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Code of Federal Regulations

# 36

**Parts 1 to 199**

Revised as of July 1, 2010

# Parks, Forests, and Public Property

Containing a codification of documents of general applicability and future effect

As of July 1, 2010

*With Ancillaries*

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*Cite this Code:* CFR

*To cite the regulations in this volume use title, part and section number. Thus,* 36 CFR 1.1 *refers to title 36, part 1, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

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An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

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RAYMOND A. MOSLEY,
*Director*,
*Office of the Federal Register*.
*July 1, 2010*.

# THIS TITLE

Title 36—PARKS, FORESTS, AND PUBLIC PROPERTY is composed of three volumes. The parts in these volumes are arranged in the following order: parts 1—199, parts 200—299, and part 300 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2010.

For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

# Title 36—Parks, Forests, and Public Property

(This book contains parts 1 to 199)

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*Part*

CHAPTER I—National Park Service, Department of the Interior ..... 1

# CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

EDITORIAL NOTE: Nomenclature changes to chapter I appear at 60 FR 55790, Nov. 3, 1995; 61 FR 28505, June 5, 1996; and at 62 FR 30234, June 3, 1997.


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# PART 1—GENERAL PROVISIONS

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AUTHORITY: 16 U.S.C. 1, 3, 9a, 460 l–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

SOURCE: 48 FR 30275, June 30, 1983, unless otherwise noted.

## § 1.1 Purpose.

(a) The regulations in this chapter provide for the proper use, management, government, and protection of persons, property, and natural and cultural resources within areas under the jurisdiction of the National Park Service.

(b) These regulations will be utilized to fulfill the statutory purposes of units of the National Park System: to conserve scenery, natural and historic objects, and wildlife, and to provide for the enjoyment of those resources in a manner that will leave them unimpaired for the enjoyment of future generations.

## § 1.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within:

(1) The boundaries of federally owned lands and waters administered by the National Park Service;

(2) The boundaries of lands and waters administered by the National Park Service for public-use purposes pursuant to the terms of a written instrument;

(3) Waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands;

(4) Lands and waters in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81);

(5) Other lands and waters over which the United States holds a less-than-fee interest, to the extent necessary to fulfill the purpose of the National Park Service administered interest and compatible with the nonfederal interest.

(b) The regulations contained in parts 1 through 5, part 7, and part 13 of this chapter do not apply on non-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries, except as provided in paragraph (a) or in regulations specifically written to be applicable on such lands and waters.

(c) The regulations contained in part 7 and part 13 of this chapter are special regulations prescribed for specific park areas. Those regulations may amend, modify, relax or make more stringent the regulations contained in parts 1 through 5 and part 12 of this chapter.

(d) The regulations contained in parts 2 through 5, part 7, and part 13 of this section shall not be construed to prohibit administrative activities conducted by the National Park Service, or its agents, in accordance with approved general management and resource management plans, or in emergency operations involving threats to life, property, or park resources.

(e) The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

[51 FR 37010, Oct. 17, 1986, as amended at 52 FR 10683, Apr. 2, 1987; 52 FR 35239, Sept. 18, 1987; 61 FR 35136, July 5, 1996]

## § 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in parts 1 through 7, 12 and 13 of this chapter, within a park area not covered in paragraphs (b) or (c) of this section, shall be punished by a fine as provided

by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(b) A person who knowingly and willfully violates any provision of the regulations contained in parts 1 through 5, 7 and 12 of this chapter, within any national military park, battlefield site, national monument, or miscellaneous memorial transferred to the jurisdiction of the Secretary of the Interior from that of the Secretary of War by Executive Order No. 6166, June 10, 1933, and enumerated in Executive Order No. 6228, July 28, 1933, shall be punished by a fine as provided by law, or by imprisonment for not more than 3 months, or by both.

NOTE: These park areas are enumerated in a note under 5 U.S.C. 901.

(c) A person convicted of violating any provision of the regulations contained in parts 1 through 7 of this chapter, within a park area established pursuant to the Act of August 21, 1935, 49 Stat. 666, shall be punished by a fine as provided by law and shall be adjudged to pay all costs of the proceedings. 16 U.S.C. 462.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section, a person convicted of violating § 2.23 of this chapter shall be punished by a fine as provided by law. 16 U.S.C. 460.

[61 FR 2918, Jan. 30, 1996]

### § 1.4 What terms do I need to know?

(a) The following definitions shall apply to this chapter, unless modified by the definitions for a specific part or regulation:

*Abandonment* means the voluntary relinquishment of property with no intent to retain possession.

*Administrative activities* means those activities conducted under the authority of the National Park Service for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the regulations in this chapter, or repairing or maintaining government facilities.

*Airboat* means a vessel that is supported by the buoyancy of its hull and powered by a propeller or fan above the waterline. This definition should not be construed to mean a ''hovercraft,'' that is supported by a fan-generated air cushion.

*Aircraft* means a device that is used or intended to be used for human flight in the air, including powerless flight.

*Archeological resource* means material remains of past human life or activities that are of archeological interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

*Authorized emergency vehicle* means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

*Authorized person* means an employee or agent of the National Park Service with delegated authority to enforce the provisions of this chapter.

*Bicycle* means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

*Boundary* means the limits of lands or waters administered by the National Park Service as specified by Congress, or denoted by presidential proclamation, or recorded in the records of a state or political subdivision in accordance with applicable law, or published pursuant to law, or otherwise published or posted by the National Park Service.

*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

*Carry* means to wear, bear, or have on or about the person.

*Controlled substance* means a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) or a drug

or substance added to these schedules pursuant to the terms of the Act.

*Cultural resource* means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

*Developed area* means roads, parking areas, picnic areas, campgrounds, or other structures, facilities or lands located within development and historic zones depicted on the park area land management and use map.

*Director* means the Director of the National Park Service.

*Dive flag* means a flag not less than 12 inches square, red in color, with a white stripe running diagonally from the top of the staff to the opposite lower corner. The white stripe shall be one-fifth the width of the flag.

*Downed aircraft* means an aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

*Firearm* means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

*Fish* means any member of the subclasses *Agnatha, Chondrichthyes,* or *Osteichthyes,* or any mollusk or crustacean found in salt water.

*Fishing* means taking or attempting to take fish.

*Flat wake speed* means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per hour.

*Harbor* means a natural or artificially improved body of water providing protection for vessels, which may include anchorage, mooring or docking facilities.

*Hunting* means taking or attempting to take wildlife, except trapping.

*Legislative jurisdiction* means lands and waters under the exclusive or concurrent jurisdiction of the United States.

*Manned submersible* means any vessel that carries or is capable of carrying passenger(s) within the confines of the vessel below the surface of the water.

*Manual wheelchair* means a device that is propelled by human power, designed for and used by a mobility-impaired person.

*Motorcycle* means every motor vehicle having a seat for the use of the rider and designed to travel on not more that three wheels in contact with the ground, but excluding a tractor.

*Motorized wheelchair* means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

*Motor vehicle* means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair.

*National Park System* (Park area) means any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

*Net* means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a hand-held landing net used to retrieve fish taken by hook and line.

*Nondeveloped area* means all lands and waters within park areas other than developed areas.

*Operator* means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

*Other Federal reservations in the environs of the District of Columbia* means Federal areas, which are not under the administrative jurisdiction of the National Park Service, located in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland, exclusive of military reservations, unless

the policing of military reservations by the U.S. Park Police is specifically requested by the Secretary of Defense or a designee thereof.

*Pack animal* means horses, burros, mules or other hoofed mammals when designated as pack animals by the superintendent.

*Park area*. See the definition for *National Park System* in this section.

*Park road* means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the National Park Service.

*Permit* means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

*Person* means an individual, firm, corporation, society, association, partnership, or private or public body.

*Personal watercraft* refers to a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

*Pet* means a dog, cat or any animal that has been domesticated.

*Possession* means exercising direct physical control or dominion, with or without ownership, over property, or archeological, cultural or natural resources.

*Power-driven vessel* means any vessel propelled by machinery.

*Practitioner* means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by the United States or the jurisdiction in which such person practices to distribute or possess a controlled substance in the course of professional practice.

*Public use limit* means the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance, or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

*Refuse* means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid waste, or other discarded materials.

*Regional Director* means the official in charge of a geographic area of the National Park Service.

*Sailing vessel* means any vessel under sail provided, if propelling machinery is fitted, it is not being used.

*Secretary* means the Secretary of the Interior.

*Services* means, but is not limited to, meals and lodging, labor, professional services, transportation, admission to exhibits, use of telephone or other utilities, or any act for which payment is customarily received.

*Sewage* means human body waste or the waste from a toilet or other receptacle intended to receive or retain body waste.

*Smoking* means the carrying of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

*Snowmobile* means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by ski or skis in contact with the snow.

*State* means a State, territory, or possession of the United States.

*State law* means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located.

*Superintendent* means the official in charge of a park area or an authorized representative thereof.

*Take* or *taking* means to pursue, hunt, harass, harm, shoot, trap, net, capture,

collect, kill, wound, or attempt to do any of the above.

*Traffic* means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

*Traffic control device* means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Superintendent for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

*Trap* means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

*Trapping* means taking or attempting to take wildlife with a trap.

*Underwater diving* means the use of any apparatus, whether self contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water, can obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water. Underwater diving would include, but is not be limited to use of SCUBA, surface supplied air, mixed gas, or re-breathers.

*Underway* means when a vessel is not at anchor, moored, made fast to the shore or docking facility, or aground.

*Unloaded,* as applied to weapons and firearms, means that: (1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

*Un-manned submersible* means any device operated by remote control, used or capable of being used, to search or collect below the surface of the water. This definition does not apply to a device being used lawfully for fishing.

*Vehicle* means every device in, upon, or by which a person or property is or may be transported or drawn on land, except snowmobiles and devices moved by human power or used exclusively upon stationary rails or track.

*Vessel* means every description of watercraft, or other artificial contrivance used, or capable of being used, as a means of transportation on the water. This definition does not apply to a seaplane on the water.

*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes a weapon the possession of which is prohibited under the laws of the State in which the park area or portion thereof is located.

*Wildlife* means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

(b) In addition to the definitions in paragraph (a), for the purpose of the regulations contained in parts 3 and 7 of this chapter, the definitions pertaining to navigation, navigable waters and shipping enumerated in title 14 United States Code, title 33 Code of Federal Regulations, title 46 Code of Federal Regulations, title 49 Code of Federal Regulations, the Federal Boating Safety Act of 1971, and the Inland Navigational Rules Act of 1980, shall apply for boating and water activities.

[48 FR 30275, June 30, 1983, as amended at 49 FR 18449, Apr. 30, 1984; 51 FR 37011, Oct. 17, 1986; 52 FR 10683, Apr. 2, 1987; 60 FR 55790, Nov. 3, 1995; 61 FR 35136, July 5, 1996; 62 FR 30234, June 3, 1997; 65 FR 15089, Mar. 21, 2000; 72 FR 13702, Mar. 23, 2007]

### § 1.5 Closures and public use limits.

(a) Consistent with applicable legislation and Federal administrative policies, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the superintendent may:

(1) Establish, for all or a portion of a park area, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of a park area to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(b) Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is of a highly controversial nature, shall be published as rulemaking in the FEDERAL REGISTER.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the superintendent shall prepare a written determination justifying the action. That determination shall set forth the reason(s) the restriction, condition, public use limit or closure authorized by paragraph (a) has been established, and an explanation of why less restrictive measures will not suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under paragraph (a), a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact park resources. This determination shall be available to the public upon request.

(d) To implement a public use limit, the superintendent may establish a permit, registration, or reservation system. Permits shall be issued in accordance with the criteria and procedures of § 1.6 of this chapter.

(e) Except in emergency situations, the public will be informed of closures, designations, and use or activity restrictions or conditions, visiting hours, public use limits, public use limit procedures, and the termination or relaxation of such, in accordance with § 1.7 of this chapter.

(f) Violating a closure, designation, use or activity restriction or condition, schedule of visiting hours, or public use limit is prohibited.

[48 FR 30275, June 30, 1983, as amended at 51 FR 29470, Aug. 18, 1986]

### § 1.6 Permits.

(a) When authorized by regulations set forth in this chapter, the superintendent may issue a permit to authorize an otherwise prohibited or restricted activity or impose a public use limit. The activity authorized by a permit shall be consistent with applicable legislation, Federal regulations and administrative policies, and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor use activities will not be adversely impacted.

(b) Except as otherwise provided, application for a permit shall be submitted to the superintendent during normal business hours.

(c) The public will be informed of the existence of a permit requirement in accordance with § 1.7 of this chapter.

(d) Unless otherwise provided for by the regulations in this chapter, the superintendent shall deny a permit that has been properly applied for only upon a determination that the designated capacity for an area or facility would be exceeded; or that one or more of the factors set forth in paragraph (a) of this section would be adversely impacted. The basis for denial shall be provided to the applicant upon request.

(e) The superintendent shall include in a permit the terms and conditions that the superintendent deems necessary to protect park resources or public safety and may also include terms or conditions established pursuant to the authority of any other section of this chapter.

(f) A compilation of those activities requiring a permit shall be maintained by the superintendent and available to the public upon request.

(g) The following are prohibited:

(1) Engaging in an activity subject to a permit requirement imposed pursuant to this section without obtaining a permit; or

(2) Violating a term or condition of a permit issued pursuant to this section.

(h) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the superintendent.

[48 FR 30275, June 30, 1983, as amended at 51 FR 29470, Aug. 18, 1986]

### § 1.7 Public notice.

(a) Whenever the authority of § 1.5(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of a park area as open or closed, or to require a permit to implement a public use limit, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the affected park locale.

(2) Maps available in the office of the superintendent and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the affected area.

(4) Other appropriate methods, such as the removal of closure signs, use of electronic media, park brochures, maps and handouts.

(b) In addition to the above-described notification procedures, the superintendent shall compile in writing all the designations, closures, permit requirements and other restrictions imposed under discretionary authority. This compilation shall be updated annually and made available to the public upon request.

### § 1.8 Information collection.

The information collection requirements contained in §§ 1.5, 2.4, 2.5, 2.10 2.12, 2.17, 2.33, 2.38, 2.50, 2.51, 2.52, 2.60, 2.61, 2.62, 3.3, 3.4, 4.4 and 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide superintendents data necessary to issue permits for special uses of park areas and to obtain notification of accidents that occur within park areas. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In §§ 2.33, 3.4 and 4.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

[52 FR 10683, Apr. 2, 1987]

### § 1.10 Symbolic signs.

(a) The signs pictured below provide general information and regulatory guidance in park areas. Certain of the signs designate activities that are either allowed or prohibited. Activities symbolized by a sign bearing a slash mark are prohibited.

(b) The use of other types of signs not herein depicted is not precluded.

## GENERAL

AREA WHERE FIREARMS ARE PERMITTED.*

AREA WHERE SMOKING IS PERMITTED.*

ROADWAY OR OTHER FACILITY WHERE AUTOMOBILES PERMITTED.*

ROADWAY WHERE TRUCKS PERMITTED.*

TUNNEL.

AN OBSERVATION, LOOKOUT OR FIRE TOWER.

A LIGHT HOUSE.

AREA OF FALLING ROCKS.

LOCATION OF A DAM.

AREA WHERE BEARS ARE FREQUENT AND MIGHT BE VIEWED BY VISITORS.

DRINKING WATER.*

FISH HATCHERY.

AREA WHERE DEER ARE FREQUENT AND MIGHT BE VIEWED BY VISITORS.

VISITOR INFORMATION.

RANGER STATION OR ADMINISTRATIVE OFFICE.

ROAD CROSSING PERMITTED.*

AREA WHERE PETS UNDER PHYSICAL CONTROL PERMITTED

## ACCOMMODATIONS OR SERVICE

PUBLIC OVERNIGHT ACCOMMODATIONS (HOTEL, LODGE, MOTEL, ETC.)

RESTAURANT, CAFETERIA, SNACK SHOP, LUNCHROOM

GROCERIES, FOOD OR CAMP STORE

MEN'S RESTROOM

RESTROOMS FOR BOTH MEN AND WOMEN

WOMEN'S RESTROOM

FIRST AID STATION

PUBLIC TELEPHONE

U.S. POST OFFICE

AUTOMOBILE OR BOAT REPAIRS

FACILITY FOR THE PHYSICALLY HANDICAPPED

AIRPORT OR LANDING STRIP

LOCKED STORAGE

BUS OR TOUR VEHICLE STOP

GAS STATION OR GAS DOCK.

PICNIC SHELTER.

VEHICLE FERRY.

AREA WHERE TRAILERS OR TRAILER CAMPING PERMITTED.*

AREA WHERE PARKING OF MOTOR VEHICLES PERMITTED.*

TRAILER SANITARY STATION FOR DUMPING WASTE FROM HOLDING TANKS.

SHOWER FACILITY.

AREA WHERE CAMPFIRES PERMITTED.*

OBSERVATION POINT FROM WHICH SCENIC AND HISTORIC AREAS CAN BE SEEN OR PHOTOGRAPHED

TRAIL SHELTER, PROVIDING SOME PROTECTION FROM THE WEATHER.

TRAIL SLEEPING SHELTERS.

AREA WHERE PICNICKING PERMITTED.*

AREA WHERE PUBLIC CAMPING PERMITTED.*

KENNEL FOR PETS

## WINTER RECREATION

WINTER RECREATION AREA

CROSS COUNTRY SKI TRAIL.

AREA WHERE DOWNHILL SKIING PERMITTED.*

AREA WHERE ICE SKATING PERMITTED *

SKI JUMP FACILITY.

TRAIL WHERE SKI BOBBING PERMITTED.*

SLEDDING AND SNOW PLAY AREA.*

AREA OR TRAIL WHERE SNOWMOBILES PERMITTED.*

## WATER RECREATION

WATER RECREATION AREA, OR BOAT DOCK, HARBOR, BOAT SLIPS, OR BOAT MARINA.

AREA WHERE WATER SKIING PERMITTED.*

RAMP WHERE BOAT LAUNCHING PERMITTED.*

WATER OR BEACH WHERE SURFING ACTIVITIES ARE PERMITTED *

AREA WHERE MOTORBOATS AND MOTOR VESSELS PERMITTED.*

AREA WHERE SCUBA DIVING PERMITTED.*

AREA WHERE SAILBOATS ARE PERMITTED.*

AREA WHERE SWIMMING PERMITTED.*

AREA FOR HAND PROPELLED VESSELS (ROW BOATS, CANOES, KAYAKS.)

AREA WHERE DIVING PERMITTED.*

FISHING PERMITTED.*

## LAND RECREATION

TRAIL OR AREA WHERE HORSE RIDING PERMITTED *

AMPHITHEATER, CAMPFIRE CIRCLE OR OTHER ASSEMBLY POINT WHERE PROGRAMS ARE PRESENTED.

TRAIL WHERE MOTORCYCLES PERMITTED.*

TRAMWAY, SKI LIFT, OR SIMILAR DEVICE.

TRAIL OR ROAD WHERE BICYCLES PERMITTED.*

AREA WHERE HUNTING PERMITTED.*

TRAIL WHERE OFF-ROAD RECREATION VEHICLES PERMITTED.*

HORSE OR MULE STABLE.

HIKING TRAIL.

INTERPRETIVE TRAIL.

PLAYGROUND FOR CHILDREN.

