



4310-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 6, 7, 11, 12, and 13

[NPS-WASO-18005; PX.XVPAD0520.00.1]

RIN 1024-AE25

Technical Edits

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is making technical corrections to its regulations. In response to Congress's enactment of Title 54 United States Code, the rule corrects the authority citations. The rule fixes typographical errors and incorrect citations and cross-references. The rule removes a firearms provision that was vacated by court order in 2009 and adds language consistent with federal law governing the possession of firearms in National Park units. The rule removes an outdated reference to a designated airstrip at Lake Mead National Recreation Area that has been closed since 1987.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Russel J. Wilson, NPS Division of Jurisdiction, Regulations, and Special Park Uses, (202) 208-4206, russ_wilson@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Authority Citations

In December 2014, the President signed into law H.R. 1068, thereby enacting Title 54 of the United States Code, “National Park Service and Related Programs,” as positive law. As a result, some (but not all) previous laws codified under Title 16 were repealed and replaced with laws under Title 54. References to 16 U.S.C. that were affected by H.R. 1068 should be changed to the new sections of 54 U.S.C. For example, the last sentence of 16 U.S.C. 1 is now codified at 54 U.S.C. 100101. This rule changes the authority citations in parts 1-7 and 11-13 to reflect the enactment of Title 54 and the repeal of certain laws under Title 16 of the U.S. Code.

This rule also removes a number of unnecessary authority citations. The authority citation is only required to cite the authority that authorizes an agency to change the Code of Federal Regulations. Over the years, some of these citations have grown to include a number of other legal authorities that are implemented by, applied by, or otherwise relevant to the regulations, but that are not actual sources of regulatory authority. In order to streamline the regulations, these unnecessary citations will be removed. The removal of these citations is not intended to alter the meaning, effect, or interpretation of any statute, regulatory provision, or other legal authority.

Technical Corrections to Parts 2, 3, and 4

This rule corrects several misspellings of the word “superintendent” in §§ 2.51 and 2.52, and fixes two incorrect references to “§13.10” in 36 CFR 3.11(b). Section 13.10 does not exist; the references should be to § 3.10. The rule fixes an incorrect citation to the Federal Register in paragraph (b) of § 4.10. The citation to 37 FR 2887 is changed to 3 CFR, 1971-1975 Comp., p. 666.

Possession of Firearms in National Park System Units

In 2008, the NPS promulgated a regulation (73 FR 74966) regarding the possession and transportation of firearms in units of the National Park System. This regulation was codified at 36 CFR 2.4(h) and went into effect on January 9, 2009. On March 19, 2009, the United States District Court for the District of Columbia issued a preliminary injunction preventing the implementation and enforcement of the regulation, and later issued a court order permanently vacating the regulation.

In May 2009, Congress enacted a law that prevents the Secretary of the Interior from promulgating or enforcing “any regulation that prohibits an individual from possessing a firearm, including an assembled or functional firearm, in any [National Park] System unit if – (1) the individual is not otherwise prohibited by law from possessing the firearm; and (2) the possession of the firearm is in compliance with the law of the State in which the System unit is located.” 54 U.S.C. 104906. This law became effective on February 22, 2010.

This rule would remove the regulation at 36 CFR 2.4(h) that has been vacated since 2009 and would add language to Section 2.4 that is consistent with the 2010 statute. Removing the vacated regulation without adding language consistent with the 2010 statute would result in NPS regulations that are misleading and inconsistent with current federal statutory law.

Cottonwood Cove Airstrip at Lake Mead NRA

In 1967, the NPS promulgated a regulation (32 FR 15715) designating Cottonwood Cove airstrip as a location authorized for landing aircraft within Lake Mead National Recreation Area. In 1987, the NPS decided to close the Cottonwood Cove landing strip because the relatively low use of the airstrip did not justify the high costs of maintaining it. The NPS determined that its limited resources were better allocated toward more critical projects, including the costs of maintaining the recreation area’s busier airstrips. The Federal Aviation Administration

deactivated the Cottonwood Cove airstrip in 1987. Since that time the NPS has notified the public in the recreation area's compendium that the airstrip has been closed. This rule removes the designation of the Cottonwood Cove airstrip from 36 CFR 7.48(a) to reflect the status of the airstrip as closed, and to avoid any confusion for the public about whether the airstrip is open.

Compliance with Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions;

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Administrative Procedure Act (Notice of Proposed Rulemaking).

We recognize that under 5 U.S.C 553(b) and (c) notice of proposed rules ordinarily must be published in the Federal Register and the agency must give interested parties an opportunity to submit their views and comments. We have determined under 5 U.S.C. 553(b) and 318 DM HB 5.3, however, that notice and public comment for this rule are not required for the following reasons:

(1) Notice and public comment are not required to correct the authority citations in parts 1-7 and 11-13. This portion of the rule is interpretative. In addition, we find good cause to treat notice and comment as unnecessary for these are ministerial technical changes that have no impact on the public use, resources, or values of the National Park System.

