special provisions apply to administrative and emergency functions?* (Subpart 6303 and Section 6304.22)

A few comments addressed this section, some saying the provision was too restrictive, and others saying it was too permissive. Some said that these provisions should include a minimum tool requirement, that BLM should carry out administrative functions with the minimum tools necessary to minimize damage to the wilderness. BLM has not adopted the comment in the regulations. The standard is not appropriate for emergencies, and BLM can apply it in other situations as a matter of policy.

One comment stated that the regulations should not place sole authority in the hands of BLM, States, and counties without imposing more stringent and more detailed standards. We believe that the level of detail in the regulations is appropriate for regulations with national effect. The regulations provide local managers with the discretion and flexibility they need to be effective wilderness managers. Also, regulations are for the guidance and instruction of the public, not BLM personnel. Internal guidance is found in the BLM Manual, instruction memoranda, and other documents.

One comment stated that the regulations should require that motor vehicles and aircraft be used for rescues, fire-fighting, fighting pest infestations, and trail maintenance and construction. The regulations allow such use, but it would be unnecessary and inappropriate to require it in every case. Another comment, on the other hand, stated that the regulations should include a preference for use of non-motorized equipment. The regulations include no such preference, and are silent on the matter. We do not believe it is appropriate to place anything in regulations that may hamper emergency personnel and place life and property at undue risk.

One comment asked whether the reference in proposed paragraph (c) to "property" is to public or private property. BLM intends no distinction between the two in the context of fire and pest emergencies. In the final rule, we moved this paragraph to new section 6304.22, while the remainder of the section becomes a separate subpart 6303, which addresses BLM administrative functions.

The same comment asked for clarification on the application of the rule to protection of wilderness users, to entry into wilderness by law enforcement officers, and whether BLM will prescribe emergency measures

before or after the emergency. A separate comment opposed allowing occupancy and use by non-BLM officials. Paragraph (d) in the proposed rule clearly stated that emergency measures are to apply in cases of danger to "health and safety of persons." This clearly includes wilderness users, and the meaning is made clearer by adding, from the Wilderness Act itself, the phrase "in the area" to apply to "persons." The rule also states that BLM may authorize occupancy and use of wilderness by law enforcement officers. We have kept the provision discretionary in order to maintain maximum flexibility in protecting health and safety; there may be occasions where it would be inappropriate to require BLM to give free rein to non-Federal agencies, or to establish emergency measures and procedures in advance of the emergency. On the other hand, the Wilderness Act does not prohibit BLM from cooperating with officials of other agencies, and BLM policy is to cooperate with State and local governments to the maximum extent feasible and appropriate.

One comment urged that the regulations include provisions authorizing BLM to use prescribed burns in appropriate situations. We believe that paragraph (b) of this section (section 6303.1(c) of the final rule) is broad enough to allow prescribed fire as a management tool in BLM wilderness. This paragraph allows BLM to authorize Federal, State, and local officials to occupy and use the wilderness areas in order to carry out the purposes of the Wilderness Act or other law.

One comment suggested that feral species and cowbirds should be included, along with fire, insects, and disease, as pests that BLM is authorized to use aircraft to control. The comment is not adopted in the final rule. The Wilderness Act specifies only fire, insects, and disease.

Another comment stated that the provisions for administration, fire, emergencies, insect and noxious weed control need to be more restrictive. We believe that we allowed a level of discretion in the proposed and final rule appropriate for a national regulation. However, we have amended the provision to remove the requirement that control of fire, insects, and disease be tied to threats to human life or property. The Wilderness Act does not limit control of fire, insects, and disease to situations where life or property is in danger. In order to carry out our responsibility for preserving the wilderness character of BLM wilderness areas, we have also added non-native

invasive plants to the list of problems to which BLM may apply control measures under this section.

One comment stated that the rule should not provide for emergency rescue. We did not adopt this comment because Section 4(c) of the Act specifically provides for the use of aircraft, motor vehicles, and so forth, in emergencies involving the health and safety of persons within the area.

One comment stated that BLM's emergency actions that involve acts that are otherwise prohibited, such as cutting trees or using a motorized climbing drill, should not be considered a violation of the regulations. We agree. Section 4(c) of the Wilderness Act states that emergencies involving the health and safety of persons within the area are exceptions to the prohibitions in the Act—and the rule should be interpreted in this way.

Several comments offered specific suggestions for rewording certain provisions. BLM adopted some suggestions: adding references to temporary roads, motor vehicles, structures, and landing aircraft in paragraph (a), and, to conform with the Wilderness Act, adding the phrase "in the area" to paragraph (d). We rejected other suggestions as overly restricting administrative discretion. One such comment suggested that the final rule should prohibit most of the administrative measures that the proposed rule sanctioned. We did not adopt this suggestion, because to do so would be contrary to the Wilderness Act.