INTERPRETIVE AUTO TOUR ROUTE

*THE ABOVE SYMBOLS INDICATED BY ASTERISKS WHEN DISPLAYED WITH A RED SLASH SUPERIMPOSED OVER THE SYMBOL INDICATES THE ACTIVITY IS PROHIBITED. THE DESIGN AND FORM OF SUCH A SLASH IS HERE PICTURED.

[48 FR 30275, June 30, 1983, as amended at 61 FR 46556, Sept. 4, 1996]

# PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec.
2.1 Preservation of natural, cultural and archeological resources.
2.2 Wildlife protection.
2.3 Fishing.
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2.5 Research specimens.
2.10 Camping and food storage.
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2.16 Horses and pack animals.
2.17 Aircraft and air delivery.
2.18 Snowmobiles.
2.19 Winter activities.
2.20 Skating, skateboards and similar devices.
2.21 Smoking.
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2.30 Misappropriation of property and services.
2.31 Trespassing, tampering and vandalism.
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2.34 Disorderly conduct.
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2.37 Noncommercial soliciting.
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2.50 Special events.
2.51 Public assemblies, meetings.
2.52 Sale or distribution of printed matter.
2.60 Livestock use and agriculture.
2.61 Residing on Federal lands.
2.62 Memorialization.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 462(k).

SOURCE: 48 FR 30282, June 30, 1983, unless otherwise noted.

## § 2.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: *Provided, however,* That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.

This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in park areas.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§1.5 and 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a

plant species, or otherwise adversely affect park resources.

(2) The superintendent may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3.

NOTE: Regulations concerning archeological resources are found in 43 CFR part 3.

### § 2.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife, except by authorized hunting and trapping activities conducted in accordance with paragraph (b) of this section.

(2) The feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities.

(3) Possessing unlawfully taken wildlife or portions thereof.

(b) *Hunting and trapping.* (1) Hunting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.

(2) Hunting may be allowed in park areas where such activity is specifically authorized as a discretionary activity under Federal statutory law if the superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles. Such hunting shall be allowed pursuant to special regulations.

(3) Trapping shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.

(4) Where hunting or trapping or both are authorized, such activities shall be conducted in accordance with Federal law and the laws of the State within whose exterior boundaries a park area or a portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting hunting and trapping or closing park areas to the taking of wildlife where such activities are mandated or authorized by Federal statutory law.

(d) The superintendent may establish conditions and procedures for transporting lawfully taken wildlife through the park area. Violation of these conditions and procedures is prohibited.

(e) The Superintendent may designate all or portions of a park area as closed to the viewing of wildlife with an artificial light. Use of an artificial light for purposes of viewing wildlife in closed areas is prohibited.

(f) Authorized persons may check hunting and trapping licenses and permits; inspect weapons, traps and hunting and trapping gear for compliance with equipment restrictions; and inspect wildlife that has been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 49 FR 18450, Apr. 30, 1984; 51 FR 33264, Sept. 19, 1986; 52 FR 35240, Sept. 18, 1987]

### § 2.3 Fishing.

(a) Except in designated areas or as provided in this section, fishing shall be in accordance with the laws and regulations of the State within whose exterior boundaries a park area or portion thereof is located. Nonconflicting

State laws are adopted as a part of these regulations.

(b) State fishing licenses are not required in Big Bend, Crater Lake, Denali, Glacier, Isle Royale (inland waters only), Mammoth Cave, Mount Rainer, Olympic and Yellowstone National Parks.

(c) Except in emergencies or in areas under the exclusive jurisdiction of the United States, the superintendent shall consult with appropriate State agencies before invoking the authority of § 1.5 for the purpose of restricting or closing park areas to the taking of fish.

(d) The following are prohibited:

(1) Fishing in fresh waters in any manner other than by hook and line, with the rod or line being closely attended.

(2) Possessing or using as bait for fishing in fresh waters, live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe, except in designated waters. Waters which may be so designated shall be limited to those where non-native species are already established, scientific data indicate that the introduction of additional numbers or types of non-native species would not impact populations of native species adversely, and park management plans do not call for elimination of non-native species.

(3) Chumming or placing preserved or fresh fish eggs, fish roe, food, fish parts, chemicals, or other foreign substances in fresh waters for the purpose of feeding or attracting fish in order that they may be taken.

(4) Commercial fishing, except where specifically authorized by Federal statutory law.

(5) Fishing by the use of drugs, poisons, explosives, or electricity.

(6) Digging for bait, except in privately owned lands.

(7) Failing to return carefully and immediately to the water from which it was taken a fish that does not meet size or species restrictions or that the person chooses not to keep. Fish so released shall not be included in the catch or possession limit: *Provided,* That at the time of catching the person did not possess the legal limit of fish.

(8) Fishing from motor road bridges, from or within 200 feet of a public raft or float designated for water sports, or within the limits of locations designated as swimming beaches, surfing areas, or public boat docks, except in designated areas.

(e) Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law.

(f) Authorized persons may check fishing licenses and permits; inspect creels, tackle and fishing gear for compliance with equipment restrictions; and inspect fish that have been taken for compliance with species, size and other taking restrictions.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.4 Weapons, traps and nets.

(a)(1) Except as otherwise provided in this section and parts 7 (special regulations) and 13 (Alaska regulations), the following are prohibited:

(i) Possessing a weapon, trap or net

(ii) Carrying a weapon, trap or net

(iii) Using a weapon, trap or net

(2) Weapons, traps or nets may be carried, possessed or used:

(i) At designated times and locations in park areas where:

(A) The taking of wildlife is authorized by law in accordance with § 2.2 of this chapter;

(B) The taking of fish is authorized by law in accordance with § 2.3 of this part.

(ii) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated pursuant to special regulations.

(iii) Within a residential dwelling. For purposes of this subparagraph only, the term ''residential dwelling'' means a fixed housing structure which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home.

(3) Traps, nets and unloaded weapons may be possessed within a temporary

lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited, except that carrying or possessing a loaded weapon in a vessel is allowed when such vessel is not being propelled by machinery and is used as a shooting platform in accordance with Federal and State law.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) The superintendent may issue a permit to carry or possess a weapon, trap or net under the following circumstances:

(1) When necessary to support research activities conducted in accordance with § 2.5.

(2) To carry firearms for persons in charge of pack trains or saddle horses for emergency use.

(3) For employees, agents or cooperating officials in the performance of their official duties.

(4) To provide access to otherwise inaccessible lands or waters contiguous to a park area when other means of access are otherwise impracticable or impossible.

Violation of the terms and conditions of a permit issued pursuant to this paragraph is prohibited and may result in the suspension or revocation of the permit.

(e) Authorized Federal, State and local law enforcement officers may carry firearms in the performance of their official duties.

(f) The carrying or possessing of a weapon, trap or net in violation of applicable Federal and State laws is prohibited.

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

(h) Notwithstanding any other provision in this Chapter, a person may possess, carry, and transport concealed, loaded, and operable firearms within a national park area in accordance with the laws of the state in which the national park area, or that portion thereof, is located, except as otherwise prohibited by applicable Federal law.

[48 FR 30282, June 30, 1983, as amended at 49 FR 18450, Apr. 30, 1984; 52 FR 35240, Sept. 18, 1987; 73 FR 74971, Dec. 10, 2008]

### § 2.5 Research specimens.

(a) Taking plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit, is prohibited.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the park area.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly identified by the States, shall not be issued unless the species cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species.

(d) In park areas where the enabling legislation authorizes the killing of wildlife, a permit which authorizes the killing of plants, fish or wildlife may be issued only when the superintendent approves a written research proposal and determines that the collection will benefit science or has the potential for improving the management and protection of park resources.

(e) In park areas where enabling legislation does not expressly prohibit the killing of wildlife, a permit authorizing

the killing of plants, fish or wildlife may be issued only when the superintendent approves a written research proposal and determines that the collection will not result in the derogation of the values or purposes for which the park area was established and has the potential for conserving and perpetuating the species subject to collection.

(f) In park areas where the enabling legislation prohibits the killing of wildlife, issuance of a collecting permit for wildlife or fish or plants, is prohibited.

(g) Specimen collection permits shall contain the following conditions:

(1) Specimens placed in displays or collections will bear official National Park Service museum labels and their catalog numbers will be registered in the National Park Service National Catalog.

(2) Specimens and data derived from consumed specimens will be made available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the superintendent.

(h) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

NOTE: The Secretary's regulations on the preservation, use, and management of fish and wildlife are found in 43 CFR part 24. Regulations concerning archeological resources are found in 43 CFR part 3.

### § 2.10 Camping and food storage.

(a) The superintendent may require permits, designate sites or areas, and establish conditions for camping.

(b) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(3) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(4) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(5) The installation of permanent camping facilities.

(6) Displaying wildlife carcasses or other remains or parts thereof, except when taken pursuant to § 2.2.

(7) Connecting to a utility system, except as designated.

(8) Failing to obtain a permit, where required.

(9) Violating conditions which may be established by the superintendent.

(10) Camping outside of designated sites or areas.

(c) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

(d) *Food storage*. The superintendent may designate all or a portion of a park area where food, lawfully taken fish or wildlife, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material, or suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or shall be stored as otherwise designated. Violation of this restriction is prohibited. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

### § 2.11 Picnicking.

Picnicking is allowed, except in designated areas closed in accordance with § 1.5. The superintendent may establish conditions for picnicking in areas where picnicking is allowed. Picnicking in violation of established conditions is prohibited.

### § 2.12 Audio disturbances.

(a) The following are prohibited:

(1) Operating motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner: (i) That exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or, if below that level, nevertheless; (ii) makes noise which is unreasonable,

considering the nature and purpose of the actor's conduct, location, time of day or night, purpose for which the area was established, impact on park users, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) In developed areas, operating a power saw, except pursuant to the terms and conditions of a permit.

(3) In nondeveloped areas, operating any type of portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit. This paragraph does not apply to vessels in areas where motor boating is allowed.

(4) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 2.50 or § 2.51.

(b) Violation of the terms and conditions of a permit issued in accordance with section is prohibited and may result in the suspension or revocation of the permit.

### § 2.13 Fires.

(a) The following are prohibited:

(1) Lighting or maintaining a fire, except in designated areas or receptacles and under conditions that may be established by the superintendent.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or park resources, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or park resources, or creates a public safety hazard.

(b) Fires shall be extinguished upon termination of use and in accordance with such conditions as may be established by the superintendent. Violation of these conditions is prohibited.

(c) During periods of high fire danger, the superintendent may close all or a portion of a park area to the lighting or maintaining of a fire.

(d) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.14 Sanitation and refuse.

(a) The following are prohibited:

(1) Disposing of refuse in other than refuse receptacles.

(2) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the superintendent.

(3) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(4) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(5) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(6) Polluting or contaminating park area waters or water courses.

(7) Disposing of fish remains on land, or in waters within 200 feet of boat docks or designated swimming beaches, or within developed areas, except as otherwise designated.

(8) In developed areas, the disposal of human body waste, except at designated locations or in fixtures provided for that purpose.

(9) In nondeveloped areas, the disposal of human body waste within 100 feet of a water source, high water mark of a body of water, or a campsite, or within sight of a trail, except as otherwise designated.

(b) The superintendent may establish conditions concerning the disposal, containerization, or carryout of human body waste. Violation of these conditions is prohibited.

### § 2.15 Pets.

(a) The following are prohibited:

(1) Possessing a pet in a public building, public transportation vehicle, or location designated as a swimming beach, or any structure or area closed to the possession of pets by the superintendent. This subparagraph shall not

apply to guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing-impaired persons.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times.

(3) Leaving a pet unattended and tied to an object, except in designated areas or under conditions which may be established by the superintendent.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on park users, and other relevant factors, or that frightens wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the superintendent.

(b) In park areas where hunting is allowed, dogs may be used in support of these activities in accordance with applicable Federal and State laws and in accordance with conditions which may be established by the superintendent.

(c) Pets or feral animals that are running-at-large and observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other park resources.

(d) Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(e) Pets may be kept by residents of park areas consistent with the provisions of this section and in accordance with conditions which may be established by the superintendent. Violation of these conditions is prohibited.

(f) This section does not apply to dogs used by authorized Federal, State and local law enforcement officers in the performance of their official duties.

### § 2.16 Horses and pack animals.

The following are prohibited:

(a) The use of animals other than those designated as ''pack animals'' for purposes of transporting equipment.

(b) The use of horses or pack animals outside of trails, routes or areas designated for their use.

(c) The use of horses or pack animals on a park road, except: (1) Where such travel is necessary to cross to or from designated trails, or areas, or privately owned property, and no alternative trails or routes have been designated; or (2) when the road has been closed to motor vehicles.

(d) Free-trailing or loose-herding of horses or pack animals on trails, except as designated.

(e) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(f) Obstructing a trail, or making an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(g) Violation of conditions which may be established by the superintendent concerning the use of horses or pack animals.

### § 2.17 Aircraft and air delivery.

(a) The following are prohibited:

(1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

(2) Where a water surface is designated pursuant to paragraph (a)(1) of this section, operating or using aircraft under power on the water within 500 feet of locations designated as swimming beaches, boat docks, piers, or ramps, except as otherwise designated.

(3) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit.

(b) The provisions of this section, other than paragraph (c) of this section, shall not be applicable to official business of the Federal government, or emergency rescues in accordance with the directions of the superintendent, or

to landings due to circumstances beyond the control of the operator.

(c)(1) Except as provided in paragraph (c)(3) of this section, the owners of a downed aircraft shall remove the aircraft and all component parts thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to: (i) Establish a reasonable date by which aircraft removal operations must be complete; (ii) determine times and means of access to and from the downed aircraft; and (iii) specify the manner or method of removal.

(2) Failure to comply with procedures and conditions established under paragraph (c)(1) of this section is prohibited.

(3) The superintendent may waive the requirements of paragraph (c)(1) of this section or prohibit the removal of downed aircraft, upon a determination that: (i) The removal of downed aircraft would constitute an unacceptable risk to human life; (ii) the removal of a downed aircraft would result in extensive resource damage; or (iii) the removal of a downed aircraft is impracticable or impossible.

(d) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration. Such regulations are adopted as a part of these regulations.

(e) The operation or use of hovercraft is prohibited.

(f) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

### § 2.18 Snowmobiles.

(a) Notwithstanding the definition of vehicle set forth in § 1.4 of this chapter, the provisions of §§ 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22 and 4.23 of this chapter apply to the operation of a snowmobile.

(b) Except as otherwise provided in this section, the laws of the State in which the exterior boundaries of a park area or a portion thereof is located shall govern equipment standards and the operation of snowmobiles. Nonconflicting State laws are adopted as a part of these regulations.

(c) The use of snowmobiles is prohibited, except on designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. Routes and water surfaces designated for snowmobile use shall be promulgated as special regulations. Snowmobiles are prohibited except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

(d) The following are prohibited:

(1) Operating a snowmobile that makes excessive noise. Excessive noise for snowmobiles manufactured after July 1, 1975 is a level of total snowmobile noise that exceeds 78 decibels measured on the A-weighted scale measured at 50 feet. Snowmobiles manufactured between July 1, 1973 and July 1, 1975 shall not register more than 82 decibels on the A-weighted scale at 50 feet. Snowmobiles manufactured prior to July 1, 1973 shall not register more than 86 decibels on the A-weighted scale at 50 feet. All decibel measurements shall be based on snowmobile operation at or near full throttle.

(2) Operating a snowmobile without a lighted white headlamp and red taillight from one half-hour after sunset to one half-hour before sunrise, or when persons and vehicles are not clearly visible for a distance of 500 feet.

(3) Operating a snowmobile that does not have brakes in good working order.

(4) Racing, or operating a snowmobile in excess of 45 mph, unless restricted in accordance with § 4.22 of this chapter or otherwise designated.

(e) Except where State law prescribes a different minimum age or qualification for the person providing direct supervision and accompaniment, the following are prohibited:

(1) The operation of a snowmobile by a person under 16 years of age unless accompanied and supervised within line of sight by a responsible person 21 years of age or older;

(2) The operation of a snowmobile by a person under 12 years of age, unless accompanied on the same machine by a responsible person 21 years of age or older; or

(3) The supervision by one person of the operation of snowmobiles by more than one person under 16 years of age.

[48 FR 30282, June 30, 1983, as amended at 52 FR 10683, Apr. 2, 1987]

### § 2.19 Winter activities.

(a) Skiing, snowshoeing, ice skating, sledding, innertubing, tobogganing and similar winter sports are prohibited on park roads and in parking areas open to motor vehicle traffic, except as otherwise designated.

(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes. This paragraph shall not apply to sleds designed to be towed behind snowmobiles and joined to the snowmobile with a rigid hitching mechanism.

(c) Failure to abide by area designations or activity restrictions established under this section is prohibited.

### § 2.20 Skating, skateboards, and similar devices.

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited, except in designated areas.

### § 2.21 Smoking.

(a) The superintendent may designate a portion of a park area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect park resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

### § 2.22 Property.

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the superintendent.

(3) Failing to turn in found property to the superintendent as soon as practicable.

(b) *Impoundment of property*. (1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the superintendent.

(2) Unattended property that interferes with visitor safety, orderly management of the park area, or presents a threat to park resources may be impounded by the superintendent at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the superintendent may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) *Disposition of property*. (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the superintendent's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the National Park Service. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.

(3) Abandoned property shall be disposed of in accordance with title 41 Code of Federal Regulations.

(4) Property, including real property, located within a park area and owned by a deceased person, shall be disposed of in accordance with the laws of the State within whose exterior boundaries the property is located.

(d) The regulations contained in paragraphs (a)(2), (b) and (c) of this section apply, regardless of land ownership, on all lands and waters within a

park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.23 Recreation fees.

(a) Recreation fees shall be established as provided for in part 71 of this chapter.

(b) Entering designated entrance fee areas or using specialized sites, facilities, equipment or services, or participating in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established without paying the required fees and possessing the applicable permits is prohibited. Violation of the terms and conditions of a permit issued in accordance with part 71 is prohibited and may result in the suspension or revocation of the permit.

(c) The superintendent may, when in the public interest, prescribe periods during which the collection of recreation fees shall be suspended.

### § 2.30 Misappropriation of property and services.

(a) The following are prohibited:

(1) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(2) Obtaining property or services offered for sale or compensation without making payment or offering to pay.

(3) Obtaining property or services offered for sale or compensation by means of deception or a statement of past, present or future fact that is instrumental in causing the wrongful transfer of property or services, or using stolen, forged, expired revoked or fraudulently obtained credit cards or paying with negotiable paper on which payment is refused.

(4) Concealing unpurchased merchandise on or about the person without the knowledge or consent of the seller or paying less than purchase price by deception.

(5) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.31 Trespassing, tampering and vandalism.

(a) The following are prohibited:

(1) *Trespassing*. Trespassing, entering or remaining in or upon property or real property not open to the public, except with the express invitation or consent of the person having lawful control of the property or real property.

(2) *Tampering*. Tampering or attempting to tamper with property or real property, or moving, manipulating or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(3) *Vandalism*. Destroying, injuring, defacing, or damaging property or real property.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.32 Interfering with agency functions.

(a) The following are prohibited:

(1) *Interference*. Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(2) *Lawful order*. Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or park resources, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(3) *False information*. Knowingly giving a false or fictitious report or other

false information: (i) To an authorized person investigating an accident or violation of law or regulation or; (ii) on an application for a permit.

(4) *False Report*. Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.33 Report of injury or damage.

