



4312-52

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-COLO-29180; GPO Deposit Account 4311H2]

RIN 1024-AE39

Colonial National Historical Park; Vessels and Commercial Passenger-Carrying Motor Vehicles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend the special regulations for Colonial National Historical Park. This proposed rule would remove a regulation that prevents the Superintendent from designating sites within the park for launching and landing private vessels. The proposed rule also would remove outdated permit and fee requirements for commercial passenger-carrying vehicles.

DATES: Comments on the proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE39, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

(2) *By hard copy:* Mail or hand deliver to: Superintendent, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690.

Instructions: Comments will not be accepted by fax, email, or in any way other than

those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN 1024-AE39 for this rulemaking.

Comments received may be posted without change to www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Superintendent, Colonial National Historical Park. Phone: (757) 898-2401; Email: kym_hall@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Colonial National Historical Park is located along the James and York Rivers and encompasses the historic Jamestown Island, Colonial Parkway, and the Yorktown Battlefield. There are also small, inland parcels of the park located at Greenspring, Gloucester Point, and Fort Story. The park tells the story of the Colonial era from the origins of the occupancy of Jamestown Island in 1607 to the last major battle of the Revolutionary War at Yorktown in 1781. These two sites are connected by the Colonial Parkway which winds 23 miles through scenic forests, over waterways, along river banks, and under Colonial Williamsburg. Much of the park is surrounded by water and includes an extensive amount of shoreline. All of the waterways in the area are a part of the Captain John Smith Chesapeake National Historic Trail that overlays the entire Chesapeake Bay and a large portion of its navigable tributaries. The park and the national historic trail are both a part of the National Park System and go hand-in-hand in this area of Virginia.

Secretarial Priorities

On February 24, 2017, President Trump issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” This Executive Order established a regulatory reform initiative to alleviate unnecessary regulatory burdens placed on the American people. As part of the Department of the Interior’s approach for implementing this initiative, the NPS is reviewing its regulations in order to identify those that should be repealed, replaced, or modified. These include regulations that are outdated or unnecessary. The NPS has identified special regulations for the park addressing vessels and commercial passenger-carrying vehicles as candidates for repeal, consistent with the direction given under Executive Order 13771.

The proposed change in this document for launching and landing vessels is consistent with Secretary of the Interior Order 3366, “Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior.” This Order directs the NPS to expand recreational opportunities on NPS-managed lands and waters.

Proposed Rule

Launching and Landing Vessels.

Since the park was established in the 1930s, the NPS has prohibited the launching or landing of watercraft, except in emergency situations. The current prohibition is codified at 36 CFR 7.1(a) which states that, except in emergencies, no privately owned vessel shall be launched from land within the park and no privately owned vessel shall be beached or landed on land within the park. Consistent with the 2003 Record of Decision for the Jamestown Project Development Concept Plan, the NPS has been exploring new opportunities for boating within the park. Local partners and members of the community have approached the NPS to discuss funding the construction of potential launch sites to better connect a variety of visitors to the shared history of the area. The NPS and its partners share an interest in establishing access to the

James and York Rivers, and thus the Captain John Smith Chesapeake National Historic Trail, for water-based educational and recreational activities.

In order to allow the NPS to pursue these management objectives, the special regulation at 36 CFR 7.1(a) must be removed. Without this park-specific prohibition, the launching and landing of vessels would be governed by NPS general regulations at 36 CFR 3.8(a)(2). This regulation prohibits the launching or recovering (i.e. retrieval) of a vessel, except at launch sites designated by the superintendent. Under this general regulation, the Superintendent may designate launch and retrieval sites within the park should the Superintendent determine that the use of those sites for boating activities is an appropriate public use. The Superintendent would provide notice to the public using the methods set forth in 36 CFR 1.7.

Commercial Passenger-Carrying Motor Vehicles.

The NPS also proposes to remove the special regulations for the park at 36 CFR 7.1(b). These regulations require a permit for the operation of commercial passenger-carrying motor vehicles within the park and establish a fee structure for obtaining the permits. For each seat carrying a passenger, an annual permit costs \$3.50 and a quarterly permit costs \$1. One-day permits are available for \$1 (up to 5-passenger vehicles) or \$3 (over 5 passenger vehicles). 36 CFR 7.1(b)(1) through (4).

The permit requirement is unnecessary because it is redundant with the NPS general regulation at 36 CFR 5.3, which requires a permit, contract, or other written agreement in order to engage in business operations within a park area. The NPS uses commercial use authorizations (CUAs) to authorize commercial passenger-carrying motor vehicles. A CUA is a type of permit that allows an individual, group, company, or other for-profit entity to conduct commercial activities and provide specific visitor services within a unit of the National Park System.

The fee structure in 36 CFR 7.1(b) is over 30 years old. The NPS no longer charges those fees because they would not come close to offsetting the increasing administrative costs of managing commercial passenger-carrying vehicles within the park. Instead, the NPS charges an entrance fee for commercial passenger-carrying vehicles under section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802) and CUA fees under section 418 of the National Park Service Concessions Management Improvement Act of 1998 (54 U.S.C. 101925).

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. The OIRA has waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866.

Executive Order 13563 reaffirms the principles of E.O. 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 rulemaking is not an E.O. 13771 (“Reducing Regulation and Controlling Regulatory

Costs”) (82 FR 9339, February 3, 2017) regulatory action because this rulemaking is not significant under E.O. 12866.

Regulatory Flexibility Act

This rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled “Draft Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Regulations for Vessels and Commercial Passenger-Carrying Motor Vehicles at Colonial National Historical Park.” The document may be viewed at www.regulations.gov by searching for “1024-AE39.”

Small Business Regulatory Enforcement Fairness Act.

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

- (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 rulemaking does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rulemaking 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 rulemaking 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 rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking 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.

Civil Justice Reform (Executive Order 12988)

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

- (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 rulemaking 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 proposed rule will have no substantial direct effect on federally recognized Indian tribes. The

NPS will consult with federally recognized tribes if and when launching and landing sites for vessels are designated.

Paperwork Reduction Act

This rulemaking 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 rulemaking 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 rulemaking is covered by a categorical exclusion. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i). The environmental effects of removing 36 CFR 7.1(a) are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Decisions to construct and designate launching and landing sites will later be subject to the NEPA process, either collectively or case-by-case. The nature of the proposal to remove 36 CFR 7.1(b) is administrative, financial and legal. The NPS has determined the rulemaking 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 rulemaking is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 7

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

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

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

1. The authority citation for part 7 continues 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.

§ 7.1 [Removed and Reserved]

2. Remove and reserve § 7.1.

George Wallace,
Assistant Secretary for Fish and Wildlife and Parks.
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