#### Subpart 6304 Access to State and Private Lands Within Wilderness Areas (Subpart 6305)

This subpart is renumbered 6305 in the final rule to accommodate new subpart 6303 on BLM administrative functions.

#### *Section 6304.20 How will BLM give access to State and private land within wilderness areas when the access is affected by wilderness designation?* (Sections 6305.10, 6305.20, and 6305.30)

Several comments addressed this section, which provides for access to inholdings. "Inholdings" in these regulations are State and private lands completely surrounded by designated wilderness. Several comments addressed matters that are covered in other regulations, primarily 43 CFR part 2920 on general leases, permits, and easements. The regulations in part 2920 authorize, among other things, "uses that cannot be authorized under Title V of the Federal Land Policy and

Management Act . . ." (43 CFR 2920.1–1(a)). Title V of FLPMA (43 U.S.C. Chapter 35, Subchapter V, Sections 1761–1771) expressly excludes wilderness from those lands across which BLM may grant rights-of-way under Title V. For this reason, part 2920, which provides for legal mechanisms other than Title V rights-of-way, is the actual authority used to provide access to wilderness inholdings.

Where valid existing rights to access do not exist, BLM may give access to inholdings by permit under existing part 2920, using its administrative discretion under this final rule to determine what access is adequate and causes the briefest and most limited impacts on wilderness character. BLM is preparing a revised version of part 2920 that would provide specific mechanisms for authorizing access to inholdings.

In accordance with these final wilderness management regulations, BLM will only approve the kind and degree of access that you enjoyed immediately before the wilderness area across which you must travel to reach your inholding was designated as wilderness and BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character. By providing for BLM land managers to approve only access routes that were in existence at the time of wilderness designation, the final rule in many cases effectively ratifies the inholder's original choice of route and mode of travel. If no access (other than travel by foot, horseback, or packstock) existed at the date of wilderness designation, BLM will only approve that combination of routes and non-motorized 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 cause the least impact on wilderness character. If you have a valid existing access right that is greater than the access BLM provides under this rule, we will ensure your reasonable use and enjoyment of your inholding. However, we may impose reasonable restrictions on your access to protect wilderness values.

One comment maintained that rights of access exist independently and are not granted by BLM authority, and that BLM does not have authority to tell private land owners what mode of travel they must use. Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) recognizes that valid rights of access may exist in designated wilderness. BLM may nevertheless regulate such existing rights to access in order to protect wilderness resources. Section

302(b) of FLPMA directs the Secretary of the Interior, "by regulation or otherwise, [to] take any action necessary to prevent unnecessary or undue degradation of the lands." The final regulations specifically implement this authority by providing at section 6305.10 that such rights are subject to reasonable regulation.

One comment stated that, for areas surrounded on only three sides by wilderness but where access on the non-wilderness side may not be possible, the regulations should allow access via the wilderness. Section 5 of the Wilderness Act does not apply to private or State land that is near or adjacent to wilderness, or only partly surrounded by wilderness. Section 5 provides for access only to State and private land that "is completely surrounded by" public land "within areas designated by this Act as wilderness..." (16 U.S.C. 1134(a)). Private or State land that is near or adjacent to wilderness would not be an inholding as defined in these regulations, and we cannot adopt the comment in the final rule.

One comment asked whether BLM will use written or verbal authorization to grant access to inholdings. The authorization must be in writing, and we have added this clarification in the final rule. The same comment asked for clarification of "means that are customarily being used" for determining the type of access allowed, and for assurance that new roads will not be allowed except for mining claims with valid existing rights. The final rule does not allow construction of new roads. You may maintain existing access routes to the degree you or your predecessors maintained them at the time of

wilderness designation. BLM will not allow you to upgrade your access routes beyond the condition that existed on the date Congress designated the area as wilderness, unless the improvement would protect wilderness resources from degradation. Further, the customary usage language in section 5 (b) of the Wilderness Act pertains only to mining claims and other valid occupancies, not to access to State and private inholdings provided for in Section 5(a).

One comment stated that the regulations need to acknowledge State and local government jurisdiction over R.S. 2477 rights-of-way. The regulations are silent on how such rights may be recognized. BLM is forestalled by a 1997 statute from promulgating regulations on R.S. 2477 rights-of-way without Congressional consent (Pub. L. 104-208, 110 Stat. 3009-181, 3009-200).

One comment stated that the regulations should use the term "inholding," as defined in the definitions section, and provide that inholdings do not include unpatented mining claims and grazing leases, but should state that these uses have special rights to access under the Wilderness Act. In response, we divided the access section to show more clearly the rights of mining claimants and persons with other valid occupancies.