(a) A person involved in an incident resulting in personal injury or property damage exceeding $300, other than an accident reportable under §§ 3.4 or 4.4 of this chapter, shall report the incident to the superintendent as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

(b) Failure to report an incident in accordance with paragraph (a) of this section is prohibited.

[48 FR 30282, June 30, 1983, as amended at 52 FR 10683, Apr. 2, 1987]

### § 2.34 Disorderly conduct.

(a) A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(1) Engages in fighting or threatening, or in violent behavior.

(2) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(3) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(4) Creates or maintains a hazardous or physically offensive condition.

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.35 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages*. (1) The use and possession of alcoholic beverages within park areas is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age limit will apply for purposes of this subparagraph.

(ii) The possession of an alcoholic beverage by a person under 21 years of age, except where allowed by State law. In a State where a lower minimum age is established, that age will apply for purposes of this subparagraph.

(3)(i) The superintendent may close all or a portion of a public use area or public facility within a park area to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or that has been opened, or whose seal is broken or the contents of which have been partially removed. *Provided however*, that such a closure may only be implemented following a determination made by the superintendent that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and §§ 1.5 and 2.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(ii) A closure imposed by the superintendent does not apply to an open

container of an alcoholic beverage that is stored in compliance with the provisions of § 4.14 of this chapter.

(iii) Violating a closure imposed pursuant to this section is prohibited.

(b) *Controlled substances.* The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

(c) Presence in a park area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or park resources, is prohibited.

[48 FR 30282, June 30, 1983, as amended at 52 FR 10683, Apr. 2, 1987]

### § 2.36 Gambling.

(a) Gambling in any form, or the operation of gambling devices, is prohibited.

(b) This regulation applies, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[48 FR 30282, June 30, 1983, as amended at 52 FR 35240, Sept. 18, 1987]

### § 2.37 Noncommercial soliciting.

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a permit that has been issued under § 2.50, § 2.51 or § 2.52.

### § 2.38 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State laws.

(b) Using or possessing fireworks and firecrackers is prohibited, except pursuant to the terms and conditions of a permit or in designated areas under such conditions as the superintendent may establish, and in accordance with applicable State law.

(c) Violation of the conditions established by the superintendent or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

### § 2.50 Special events.

(a) Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events are allowed: *Provided, however,* There is a meaningful association between the park area and the events, and the observance contributes to visitor understanding of the significance of the park area, and a permit therefor has been issued by the superintendent. A permit shall be denied if such activities would:

(1) Cause injury or damage to park resources; or

(2) Be contrary to the purposes for which the natural, historic, development and special use zones were established; or unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones.

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the superintendent. The application shall be

submitted so as to reach the superintendent at least 72 hours in advance of the proposed event.

(c) As a condition of permit issuance, the superintendent may require:

(1) The filing of a bond payable to the Director, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the United States is named as co-insured in an amount sufficient to protect the United States.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

[48 FR 30282, June 30, 1983; 48 FR 31847, July 11, 1983]

### § 2.51 Public assemblies, meetings.

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within park areas, provided a permit therefor has been issued by the superintendent.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used and any other information required by the permit application form.

(c) The superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquillity, interference with program activities, or impairment of public use facilities.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The superintendent shall designate on a map, that shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available only if such activities would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of 7 days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of

the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede pedestrians or vehicles, or harass park visitors with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

### § 2.52 Sale or distribution of printed matter.

(a) The sale or distribution of printed matter is allowed within park areas, provided that a permit to do so has been issued by the superintendent, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed sale or distribution, the number of participants, and any other information required by the permit application form.

(c) The superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The superintendent shall designate on a map, which shall be available for inspection in the office of the superintendent, the locations within the park area that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of the peace and tranquility maintained in wilderness, natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors.

(5) Present a clear and present damage to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass park visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

**§ 2.60 Livestock use and agriculture.**

(a) The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in a park area or the use of a park area for agricultural purposes is prohibited, except:

(1) As specifically authorized by Federal statutory law; or

(2) As required under a reservation of use rights arising from acquisition of a tract of land; or

(3) As designated, when conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene.

(b) Activities authorized pursuant to any of the exceptions provided for in paragraph (a) of this section shall be allowed only pursuant to the terms and conditions of a license, permit or lease. Violation of the terms and conditions of a license, permit or lease issued in accordance with this paragraph is prohibited and may result in the suspension or revocation of the license, permit, or lease.

(c) *Impounding of livestock.* (1) Livestock trespassing in a park area may be impounded by the superintendent and, if not claimed by the owner within the periods specified in this paragraph, shall be disposed of in accordance with applicable Federal and State law.

(2) In the absence of applicable Federal or State law, the livestock shall be disposed of in the following manner:

(i) If the owner is known, prompt written notice of impoundment will be served, and in the event of the owner's failure to remove the impounded livestock within five (5) days from delivery of such notice, it will be disposed of in accordance with this paragraph.

(ii) If the owner is unknown, disposal of the livestock shall not be made until at least fifteen (15) days have elapsed from the date that a notice of impoundment is originally published in a newspaper of general circulation in the county in which the trespass occurs or, if no such newspaper exists, notification is provided by other appropriate means.

(iii) The owner may redeem the livestock by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding, and the amount of damage to public property injured or destroyed as a result of the trespass.

(iv) In determining the claim of the government in a livestock trespass, the value of forage consumed shall be computed at the commercial rates prevailing in the locality for the class of livestock found in trespass. The claim shall include the pro rata salary of employees for the time spent and the expenses incurred as a result of the investigation, reporting, and settlement or prosecution of the claim.

(v) If livestock impounded under this paragraph is offered at public sale and no bid is received, or if the highest bid received is less than the amount of the claim of the United States or of the officer's appraised value of the livestock, whichever is the lesser amount, such livestock, may be sold at private sale for the highest amount obtainable, condemned and destroyed, or converted to the use of the United States.

### § 2.61 Residing on Federal lands.

(a) Residing in park areas, other than on privately owned lands, except pursuant to the terms and conditions of a permit, lease or contract, is prohibited.

(b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

### § 2.62 Memorialization.

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation in a park area without the authorization of the Director is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas according to conditions which may be established by the superintendent.

(c) Failure to abide by area designations and established conditions is prohibited.

(d) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

## PART 3—BOATING AND WATER USE ACTIVITIES

Sec.

3.1 What is the applicability and scope of this part?
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AUTHORITY: 16 U.S.C. 1, 1a–2(h), 3.

SOURCE: 72 FR 13702, Mar. 23, 2007, unless otherwise noted.

### § 3.1 What is the applicability and scope of this part?

The applicability of the regulations in this part is described in § 1 .2 of this chapter.

### § 3.2 Do other boating laws and regulations apply to me when I operate my boat on park waters?

(a) In addition to the regulations contained in this part, the NPS adopts applicable laws and regulations of the United States Coast Guard. The USCG laws and regulations are found in Title 14 United States Code, Title 33 United States Code, Title 46 United States Code, and 33 CFR chapter I, 46 CFR chapter I and III and 49 CFR chapter IV. NPS applies the adopted laws and regulations to vessels and their operation on all waters (navigable and nonnavigable) subject to NPS jurisdiction. Therefore, Federal regulations authorizing an action by the ''captain of the port'' or another officer or employee of the United States Coast Guard, authorize a like action by the superintendent.

(b) Except to the extent that directives of the United States Coast Guard have expressly or implicitly preempted inconsistent state laws and regulations or as otherwise provided by subsection (a), vessels and their operation on all waters subject to NPS jurisdiction are governed by non-conflicting boating safety laws and regulations of the State within whose interior boundaries a park area or portion thereof is located.

### § 3.3 Am I required to obtain a permit to operate a vessel in a park area?

Generally, you are not required to obtain a permit to operate a vessel in a park area. However, in certain circumstances, taking into consideration public safety, protection of park resources, and weather and park management objectives, the superintendent may require a permit for use of a vessel within a park area, under §§ 1.5 and 1.7, and will issue permits consistent with § 1.6 of this chapter.

### § 3.4 For what purposes may my vessel be inspected?

(a) An authorized person may at any time stop and/or board a vessel to examine documents, licenses or permits relating to operation of the vessel, and to inspect the vessel to determine compliance with regulations pertaining to safety equipment, vessel capacity, marine sanitation devices, and other pollution and noise abatement requirements.

(b) An authorized person who identifies a vessel being operated without sufficient life saving or firefighting devices, in an overloaded or other unsafe condition, as defined in United States Coast Guard regulations, or in violation of a noise level specified in § 3.15(a) of this part, may direct the operator to suspend further use of the vessel until the condition is corrected.

### § 3.5 Do I have to report an accident involving a vessel to the National Park Service?

(a) The operator of a vessel involved in an accident must report the accident to the superintendent as soon as practical, but in any event within 24 hours of the accident, if the accident involves:

(1) Total property damage of $2000 or more; or

(2) Injury, or death or disappearance of a person

(b) If the operator is physically incapable of making the report, the owner or an occupant of the vessel must report the accident to the superintendent.

(c) Filing a report with the superintendent may satisfy applicable United States Coast Guard, State, and local accident reporting requirements. Superintendents will forward the accident report to the appropriate reporting authority in a timely manner that complies with the requirements of 33 CFR 173.55.

### § 3.6 What are the requirements to operate a power driven vessel?

(a) To operate a power-driven vessel on park waters, a person must be either:

(1) At least 16 years old; or

(2) Between 12 and 15 years old and accompanied on the vessel by a person at least 18 years old.

(b) If a park area is located within a State having different age requirements, then the applicable State law is adopted in lieu of paragraph (a) of this section.

(c) If a park area is located within a State having a mandatory boater education requirement, then that State requirement is adopted.

### § 3.7 What are the NPS Personal Floatation Device (PFD) requirements?

(a) All requirements in Title 33 CFR part 175 related to PFDs are adopted.

(b) The Superintendent may require that a PFD be worn or carried on designated waters, at designated times and/or during designated water based activities in accordance with §§ 1.5 and 1.7 of this chapter.

### § 3.8 What vessel operations are prohibited?

(a) The following operations are prohibited:

(1) Launching or operating an airboat.

(2) Launching or recovering a vessel, except at a launch site designated by the superintendent.

(3) Operating a power-driven vessel on waters not accessible by road.

(4) Operating a vessel in excess of a length, width, or horsepower restriction established by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter. For the purposes of this paragraph, vessel length is measured according to criteria established in 46 CFR chapter I or 33 CFR chapter I.

(b) The following operations are inherently unsafe and therefore prohibited:

(1) Operating a power-driven or sailing vessel within 100 feet of a diver's flag except a vessel in support of dive operations, which may not be operated in excess of flat wake speed.

(2) Failing to observe restriction(s) established by a regulatory marker.

(3) Operating a vessel in excess of flat wake speed in designated areas.

(4) Operating a vessel in excess of flat wake speed within 100 feet of:

(i) A downed water skier;

(ii) A person swimming, wading, fishing from shore or floating with the aid of a flotation device;

(iii) A designated launch site; or

(iv) A manually propelled, anchored or drifting vessel. If the park is located within a State specifying different conditions, then that State law is adopted in lieu of this paragraph.

(5) Unless a designated area is marked otherwise, operating a power-driven or sailing vessel within 500 feet of a shoreline designated as a swimming beach. This prohibition does not apply in locations such as a river, channel, or narrow cove where passage is restricted to less than 500 feet. In such restrictive locations where swim beaches are designated, the operation of a vessel in excess of a flat wake speed is prohibited.

(6) Operating a power-driven vessel while a person is riding on the decking over the bow, gunwales, top edge of the transom, motor cover, or in any other unsafe position when the vessel is being operated. This provision does not apply when that portion of the vessel is designed and constructed for the purpose of carrying passengers safely at all speeds or when the vessel is maneuvering for anchoring, docking or mooring.

(7) Operating a power driven vessel engine/s or generator with a person sitting, riding or hanging on to a swim platform or swim ladder.

(8) Operating a vessel, or knowingly allowing another person to operate a vessel in a negligent manner, by failing to exercise that degree of care which a reasonable person, under like circumstances, would demonstrate in order to prevent the endangering of the life, limb, or property of a person(s) through the operator's lack of knowledge, inattention, or general carelessness.

(9) Operating a vessel or knowingly allowing another person to operate a vessel in a grossly negligent manner, by willfully and wantonly creating an unreasonable risk of harm to person(s) or property, regardless of whether the operator intended to cause harm.

### § 3.9 May I operate my personal watercraft (PWC) in park waters?

(a) A person may operate a PWC only in park areas where authorized by special regulation. Special regulations may only be promulgated in the 21 parks listed in the following table:

| Name | Water type | State |
|---|---|---|
| Amistad National Recreation Area. | Impounded Lake | TX |
| Assateague Island National Seashore. | Open Ocean/Bay | MD/VA |
| Bighorn Canyon National Recreation Area. | Impounded Lake | MT |
| Big Thicket National Preserve .. | River ..... | TX |
| Cape Cod National Seashore ... | Open Ocean/Bay | MA |
| Cape Lookout National Seashore. | Open Ocean/Bay | NC |
| Chickasaw National Recreation Area. | Impounded Lake | OK |
| Cumberland Island National Seashore. | Open Ocean/Bay | GA |
| Curecanti National Recreation Area. | Impounded Lake | CO |
| Delaware Water Gap ..... | River ..... | PA/NJ |
| Fire Island National Seashore .. | Open Ocean/Bay | NY |
| Gateway National Recreation Area. | Open Ocean/Bay | NY |
| Glen Canyon National Recreation Area. | Impounded Lake | AZ/UT |
| Gulf Islands National Seashore | Open Ocean/Bay | FL/MS |
| Indiana Dunes National Lakeshore. | Natural Lake ..... | IN |
| Lake Mead National Recreation Area. | Impounded Lake | AZ/NV |
| Lake Meredith National Recreation Area. | Impounded Lake | TX |
| Lake Roosevelt National Recreation Area. | Impounded Lake | WA |
| Padre Island National Seashore | Open Ocean/Bay | TX |
| Pictured Rocks National Lakeshore. | Natural Lake ..... | MI |
| Whiskeytown-Shasta-Trinity National Recreation Area. | Impounded Lake | CA |

(b) Where authorized, operation of a PWC on park waters is subject to the following conditions:

(1) No person may operate a PWC unless each person aboard is wearing a Type I, II, III, or V PFD approved by the United States Coast Guard.

(2) A person operating a PWC equipped by the manufacturer with a lanyard-type engine cut-off switch

must attach such lanyard to his person, clothing, or PFD, as appropriate for the specific vessel.

(3) No person may operate a PWC anytime between sunset and sunrise.

(4) No person may operate a PWC by jumping the wake, becoming partially airborne or completely leaving the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake.

(5) If a park area is located within a State that has more restrictive regulations for the operation of PWC, then applicable State law applies in lieu of paragraphs (b)(1) through (b)(4) of this section.

### § 3.10 What are the regulations regarding operating a vessel while under the influence of alcohol and/or drugs?

(a) Operating or being in actual physical control of a vessel is prohibited while:

(1) Under the influence of alcohol, a drug or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath.

(b) If State law that applies to operating a vessel while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits apply rather than the limits specified in paragraph (a) of this section.

(c) The provisions of this section also apply to an operator who is or has been legally entitled to use alcohol or drugs.

### § 3.11 When is testing for alcohol or drugs required?

(a) At the request or direction of an authorized person who has probable cause to believe that an operator of a vessel has violated provisions of § 3.10, the operator must submit to one or more testing procedures of the blood, breath, saliva or urine for the purpose of determining blood alcohol and/or drug content.

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

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

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

(b) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of § 13.10. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in § 13.10(a)(2), this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(c) The provisions of paragraph (b) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

### § 3.12 May I use a vessel to tow a person for water skiing or other similar activities?

(a) The towing of a person by a vessel is allowed only in designated waters, and in accordance with conditions established by the superintendent under §§ 1.5 and 1.7 of this chapter.

(b) Towing a person using a parasail, hang-glider or other airborne device may be allowed only in accordance with a permit issued by the superintendent under § 1.6 of this chapter.

(c) Where towing is designated, the following conditions apply:

(1) Towing is allowed only between the hours of sunrise and sunset.

(2) In addition to the boat operator, a person at least 12 years of age must be present to observe the action of the person being towed.

(3) A person being towed must wear a United States Coast Guard approved Type I, II, III, or V PFD.

(4) A person being towed may not commit any act in a manner that endangers, or is likely to endanger, any person or damage property.

(5) Operating a vessel that does not have the capacity to carry the person(s) being towed in addition to the operator and observer is prohibited.

(6) No person shall operate a power driven vessel using a tow rope 20 feet or less in length when towing a person.

### § 3.13 What conditions apply to the use of Marine Sanitation Devices (MSD)?

(a) Discharging sewage from any vessel, whether treated or not, in any body of fresh water is prohibited.

(b) The owner or operator of any vessel on park fresh water that is equipped with toilet facilities and/or a MSD that is capable of discharge, must lock or otherwise secure the valves or mechanism of the device. Acceptable methods of securing the device include:

(1) Closing the seacock and removing the handle;

(2) Padlocking the seacock in the closed position;

(3) Using a non-releasable wire-tie to hold the seacock in the closed position; or

(4) Locking the door to the space enclosing the toilets with a padlock or door handle key lock.

(c) The superintendent may modify the requirements of this section through a special regulation.

### § 3.14 Am I required to remove a sunken, grounded, or disabled vessel?

(a) Except as provided in paragraph (b) of this section, the owners or authorized salvager of a sunken, grounded, or disabled vessel must remove the vessel, all component parts and equipment, and all associated cargo thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to:

(1) Establish a reasonable date by which vessel removal operations must be complete;

(2) Determine times and means of access to and from the vessel; and

(3) Specify the manner or method of removal.

(b) The superintendent may waive the requirements of paragraph (a) of this section or prohibit removal of the vessel, equipment, or cargo upon a written determination that:

(1) The removal would constitute an unacceptable risk to human life;

(2) The removal would result in extensive resource damage; or

(3) The removal is impracticable or impossible.

### § 3.15 What is the maximum noise level for the operation of a vessel?

(a) A person may not operate a vessel at a noise level exceeding:

(1) 75dB(A) measured utilizing test procedures applicable to vessels underway (Society of Automotive Engineers SAE—J1970); or

(2) 88dB(A) measured utilizing test procedures applicable to stationary vessels (Society of Automotive Engineers SAE—J2005).

(b) An authorized person who has reason to believe that a vessel is being operated in excess of the noise levels established in paragraph (a) of this section may direct the operator of the vessel to submit the vessel to an on-site test to measure the noise level.

### § 3.16 May I swim or wade in park waters?

Swimming or wading is allowed in waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

### § 3.17 What regulations apply to swimming areas and beaches?

(a) The superintendent may designate areas as swimming areas or swimming beaches in accordance with §§ 1.5 and 1.7 of this chapter.

(b) Within designated swimming areas, the use of a surfboard or similar rigid device is prohibited.

(c) The superintendent may prohibit the use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or swimming beaches in accordance with §§ 1.5 and 1.7 of this chapter.

### § 3.18 May I snorkel or underwater dive in park waters?

(a) Snorkeling and underwater diving is allowed in park waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

(b) In waters open to the use of vessels, a diver must prominently display a dive flag during dive operations. A dive flag must not be displayed unless dive operations are ongoing.