(2) Notice and public comment are not required to fix the misspellings and incorrect cross-references and citations in parts 2, 3, and 4. We find good cause to treat notice and comment as unnecessary for these ministerial technical changes that have no impact on the public use, resources, or values of the National Park System.

(3) Notice and public comment are not required to remove 36 CFR 2.4(h) and add language consistent with the current governing federal statute. This portion of the rule is interpretative. In addition, we find good cause to treat notice and comment as unnecessary because these changes are not discretionary in nature but implement a court order vacating the provision and a federal statute that already applies in NPS units. Without including this language

from the statute, the public would not be informed of the actual scope of the regulatory provisions.

(4) Notice and public comment are not required to remove the designation of the Cottonwood Cove airstrip from 36 CFR 7.48(a). We find good cause to treat notice and comment as unnecessary. As discussed above, the Cottonwood Cove airstrip in Lake Mead National Recreation Area has been closed since 1987 and is unusable in its current condition. The current reference in 36 CFR 7.48 is potentially confusing for the public, and its removal will simply reflect longstanding reality. Such a correction will not benefit from public comment, and further delaying it is contrary to the public interest.

We also recognize that rules ordinarily do not become effective until at least 30 days after their publication in the Federal Register. We have determined, however, that this rule shall be effective immediately upon publication. Portions of the rule, as discussed above, are interpretative and not subject to the delayed effective date requirement. Nor are the changes to § 2.4, which recognize exemptions and relieve restrictions on firearm possession. Finally, we find that good cause exists for all portions of the rule to be effective immediately upon publication, for the same reasons stated in the above discussion on notice and comment.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation with Indian Tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined it has no substantial direct effects on federally recognized Indian tribes and consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.).

This rule does not contain new collections of information that require approval by the Office of Management and Budget under the PRA. The rule does not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or

organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA).

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Drafting Information: The primary author of this regulation was Jay Calhoun, Regulations Program Specialist, National Park Service, Washington, DC. Russel J. Wilson, Chief, Regulations, Jurisdiction, and Special Park Uses, National Park Service, Washington, DC, also contributed.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

36 CFR Part 3

Marine safety, National parks, Reporting and recordkeeping requirements.

36 CFR Part 4

National parks, Traffic regulations.

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation.

36 CFR Part 6

National parks, Natural resources, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal.

36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

36 CFR Part 11

National parks, Signs and symbols.

36 CFR Part 12

Cemeteries, Military personnel, National parks, Reporting and recordkeeping requirements, Veterans.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR parts 1, 2, 3, 4, 5, 6, 7, 11, 12, and 13 as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

2. The authority citation for part 2 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

3. Amend § 2.4 as follows:

a. Remove paragraph (h).

b. Redesignate paragraphs (a) through (g) as paragraphs (b) through (h), respectively.

c. Add a new paragraph (a).

The addition reads as follows:

§ 2.4 Weapons, traps and nets.

(a) None of the provisions in this section or any regulation in this chapter may be enforced to prohibit an individual from possessing a firearm, including an assembled or functional firearm, in any National Park System unit if:

(1) The individual is not otherwise prohibited by law from possessing the firearm; and

(2) The possession of the firearm is in compliance with the law of the State in which the

National Park System unit is located.

* * * * *

§ 2.51 [Amended]

4. In § 2.51(e), (f), and (g), remove the word “superintendent” and add, in its place, the word “superintendent”.

§ 2.52 [Amended]

5. In § 2.52(d), (e), and (f), remove the word “superintendent” and add, in its place, the word “superintendent”.

PART 3—BOATING AND WATER USE ACTIVITIES

6. The authority citation for part 3 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

§ 3.11 [Amended]

7. In § 3.11(b), remove the term “§ 13.10” and add, in its place, the term “§ 3.10” and remove the term “§ 13.10(a)(2)” and add, in its place, the term “§ 3.10(a)(2)”.

PART 4—VEHICLES AND TRAFFIC SAFETY

8. The authority citation for part 4 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

§ 4.10 [Amended]

9. In § 4.10(b), remove the phrase “E.O. 11644 (37 FR 2887)” and add, in its place, the phrase “Executive Order 11644 (3 CFR, 1971-1975 Comp., p. 666)”.

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

10. The authority citation for part 5 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

PART 6—SOLID WASTE DISPOSAL SITES IN UNITS OF THE NATIONAL PARK SYSTEM

11. The authority citation for part 6 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 100903.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

12. The authority citation for part 7 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

§ 7.48 [Amended]

13. In § 7.48, remove paragraphs (a)(4) and (5), and redesignate paragraph (a)(6) as paragraph (a)(4).

PART 11— ARROWHEAD AND PARKSCAPE SYMBOLS

14. The authority citation for part 11 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751.

PART 12— NATIONAL CEMETERIES

15. The authority citation for part 12 is revised to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

16. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240.

Dated: June 15, 2015.

Michael Bean,
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 2015-15498 Filed: 6/24/2015 08:45 am; Publication Date: 6/25/2015]