Two comments criticized the proposed rule's use of the term "customarily used" as a standard for permitting means of access to mining claims and other valid occupancies within wilderness, asserting this standard would not protect wilderness. In the final rule, we have substituted the term "customarily enjoyed." Section

5(b) of the Wilderness Act contains that standard and we may not use a different one.

One comment stated that, according to the United States Attorney General's Opinion of June 23, 1980, BLM need not provide access under the Wilderness Act to inholdings if the owner of the inholding has refused a reasonable offer of exchange. The Attorney General's Opinion addressed the authorities of the Forest Service. It has not yet been determined if the 1980 opinion applies to BLM acquisition of inholdings by exchange. In the event the opinion is determined applicable to BLM, this final rule allows for that possibility. Even so, however, BLM's policy will be to exercise that authority only in unusual or extreme circumstances. The final rule, therefore, allows BLM to acquire land or interests in land from a landowner by exchange, by accepting donation of the inholding or, if the landowner agrees, by purchase. Further, we encourage inholders to seek a fair exchange of their inholding for other public land in the same State (as provided by Sec. 5(a) of the Wilderness Act), and we expect BLM local land managers to explore this possibility in all wilderness inholding cases. Before issuing any authorization allowing access to State-owned or privately owned land, BLM will discuss with the property owner the possibility of selling or donating the inholding to BLM, or exchanging it for other public land.

**III. Final Rule as Adopted**

The following table shows how BLM redesignated sections in the proposed rule or created new sections in the final rule.

Proposed rule	Final rule
Part 6300 .....	Part 6300
Subpart 6301 .....	Subpart 6301
Sec. ....	Sec.
6301.10 .....	6301.1
6301.30 .....	6301.3
6301.50 .....	6301.5
Subpart 6302 .....	Subpart 6302
Sec. ....	Sec.
6302.10 .....	6302.11
6302.20(a) .....	6302.12(a)
6302.20(b) .....	6302.12(b)
6302.20(c) .....	6302.13
6302.30 .....	6302.19
6302.40(a) .....	6302.16
6302.40(b) .....	6302.15(a)
6302.40(c) .....	6302.15(b)
6302.41 .....	6302.15
6302.50 .....	6302.17
6302.60 .....	6302.18
6302.70 .....	6302.20
6302.70(j) .....	6302.14, 6302.20(j)
6302.80 .....	6302.30
Subpart 6303 .....	Subpart 6304
Sec. ....	Sec.

Proposed rule	Final rule
6303.10 .....	removed
6303.20 .....	6304.21
6303.30 .....	6304.11
6303.31 .....	6304.12
6303.40 .....	6304.23
6303.50 .....	6304.24
6303.60 .....	6304.25
6303.70 .....	6302.20(f)
6303.80 .....	Subpart 6303
6303.80(c) .....	6304.22
Subpart 6304 .....	Subpart 6305
Sec. ....	Sec.
6304.20(a) .....	6305.10, 6505.11
6304.20(b) .....	6305.20
6304.20(c) .....	6305.30

We have tried in this renumbering to make the organization more logical and the regulations flow better and be more informative. We divided a few of the longer sections in the proposed rule into two or more shorter sections with informative headings.

Also, we have arranged subject matter so that major subject matter headings (with section numbers ending in zero (0) and often with no regulatory content themselves), lead into two or more subordinate sections, with numbers ending in other than 0, providing detailed information and guidance. For example, sections 6304.11 and 6304.12 are subordinate to section 6304.10, and section 6304.20 immediately thereafter leads into a separate series of sections. We have also simplified some of the section headings, and minimized the use of “yes or no” questions.

Subpart 6301 contains general information, a statement of purpose in section 6301.1, a reference to the statutory definition of wilderness in section 6301.3, and definitions in section 6301.5.

Subpart 6302 discusses use of wilderness areas, when you need and how you get a permit, what you can do in wilderness without a permit (including rock climbing), and what acts the regulations totally prohibit. It concludes with a section on criminal and civil penalties for violating the prohibited acts.

Subpart 6303 describes the administrative and emergency functions, except for fire, insect, and disease control, that BLM performs in wilderness.

Subpart 6304 deals with the “special provisions” in Section 4(d) of the Wilderness Act. It contains the regulations for mining, prospecting and information gathering, mineral leasing, control of fire, insects, and disease, water development, livestock grazing, and commercial services related to recreation and other wilderness uses.

Subpart 6305 covers access to wilderness inholdings, both those held as private property in fee simple by individuals, or as State land, and those legally occupied, such as mining claims.

**IV. Procedural Matters**

The principal author of this final rule is Jeff Jarvis, Senior Wilderness Specialist, Wilderness, Rivers and National Trails Group, Office of the National Landscape Conservation System, assisted by Rob Hellie of the National Monuments and National Conservation Areas Group, and Ted Hudson of the Regulatory Affairs Group, all in the Washington, D.C., office. David Porter of the Colorado State Office, Ken Mahoney of the Arizona State Office, and Paul Brink of the California State Office, BLM, also assisted.