(c) The dive flag must be illuminated when dive operations take place between sunset and sunrise. The dive flag illumination may not consist of lights that may be confused with navigation lights or aids to navigation lights.

(d) While on the surface, submerging or surfacing the diver must remain within a 100 feet horizontal radius of the diver flag.

(e) If State laws or regulations exist concerning snorkeling activities, those provisions of State law or regulation are adopted.

### § 3.19 May I operate a submersible within park waters?

The use of manned or unmanned submersibles may only occur in accordance with a permit issued by the superintendent under § 1.6 of this chapter.

## PART 4—VEHICLES AND TRAFFIC SAFETY

Sec.

4.1 Applicability and scope.
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4.3 Authorized emergency vehicles.
4.4 Report of motor vehicle accident.
4.10 Travel on park roads and designated routes.
4.11 Load, weight and size limits.
4.12 Traffic control devices.
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4.15 Safety belts.
4.20 Right of way.
4.21 Speed limits.
4.22 Unsafe operation.
4.23 Operating under the influence of alcohol or drugs.
4.30 Bicycles.
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AUTHORITY: 16 U.S.C. 1, 3, 9a, 462(k).

SOURCE: 52 FR 10683, Apr. 2, 1987, unless otherwise noted.

### § 4.1 Applicability and scope.

The applicability of the regulations in this part is described in § 1.2 of this chapter. The regulations in this part also apply, regardless of land ownership, on all roadways and parking areas within a park area that are open to public traffic and that are under the legislative jurisdiction of the United States.

### § 4.2 State law applicable.

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within a park area are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

### § 4.3 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

### § 4.4 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the superintendent as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the superintendent.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the superintendent unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the park area.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

### § 4.10 Travel on park roads and designated routes.

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use.

(b) Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations. The designation of routes and areas shall comply with § 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

(c) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the superintendent.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road or route.

(3) Operating a motor vehicle on a route or area designated for off-road motor vehicle use, from ½ hour after sunset to ½ hour before sunrise, without activated headlights and taillights that meet the requirements of State law for operation on a State highway.

### § 4.11 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a park road. However, the superintendent may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The superintendent may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the superintendent.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the superintendent.

### § 4.12 Traffic control devices.

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the superintendent.

### § 4.13 Obstructing traffic.

The following are prohibited:

(a) Stopping or parking a vehicle upon a park road, except as authorized by the superintendent, or in the event of an accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

### § 4.14 Open container of alcoholic beverage.

(a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in a park area is prohibited.

(c) This section does not apply to:

(1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed

for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(2) An open container stored in the living quarters of a motor home or camper; or

(3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.

(d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

### § 4.15 Safety belts.

(a) Each operator and passenger occupying any seating position of a motor vehicle in a park area will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

[62 FR 61633, Nov. 19, 1997]

### § 4.20 Right of way.

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and vehicles drawn by animals. Failure to yield the right of way is prohibited.

### § 4.21 Speed limits.

(a) Park area speed limits are as follows:

(1) 15 miles per hour: within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: upon sections of park road under repair or construction.

(3) 45 miles per hour: upon all other park roads.

(b) The superintendent may designate a different speed limit upon any park road when a speed limit set forth in paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes for which the park area was established. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a park road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

### § 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

### § 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(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 blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

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

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

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

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

[52 FR 10683, Apr. 2, 1987, as amended at 68 FR 46479, Aug. 6, 2003]

### § 4.30 Bicycles.

(a) The use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use; *provided, however,* the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

### § 4.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

## PART 5—COMMERCIAL AND PRIVATE OPERATIONS

Sec.
5.1 Advertisements.
5.2 Alcoholic beverages; sale of intoxicants.
5.3 Business operations.
5.4 Commercial passenger-carrying motor vehicles.
5.5 Commercial photography.
5.6 Commercial vehicles.
5.7 Construction of buildings or other facilities.
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5.10 Eating, drinking, or lodging establishments.
5.11–5.12 [Reserved]
5.13 Nuisances.
5.14 Prospecting, mining, and mineral leasing.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

SOURCE: 31 FR 16660, Dec. 29, 1966, unless otherwise noted.

### § 5.1 Advertisements.

Commercial notices or advertisements shall not be displayed, posted, or distributed on federally owned or controlled lands within a park area unless prior written permission has been given by the Superintendent. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the park area and such notices and advertisements are found by the Superintendent to be desirable and necessary for the convenience and guidance of the public.

### § 5.2 Alcoholic beverages; sale of intoxicants.

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations (See also § 2.35 of this chapter.)

(b) No such liquor shall be sold on any privately owned lands under the legislative jurisdiction of the United States within Glacier, Lassen Volcanic Mesa Verde, Denali, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone, or Yosemite National Parks, unless a permit for the sale thereof has first been secured from the appropriate Regional Director.

(1) In granting or refusing applications for permits as herein provided, the Regional Directors shall take into consideration the character of the neighborhood, the availability of other liquor-dispensing facilities, the local laws governing the sale of liquor, and any other local factors which have a relationship to the privilege requested.

(2) A fee will be charged for the issuance of such a permit, corresponding to that charged for the exercise of similar privileges outside the park area boundaries by the State government, or appropriate political subdivision thereof within whose exterior boundaries the place covered by the permit is situated.

(3) The applicant or permittee may appeal to the Director from any final action of the appropriate Regional Director refusing, conditioning or revoking the permit. Such an appeal shall be filed, in writing, within 20 days after receipt of notice by the applicant or permittee of the action appealed from. Any final decision of the Director may be appealed to the Secretary of the Interior within 15 days after receipt of notice by the applicant or permittee of the Director's decision.

(4) The permit for sale of intoxicating liquors shall contain such general and special conditions as the Regional Director may deem reasonably necessary to insure safe and orderly management of the park area.

(5) The permittee shall comply with all State and county laws and regulations, other than fee and license requirements, which would be applicable to the premises and to the sale and dispensing of intoxicating beverages if the privately owned lands were not subject

to the jurisdiction of the United States.

[31 FR 16660, Dec. 29, 1966, as amended at 35 FR 12542, Aug. 6, 1970; 65 FR 37878, June 19, 2000]

### § 5.3 Business operations.

Engaging in or soliciting any business in park areas, except in accordance with the provisions of a permit, contract, or other written agreement with the United States, except as such may be specifically authorized under special regulations applicable to a park area, is prohibited.

### § 5.4 Commercial passenger-carrying motor vehicles.

(a) The commercial transportation of passengers by motor vehicles except as authorized under a contract or permit from the Secretary or his authorized representative is prohibited in Crater Lake (prohibition is limited to sightseeing tours on the rim drive), Glacier (prohibition does not apply to nonscheduled tours on portions of the park road as defined in § 7.3 of this chapter), Grand Canyon (prohibition does not apply to the north rim or to nonscheduled tours as defined in § 7.4 of this chapter), Grand Teton (prohibition does not apply to those portions of Highways Nos. 26, 89, 187, and 287 commencing at the south boundary of the park and running in a general northerly direction to the east and north boundaries of the park), Mesa Verde (prohibition does not apply to transportation between points within the park and outside points), Denali National Park and Preserve (prohibition does not apply to that portion of the Denali Park road between the Highway 3 junction and the Denali Park Railroad Depot), Sequoia-Kings Canyon, Yellowstone (prohibition does not apply to nonscheduled tours as defined in § 7.13 of this chapter, nor to that portion of U.S. Highway 191 traversing the northwest corner of the park) and Yosemite National Parks. The following principles will govern the interpretation and enforcement of the section:

(1) Transportation is commercial if it is operated primarily as a business activity or for profit of the operator, or if any person or organization may receive a profit, commission, fee, brokerage or other compensation for organizing, advertising, promoting, soliciting or selling the trip or tour of which such transportation is a part.

(2) Transportation is commercial if payment therefor is made directly or indirectly to the operator: *Provided,* That bona fide sharing of actual expenses will not be deemed a payment.

(3) Transportation by a motor vehicle licensed as a commercial vehicle, or of commercial type, will be presumed to be commercial unless otherwise established to the satisfaction of the Superintendent or his authorized representative.

(4) Transportation will not be deemed commercial for the sole reason that the motor vehicle is chartered or rented in good faith to the operator, by the owner, for general use at a charge based upon time or mileage or both. Nothing in this section is intended to prohibit the operation of pleasure type automobiles rented without a driver on the normal terms from the owner.

(5) Subject to the provision of paragraph (a)(1) of this section, transportation is not commercial if it is a part of a trip or tour initiated, organized, and directed by an established bona fide school or college, institution, society or other organization, as a nonprofit activity of such organization, and if all passengers are students, faculty, members, or employees of such organization, or otherwise connected therewith, provided that credentials are presented at the park entrance from the head of such institution or organization indicating the trip is in accordance with the provisions stipulated herein. Clubs or associations having as a principal purpose the arranging of tours, trips, or transportation for their members will not qualify for admission into the above-named parks under the provision of this paragraph.

(6) As used in this section, ''owner'' means the person or organization having legal title, or all the incidents of ownership other than legal title, of a motor vehicle by which passengers may be transported, and includes a registered owner or a purchaser under a conditional sales contract. ''Operator'' means the person, organization, or

group that arranges for the transportation, assumes responsibility for financial risk and management, and determines who shall be transported upon what terms, conditions, or charges. The operator may be the owner, but need not be.

(b) Passenger-carrying motor vehicles, otherwise admissible, that are so large as to require special escort in order to proceed safely over park roads, or which in the judgment of the Superintendent are beyond the carrying capacity or safety factor of the roads, will not be permitted in the parks, except that, where they may satisfactorily enter and travel to park headquarters they may be parked there during the period of stay.

(5 U.S.C. 553; 39 Stat. 535; 16 U.S.C. 3)

[31 FR 16660, Dec. 29, 1966, as amended at 37 FR 12722, June 28, 1972; 38 FR 10639, Apr. 30, 1973; 60 FR 35841, July 12, 1995; 65 FR 37878, June 19, 2000]

### § 5.5 Commercial photography.

(a) *Motion pictures, television.* Before any motion picture may be filmed or any television production or sound track may be made, which involves the use of professional casts, settings, or crews, by any person other than bona fide newsreel or news television personnel, written permission must first be obtained from the Superintendent, in accordance with the provisions of the special regulations contained in part 5, subtitle A, title 43 of the Code of Federal Regulations.

(b) *Still photography.* The taking of photographs of any vehicle, or other articles of commerce or models for the purpose of commercial advertising without a written permit from the Superintendent is prohibited.

### § 5.6 Commercial vehicles.

(a) The term ''Commercial vehicle'' as used in this section shall include, but not be limited to trucks, station wagons, pickups, passenger cars or other vehicles when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, or used as an incident to providing services to another person, or used in connection with any business.

(b) The use of government roads within park areas by commercial vehicles, when such use is in no way connected with the operation of the park area, is prohibited, except that in emergencies the Superintendent may grant permission to use park roads.

(c) The Superintendent shall issue permits for commercial vehicles used on park area roads when such use is necessary for access to private lands situated within or adjacent to the park area, to which access is otherwise not available.

### § 5.7 Construction of buildings or other facilities.

Constructing or attempting to construct a building, or other structure, boat dock, road, trail, path, or other way, telephone line, telegraph line, power line, or any other private or public utility, upon across, over, through, or under any park areas, except in accordance with the provisions of a valid permit, contract, or other written agreement with the United States, is prohibited.

### § 5.8 Discrimination in employment practices.

(a) The proprietor, owner, or operator of any hotel, inn, lodge or other facility or accommodation offered to or enjoyed by the general public within any park area is prohibited from discriminating against any employee or maintaining any employment practice which discriminates because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in connection with any activity provided for or permitted by contract with or permit from the Government or by derivative subcontract or sublease. As used in this section, the term ''employment'' includes, but is not limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Each such proprietor, owner or operator shall post either the following notice:

NOTICE

This is a facility operated in an area under the jurisdiction of the United States Department of the Interior. No discrimination in employment practices on the basis of race, creed, color, ancestry, sex, age, disabling condition, or national origin is permitted in this facility. Violations of this prohibition are punishable by fine, imprisonment, or both.

Complaints or violations of this prohibition should be addressed to the Director, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

or notices supplied in accordance with Executive Order 11246 at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking employment.

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[31 FR 16660, Dec. 29, 1966, as amended at 52 FR 35240, Sept. 18, 1987; 53 FR 740, Jan. 12, 1988]

### § 5.9 Discrimination in furnishing public accommodations and transportation services.

(a) The proprietor, owner or operator and the employees of any hotel, inn, lodge, or other facility or accommodation offered to or enjoyed by the general public within a park area and, while using such a park area, any commercial passenger-carrying motor vehicle service and its employees, are prohibited from: (1) Publicizing the facilities, accommodations or any activity conducted therein in any manner that would directly or inferentially reflect upon or question the acceptability of any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin; or (2) discriminating by segregation or otherwise against any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in furnishing or refusing to furnish such person or persons any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

(b) Each such proprietor, owner, or operator shall post the following notice at such locations as will insure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges:

NOTICE

This is a facility operated in an area under the jurisdiction of the U.S. Department of the Interior.

No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both.

Complaints of violations of this prohibition should be addressed to the Director, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

(c) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

[31 FR 16660, Dec. 29, 1966, as amended at 52 FR 35240, Sept. 18, 1987; 53 FR 740, Jan. 12, 1988]

### § 5.10 Eating, drinking, or lodging establishments.

(a) No establishment offering food, drink, or lodging for sale on any privately owned lands under the legislative jurisdiction of the United States within Glacier, Lassen Volcanic, Mesa Verde, Denali, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone, and Yosemite National Parks may be operated without a permit obtained from the Superintendent. Such permit may include terms and conditions deemed necessary by the Superintendent to the health, safety and welfare of the public and it may be revoked upon failure to comply with the requirements of paragraphs (b) and (c) of this section or the conditions set forth in the permit.

(b) Such establishment shall be maintained and operated in accordance with the rules and regulations recommended by the U.S. Public Health Service for such establishments, and the substantive requirements of State and local laws and regulations relating to such establishments, which would apply if such privately owned lands were not subject to the jurisdiction of

the United States. In the event of conflict or inconsistency between such U.S. Public Health Service recommendations and State or local laws the former shall prevail.

(c) The Superintendent shall have the right to inspect such establishments at reasonable times to determine whether the establishment is being operated in accordance with the applicable rules and regulations and in accordance with the provisions of the permit.

[31 FR 16660, Dec. 29, 1966, as amended at 65 FR 37878, June 19, 2000]

### §§ 5.11–5.12 [Reserved]

### § 5.13 Nuisances.

The creation or maintenance of a nuisance upon the federally owned lands of a park area or upon any private lands within a park area under the exclusive legislative jurisdiction of the United States is prohibited.

### § 5.14 Prospecting, mining, and mineral leasing.

Prospecting, mining, and the location of mining claims under the general mining laws and leasing under the mineral leasing laws are prohibited in park areas except as authorized by law.

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

Sec.

6.1 Purpose.
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6.10 Financial assurance.
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6.12 Prohibited acts and penalties.

AUTHORITY: 16 U.S.C. 1, 3, 460*l*–22(c).

SOURCE: 59 FR 65957, Dec. 22, 1994, unless otherwise noted.

### § 6.1 Purpose.

(a) The regulations contained in this part prohibit the operation of any solid waste disposal site, except as specifically provided for, and govern the continued use of any existing solid waste disposal site within the boundaries of any unit of the National Park System.

(b) The purpose of the regulations in this part is to ensure that all activities within the boundaries of any unit of the National Park System resulting from the operation of a solid waste disposal site are conducted in a manner to prevent the deterioration of air and water quality, to prevent degradation of natural and cultural, including archeological, resources, and to reduce adverse effects to visitor enjoyment.

(c) The regulations in this part interpret and implement Pub. L. 98–506, 98 Stat. 2338 (16 U.S.C. 460*l*–22(c)).

### § 6.2 Applicability and scope.

(a) The regulations contained in this part apply to all lands and waters within the boundaries of all units of the National Park System, whether federally or nonfederally owned, and without regard to whether access to a solid waste disposal site requires crossing federally-owned or controlled lands or waters.

(b) The regulations contained in this part govern:

(1) The use of solid waste disposal sites not in operation on September 1, 1984, including the approval of new solid waste disposal sites;

(2) The continued use or closure of solid waste disposal sites that were in operation on September 1, 1984;

(3) The continued use or closure of solid waste disposal sites on lands or waters added to the National Park System after January 23, 1995.

(c) Exceptions.

(1) The regulations contained in this part do not govern the disposal of residential or agricultural solid wastes in a site by a person who can show that he or she:

(i) Resides within the boundaries of the unit;

(ii) Generates the residential or agricultural solid waste within the boundaries of the unit;

(iii) Disposes of the solid waste only on lands that the person owns or leases within the unit;

(iv) Does not engage in a solid waste disposal practice that poses a reasonable probability of adverse effects on health or the environment, as described by the criteria in 40 CFR part 257, Criteria For Classification Of Solid Waste Disposal Facilities and Practices found at 40 CFR 257.3–1 to 257.3–8; and

(v) Is not required to possess a State or local permit or license for the disposal of solid waste.

(2) The exemption in paragraph (c)(1) of this section does not apply to agricultural solid waste consisting of a chemical used as a pesticide, an item used to apply, or a container used to store, a pesticide.

(3) Manure and crop residue returned to the soil as a fertilizer or soil conditioner are not solid wastes for purposes of this part, and do not require a request, environmental report, financial assurance or permit issued under this part.

(d) The conditions in § 6.4(a) govern the establishment of new, or the expansion of existing, solid waste disposal sites operated by the National Park Service. The conditions in § 6.5(c) govern the continued use of existing solid waste disposal sites operated by the National Park Service. However, the permit, financial assurance, administrative and penalty provisions of this part do not apply to any solid waste disposal site operated by the National Park Service.

### § 6.3 Definitions.

The following definitions apply to this part:

*Agricultural solid waste* means solid waste that is generated by the rearing or harvesting of animals, or the producing or harvesting of crops or trees.

*Boundaries* means the limits of lands or waters that constitute a unit of the National Park System as specified by Congress, denoted by Presidential Proclamation, recorded in the records of a State or political subdivision in accordance with applicable law, published pursuant to law, or otherwise published or posted by the National Park Service.

*Closure and Post-closure care* means all of the requirements prescribed by 40 CFR part 258, Criteria For Municipal Solid Waste Landfills at 40 CFR 258.60 and 258.61.

*Compostible materials* means organic substances that decay under natural and/or human-assisted conditions within relatively short time intervals, generally not in excess of ninety days.

*Degrade* means to lessen or diminish in quantity, quality or value.

*Hazardous waste* means a waste defined by 40 CFR part 261, Identification And Listing Of Hazardous Waste. Hazardous waste does not include any solid waste listed under 40 CFR 261.4(b).

*Leachate* means liquid that has percolated through solid waste and has extracted, dissolved or suspended materials in it.

*Mining overburden* means material overlying a mineral deposit that is removed to gain access to that deposit.

*Mining wastes* means residues that result from the extraction of raw materials from the earth.

*National Park Service activities* means operations conducted by the National Park Service or a National Park Service contractor, concessionaire or commercial use licensee.

*National Park System* means any area of land or water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational or other purposes.

*Natural resource* means the components of a park, both biotic and abiotic, including but not limited to, vegetation, wildlife, fish, water, including surface and ground water, air, soils, geological features, including subsurface strata, the natural processes and interrelationships that perpetuate such resources, and attributes that contribute to visitor enjoyment.

