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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 4

[NPS-WASO- 24719; PPWOVPADU0/PPMPRLE1Y.Y00000]

RIN 1024-AE43

Technical and Clarifying Edits; Criminal Violations NPS Units Nationwide

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule removes criminal penalty provisions that are outdated and unnecessary under federal statute. The rule also clarifies – consistent with recent decisions by the U.S. Supreme Court – that, absent exigent circumstances, a search warrant is necessary to require a motor vehicle operator to submit to a blood test (rather than a breath or urine test) to measure blood alcohol and drug content.

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

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SUPPLEMENTARY INFORMATION:

Background.

Criminal Penalty Provisions.

Paragraph (a) of 36 CFR 1.3 describes the penalties for violating a provision of NPS regulations contained in parts 1 through 7, part 9 subpart B, and parts 12 and 13 of chapter I of

title 36. These penalties are payment of a fine as provided by law or imprisonment not exceeding six months, or both, and payment of the costs of all proceedings. The authority to impose these penalties is found in the NPS Organic Act (54 U.S.C. 100751) and 18 U.S.C. 1865. The NPS has the authority to impose these penalties for a violation of any regulation relating to the use and management of the units of the National Park System.

Paragraphs (b), (c), and (d) of 36 CFR 1.3 describe lesser penalties that apply to violations of NPS regulations that occur within units of the National Park System that originated as military parks or national historic sites. These additional provisions are superfluous because the NPS has the authority to impose greater penalties under the NPS Organic Act for violations of NPS regulations that occur in any unit of the National Park System, including those units referred to in paragraphs (b), (c), and (d). This rule removes these unnecessary provisions to reduce the chance of confusion and clarify that a uniform penalty structure applies to the entire National Park System.

Blood Test Procedures.

Existing NPS regulations at 36 CFR 4.23(c) state that a driver suspected of operating a motor vehicle while under the influence of alcohol or drugs must submit to a blood test (if requested) for the purpose of determining blood alcohol and drug content. This language could be misleading because it does not explicitly state that – absent exigent circumstances – a search warrant must be present in order to require a blood test. This is the Constitutional requirement under the Fourth Amendment following the U.S. Supreme Court decisions in Missouri v. McNeely (2013) and Birchfield v. North Dakota (2016). This rule revises section 4.23(c) to explicitly state this general requirement for a warrant for blood tests. Law enforcement officers will still have the regulatory authority to require an operator to submit to less intrusive tests such

as the extraction of saliva, breath tests, or urine samples without a warrant. In practice, NPS law enforcement officers generally stopped requiring blood tests after the McNeely decision in 2013.

Consistent with McNeely and Birchfield, this rule deletes the requirement that a suspected operator submit to a blood test under 36 CFR 4.23(c)(1). This rule clarifies that 36 CFR 4.23(c)(2)'s prohibition on refusing tests applies to those tests allowed under (c)(1) (and would thus no longer apply to the refusal of a blood test, since blood tests have been deleted from that paragraph). This rule creates a new 36 CFR 4.23(c)(3) that provides that absent exigent circumstances, an operator cannot ordinarily be required to submit for a blood test unless it occurs through a search warrant. Existing paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(4) and (c)(5) but otherwise do not change.

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 in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs 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 regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The

NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771).

This rule is an E.O. 13771 deregulatory action because, once finalized, it will impose less than zero costs by removing unnecessary criminal penalty provisions and clarifying the current law regarding the valid use of blood tests to measure blood alcohol and drug content.

Small Business Regulatory Enforcement Fairness Act.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. 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.

Unfunded Mandates Reform Act.

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. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (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. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Administrative Procedure Act (Notice of Proposed Rulemaking and Effective Date).

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. We find good cause to treat notice and comment as unnecessary. As discussed above, the penalty provisions being removed are superfluous and not used by the NPS. The clarification that the NPS must obtain a warrant to require a blood sample is settled law and comports with NPS practice since 2013. These regulatory changes will not benefit from public comment, and further delaying them 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 good cause exists for this rule to be effective immediately upon publication for the reasons stated above.

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 that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written 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. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act.

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS 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.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. 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.

List of Subjects

36 CFR Part 1

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

36 CFR Part 4

National parks, Traffic regulations.

The National Park Service amends 36 CFR parts 1 and 4 as follows:

PART 1—GENERAL PROVISIONS

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

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

2. Revise § 1.3 to read as follows:

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in parts 1 through 7, part 9 subpart B, and parts 12 and 13 of this chapter shall be subject to the criminal penalties provided under 18 U.S.C. 1865.

(b) [Reserved]

PART 4—VEHICLES AND TRAFFIC SAFETY

3. The authority citation for part 4 continues to read as follows:

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

4. In § 4.23, revise paragraph (c) to read as follows:

§ 4.23 Operating under the influence of alcohol or drugs.

* * * * *

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the breath, saliva, or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test under paragraph (c)(1) is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Absent exigent circumstances, an operator cannot ordinarily be required to submit blood samples for the purpose of determining blood alcohol and drug content unless it occurs through a search warrant. An authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section shall get a search warrant, except when exigent circumstances exist, to obtain any blood samples from the operator for the purpose of determining blood alcohol and drug content.

(4) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(5) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

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Susan Combs,
Senior Advisor to the Secretary,
Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.
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