*National Environmental Policy Act*

BLM has performed and documented an environmental assessment (EA), and has found that the rule is not 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, 42 U.S.C. 4332(2)(C)(NEPA). Therefore, BLM is not required to write a detailed statement on the environmental impacts of the rule under NEPA. BLM has placed the EA and the Finding of No Significant Impact (FONSI), dated June 19, 2000, on file in the BLM Administrative Record. You may review these documents by contacting us at the address listed above (see **ADDRESSES**).

*Executive Order 12866*

Following the criteria listed in section 3(f) of Executive Order 12866, BLM has found that the rule is not a significant regulatory action. Therefore, this rule is not subject to review by the Office of Management and Budget under section 6(a)(3) of the Executive Order.

*Executive Order 12630*

This rule does not represent a governmental action capable of interference with constitutionally protected property rights or result in a taking of private property under Executive Order 12630. It does not provide for the taking of any property rights or interests.

One public comment suggested that the access provisions in subpart 6305 may require a takings assessment under this Executive Order. Section 1(b) of the Executive Order states, in part, “Executive departments \* \* \* should account in decision-making for those takings that are necessitated by statutory mandate.” The only non-Federal property directly affected by the rule is non-Federal land surrounded by designated wilderness, and the rule establishes procedures regulating access to such inholdings.

There are fewer than 1,000 State and private inholdings in BLM wilderness areas in California and Arizona. These two States contain the great bulk of BLM designated wilderness. This is the approximate number of inholdings that may be affected by this provision of the rule. The rule establishes acquisition by BLM as the remedy of preference for resolving inholding problems. Inholders for whom an exchange or other acquisition arrangement will not work will likely need to apply for access under 43 CFR part 2920. Under BLM policy, we will grant access to such inholders appropriate for their level of use of the affected property and equivalent to that which they enjoyed before wilderness designation.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 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. BLM has determined under the RFA that this rule will not have a significant economic impact on a substantial number of small entities.

Several public comments maintained that section 6302.70(j) of the proposed rule would have a serious impact on small businesses. This argument was based on two premises: (1) that paragraph (j) would prohibit the use of fixed anchors and thereby virtually prohibit climbing, and (2) that the rule would affect many climbing areas.

In Part II of this preamble, we explained that the Forest Service has begun a negotiated rulemaking. This process must be concluded before BLM can promulgate regulations on this matter. Therefore, we reserve a discussion of the supposed impacts of the rule on small business until such time as we publish a final rule containing a provision affecting climbing.

None of the other provisions of the proposed rule attracted comments alleging negative effects on small business.

The Small Business Administration established the Small Business and Agricultural Regulatory Enforcement Ombudsman and ten Regional Fairness Boards to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates these enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on enforcement aspects of this rule, you may call 1-888-734-4247.

#### *Paperwork Reduction Act*

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

#### *Unfunded Mandates Reform Act*

This rule will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. The rule will not establish a Federal mandate that may result in expenditures of \$100 million or more in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, BLM need not prepare a written statement of the anticipated costs and benefits of the rule in accordance with the Unfunded

Mandates Reform Act (25 U.S.C. 1501-1571).

The rule requires that State agencies comply with the Wilderness Act in carrying out their activities in BLM wilderness areas. For example, States will not be allowed to use motorized equipment or mechanical transport, or to land aircraft, in managing wildlife. This degree of limitation does not cross the financial threshold contemplated in the Unfunded Mandates Reform Act, and is required by Federal law.

#### *Executive Order 12988*

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Executive Order 13132*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects 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. The rule does not preempt State law. Several comments on the proposed rule questioned whether the rule would affect State management of fish and wildlife. This was the only arena where the public perceived potential conflict between BLM and the States. As stated several times earlier in this preamble, and as directed by both FLPMA and the Wilderness Act, this rule has no effect on the respective roles of Federal and State government in this area.

#### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no adverse effects on the tribes. The regulations specifically allow Indian use of BLM wilderness for religious ceremonies. Limitations imposed on Indians for the use of BLM wilderness in this rule are no different from limitations imposed on other groups, and are required by the Wilderness Act and FLPMA. The regulations have no effect on Indian governmental affairs, Indian reservations, or other Indian lands.

#### **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 amended as follows:

Dated: November 28, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

1. Subchapter F, consisting of Part 6300, is added to read as follows:

#### **Subchapter F—Preservation and Conservation (6000)**

#### **Part 6300—Management of Designated Wilderness Areas**

##### **Subpart 6301—Introduction**

Sec.