*Operator* means a person conducting or proposing to conduct the disposal of solid waste.

*PCBs or PCB item* means an item as defined in 40 CFR part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution In Commerce, And Use Prohibitions at 40 CFR 761.3(x).

*Residential solid waste* means waste generated by the normal activities of a

household, including, but not limited to, food waste, yard waste and ashes, but not including metal or plastic.

*Solid waste* means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, and contained gaseous material resulting from industrial, commercial, mining and agricultural operations or from community activities. ''Solid waste'' does not include a material listed under 40 CFR 261.4(a).

*Solid waste disposal site* means land or water where deliberately discarded solid waste, as defined above, is discharged, deposited, injected, dumped, spilled, leaked, or placed so that such solid waste or a constituent thereof may enter the environment or be emitted into the air or discharged into waters, including ground waters. Solid waste disposal sites include facilities for the incineration of solid waste and transfer stations. Facilities for the management of compostible materials are not defined as solid waste disposal sites for the purposes of this part.

### §6.4 Solid waste disposal sites not in operation on September 1, 1984.

(a) No person may operate a solid waste disposal site within the boundaries of a National Park System unit that was not in operation on September 1, 1984, unless the operator has shown and the Regional Director finds that:

(1) The solid waste is generated solely from National Park Service activities conducted within the boundaries of that unit of the National Park System;

(2) There is no reasonable alternative site outside the boundaries of the unit suitable for solid waste disposal;

(3) The site will not degrade any of the natural or cultural resources of the unit;

(4) The site meets all other applicable Federal, State and local laws and regulations, including permitting requirements;

(5) The site conforms to all of the restrictions and criteria in 40 CFR 257.3–1 to 257.3–8, and 40 CFR part 258, subparts B, C, D, E and F;

(6) The site will not be used for the storage, handling, or disposal of a solid waste containing:

(i) Hazardous waste;

(ii) Municipal solid waste incinerator ash;

(iii) Lead-acid batteries;

(iv) Polychlorinated Biphenyls (PCBs) or a PCB Item;

(v) A material registered as a pesticide by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*);

(vi) Sludge from a waste treatment plant, septic system waste, or domestic sewage;

(vii) Petroleum, including used crankcase oil from a motor vehicle, or soil contaminated by such products;

(viii) Non-sterilized medical waste;

(ix) Radioactive materials; or

(x) Tires;

(7) The site is located wholly on nonfederal lands, except for NPS operated sites in units where nonfederal lands are unavailable, or unsuitable and there is no practicable alternative;

(8) The site is not located within the 500 year floodplain, or in a wetland;

(9) The site is not located within one mile of a National Park Service visitor center, campground, ranger station, entrance station, or similar public use facility, or a residential area;

(10) The site will not be detectable by the public by sight, sound or odor from a scenic vista, a public use facility, a designated or proposed wilderness area, a site listed on, or eligible for listing on, the National Register of Historic Places, or a road designated as open to public travel;

(11) The site will receive less than 5 tons per day of solid waste, on an average yearly basis; and

(12) The proposed closure and post-closure care is sufficient to protect the resources of the National Park System unit from degradation.

(b) A person proposing to operate a solid waste disposal site that was not in operation on September 1, 1984, must submit a request for a permit to the proper Superintendent for review by Regional Director demonstrating that the solid waste operation meets the

criteria in paragraph (a) of this section. The following information must be included in a permit request:

(1) A map or maps, satisfactory to the Regional Director, that adequately shows the proposed area of solid waste disposal, size of the area in acres, existing roads and proposed routes to and from the area of operations and the location and description of surface facilities;

(2) The name and legal addresses of the following:

(i) Owners of record of the land; and

(ii) Any lessee, assignee or designee of the owner, if the proposed operator is not the owner of the land;

(3) The mode and frequency (in number of trips per day) of transport and size and gross weight of major vehicular equipment to be used;

(4) The amount of solid waste to be received, in average tons per day and average cubic yards per day;

(5) The estimated capacity of the site in cubic yards and tons;

(6) A detailed plan of the daily site operations;

(7) A plan for the reclamation and post closure care of the site after completion of solid waste disposal;

(8) Evidence that the proposed operator has obtained all other Federal, State and local permits necessary for solid waste disposal; and

(9) An environmental report that includes the following:

(i) A description of the natural and cultural resources and visitor uses to be affected;

(ii) An assessment of hydrologic conditions of the disposal site with projections of leachate generation, composition, flow paths and discharge areas and geochemical fate of leachate constituents;

(iii) An analysis of the quantitative and qualitative extent to which natural and cultural resources will be affected based on acceptable and appropriate monitoring of existing resource conditions;

(iv) Steps to be taken by the operator to prevent degradation of air and water quality, to manage pests and vermin, and to minimize noise, odor, feeding by native wildlife and conflicts with visitor uses;

(v) An analysis of alternative locations and methods for the disposal of the solid waste; and

(vi) Any other information required by the Regional Director to effectively analyze the effects that the proposed solid waste disposal site may have on the preservation, management and public use of the unit.

(c) If the Regional Director finds that the permit request and environmental report do not meet the conditions of approval set forth in paragraph (a) of this section, the Regional Director must reject the application and notify the proposed operator of the reasons for the rejection.

### § 6.5 Solid waste disposal sites in operation on September 1, 1984.

(a) The operator of a solid waste disposal site in operation as of September 1, 1984, within the boundaries of a unit of the National Park System, having been in continuous operation on January 23, 1995, and who wishes to remain in operation, must submit to the proper Superintendent for review by the Regional Director, within 180 calendar days of January 23, 1995, a permit request and an environmental report as described in § 6.4(b) (1)–(9).

(b) Any operator who fails to submit a request as described in paragraph (a) of this section will not be allowed to continue operations and must immediately fulfill all applicable closure and post-closure care requirements.

(c) The Regional Director may approve a request to allow the continued use of a solid waste disposal site only if the operator has shown and the Regional Director finds that:

(1) Adverse effects resulting from leachate, noise, odor, vehicular traffic, litter and other activities upon natural and cultural resources will be adequately mitigated;

(2) The proposed operator meets all other applicable Federal, State and local laws and regulations, including permit requirements;

(3) The site will no longer be used for the storage, handling or disposal of a solid waste containing:

(i) Hazardous waste;

(ii) Municipal solid waste incinerator ash;

(iii) Lead-acid batteries;

(iv) Polychlorinated Biphenyls (PCBs) or a PCB Item;

(v) A material registered as a pesticide by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.);

(vi) Sludge from a waste treatment plant, septic system waste or domestic sewage;

(vii) Petroleum, including used crankcase oil from a motor vehicle, or soil contaminated by such products;

(viii) Non-sterilized medical waste;

(ix) Radioactive materials; or

(x) Tires;

(4) The proposed closure and post-closure care is sufficient to protect the resources of the National Park System unit from degradation; and

(5) The site conforms to all of the restrictions and criteria applicable to the site under 40 CFR 257.3 and 40 CFR part 258, or where applicable, 40 CFR part 240, Guidelines for the Thermal Processing of Solid Waste.

(d) If the Regional Director finds that the permit request and the environmental report do not meet the conditions for approval set forth in paragraph (c) of this section, the Regional Director shall reject the request and notify the proposed operator of the reasons for the rejection. Within 90 calendar days of such notice, the operator of the solid waste disposal site must cease disposing of solid waste at the site. The operator may resume disposing of solid waste only upon submission and approval of a permit request and environmental report that the Regional Director determines meet the conditions set forth in paragraph (c) of this section.

(e) *Site expansions.* (1) A request for an existing solid waste disposal site to continue operations by expanding its capacity, laterally or vertically, is considered a request for a new solid waste disposal site and is subject to the conditions of §6.4(a), except as provided in paragraph (e)(2) of this section.

(2) A request for an existing solid waste disposal site to continue operations by expanding its capacity, laterally or vertically, will be judged by the approval conditions of paragraph (c) of this section if the operator shows that:

(i) The solid waste is generated solely from sources within the boundaries of the unit;

(ii) The area proposed for site expansion encompasses only nonfederal lands owned or leased by the operator; and

(iii) the solid waste disposal site lacks road, rail, or adequate water access to any lands outside the unit for all or substantial portions of the year.

(f) After January 23, 1995, an operator of an NPS-approved existing landfill solid waste disposal site may convert that site to a transfer station only after submitting a request under paragraph (a) of this section, and only after receiving approval from the Regional Director under paragraph (c) of this section. The Regional Director may approve such a request, if in addition to meeting the standards of paragraph (c) of this section, the Regional Director finds that the conversion to a transfer station better protects the unit's natural or cultural resources than the existing land-fill operation.

### §6.6 Solid waste disposal sites within new additions to the National Park System.

(a) An operator of a solid waste disposal site located on lands or waters added to the National Park System, by act of Congress or by proclamation, after January 23, 1995, will not be permitted to dispose of solid waste after expiration of the permit or license in effect on the date of the land's or water's designation as being within a National Park System unit's boundaries. The operator must then immediately fulfill all applicable closure and post-closure care requirements.

(b) An operator of a solid waste disposal site located on lands or waters designated as being within the boundaries of a unit of the National Park System established or expanded after January 23, 1995, who wishes to remain in operation for the duration of the existing permit or license, must submit to the Regional Director, within 180 calendar days of the land's or water's designation as being within a National Park System unit boundaries, a permit request and environmental report as described in §6.4(b) (1)–(9).

(c) Any operator who fails to submit a request as described in paragraph (b)

of this section will be subject to the penalty provisions of § 6.12.

(d) If the Regional Director finds that the permit request and the environmental report do not meet the conditions for approval set forth in § 6.5(c), the Regional Director will reject the request and notify the proposed operator of the reasons for the rejection. Within 90 calendar days of such notice, the operator of the solid waste disposal site must cease disposing of solid waste at the site. The operator may resume disposing of solid waste only upon submission and approval of a permit request and environmental report that the Regional Director determines meet the conditions set forth in § 6.5(c).

### § 6.7 Mining wastes.

(a) Solid waste from mining includes but is not limited to mining overburden, mining byproducts, solid waste from the extraction, processing and beneficiation of ores and minerals, drilling fluids, produced waters, and other wastes associated with exploration, development, or production of oil, natural gas or geothermal energy and any garbage, refuse or sludge associated with mining and mineral operations.

(b) A person conducting mining or mineral operations on January 23, 1995, and not governed by a plan of operations approved under 36 CFR part 9, Minerals Management, or pursuant to the terms of a Federal mineral lease, may continue to operate a solid waste disposal site within the boundaries of a unit only after complying with § 6.5 and § 6.10 and with a permit issued by the Regional Director under § 6.9.

(c) A person conducting mining or mineral operations on January 23, 1995, and governed by a plan of operations approved under 36 CFR part 9 or pursuant to the terms of a Federal mineral lease may continue to operate a solid waste disposal site under the terms of the approved plan of operations or lease. Where an existing mining or mineral operation is governed by 36 CFR part 9 or a Federal mineral lease, an NPS-approved plan of operations will constitute the permit for solid waste disposal site operation otherwise required under § 6.9. A bond required under 36 CFR part 9, or by the Bureau of Land Management for Federal lessees, will satisfy the requirements of § 6.10.

(d) A person proposing to initiate mining or mineral operations after January 23, 1995, within the boundaries of a unit of the National Park System, whether or not governed by a plan of operations approved under 36 CFR part 9 or the terms of a Federal mineral lease, may not establish or operate a new solid waste disposal site within a unit.

(e) The temporary storage, stockpiling for return, or return of nonhazardous mining overburden to the mine site for the purpose of mine site reclamation does not require a request, environmental report, financial assurance or a permit issued under this part.

### § 6.8 National Park Service solid waste responsibilities.

(a) Beginning one year after January 23, 1995, a Superintendent will not permit or allow a person to dispose of solid waste at a National Park Service operated solid waste disposal site except for waste generated by National Park Service activities.

(b) The Superintendent of a unit where the National Park Service operates a solid waste disposal site will establish a waste collection program for harmful wastes generated by residential activities by National Park Service and concessionaire households within the unit. The Superintendent will establish frequency and place of collection but such frequency must be, at a minimum, every twelve months.

(c) Each Superintendent will ensure full compliance with regulations at 40 CFR part 244, Solid Waste Management Guidelines For Beverage Containers. Only those units of the National Park System where carbonated beverages in containers are not sold, or that have prepared formal documentation of nonimplementation under 40 CFR 244.100(f)(3) that has been approved by the Director and the Administrator of the Environmental Protection Agency, are exempt from the deposit and container return program mandated in 40 CFR part 244.

(d) NPS concessionaires, commercial use licensees and contractors will comply with acquisition, recycling and

waste minimization goals established by the NPS.

**§6.9 Permits.**

(a) A permit issued under this section is required to operate a solid waste disposal site within the boundaries of a unit of the National Park System, except as specified in §6.2(c) or §6.7(c).

(b) Upon receipt of a request under §6.4, §6.5 or §6.6, the Regional Director will analyze whether a new site, or continued operation of an existing site, meets the approval conditions of §6.4, or §6.5 respectively. The Regional Director will also review the request under appropriate laws and executive orders, including, but not limited to the National Environmental Policy Act (43 U.S.C. 4321), the National Historic Preservation Act (16 U.S.C. 470), the Endangered Species Act (16 U.S.C. 1531–1543), and E.O. 11988, Floodplain Management (3 CFR, 1978 Comp., p. 117), and E.O. 11990, Wetland Protection (3 CFR, 1978 Comp., 121).

(c) The Regional Director must approve or deny a solid waste disposal site request under this part within 180 calendar days of receipt of the request. The 180 calendar days do not include any days required for consultation with State or Federal agencies under, but not limited to, the Endangered Species Act, the National Historic Preservation Act and the Coastal Zone Management Act, or days required to prepare an Environmental Impact Statement under the National Environmental Policy Act.

(d) If the Regional Director approves a solid waste disposal site request under §6.4, §6.5 or §6.6, the Regional Director may issue, after operator compliance with §6.10, a nontransferable permit, the term of which shall not exceed five years. The permittee may request a new five year permit upon expiration of an existing permit. The permit instrument will be Form 10–114 (OMB No. 1024–0026), Special Use Permit, available from the park Superintendent.

(e) A permit for a solid waste disposal site will prescribe the site capacity and the requirements under which the solid waste disposal site will be operated. The requirements must include, but are not limited to:

(1) Hours of operation;

(2) Number, frequency, size, gross weight and types of vehicles used, and access routes;

(3) Type and height of perimeter fencing;

(4) Compliance with all applicable Federal, State and local laws and regulations, including permit requirements;

(5) Type and frequency of groundwater, surface water, explosive gas and other pertinent natural resource monitoring;

(6) Rights and conditions of access for inspection by National Park Service and other responsible Federal, State or local officials;

(7) Closure and post-closure care requirements;

(8) Methods of pest and vermin control;

(9) Methods of excluding hazardous waste, municipal solid waste incinerator ash, lead-acid batteries, PCBs and PCB Items, material registered by the Environmental Protection Agency as a pesticide, sludge from a waste treatment plant or septic system, domestic sewage, petroleum, including used crankcase oil from a motor vehicle and soil contaminated by such products, medical waste, radioactive materials and tires;

(10) Methods of excluding waste generated from non-National Park Service activities, except for a solid waste disposal site approved under §6.5, or §6.6, or §6.7(c); and

(11) Methods of litter control.

(f) Any conflict between a requirement of the permit issued by the National Park Service and a requirement of State or local law will be resolved in favor of the stricter of the two requirements.

**§6.10 Financial assurance.**

(a) The Regional Director will not require a bond or security deposit for a solid waste disposal site for which the operator has established a bond under 40 CFR 258.74(b).

(b) The Regional Director will not require a bond or security deposit for a solid waste disposal site whose owner or operator is a State entity whose debts and liabilities are the debts and liabilities of a State.

(c) Upon approval of a request to operate a new, or continue an existing, solid waste disposal site, an operator who is not described in paragraphs (a) or (b) of this section must file with the Regional Director a suitable performance bond with satisfactory surety, payable to the Secretary of the Interior or the Secretary's designee. The bond must be conditioned upon faithful compliance with all applicable laws and regulations, and the permit requirements as approved. When bonds are to serve as security, an operator must provide a power of attorney to the Secretary or the Secretary's designee. The bond must be issued by a surety company listed and approved by the Department of the Treasury.

(d) In lieu of a performance bond, an operator may deposit with the Secretary or the Secretary's designee cash or negotiable bonds of the United States Government. The cash deposit or the market value of such securities must be at least equal to the required sum of the bond(s).

(e) The bond or security deposit will be established by the Regional Director in an amount equal to the estimated cost to accomplish all closure and post-closure care requirements as described in 40 CFR part 258, subpart F, but in no case less than $25,000.

(f) The responsibility and liability of the operator (and the surety, if any) under the bond or security deposit must continue until the Regional Director determines that closure and post- closure care have been completed in accordance with the permit requirements. No portion of the performance bond or security deposit may be released until such a determination has been made.

(g) Within 30 calendar days after the Regional Director determines that all closure and post-closure care requirements have been successfully completed according to the permit, the Regional Director will notify the operator (and the surety, if any) that liability under the bond or security deposit has been terminated and the bond or security deposit released.

### § 6.11 Appeals.

(a) An applicant aggrieved by a decision of the Regional Director with regard to a permit request under this part may appeal, in writing, to the Director for reconsideration. The aggrieved applicant must file the appeal with the Director within 45 calendar days of notification to the applicant of the decision complained of. The appeal must set forth in detail the respects to which the decision of the Regional Director is contrary to, or in conflict with, the facts, the law, this part, or is otherwise in error.

(b)(1) Within 45 calendar days after receiving the written appeal of the aggrieved applicant, the Director will make a decision in writing. The Director's decision will include:

(i) A statement of facts;

(ii) A statement of conclusions; and

(iii) an explanation of the reasons upon which the conclusions are based.

(2) The decision of the Director will constitute the final administrative action of the National Park Service.

### § 6.12 Prohibited acts and penalties.

(a) The following are prohibited:

(1) Operating a solid waste disposal site without a permit issued under § 6.9 or, where applicable, without approval granted under § 6.7(c);

(2) Operating a solid waste disposal site without the proper amount or form of bond or security deposit, as prescribed by the Regional Director, when such a bond or security deposit is required by this part;

(3) Operating a solid waste disposal site in violation of a term or a requirement of a National Park Service issued permit; or

(4) Operating a solid waste disposal site in violation of 40 CFR Parts 257 or 258, or in violation of the equivalent State law or regulation.

(b) A person who violates a provision of paragraph (a) of this section is subject to:

(1) The penalty provisions of 36 CFR 1.3; and/or

(2) Revocation of the permit by the Regional Director if a permit exists; and/or

(3) Forfeiture of a bond or security deposit if a bond or security deposit is required under § 6.10.

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

Sec.