6301.1 Purpose.

6301.3 What is a BLM wilderness area?

6301.5 Definitions.

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

###### **Use of Wilderness Areas**

6302.10 Use of wilderness areas.

6302.11 How may I use wilderness areas?

6302.12 When do I need an authorization and to pay a fee to use a wilderness area?

6302.13 Where do I obtain an authorization to use a wilderness area?

6302.14 What authorization do I need to climb in BLM wilderness?

6302.15 When and how may I collect or disturb natural resources such as rocks and plants in wilderness areas?

6302.16 When and how may I gather scientific information about resources in BLM wilderness?

6302.17 When may I use a wheelchair in BLM wilderness?

6302.18 How may American Indians use wilderness areas for traditional religious purposes?

6302.19 When may BLM close or restrict use of wilderness areas?

###### **Prohibited Acts**

6302.20 What is prohibited in wilderness?

###### **Penalties**

6302.30 What penalties apply if I commit one or more of the prohibited acts?

###### **Subpart 6303—Administrative and Emergency Functions**

6303.1 How does BLM carry out administrative and emergency functions?

###### **Subpart 6304—Uses Addressed in Special Provisions of the Wilderness Act**

###### **Mining Under the General Mining Laws**

6304.10 Mining law administration.

6304.11 What special provisions apply to operations under the mining laws?

6304.12 How will BLM determine the validity of unpatented mining claims or sites?



**Other Uses Specifically Addressed by the Wilderness Act**

- 6304.20 Other uses addressed in special provisions of the Wilderness Act.
- 6304.21 What special provisions cover aircraft and motorboat use?
- 6304.22 What special provisions apply to control of fire, insects, and diseases?
- 6304.23 What special provisions apply to mineral leasing and material sales?
- 6304.24 What special provisions apply to water and power resources?
- 6304.25 What special provisions apply to livestock grazing?

**Subpart 6305—Access to State and Private Lands Or Valid Occupancies Within Wilderness Areas****Access to Non-Federal Inholdings**

- 6305.10 How will BLM allow access to State and private land within wilderness areas?
- 6305.11 What alternatives to granting access will BLM consider in cases of State and private inholdings?

**Access to Other Valid Occupancies**

- 6305.20 How will BLM allow access to valid mining claims or other valid occupancies within wilderness areas?

**Access Procedures for Valid Occupancies**

- 6305.30 What are the steps BLM must take in issuing an access authorization to valid occupancies?

**Authority:** 16 U.S.C. 1131 *et seq.*; 43 U.S.C. 1733, 1740, 1782.

**Subpart 6301—Introduction****§ 6301.1 Purpose.**

This part governs the management of BLM wilderness areas outside of Alaska. It tells you what wilderness areas are, how BLM manages 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 that the Wilderness Act explicitly allows.

**§ 6301.3 What is a BLM wilderness area?**

A BLM wilderness area is an area of public lands that Congress has designated for BLM to manage as a component of the National Wilderness Preservation System in accordance with the Wilderness Act of 1964. The Wilderness Act provides a detailed definition of wilderness that applies to BLM wilderness areas. See 16 U.S.C. 1131(c) and 43 U.S.C. 1702(i).

**§ 6301.5 Definitions.**

Terms used in this part have the following meanings:

*Access* means the physical ability of property owners and their successors in interest to have ingress to and egress 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 the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) (FLPMA) or parts 2800 and 2880 of this chapter.

*Inholding* means State-owned or privately owned land that is completely surrounded by Congressionally designated wilderness.

*Mechanical transport* means any vehicle, device, or contrivance for moving people or material in or over land, water, snow, or air that has moving parts. This includes, but is not limited to, sailboats, sailboards, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. The term does not include wheelchairs, nor does it include horses or other pack stock, skis, snowshoes, non-motorized river craft including, but not limited to, drift boats, rafts, and canoes, or sleds, travois, or similar devices without moving parts.

*Mining operations* is defined in subpart 3715 of this chapter.

*Motor vehicle* means any vehicle that is self-propelled.

*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, chainsaws, power drills, aircraft, generators, motorboats, 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 hand held or portable equipment.

*Primitive and unconfined recreation* means non-motorized types of outdoor recreation activities that do not require developed facilities or mechanical transport.

*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 an occupancy under a current permit, lease, or other written authorization from BLM to occupy public lands. For a definition of occupancy related to development of locatable minerals, see subpart 3715 of this chapter.

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

**Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties****Use of Wilderness Areas****§ 6302.10 Use of wilderness areas.****§ 6302.11 How may I use wilderness areas?**

Unless otherwise provided by BLM, the Wilderness Act, or the Act of Congress designating the area as wilderness, all wilderness areas will be open to uses consistent with the preservation of their wilderness character and their future use and enjoyment as wilderness. In subpart 6304 you will find provisions implementing the special provisions of the Wilderness Act that allow specific uses of wilderness areas. In § 6302.20 you will find a list of acts that are explicitly prohibited within wilderness areas.