7.1 Colonial National Historical Park.
7.2 Crater Lake National Park.
7.3 Glacier National Park.
7.4 Grand Canyon National Park.
7.5 Mount Rainier National Park.
7.6 Muir Woods National Monument.
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7.8 Sequoia and Kings Canyon National Parks.
7.9 St. Croix National Scenic Rivers.
7.10 Zion National Park.
7.11 Saguaro National Park.
7.12 Gulf Islands National Seashore.
7.13 Yellowstone National Park.
7.14 Great Smoky Mountains National Park.
7.15 Shenandoah National Park.
7.16 Yosemite National Park.
7.17 Cuyahoga Valley National Recreation Area.
7.18 Hot Springs National Park.
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7.22 Grand Teton National Park.
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7.24 Upper Delaware Scenic and Recreational River.
7.25 Hawaii Volcanoes National Park.
7.26 Death Valley National Monument.
7.27 Dry Tortugas National Park.
7.28 Olympic National Park.
7.29 Gateway National Recreation Area.
7.30 Devils Tower National Monument.
7.31 Perry's Victory and International Peace Memorial.
7.32 Pictured Rocks National Lakeshore.
7.33 Voyageurs National Park.
7.34 Blue Ridge Parkway.
7.35 Buffalo National River.
7.36 Mammoth Cave National Park.
7.37 Jean Lafitte National Historical Park.
7.38 Isle Royale National Park.
7.39 Mesa Verde National Park.
7.40 Hopewell Village National Historic Site.
7.41 Big Bend National Park.
7.42 Pipestone National Monument.
7.43 Natchez Trace Parkway.
7.44 Canyonlands National Park.
7.45 Everglades National Park.
7.46 Virgin Islands Coral Reef National Monument.
7.47 Carlsbad Caverns National Park.
7.48 Lake Mead National Recreation Area.
7.49 Cape Lookout National Seashore.
7.50 Chickasaw Recreation Area.
7.51 Curecanti Recreation Area.
7.52 Cedar Breaks National Monument.
7.53 Black Canyon of the Gunnison National Monument.
7.54 Theodore Roosevelt National Park.
7.55 Lake Roosevelt National Recreation Area.
7.56 Acadia National Park.
7.57 Lake Meredith National Recreation Area.
7.58 Cape Hatteras National Seashore.
7.59 Grand Portage National Monument.
7.60 Herbert Hoover National Historic Site.
7.61 Fort Caroline National Memorial.
7.62 Lake Chelan National Recreation Area.
7.63 Dinosaur National Monument.
7.64 Petersburg National Battlefield.
7.65 Assateague Island National Seashore.
7.66 North Cascades National Park.
7.67 Cape Cod National Seashore.
7.68 Russell Cave National Monument.
7.69 Ross Lake National Recreation Area.
7.70 Glen Canyon National Recreation Area.
7.71 Delaware Water Gap National Recreation Area.
7.72 Arkansas Post National Memorial.
7.73 Buck Island Reef National Monument.
7.74 Virgin Islands National Park.
7.75 Padre Island National Seashore.
7.76 Wright Brothers National Memorial.
7.77 Mount Rushmore National Memorial.
7.78 Harpers Ferry National Historical Park.
7.79 Amistad Recreation Area.
7.80 Sleeping Bear Dunes National Lakeshore.
7.81 Point Reyes National Seashore.
7.82 Apostle Islands National Lakeshore.
7.83 Ozark National Scenic Riverways.
7.84 Channel Islands National Park.
7.85 Big Thicket National Preserve.
7.86 Big Cypress National Preserve.
7.87 Kaloko-Honokohau National Historical Park.
7.88 Indiana Dunes National Lakeshore.
7.89 New River Gorge National River.
7.90 [Reserved]
7.91 Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.
7.92 Bighorn Canyon National Recreation Area.
7.93 Guadalupe Mountains National Park.
7.94 Harry S Truman National Historic Site.
7.95 [Reserved]
7.96 National Capital Region.
7.97 Golden Gate National Recreation Area.
7.100 Appalachian National Scenic Trail.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under DC Code 10–137 (2001) and DC Code 50–2201 (2001).

ALPHABETICAL LISTING

| Name | Section |
|---|---|
| Acadia National Park, Maine | 7.56 |
| Amistad Recreation Area, Tex | 7.79 |
| Apostle Islands National Lakeshore, Wis | 7.82 |

ALPHABETICAL LISTING—Continued

| Name | Section |
|---|---|
| Appalachian National Scenic Trail | 7.100 |
| Arkansas Post National Memorial, Ark | 7.72 |
| Assateague Island National Seashore, Md.–Va | 7.65 |
| Badlands National Park, SD | 7.23 |
| Big Bend National Park, Tex | 7.41 |
| Big Cypress National Preserve, Fla | 7.86 |
| Big Thicket National Preserve, Tex | 7.85 |
| Bighorn Canyon National Recreation Area, Mont.–Wyo | 7.92 |
| Black Canyon of the Gunnison National Monument, Colo | 7.53 |
| Blue Ridge Parkway, Va.-N.C | 7.34 |
| Buck Island Reef National Monument, Virgin Islands | 7.73 |
| Buffalo National River, Ark | 7.35 |
| Canyon de Chelly National Monument, Ariz | 7.19 |
| Canyonlands National Park, Utah | 7.44 |
| Cape Cod National Seashore, Mass | 7.67 |
| Cape Hatteras National Seashore, N.C | 7.58 |
| Cape Lookout National Seashore, NC | 7.49 |
| Carlsbad Caverns National Park, N. Mex | 7.47 |
| Cedar Breaks National Monument, Utah | 7.52 |
| Channel Islands National Park, Calif | 7.84 |
| Chickasaw Recreation Area, Okla | 7.50 |
| Colonial National Historical Park, Va | 7.1 |
| Lake Roosevelt National Recreation Area, Wash | 7.55 |
| Crater Lake National Park, Oreg | 7.2 |
| Curecanti Recreation Area, Colo | 7.51 |
| Cuyahoga Valley National Recreation Area, Ohio | 7.17 |
| Death Valley National Monument, Calif | 7.26 |
| Delaware Water Gap National Recreation Area, N.J.–Pa | 7.71 |
| Devil's Tower National Monument, Wyo | 7.30 |
| Dinosaur National Monument, Utah-Colo | 7.63 |
| Dry Tortugas National Park, Fla | 7.27 |
| Everglades National Park, Fla | 7.45 |
| Fire Island National Seashore, N.Y | 7.20 |
| Fort Caroline National Memorial, Fla | 7.61 |
| Gateway National Recreation Area, N.Y.–N.J | 7.29 |
| Glacier National Park, Mont | 7.3 |
| Glen Canyon National Recreation Area, Utah-Ariz | 7.70 |
| Golden Gate National Recreation Area, Calif | 7.97 |
| Grand Canyon National Park, Ariz | 7.4 |
| Grand Portage National Monument, Minn | 7.59 |
| Grand Teton National Park, Wyo | 7.22 |
| Great Smoky Mountains National Park, N.C.-Tenn | 7.14 |
| Guadalupe Mountains National Park, Tex | 7.93 |
| Gulf Islands National Seashore, Fla.–Miss | 7.12 |
| Harpers Ferry National Historical Park, Md.–W.V | 7.78 |
| Hawaii Volcanoes National Park, Hawaii | 7.25 |
| Herbert Hoover National Historic Site, Iowa | 7.60 |
| Hopewell Village National Historic Site, Pa | 7.40 |
| Hot Springs National Park, Ark | 7.18 |
| Indiana Dunes National Lakeshore, Ind | 7.88 |
| Isle Royale National Park, Mich | 7.38 |
| Jean Lafitte National Historical Park, La | 7.37 |
| Kaloko-Honokohau National Historical Park, Hawaii | 7.87 |
| Lake Chelan National Recreation Area, Wash | 7.62 |
| Lake Mead National Recreation Area, Ariz.-Nev | 7.48 |
| Lake Meredith National Recreation Area, Tex | 7.57 |
| Mammoth Cave National Park, Ky | 7.36 |
| Mesa Verde National Park, Colo | 7.39 |
| Mount Rainier National Park, Wash | 7.5 |
| Mount Rushmore National Memorial, S. Dak | 7.77 |
| Muir Woods National Monument, Calif | 7.6 |
| Natchez Trace Parkway, Miss.-Tenn.-Ala | 7.43 |
| National Capital Region, D.C. area | 7.96 |
| New River Gorge National River, WV | 7.89 |
| North Cascades National Park, Wash | 7.66 |
| Olympic National Park, Wash | 7.28 |
| Ozark National Scenic Riverways, Mo | 7.83 |
| Padre Island National Seashore, Tex | 7.75 |
| Perry's Victory and International Peace Memorial, Ohio | 7.31 |

ALPHABETICAL LISTING—Continued

| Name | Section |
|---|---|
| Petersburg National Battlefield, VA | 7.64 |
| Pipestone National Monument, Minn | 7.42 |
| Pictured Rocks National Lakeshore, Mich | 7.32 |
| Point Reyes National Seashore, Calif | 7.81 |
| Rockefeller, Jr., John D., Memorial Parkway, Wyo | 7.21 |
| Rocky Mountain National Park, Colo | 7.7 |
| Ross Lake National Recreation Area, Wash | 7.69 |
| Russell Cave National Monument, Ala | 7.68 |
| Saguaro National Park, AZ | 7.11 |
| Sequoia-Kings Canyon National Parks, Calif | 7.8 |
| Shenandoah National Park, Va | 7.15 |
| Sleeping Bear Dunes National Lakeshore, Mich | 7.80 |
| St. Croix National Scenic Rivers, Wis | 7.9 |
| Theodore Roosevelt National Park, N. Dak | 7.54 |
| Truman, Harry S., National Historic Site | 7.94 |
| Upper Delaware Scenic and Recreational River, Pa.–N.Y | 7.24 |
| Virgin Islands Coral Reef National Monument | 7.46 |
| Virgin Islands National Park, Virgin Islands | 7.74 |
| Voyageurs National Park, Minn | 7.33 |
| Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Calif | 7.91 |
| Wright Brothers National Memorial, N.C | 7.76 |
| Yellowstone National Park, Wyo.-Mont.-Idaho | 7.13 |
| Yosemite National Park, Calif | 7.16 |
| Zion National Park, Utah | 7.10 |

[32 FR 6932, May 5, 1967; 32 FR 7333, May 17, 1967, as amended at 32 FR 21037, Dec. 30, 1967]

EDITORIAL NOTE: The Alphabetical Listing is updated annually by the Office of the Federal Register.

## § 7.1 Colonial National Historical Park.

(a) *Boating*. Except in emergencies, no privately owned vessel shall be launched from land within Colonial National Historical Park and no privately owned vessel shall be beached or landed on land within said Park.

(b) *Commercial passenger—carrying motor vehicles*. Permits shall be required for the operation of commercial passenger-carrying vehicles, including taxi-cabs, carrying passengers for hire on any portion of the Colonial Parkway. The fees for such permits shall be as follows:

(1) Annual permit for the calendar year: $3.50 for each passenger-carrying seat in the vehicle to be operated.

(2) Quarterly permit for a period beginning January 1, April 1, July 1, or October 1: $1 for each passenger-carrying seat in the vehicle to be operated.

(3) Permit good for one day, 5-passenger vehicle: $1.

(4) Permit good for one day, more than 5-passenger vehicle: $3.

[32 FR 16213, Nov. 28, 1967, as amended at 48 FR 30293, June 30, 1983]

### § 7.2 Crater Lake National Park.

(a) *Fishing*. Fishing in Crater Lake and park streams is permitted from May 20 through October 31.

(b) *Boating*. No private vessel or motor may be used on the waters of the park.

(c) *Snowmobiles*. Snowmobile use is permitted in Crater Lake National Park on the North Entrance Road from its intersection with the Rim Drive to the park boundary, and on intermittent routes detouring from the North Entrance Road as designated by the Superintendent and marked with snow poles and signs. Except for such designated detours marked with snow poles and signs, only that portion of the North Entrance Road intended for wheeled vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated roadway is closed to all wheeled vehicles used by the public.

[34 FR 9751, June 24, 1969, as amended at 41 FR 33263, Aug. 9, 1976]

### § 7.3 Glacier National Park.

(a) *Fishing*. (1) Fishing regulations, based on management objectives described in the park's Resource Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, or any activity pertaining to fishing, including but not limited to, species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, location, and possession limits.

(3) Fishing in violation of a condition or restriction established by the Superintendent is prohibited.

(b) *Eating, drinking, and lodging establishments*. (1) No eating, drinking, or lodging establishment offering food, drink, or lodging for sale may be operated on any privately owned lands within Glacier National Park unless a permit for the operation thereof has first been obtained from the Superintendent.

(2) The Superintendent will issue a permit only after an inspection of the premises and a determination that the premises comply with the substantive requirements of State and county health and sanitary laws and ordinances and rules and regulations promulgated pursuant thereto which would apply to the premises if the privately owned lands were not subject to the jurisdiction of the United States.

(3) No fee will be charged for the issuance of such a permit.

(4) The Superintendent or his duly authorized representative shall have the right of inspection at all reasonable times for the purpose of ascertaining that the premises are being maintained and operated in compliance with State and county health laws and ordinances and rules and regulations promulgated pursuant thereto.

(5) Failure of the permittee to comply with all State and county substantive laws and ordinances, and rules and regulations promulgated pursuant thereto applicable to the establishment for which a permit is issued, or failure to comply with any Federal law or any regulation promulgated by the Secretary of the Interior for governing the park, or with the conditions imposed by the permit, will be grounds for revocation of the permit.

(6) The applicant or permittee may appeal to the Regional Director, National Park Service, from any final action of the Superintendent, refusing, conditioning, or revoking a permit. Such an appeal, in writing, shall be filed within 30 days after receipt of notice by the applicant or permittee of the action appealed from. Any final decision of the Regional Director may be appealed to the Director, National Park Service, within 30 days after receipt of notice by the applicant or permittee of the Regional Director's decision. During the period in which an appeal is being considered by the Regional Director or the Director, the establishment for which a permit has been denied or revoked shall not be operated.

(7) The revocable permit for eating, drinking, and lodging establishments

issued by the Superintendent shall contain general regulatory provisions as hereinafter set forth, and will include such reasonable special conditions relating to the health and safety of visitors both to the park and to the establishments as the Superintendent may deem necessary to cover existing local circumstances, and shall be in a form substantially as follows:

*(Front of Permit)*

U.S. DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

REVOCABLE PERMIT FOR OPERATION OF EATING OR DRINKING AND LODGING ESTABLISHMENTS

Permission is hereby granted _____, who resides at _____, to operate during the period of _____, 19___, to _____, 19___, inclusive a _____ (specify type of establishment) within Glacier National Park on lands privately owned or controlled by him (her) over which the United States exercises exclusive jurisdiction. This permit is subject to the general provisions and any special conditions stated on the reverse hereof.

Issued at Glacier National Park, Mont., this _____ day of _____, 19___.

Superintendent

I, _____, the permittee named herein, accept this permit subject to the terms, convenants, obligations, and reservations expressed or implied.

Copartnership—permittees sign as ''Members of firm''.

Corporation—the officer authorized to execute contracts, etc., should sign, with title, the sufficiency of such signature being attested by the Secretary, with corporate seal in lieu of witness.

Permittee

Witness:

Name

Address

Name

Address

*(Reverse of Permit)*

GENERAL REGULATORY PROVISIONS OF THIS PERMIT

1. Permittee shall exercise this privilege subject to the supervision of the Superintendent of the Park and shall comply with the regulations of the Secretary of the Interior governing the Park.

2. Any building or structure used for the purpose of conducting the business herein permitted shall be kept in a safe, and sightly condition.

3. The permittee shall dispose of all refuse from the business herein permitted as required by the Superintendent.

4. Permittee, his agents, and employees shall be responsible for the preservation of good order within the vicinity of the business operations herein permitted.

5. Failure of the permittee to comply with all State and county substantive laws and ordinances and rules and regulations promulgated pursuant thereto applicable to eating, drinking, and lodging establishments or to comply with any law or any regulation of the Secretary of the Interior governing the Park or with the conditions imposed by this permit, will be grounds for revocation of this permit.

6. This permit may not be transferred or assigned without the consent, in writing of the Superintendent.

7. Neither Members of, nor Delegates to Congress, or Resident Commissioners, officers, agents, or employees of the Department of the Interior, shall be admitted to any share or part of this permit or derive, directly or indirectly, any pecuniary benefit arising therefrom.

8. Standard Equal Employment Provision to be set out in full as provided for by Executive Orders 10925 and 11114.

9. The following special provisions are made a part of this permit: _____

(c) *Water supply and sewage disposal systems.* The provisions of this paragraph apply to the privately owned lands within Glacier National Park. The provisions of this paragraph do not excuse compliance by eating, drinking, or lodging establishments with § 5.10 of the chapter.

(1) *Facilities.* (i) Subject to the provisions of paragraph (e)(3) of this section, no person shall occupy any building or structure intended for human habitation, or use, unless such building is served by water supply and sewage disposal systems that comply with the standards prescribed by State and county laws and regulations applicable in the county within whose exterior boundaries such building is located.

(ii) No person shall construct, rebuild or alter any water supply or sewage disposal system without a written permit issued by the Superintendent. The Superintendent will issue such permit

only after receipt of written notification from the appropriate Federal, State, or county officer that the plans for such system comply with State or county standards. There shall be no charge for such permits. Any person aggrieved by an action of the Superintendent with respect to any such permit or permit application may appeal in writing to the Director, National Park Service, Department of the Interior, Washington, DC 20240.

(2) *Inspections.* (i) The appropriate State or county health officer, the Superintendent, or their authorized representatives or an officer of the U.S. Public Health Service, may inspect any water supply or sewage disposal system, from time to time, in order to determine whether such system complies with the State and county standards: *Provided, however,* That inspection shall be made only upon consent of the occupant of the premises or pursuant to a warrant.

(ii) Any water supply or sewage disposal system may be inspected without the consent of the occupant of the premises or a warrant if there is probable cause to believe that such system presents an immediate and severe danger to the public health.

(3) *Defective systems.* (i) If upon inspection, any water supply system or sewage disposal system is found by the inspecting officer not to be in conformance with applicable State and county standards, the Superintendent will send to the ostensible owner and/or the occupant of such property, by certified mail, a written notice specifying what steps must be taken to achieve compliance. If after one year has elapsed from the mailing of such written notice the deficiency has not been corrected, such deficiency shall constitute a violation of this regulation and shall be the basis for court action for the vacation of the premises.

(ii) If upon inspection, any water supply or sewage disposal system is found by the inspecting officer not to be in conformance with established State and county standards and it is found further that there is immediate and severe danger to the public health or the health of the occupants, the Superintendent shall post appropriate notices at conspicuous places on such premises, and thereafter, no person shall occupy the premises on which the system is located until the Superintendent is satisfied that remedial measures have been taken that will assure compliance of the system with established State and county standards.

(d) *Motorboats.* (1) Motorboats and motor vessels are limited to ten (10) horsepower or less on Bowman and Two Medicine Lakes. This restriction does not apply to sightseeing vessels operated by an authorized concessioner on Two Medicine Lake.

(2) All motorboats and motor vessels except the authorized, concessioner-operated, sightseeing vessels are prohibited on Swiftcurrent Lake.

(3) The operation of all motorboats and motor vessels are prohibited on Kintla Lake.

(e) *Canadian dollars.* To promote the purpose of the Act of May 2, 1932 (47 Stat. 145; 16 U.S.C. 161a), Canadian dollars tendered by Canadian visitors entering the United States section of Glacier National Park will be accepted at the official rate of exchange in payment of the recreation fees prescribed for the park.

(f) *Commercial passenger-carrying motor vehicles.* The prohibition against the commercial transportation of passengers by motor vehicles to Glacier National Park, contained in § 5.4 of this chapter, shall be subject to the following exceptions:

(1) Commercial transport of passengers by motor vehicles on those portions of the park roads from Sherburne entrance to the Many Glacier area; from Two Medicine entrance to Two Medicine Lake; from West Glacier entrance to the Camas Entrance; U.S. Highway 2 from Walton to Java; and the Going-to-the-Sun Road from West Glacier entrance to Lake McDonald Lodge and from St. Mary entrance to Rising Sun will be permitted.

(2) Commercial passenger-carrying motor vehicles operated in the above areas, on a general, infrequent, and nonscheduled tour in which the visit to the park is incidental to such tour, and carrying only round-trip passengers traveling from the point of origin of the tour, will be accorded admission to the park. Such tours shall not provide, in effect, a regular and duplicating

service conflicting with, or in competition with, the tours provided for the public pursuant to contract authorization from the Secretary as determined by the Superintendent.

[34 FR 5842, Mar. 28, 1969, as amended at 36 FR 9248, May 21, 1971; 37 FR 7499, Apr. 15, 1972; 48 FR 29847, June 29, 1983; 48 FR 30293, June 30, 1983; 52 FR 10685, Apr. 2, 1987; 60 FR 35841, July 12, 1995; 60 FR 55791, Nov. 3, 1995]

### § 7.4 Grand Canyon National Park.

(a) *Commercial passenger-carrying motor vehicles.* The prohibition against the commercial transportation of passengers by motor vehicles to Grand Canyon National Park contained in § 5.4 of this chapter shall be subject to the following exception: Motor vehicles operated on a general, infrequent, and nonscheduled tour on which the visit to the park is an incident to such tour, carrying only round-trip passengers traveling from the point of origin of the tour, will be accorded admission to the park.

(b) *Colorado whitewater boat trips.* The following regulations shall apply to all persons using the waters of, or Federally owned land administered by the National Park Service, along the Colorado River within Grand Canyon National Park, upstream from Diamond Creek at approximately river mile 226:

(1) No person shall operate a vessel engaging in predominantly upstream travel or having a total horsepower in excess of 55.

(2) U.S. Coast Guard approved life preservers must be worn by every person while on the river or while lining or portaging near rough water. One extra preserver must be carried for each ten (10) persons.

(3) No person shall conduct, lead, or guide a river trip unless such person possesses a permit issued by the Superintendent, Grand Canyon National Park. The National Park Service reserves the right to limit the number of such permits issued, or the number of persons traveling on trips authorized by such permits when, in the opinion of the National Park Service, such limitations are necessary in the interest of public safety or protection of the ecological and environmental values of the area.

(i) The Superintendent shall issue a permit upon a determination that the person leading, guiding, or conducting a river trip is experienced in running rivers in white water navigation of similar difficulty, and possesses appropriate equipment, which is identified in the terms and conditions of the permit.

(ii) No person shall conduct, lead, guide, or outfit a commercial river trip without first securing the above permit and possessing an additional permit authorizing the conduct of a commercial or business activity in the park.

(iii) An operation is commercial if any fee, charge or other compensation is collected for conducting, leading, guiding, or outfitting a river trip. A river trip is not commercial if there is a bona fide sharing of actual expenses.

(4) All human waste will be taken out of the Canyon and deposited in established receptacles, or will be disposed of by such means as is determined by the Superintendent.

(5) No person shall take a dog, cat, or other pet on a river trip.

(6) The kindling of a fire is permitted only on beaches. The fire must be completely extinguished only with water before abandoning the area.

(7) Picnicking is permitted on beach areas along the Colorado River.

(8) Swimming and bathing are permitted except in locations immediately above rapids, eddies and riffles or near rough water.

(9) Possession of a permit to conduct, guide, outfit, or lead a river trip also authorizes camping along the Colorado River by persons in the river trip party, except on lands within the Hualapai Indian Reservation which are administered by the Hualapai Tribal Council; *Provided, however,* That no person shall camp at Red Wall Cavern, Elves Chasm, the mouth of Havasu Creek, or along the Colorado River bank between the mouth of the Paria River and the Navajo Bridge.

(10) All persons issued a river trip permit shall comply with all the terms and conditions of the permit.

(c) *Immobilized and legally inoperative vehicles.* (1) An immobilized vehicle is a motor vehicle which is not capable of moving under its own power due to equipment malfunction or deficiency. This term shall also include trailers

whose wheels have been removed or which, for other reasons, cannot be immediately towed from their location, excluding trailers being used as residences which are occupying sites designated for this purpose by the Superintendent. A legally inoperative vehicle is a motor vehicle capable of movement under its own power, but not licensed to legally operate on roads.

(2) Leaving, storing, or placing upon federally owned lands within the park any immobilized or legally inoperative vehicle for a period exceeding 30 days is prohibited, except under the terms of a permit issued by the Superintendent.

(3) A revocable permit for an immobilized or legally inoperative vehicle may be issued without fee by the Superintendent for a specific period of time, upon a finding that the issuance of such a permit will not interfere with park management or impair park resources.

(i) Any permit issued will be valid for the period stated on the permit, unless otherwise revoked or terminated by the Superintendent, and will state the name and address of the owner, the description of the vehicle, and the exact location where it may be left, stored or placed.

(ii) The permittee will affix the permit securely and conspicuously to the vehicle.

(iii) The permit shall be nontransferable.

(iv) Any person issued a permit shall comply with all terms and conditions of the permit. Failure to do so will constitute cause for the Superintendent to terminate the permit at any time.

(v) A permit may be revoked at any time for the convenience of the National Park Service or upon a finding that continued authorization under the permit would interfere with park management or impair park resources.

(4) An immobilized or legally inoperative vehicle left in excess of 30 days without a permit will be removed at the owner's expense.

(5) An immobilized or legally inoperative vehicle constituting a safety hazard, causing an obstruction to roads or trails, or interfering with maintenance operations will be removed immediately at the owner's expense. Such interference or impairment may include, but shall not be limited to, the creation of a safety hazard, traffic congestion, visual pollution, or fuel and lubricant drip pollution.

(6) The Superintendent shall have the right of inspection at all reasonable times to ensure compliance with the requirements of this paragraph.

[34 FR 14212, Sept. 10, 1969 as amended at 36 FR 23293, Dec. 8, 1971; 42 FR 25857, May 20, 1977; 43 FR 1793, Jan. 12, 1978; 52 FR 10685, Apr. 2, 1987]

### § 7.5 Mount Rainier National Park.

(a) *Fishing*. (1) The following waters are closed to fishing:

(i) Tipsoo Lake.

(ii) Shadow Lake.

(iii) Klickitat Creek above the White River Entrance water supply intake.

(iv) Laughing Water Creek above the Ohanapecosh water supply intake.

(v) Frozen Lake.

(vi) Reflection Lakes.

(vii) Ipsut Creek above the Ipsut Creek Campground water supply intake.

(2) Except for artificial fly fishing, the Ohanapecosh River and its tributaries are closed to all fishing.

(3) There shall be no minimum size limit on fish that may be possessed.

(4) The daily catch and possession limit for fish taken from park waters shall be six pounds and one fish, not to exceed 12 fish.

(b) *Climbing and hiking*. (1) Registration with the Superintendent is required prior to and upon return from any climbing or hiking on glaciers or above the normal high camps such as Camp Muir and Camp Schurman.

(2) A person under 18 years of age must have permission of his parent or legal guardian before climbing above the normal high camps.

(3) A party traveling above the high camps must consist of a minimum of two persons unless prior permission for a solo climb has been obtained from the Superintendent. The Superintendent will consider the following points when reviewing a request for a solo climb: The weather prediction for the estimated duration of the climb, and the likelihood of new snowfall, sleet, fog , or hail along the route, the feasibility of climbing the chosen route because of normal inherent hazards,

current route conditions, adequacy of equipment and clothing, and qualifying experience necessary for the route contemplated.

(c) *Backcountry Camping*—(1) *Backcountry camping permits required.* No person or group of persons traveling together may camp in the backcountry without a valid backcountry camping permit. Permits may be issued to each permittee or to the leader of the group for a group of persons. The permit must be attached to the pack or camping equipment of each permittee in a clearly visible location. No person may camp in any location other than that designated in the permit for a given date.

(2) *Group size limitations.* Groups exceeding five persons must camp at a group site, but groups may not exceed twelve persons. The Superintendent may, however,

(i) Waive group size limitations on routes in the climbing zone when he determines that it will not result in environmental degradation; and

(ii) Establish special zones and group size limitations during the winter season to balance the impact of cross-country skiers, snowshoers, and snowmobilers on the resource.

(d) *Snowmobile use*—(1) *Designated routes.* (i) That portion of the West Side Road south of Round Pass.

(ii) The Mather Memorial Parkway (State Route 410) from its intersection with the White River Road north to the park boundary.

(iii) The White River Road from its intersection with the Mather Memorial Parkway to the White River Campground.

(iv) The Cougar Rock Campground road system.

(v) The Stevens Canyon Road from Stevens Canyon Entrance to the Stevens Canyon Road tunnel at Box Canyon.

[34 FR 17520, Oct. 30, 1969, as amended at 40 FR 31938, July 30, 1975; 41 FR 14863, Apr. 8, 1976; 41 FR 33264, Aug. 9, 1976; 42 FR 22557, May 4, 1977; 48 FR 30293, June 30, 1983]

### § 7.6 Muir Woods National Monument.

(a) *Fires.* Fires are prohibited within the monument.

(b) [Reserved]

(c) *Fishing.* Fishing is prohibited within the Monument.

[24 FR 11035, Dec. 30, 1959, as amended at 34 FR 5255, Mar. 14, 1969; 39 FR 14338, Apr. 23, 1974]

### § 7.7 Rocky Mountain National Park.

(a) *Fishing.* (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, creel, and possession limits.

(3) Fishing in closed waters or violating a condition or restriction established by the Superintendent is prohibited.

(b) *Trucking Permits.* (1) The Superintendent may issue a permit for trucking on a park road when the load carried originates and terminates within the counties of Larimer, Boulder, or Grand, Colorado.

(2) The fee charged for such trucking over Trail Ridge Road is the same as the single visit entrance fee for a private passenger vehicle. A trucking permit is valid for one round trip, provided such trip is made in one day, otherwise the permit is valid for a one-way trip only.

(3) The fees provided in this paragraph also apply to a special emergency trucking permit issued pursuant to § 5.6(b) of this chapter.

(c) *Boats.* (1) The operation of motorboats is prohibited on all waters of the park.

(2) All vessels are prohibited on Bear Lake.

(d) *Dogs, cats, and other pets.* In addition to the provisions of § 2.15 of this chapter, dogs, cats, and other pets on leash, crated, or otherwise under physical restraint are permitted in the park only within 100 feet of the edge of established roads or parking areas, and are permitted within established campgrounds and picnic areas; dogs, cats,

and other pets are prohibited in the backcountry and on established trails.

(e)(1) *On what route may I operate a snowmobile?* Snowmobiles may be operated on the North Supply Access Trail solely for the purpose of gaining access between national forest lands on the west side of the park and the town of Grand Lake. Use of this trail for other purposes is not permitted. This trail will be marked by signs, snow poles or other appropriate means.

(2) *When may I operate a snowmobile on the North Supply Access Trail?* The Superintendent will determine the opening and closing dates for use of the North Supply Access Trail each year, taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. The Superintendent will notify the public of such dates through one or more of the methods listed in §1.7(a) of this chapter. Temporary closure of this route will be initiated through the posting of appropriate signs and/or barriers.

[40 FR 14912, Apr. 3, 1975, as amended at 41 FR 49629, Nov. 10, 1976; 43 FR 14308, Apr. 5, 1978; 48 FR 30293, June 30, 1983; 49 FR 24893, June 18, 1984; 49 FR 25854, June 25, 1984; 52 FR 10685, Apr. 2, 1987; 52 FR 23304, June 19, 1987; 54 FR 4020, Jan. 27, 1989; 54 FR 43061, Oct. 20, 1989; 69 FR 53630, Sept. 2, 2004]

## § 7.8 Sequoia and Kings Canyon National Parks.

(a) *Dogs and cats.* Dogs and cats are prohibited on any park land or trail except within one-fourth mile of developed areas which are accessible by a designated public automobile road.

(b) *Fishing.* (1) Fishing restrictions, based on management objectives described in the parks' Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§1.5 and 1.7 of this chapter, on any activity pertaining to fishing including, but not limited to, species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, location and elevation, and possession limits.

(3) Soda Springs Creek drainage is closed to fishing.

(4) Fishing in closed waters or in violation of a condition or restriction established by the Superintendent is prohibited.

(c) *Privately owned lands*—(1) *Water supply, sewage or disposal systems, and building construction or alterations.* The provisions of this paragraph apply to the privately owned lands within Sequoia and Kings Canyon National Parks.

(i) *Facilities.* (*a*) Subject to the provisions of paragraph (c)(1)(iii) of this section, no person shall occupy any building or structure, intended for human habitation or use, unless such building complies with standards, prescribed by State and county laws and regulations applicable in the county within whose exterior boundaries such building is located, as to construction, water supply and sewage disposal systems.

(*b*) No person shall construct, rebuild, or alter any building, water supply or sewage disposal system without the permission of the Superintendent. The Superintendent will give such permission only after receipt of written notification from the appropriate Federal, State, or county officer that the plans for such building or system comply with State or county standards. Any person aggrieved by an action of the Superintendent with respect to any such permit or permit application may appeal in writing to the Director, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

(ii) *Inspections.* (*a*) The appropriate State or county officer, the Superintendent, or their authorized representatives or an officer of the U.S. Public Health Service, may inspect any building, water supply, or sewage disposal system, from time to time, in order to determine whether the building, water supply, or sewage disposal system comply with the State and county standards: *Provided, however,* That inspection shall be made only upon consent of the occupant of the premises or pursuant to a warrant.

(*b*) Any building, water supply, or sewage disposal system may be inspected without the consent of the occupant of the premises or a warrant if there is probable cause to believe that

such system presents an immediate and severe danger to the public health and safety.

(iii) *Defective systems.* (*a*) If upon inspection, any building, water supply or sewage disposal system is found by the inspecting officer not to be in conformance with applicable State and county standards, the Superintendent will send to the ostensible owner and/or the occupant of such property, by certified mail, a written notice specifying what steps must be taken to achieve compliance. If after 1 year has elapsed from the mailing of such notice the deficiency has not been corrected, such deficiency shall constitute a violation of this regulation and shall be the basis for court action for the vacation of the premises.

(*b*) If upon inspection, any building, water supply or sewage disposal system is found by the inspecting officer not to be in conformance with established State and county standards and it is found further that there is immediate and severe danger to the public health and safety or the health and safety of the occupants or users, the Superintendent shall post appropriate notices at conspicuous places on such premises, and thereafter, no person shall occupy or use the premises on which the deficiency or hazard is located until the Superintendent is satisfied that remedial measures have been taken that will assure compliance with established State and county standards.

(d) *Stock Driveways.* (1) The present county road extending from the west boundary of Kings Canyon National Park near Redwood Gap to Quail Flat junction of the General's Highway and the old road beyond is designated for the movement of stock and vehicular traffic, without charge, to and from national forest lands on either side of the General Grant Grove section of the park. Stock must be prevented from straying from the right of way.

(e) *Snowmobiles.* (1) The use of snowmobiles is allowed on the unplowed roads of Wilsonia, the Wilsonia parking lot, and the Mineral King road.

(2) Snowmobile use will be limited to providing access to private property within the exterior boundaries of the park area, pursuant to the terms and conditions of a permit issued only to owners of such private property.

[34 FR 9387, June 14, 1969, as amended at 49 FR 18450, Apr. 30, 1984; 56 FR 41943, Aug. 26, 1991]

## § 7.9 St. Croix National Scenic Rivers.

(a) *Snowmobiles.* After consideration of existing special situations, i.e., depth of snow or thickness of ice, and depending on local weather conditions, the superintendent may allow the use of snowmobiles on the frozen surface of the Saint Croix River on those sections normally used by motor boats during other seasons, between the Boomsite and Highway 243 near Osceola, Wisconsin, and Saint Croix Falls to Riverside, Wisconsin, and in those areas where county or other established snowmobile trails need to cross the riverway or riverway lands to connect with other established snowmobile trails.

(b) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(c) *Vessels.* (1) Entering by vessel, launching a vessel, operating a vessel, or knowingly allowing another person to enter, launch or operate a vessel, or attempting to do any of these activities in park area waters when that vessel or the trailer or the carrier of that vessel has been in water infested or contaminated with aquatic nuisance species, except as provided in paragraph (c)(2) of this section is prohibited.

(2) Vessels, trailers or other carriers of vessels wishing to enter park area waters from aquatic nuisance species contaminated or infested waters may enter after being inspected and cleaned using the technique or process appropriate to the nuisance species.

(d) Placing or dumping, or attempting to place or dump, bait containers, live wells, or other water-holding devises that are or were filled with waters holding or contaminated by aquatic nuisance species is prohibited.

(e) Using a wet suit or associated water use and diving equipment previously used in waters infested with aquatic nuisance species prior to being inspected and cleaned using a process appropriate to the nuisance species is prohibited.

(f) For the purpose of this section:

(1) The term aquatic nuisance species means the zebra mussel, purple loosestrife and Eurasian watermilfoil;

(2) The term vessel means every type or description of craft on the water used or capable of being used as a means of transportation, including seaplanes, when on the water, and buoyant devises permitting or capable of free flotation.

[47 FR 55918, Dec. 14, 1982, as amended at 49 FR 18450, Apr. 30, 1984; 51 FR 8493, Mar. 12, 1986; 62 FR 33751, June 23, 1997]

### § 7.10 Zion National Park.

(a) *Vehicle convoy requirements.* (1) An operator of a vehicle that exceeds load or size limitations established by the superintendent for the use of park roads may not operate such vehicle on a park road without a convoy service provided at the direction of the superintendent.

(2) A single trip convoy fee of $15 is charged by the superintendent for each vehicle or combination of vehicles convoyed over a park road. Payment of a convoy fee by an operator of a vehicle owned by the Federal, State or county government and used on official business is not required. Failure to pay a required convoy fee is prohibited.

(b) *Snowmobiles.* After consideration of snow and weather conditions, the superintendent may permit the use of snowmobiles on designated routes within the park. Snowmobile use is restricted to the established roadway. All off-road use is prohibited. The designated routes are defined as follows:

(1) All of the paved portion of the Kolob Terrace Road from the park boundary in the west one-half of Sec. 33, T. 40 S., R. 11 W., Salt Lake Base and Meridian, north to where this road leaves the park in the northwest corner of Sec. 16, T. 40 S., R. 11 W., SLBM. This paved portion of the Kolob Terrace Road is approximately three and one-half miles in length.

(2) All of the unplowed, paved portions of the Kolob Terrace Road from the park boundary, north of Spendlove Knoll, in Sec. 5, T. 40 S., R. 11 W., SLBM, north to where this road leaves the park in the southwest corner of Sec. 23, T. 39 S., R. 11 W., SLBM, a distance of approximately five miles.

(3) The unplowed, graded dirt road from the park boundary in the southeast corner of Sec. 13, T. 39 S., R. 11 W., SLBM, south to Lava Point Fire Lookout in the northwest quarter of Sec. 31, T. 39 S., R. 10 W., SLBM, a distance of approximately one mile.