**§ 6302.12 When do I need an authorization and to pay a fee to use a wilderness area?**

(a) In general, you do not need an authorization to use wilderness areas.

(b) BLM may require an authorization and charge fees for some uses of wilderness areas. You must obtain authorization from BLM and pay fees to use a wilderness area when required by:

(1) The regulations in this part (see § 6302.15 on collecting natural resource materials, § 6302.16 on gathering scientific information, and subpart 6305 on access to inholdings and valid occupancies);

(2) Regulations in this chapter II—Bureau of Land Management, Department of the Interior—governing the specific activities in which you are engaged;

(3) The management plan for the wilderness area; or

(4) A BLM closure or restriction under § 6302.19 of this part.

(c) To determine whether you need an authorization under paragraph (b)(2) of this section, you should refer to the applicable BLM regulations for your particular activity.

**§ 6302.13 Where do I obtain an authorization to use a wilderness area?**

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.

**§ 6302.14 What authorization do I need to climb in BLM wilderness?**

(a) You do not need a permit or other authorization to climb in BLM wilderness.

(b) [Reserved]

(c) You must not use power drills for climbing. See § 6302.20(d).

**§ 6302.15 When and how may I collect or disturb natural resources such as rocks and plants in wilderness areas?**

(a) You may remove or disturb natural resources for non-commercial purposes in wilderness areas, including prospecting, provided—

(1) You do it in a manner that preserves the wilderness environment, using no more than non-motorized hand tools and causing minimal surface disturbance; and

(2) (i) Your proposed activity conforms to the applicable management plan; or

(ii) You have a BLM authorization if one is required by statute or regulation.

(b) Where BLM allows campfires in a wilderness, you may gather a reasonable amount of wood for use in your campfire.

**§ 6302.16 When and how may I gather scientific information about resources in BLM wilderness?**

(a) You may conduct research, including gathering information and collecting natural or cultural resources in wilderness areas, using methods that may cause greater impacts on the wilderness environment than allowed under § 6302.15(a), if—

(1) Similar research opportunities are not reasonably available outside wilderness;

(2) You carry out your proposed activity in a manner compatible with the preservation of the wilderness environment and conforming to the applicable management plan;

(3) Any ground disturbance or removal of material is the minimum necessary for the scientific purposes of the research; and

(4) You have an authorization from BLM.

(b) You must reclaim disturbed areas, and BLM may require you to post a bond.

**§ 6302.17 When may I use a wheelchair in BLM wilderness?**

If you have a disability that requires the use of a wheelchair, you may use a wheelchair in a wilderness. Consistent with the Wilderness Act and the Americans with Disabilities Act of 1990 (42 U.S.C. 12207), BLM is not required to facilitate such use by building any facilities or modifying any conditions of lands within a wilderness area.

**§ 6302.18 How may American Indians use wilderness areas for traditional religious purposes?**

In accordance with the American Indian Religious Freedom Act (42 U.S.C. 1996), American Indians may use wilderness areas for traditional religious purposes, subject to the provisions of

the Wilderness Act, the prohibitions in § 6302.20, and other applicable law.

**§ 6302.19 When may BLM close or restrict use of wilderness areas?**

When necessary to carry out the provisions of the Wilderness Act and other Federal laws, BLM may close or restrict the use of lands or waters within the boundaries of a BLM wilderness area, using the procedures in § 8364.1 of this chapter. BLM will limit any such closure to affect the smallest area necessary for the shortest time necessary.

**Prohibited Acts****§ 6302.20 What is prohibited in wilderness?**

Except as specifically provided in the Wilderness Act, the individual statutes designating the particular BLM wilderness area, or the regulations of this part, and subject to valid existing rights, in BLM wilderness areas you must not:

(a) Operate a commercial enterprise;

(b) Build temporary or permanent roads;

(c) Build aircraft landing strips, heliports, or helispots;

(d) Use motorized equipment; or motor vehicles, motorboats, or other forms of mechanical transport;

(e) Land aircraft, or drop or pick up any material, supplies or person by means of aircraft, including a helicopter, hang-glider, hot air balloon, parasail, or parachute;

(f) Build, install, or erect structures or installations, including transmission lines, motels, vacation homes, sheds, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures, other than tents, tarpaulins, temporary corrals, and similar devices for overnight camping;

(g) Cut trees;

(h) Enter or use wilderness areas without authorization, where BLM requires authorization under § 6302.12;

(i) Engage or participate in 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) [Reserved]; or

(k) Violate any BLM regulation, authorization, or order.

**Penalties****§ 6302.30 What penalties apply if I commit one or more of the prohibited acts?**

(a) If you commit a prohibited act listed in § 6302.20 in a BLM wilderness

area, you are subject to criminal prosecution on each offense. If convicted, you may be fined not more than \$100,000 under 18 U.S.C. 3571. In addition, you may be imprisoned for not more than 12 months, as provided for by 43 U.S.C. 1733(a).

(b) At the request of the Secretary of the Interior, the United States 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—Administrative and Emergency Functions.****§ 6303.1 How does BLM carry out administrative and emergency functions?**

As necessary to meet minimum requirements for the administration of the wilderness area, BLM may:

(a) Use, build, or install temporary roads, motor vehicles, motorized equipment, mechanical transport, structures or installations, and land aircraft, in designated wilderness;

(b) Prescribe conditions under which other Federal, State, or local agencies or their agents may use, build, or install such items to meet the minimum requirements for protection and administration of the wilderness area, its resources and users;

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

(d) Prescribe measures that may be used in emergencies involving the health and safety of persons in the area, 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 any restoration activities that we find necessary to be undertaken concurrently with the emergency activities or as soon as practicable when the emergency ends.

**Subpart 6304—Uses Addressed in Special Provisions of the Wilderness Act****Mining Under the General Mining Laws****§ 6304.10 Mining law administration.****§ 6304.11 What special provisions apply to operations under the mining laws?**

The general mining laws apply to valid existing mining claims and mill sites within BLM wilderness, except as provided in this section.

(a) After the date on which the general mining laws cease to apply to a specific wilderness area—

(1) You cannot locate a mining claim or establish any right to or interest in any mineral deposits discovered in that wilderness area; and

(2) You cannot locate a mill site in that wilderness area.

(b) If you hold a valid existing mining claim or mill site within a wilderness area—

(1) You must conduct any mining operations following the applicable standards provided in—

(i) The Wilderness Act;

(ii) The legislation designating the wilderness;

(iii) Your approved plan of operations;

(iv) Subpart 3809 of this chapter; and

(v) Subpart 3715 of this chapter;

(2) You must minimize impairment of wilderness characteristics to the extent BLM determines practicable, consistent with the use of a valid claim or site for mineral activities; and

(3) Your temporary structures used in mining operations are subject to the use and occupancy regulations in subpart 3715 of this chapter.

(4) You must post a financial guarantee under subpart 3809 of this chapter in order to ensure completion of reclamation.

(c) If you hold a valid mining claim, mill site, or tunnel site located in any BLM wilderness area before the general mining laws ceased to apply to that area, you may maintain your mining claim or site, so long as you comply with the general mining laws, the regulations in part 3830 of this chapter, and the Act of Congress designating the wilderness.

(d) As required in your approved plan of operations, when you complete mining operations in a wilderness area—

(1) You must remove all structures, equipment, and other facilities and begin reclamation as soon as feasible after mining operations end. However, you must start reclamation no later than 18 months after mining operations end.

(2) You must restore the surface as near as practicable to the appearance and contour of the surface before mining operations began, following the regulations in subpart 3809 of this chapter.

(e) [Reserved]

(f) [Reserved]

**§ 6304.12 How will BLM determine the validity of unpatented mining claims or sites?**

(a) BLM will conduct a mineral examination to determine whether your

claim or site was valid as of the date that lands within the wilderness area were withdrawn from appropriation under the mining laws. We also will determine whether your claim or site remains valid at the time of the examination.

(1) If you do not have an approved plan of operations, BLM must complete this validity determination before approving your plan of operations.

(2) If you have a plan of operations that was approved before the wilderness designation, BLM will determine whether operations may begin or continue while we conduct the validity determination.

(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, we will disapprove your application for a plan of operations. For an existing approved operation, BLM may issue a notice ordering suspension or cessation of operations. We will begin contest proceedings to determine the validity of your mining claim or site under subpart E of part 4 of this title. However, you may take samples and gather other evidence to confirm or corroborate mineral exposures that were physically disclosed on the claim before the date the wilderness area was withdrawn.

(c) If the Department of the Interior issues a final administrative decision declaring your claim or site null and void, you must cease all operations and complete all reclamation required under subpart 3809 of this chapter and § 6304.11(d) of this part.

**Other Uses Specifically Addressed by the Wilderness Act**

**§ 6304.20 Other uses addressed in special provisions of the Wilderness Act.**

**§ 6304.21 What special provisions cover aircraft and motorboat use?**

(a) Subject to such restrictions as BLM determines necessary to protect wilderness values, we may authorize you to land aircraft and use motorboats at places within any wilderness area if these uses were established and active at the time Congress designated the area as wilderness.

(b) BLM may also authorize you to maintain, utilizing non-motorized means, aircraft landing strips, heliports or helispots that existed and were in active use when Congress designated the area as wilderness.

**§ 6304.22 What special provisions apply to control of fire, insects, and diseases?**

BLM may prescribe measures to control fire, noxious weeds, non-native invasive plants, insects, and diseases. BLM may require restoration concurrent

with or as soon as practicable upon completion of such measures.

**§ 6304.23 What special provisions apply to mineral leasing and material sales?**

(a) After Congress designates any area of public lands as wilderness, BLM will not issue mineral or geothermal leases, licenses, or permits under the mineral or geothermal leasing laws, or sales contracts or free use permits under the Materials Act (30 U.S.C. 601 *et seq.*)

(b) You may continue to hold and operate mineral or geothermal leases, licenses, contracts, or permits under their original terms and conditions after Congress designates the affected BLM lands as wilderness.

**§ 6304.24 What special provisions apply to water and power resources?**

If the President specifically authorizes you under 16 U.S.C. 1133(d)(4)(1), BLM will permit you 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.

**§ 6304.25 What special provisions apply to livestock grazing?**

(a) 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 you or your predecessors began such use under a permit or lease before Congress established the wilderness area.

(b) 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.

(c) If the management plan for the area allows, you may maintain or reconstruct grazing support facilities that existed before designation of the wilderness area. BLM will not authorize 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 wilderness resources.

(d) BLM may authorize an increase in livestock numbers only if you demonstrate that the additional use will not have an adverse impact on wilderness values.

### **Subpart 6305—Access to State and Private Lands Or Valid Occupancies Within Wilderness Areas**

#### **Access to Non-Federal Inholdings**

##### **§ 6305.10 How will BLM allow access to State and private land within wilderness areas?**

(a) If you own land completely surrounded by wilderness, BLM will only approve that combination of routes and modes of travel to your land that—

(1) BLM finds existed on the date Congress designated the area surrounding the inholding as wilderness, and

(2) BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character.

(b) If you own land completely surrounded by wilderness, and no routes or modes of travel to your land existed on the date Congress designated the area surrounding the inholding as wilderness, BLM will only approve that combination of routes and non-motorized 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 cause the least impact on wilderness character.

(c) If BLM approves your access route under paragraph (a) or (b) of this section, we will authorize it under part 2920 of this chapter.

(d) BLM will not allow construction of new access routes to State and private inholdings in wilderness.

(e) BLM will not allow improvement of access routes to a condition more highly developed than that which existed on the date Congress designated the area as wilderness, except such improvements BLM determines are necessary to protect wilderness resources from degradation.

(f) If you own land completely surrounded by wilderness and you have a valid existing right of access which is greater than the access described in paragraph (a) or (b) of this section, BLM may manage such access to protect wilderness resources while ensuring your reasonable use and enjoyment of the inholding.

##### **§ 6305.11 What alternatives to granting access will BLM consider in cases of State and private inholdings?**

To reduce or eliminate the need to use wilderness areas for access to State and private land, BLM may—

(a) Accept donation of the inholding, or

(b) Acquire the inholding from the owner by an exchange for federally owned land in the same State of approximately equal value or, if the owner concurs, by purchase.

#### **Access to Other Valid Occupancies**

##### **§ 6305.20 How will BLM allow access to valid mining claims or other valid occupancies within wilderness areas?**

If you hold a valid mining claim or other valid occupancy wholly within a wilderness area, BLM will allow you access by means that are consistent with the preservation of the area as wilderness and that have been or are being customarily enjoyed with respect to other mining claims or similar occupancies surrounded by wilderness.

(a) BLM approves plans of operation under subpart 3809 of this chapter. The plan of operation will prescribe the routes of travel that you may use for access to claims or sites surrounded by wilderness. These plans will also identify the mode of travel, and other conditions reasonably necessary to preserve the wilderness area.

(b) BLM issues written authorizations under part 2920 of this chapter. Your authorization will prescribe the routes of travel that you may use for access to occupancies surrounded by wilderness.

The authorizations will also identify the mode of travel and other conditions reasonably necessary to minimize adverse impacts on the natural resource values of the wilderness area.

#### **Access Procedures for Valid Occupancies**

##### **§ 6305.30 What are the steps BLM must take in issuing an access authorization to valid occupancies?**

(a) Before issuing an access authorization to mining claims or other valid occupancies wholly surrounded by wilderness, 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 applicable State or common law and that access by non-federally owned routes is not reasonably obtainable;

(2) Your combination of routes and modes of travel, including non-motorized modes, will cause the least impact on the wilderness but, at the same time, will permit the reasonable use of the non-Federal land, valid mining claim, or other valid occupancy; and

(3) The location, construction, maintenance, and use of the access route that BLM approves will be as consistent as possible with the management of the wilderness area.

(b) After issuing an access authorization, BLM will make certain that you situate and build the route that BLM approves to minimize adverse impacts on the natural resource values of the wilderness area.

#### **Subchapter H—Recreation Programs**

##### **PART 8560 [Removed]**

2. Group 8500, part 8560, and subpart 8560 are removed.

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