(4) The unplowed, graded dirt road from the Lava Point Ranger Station, southeast to the West Rim Trailhead and then to a point where this road divides and leaves the park, in the southeast corner of Sec. 30, and the northeast corner of Sec. 31, T. 39 S., R. 10 W., SLBM, a distance of approximately two miles.

(5) The unplowed, graded dirt road from the Lava Point Ranger Station, north to the park boundary where this road leaves the park, all in the southeast corner of Sec. 13, T. 39 S., R. 11 W., SLBM, a distance of approximately one-fourth mile.

[49 FR 34482, Aug. 31, 1984 as amended at 51 FR 4736, Feb. 7, 1986]

### § 7.11 Saguaro National Park.

(a) *Bicycles.* That portion of the Cactus Forest Trail inside the Cactus Forest Drive is open to non-motorized bicycle use.

(b) [Reserved]

[68 FR 50077, Aug. 20, 2003]

### § 7.12 Gulf Islands National Seashore.

(a) *Operation of seaplanes and amphibious aircraft.* (1) Aircraft may be operated on the waters within the boundaries of the Seashore surrounding Ship, Horn and Petit Bois Islands, but approaches, landings and take-offs shall not be made within 500 feet of beaches.

(2) Aircraft may be moored to island beaches, but beaches may not be used as runways or taxi strips.

(3) Aircraft operating in the vicinity of any developed facilities, boat docks, floats, piers, ramps or bathing beaches will remain 500 feet from such facilities and must be operated with due care and regard for persons and property and in accordance with any posted signs or uniform waterway markers.

(4) Aircraft are prohibited from landing on or taking off from any land surfaces; any estuary, lagoon, pond or tidal flat; or any waters temporarily

covering a beach; except when such operations may be authorized by prior permission of the Superintendent. Permission shall be based on needs for emergency service, resource protection, or resource management.

(b) *Off-road operation of motor vehicles*—(1) *Route designations*. (i) The operation of motor vehicles, other than on established roads and parking areas, is limited to oversand routes designated by the Superintendent in accordance with § 4.10(b) of this chapter. Operation of vehicles on these routes will be subject to all provisions of parts 2 and 4 of this chapter, as well as the specific provisions of this paragraph (b).

(ii) Oversand routes may be designated by the Superintendent in the following locations:

(A) In the eastern portion of Perdido Key, from the easternmost extension of the paved road to the east end of the island, excluding the Perdido Key Historic District near the former site of Fort McRee.

(B) In the westernmost portion of Santa Rosa Island, from the vicinity of Fort Pickens to the west end of the island.

(iii) Oversand routes designated by the Superintendent will be shown on maps available at park headquarters and other park offices. Signs at the entrance to each route will designate the route as open to motor vehicles.

Routes will be marked as follows:

(A) On beach routes, travel is permitted only between the water's edge and a line of markers on the landward side of the beach.

(B) On inland routes, travel is permitted only in the lane designated by pairs of markers showing the sides of the route.

(2) *Permits*. (i) The Superintendent is authorized to establish a system of special recreation permits for oversand vehicles and to establish special recreation permit fees for these permits, consistent with the conditions and criteria of 36 CFR part 71.

(ii) No motor vehicle shall be operated on a designated oversand route without a valid permit issued by the Superintendent.

(iii) Permits are not transferable to another motor vehicle or to another driver. The driver listed on the permit must be present in the vehicle at any time it is being operated on an oversand route. Permits are to be displayed as directed at the time of issuance.

(iv) No permit shall be valid for more than one year. Permits may be issued for lesser periods, as appropriate for the time of year at which a permit is issued or the length of time for which use is requested.

(v) For a permit to be issued, a motor vehicle must:

(A) Be capable of four-wheel drive operation.

(B) Meet the requirements of § 4.10(c)(3) of this chapter and conform to all applicable State laws regarding licensing, registration, inspection, insurance, and required equipment.

(C) Contain the following equipment to be carried at all times when the vehicle is being operated on an oversand route: shovel; tow rope, cable or chain; jack; and board or similar support for the jack.

(vi) No permit will be issued for a two-wheel drive motor vehicle, a motorcycle, an all-terrain vehicle, or any vehicle not meeting State requirements for on-road use.

(vii) In addition to any penalty required by § 1.3 of this chapter for a violation of regulations governing the use of motor vehicles on oversand routes, the Superintendent may revoke the permit of the person committing the violation or in whose vehicle the violation was committed. No person whose permit has been so revoked shall be issued a permit for a period of one year following revocation.

(3) *Operation of vehicles*. (i) No motor vehicle shall be operated in any location off a designated oversand route or on any portion of a route designated as closed by the posting of appropriate signs.

(ii) No motor vehicle shall be operated on an oversand route in excess of the following speeds:

(A) 15 miles per hour while within 100 feet of any person not in a motor vehicle.

(B) 25 miles per hour at all other times.

(iii) When two motor vehicles meet on an oversand route, both drivers shall reduce speed and the driver who

is traveling south or west shall yield the right of way, if the route is too narrow for both vehicles.

(iv) The towing of trailers on oversand routes is prohibited.

(4) *Information collection*. The information collection requirements contained in § 7.12(b)(2) have been approved by the Office Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0017. The information is being collected to solicit information necessary for the Superintendent to issue ORV permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

(c) *Personal Watercraft (PWC)*. (1) PWCs may operate within Gulf Islands National Seashore except in the following closed areas:

(i) The lakes, ponds, lagoons and inlets of Cat Island, East Ship Island, West Ship Island, Horn Island, and Petit Bois Island;

(ii) The lagoons of Perdido Key within Big Lagoon;

(iii) The areas within 200 feet from the remnants of the old fishing pier and within 200 feet from the new fishing pier at Fort Pickens; and

(iv) Within 200 feet of non-motorized vessels and people in the water, except individuals associated with the use of the PWC.

(2) PWC may not be operated at greater than flat wake speed in the following locations:

(i) Within 0.5 mile from the shoreline or within 0.5 mile from either side of the pier at West Ship Island;

(ii) Within 0.5 mile from the shoreline on the designated wilderness islands of Horn and Petit Bois; and

(iii) Within 300 yards from all other park shorelines.

(3) PWC are allowed to beach at any point along the shore except as follows:

(i) PWC may not beach in any restricted area listed in paragraph (c)(1) of this section; and

(ii) PWC may not beach above the mean high tide line on the designated wilderness islands of Horn and Petit Bois.

(4) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[41 FR 29120, July 15, 1976, as amended at 46 FR 40875, Aug. 13, 1981; 52 FR 10686, Apr. 2, 1987; 71 FR 26244, May 4, 2006]

### § 7.13 Yellowstone National Park.

(a) *Commercial Vehicles*. (1) Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, commercial vehicles are allowed to operate on U.S. Highway 191 in accordance with the provisions of this section.

(2) The transporting on U.S. Highway 191 of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste as defined in 49 CFR 171.8 that requires placarding of the transport vehicle in accordance with 49 CFR 177.823 or any marine pollutant that requires marking as defined in 49 CFR Subtitle B, is prohibited; provided, however, that the superintendent may issue permits and establish terms and conditions for the transportation of hazardous materials on U.S. Highway 191 in emergencies or when such transportation is necessary for access to lands within or adjacent to the park area.

(3) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(4) The superintendent may require a permit and establish terms and conditions for the operation of a commercial vehicle on any park road in accordance with § 1.6 of this chapter. The superintendent may charge a fee for permits in accordance with a fee schedule established annually.

(5) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or

condition of a permit may result in the suspension or revocation of the permit.

(b) Employee motor vehicle permits:

(1) A motor vehicle owned and/or operated by an employee of the U.S. Government, park concessioners and contractors, whether employed in a permanent or temporary capacity, shall be registered with the Superintendent and a permit authorizing the use of said vehicle in the park is required. This requirement also applies to members of an employee's family living in the park who own or operate a motor vehicle within the park. Such permit, issued free of charge, may be secured only when the vehicle operator can produce a valid certificate of registration, and has in his possession a valid operator's license. No motor vehicle may be operated on park roads unless properly registered.

(2) The permit is valid only for the calendar year of issue. Registry must be completed and permits secured by April 15 of each year or within one week after bringing a motor vehicle into the park, whichever date is later. The permit shall be affixed to the vehicle as designated by the Superintendent.

(c) [Reserved]

(d) *Vessels*—(1) *Permit.* (i) A general permit, issued by the Superintendent, is required for all vessels operated upon the waters of the park open to boating. In certain areas a special permit is required as specified hereinbelow. These permits must be carried within the vessel at all times when any person is aboard, and shall be exhibited upon request to any person authorized to enforce the regulations in this chapter.

(ii) A special permit shall be issued by the Superintendent to any holder of a general permit who expresses the intention to travel into either the South Arm or the Southeast Arm ''Five Mile Per Hour Zones'' of Yellowstone Lake, as defined in paragraphs (d)(6) (ii) and (iii) of this section, upon the completion and filing of a form statement in accordance with the provisions of paragraph (d)(10) of this section.

(iii) Neither a general nor special permit shall be issued until the permittee has signed a statement certifying that he is familiar with the speed and all other limitations and requirements in these regulations. The applicant for a special permit shall also agree in writing to provide, in accordance with paragraph (d)(10) of this section, information concerning the actual travel within the ''Five Mile Per Hour Zones.''

(2) *Removal of vessels.* All privately owned vessels, boat trailers, waterborne craft of any kind, buoys, mooring floats, and anchorage equipment will not be permitted in the park prior to May 1 and must be removed by November 1.

(3) *Restricted landing areas.* (i) Prior to July 1 of each year, the landing of any vessel on the shore of Yellowstone Lake between Trail Creek and Beaverdam Creek is prohibited, except upon written permission of the Superintendent.

(ii) The landing or beaching of any vessel on the shores of Yellowstone Lake (*a*) within the confines of Bridge Bay Marina and Lagoon and the connecting channel with Yellowstone Lake; and (*b*) within the confines of Grant Village Marina and Lagoon and the connecting channel with Yellowstone Lake is prohibited except at the piers or docks provided for the purpose.

(4) *Closed waters.* (i) Vessels are prohibited on Sylvan Lake, Eleanor Lake, Twin Lakes, and Beach Springs Lagoon.

(ii) Vessels are prohibited on park rivers and streams (as differentiated from lakes and lagoons), except on the channel between Lewis Lake and Shoshone Lake, which is open only to handpropelled vessels.

(5) *Lewis Lake motorboat waters.* Motorboats are permitted on Lewis Lake.

(6) *Yellowstone Lake motorboat waters.* Motorboats are permitted on Yellowstone Lake except in Flat Mountain Arm as described in paragraph (d)(6)(i) of this section and as restricted within the South Arm and the Southeast Arm where operation is confined to areas known as ''Five Mile Per Hour Zones'' which waters are between the lines as described in paragraphs (d)(6) (ii) and (iii) of this section in the South Arm and Southeast Arm, but which specifically exclude the southernmost 2 miles of both Arms which are open only to hand-propelled vessels.

(i) The following portion of Flat Mountain Arm of Yellowstone Lake is restricted to hand-propelled vessels: West of a line beginning at a point marked by a monument located on the south shore of the Flat Mountain Arm and approximately 10,200 feet easterly from the southwest tip of the said arm, said point being approximately 44°22′13.2″ N. latitude and 110°25′07.2″ W. longitude, then running approximately 2,800 feet due north to a point marked by a monument located on the north shore of the Flat Mountain Arm, said point being approximately 44°22′40″ N. latitude and 110°25′07.2″ W. longitude.

(ii) In the South Arm that portion between a line from Plover Point running generally east to a point marked by a monument on the northwest tip of the peninsula common to the South and Southeast Arms; and a line from a monument located on the west shore of the South Arm approximately 2 miles north of the cairn which marks the extreme southern extremity of Yellowstone Lake in accordance with the Act of Congress establishing Yellowstone National Park; said point being approximately in latitude 44°18′22.8″ N., at longitude 110°20′04.8″ W., Greenwich Meridian, running due east to a point on the east shore of the South Arm marked by a monument. Operation of motorboats south of the latter line is prohibited.

(iii) In the Southeast Arm that portion between a line from a monument on the northwest tip of the peninsula common to the South and Southeast Arms which runs generally east to a monument at the mouth of Columbine Creek; and a line from a cairn which marks the extreme eastern extremity of Yellowstone Lake, in accordance with the Act of Congress establishing Yellowstone National Park; said point being approximately in latitude 44°19′42.0″ N., at longitude 110°12′06.0″ W., Greenwich Meridian, running westerly to a point on the west shore of the Southeast Arm, marked by a monument; said point being approximately in latitude 44°20′03.6″ N., at longitude 110°16′19.2″ W., Greenwich Meridian. Operation of motorboats south of the latter line is prohibited.

(7) Motorboats are prohibited on park waters except as permitted in paragraphs (d) (5) and (6) of this section.

(8) *Hand-propelled vessel waters.* Hand-propelled vessels and sail vessels may operate in park waters except on those waters named in paragraph (d)(4) of this section.

(9) *Five Mile Per Hour Zone motorboat restrictions.* The operation of motorboats within ''Five Mile Per Hour Zones'' is subject to the following restrictions:

(i) Class 1 and Class 2 motorboats shall proceed no closer than one-quarter mile from the shoreline except to debark or embark passengers, or while moored when passengers are ashore.

(ii) [Reserved]

(10) *Permission required to operate motorboats in Five Mile Per Hour Zone.* Written authority for motorboats to enter either or both the South Arm or the Southeast Arm ''Five Mile Per Hour Zones'' shall be granted to an operator providing that prior to commencement of such entry the operator completes and files with the Superintendent a form statement showing:

(i) Length, make, and number of motorboat.

(ii) Type of vessel, such as inboard, inboard-outboard, turbojet, and including make and horsepower rating of motor.

(iii) Name and address of head of party.

(iv) Number of persons in party.

(v) Number of nights planned to spend in each ''Five Mile Per Hour Zone.''

(vi) Place where camping is planned within each ''Five Mile Per Hour Zone,'' or if applicable, whether party will remain overnight on board.

(11) The disturbance of birds inhabiting or nesting on either of the islands designated as ''Molly Islands'' in the Southeast Arm of Yellowstone Lake is prohibited; nor shall any vessel approach the shoreline of said islands within one-quarter mile.

(12) Boat racing, water pageants, and spectacular or unsafe types of recreational use of vessels are prohibited on park waters.

(e) *Fishing.* (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the superintendent.

(2) The superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on any activity pertaining to fishing, including, but not limited to, seasons and hours during which fishing may take place, size, creel and possession limits, species of fish that may be taken and methods of taking.

(3) *Closed waters.* The following waters of the park are closed to fishing and are so designated by appropriate signs:

(i) Pelican Creek from its mouth to a point two miles upstream.

(ii) The Yellowstone River and its tributary streams from the Yellowstone Lake outlet to a point one mile downstream.

(iii) The Yellowstone River and its tributary streams from the confluence of Alum Creek with the Yellowstone River upstream to the Sulphur Caldron.

(iv) The Yellowstone River from the top of the Upper Falls downstream to a point directly below the overlook known as Inspiration Point.

(v) Bridge Bay Lagoon and Marina and Grant Village Lagoon and Marina and their connecting channels with Yellowstone Lake.

(vi) The shores of the southern extreme of the West Thumb thermal area along the shore of Yellowstone Lake to the mouth of Little Thumb Creek.

(vii) The Mammoth water supply reservoir.

(4) Fishing in closed waters or violating a condition or restriction established by the superintendent is prohibited.

(f) *Commercial passenger-carrying vehicles.* The prohibition against the commercial transportation of passengers by motor vehicles in Yellowstone National Park contained in § 5.4 of this chapter shall be subject to the following exception: Motor vehicles operated on an infrequent and nonscheduled tour on which the visit to the park is an incident to such tour, carrying only round trip passengers traveling from the point of origin of the tour will, subject to the conditions set forth in this paragraph, be accorded admission to the park for the purpose of delivering passengers to a point of overnight stay in the park and exit from the park. After passengers have completed their stay, such motor vehicles shall leave the park by the most convenient exit station, considering their destinations. Motor vehicles admitted to the park under this paragraph shall not, while in the park, engage in general sightseeing operations. Admission will be accorded such vehicles upon establishing to the satisfaction of the superintendent that the tour originated from such place and in such manner as not to provide in effect a regular and duplicating service conflicting with, or in competition with, the services provided for the public pursuant to contract authorization from the Secretary. The superintendent shall have the authority to specify the route to be followed by such vehicles within the park.

(g) *Camping.* (1) Camping in Yellowstone National Park by any person, party, or organization during any calendar year during the period Labor Day through June 30, inclusive, shall not exceed 30 days, either in a single period or combined separate periods, when such limitations are posted.

(2) The intensive public-use season for camping shall be the period July 1 to Labor Day. During this period camping by any person, party, or organization shall be limited to a total of 14 days either in a single period or combined separate periods.

(h) *Dogs and cats.* Dogs and cats on leash, crated, or otherwise under physical restraint are permitted in the park only within 100 feet of established roads and parking areas. Dogs and cats are prohibited on established trails and boardwalks.

(i) [Reserved]

(j) *Travel on trails.* Foot travel in all thermal areas and within the Yellowstone Canyon between the Upper Falls and Inspiration Point must be confined to boardwalks or trails that are maintained for such travel and are marked by official signs.

(k) *Portable engines and motors.* The operation of motor-driven chain saws, portable motor-driven electric light plants, portable motor-driven pumps, and other implements driven by portable engines and motors is prohibited in the park, except in Mammoth, Canyon, Fishing Bridge, Bridge Bay, Grant Village, and Madison Campgrounds, for park operation purposes, and for construction and maintenance projects authorized by the Superintendent. This restriction shall not apply to outboard motors on waters open to motorboating.

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know*? The definitions in this paragraph (l)(2) also apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, and other non-recreational users authorized by the Superintendent.

*Commercial guide* means a guide who operates a snowmobile or snowcoach for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, ''guide'' also means ''commercial guide.''

*Historic snowcoach* means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

*Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

*Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

*Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

*Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

*Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and must provide notice of those conditions in accordance with §1.7(a) of this chapter or in the FEDERAL REGISTER.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect through the winter season of 2010–2011.

(4) *May I operate a snowcoach in Yellowstone National Park*? (i) Snowcoaches may only be operated in Yellowstone National Park under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must meet NPS air emissions requirements, which mean the applicable EPA emissions standards for the vehicle that were in effect at the time it was manufactured.

(iii) All critical emission-related exhaust components (as listed in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emissions-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(iv) of this section.

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2010–2011.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(v) These air and sound emissions requirements do not apply to snowmobiles being operated on the Cave Falls Road in Yellowstone.

(7) *Where may I operate my snowmobile in Yellowstone National Park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter of 2010–2011:

(A) The Grand Loop Road from its junction with Upper Terrace Drive to Norris Junction.

(B) Norris Junction to Canyon Junction.

(C) The Grand Loop Road from Norris Junction to Madison Junction.

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(E) The Grand Loop Road from Madison Junction to West Thumb.

(F) The South Entrance Road from the South Entrance to West Thumb.

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(H) The East Entrance Road from Fishing Bridge Junction to the East Entrance.

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive, between noon and 9 p.m. each day.

(N) North Canyon Rim Drive, between noon and 9 p.m. each day.

(O) Riverside Drive, between noon and 9 p.m. each day.

(P) Cave Falls Road.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in §1.7(a) of this chapter.

(iii) This paragraph (l)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use*? (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes through the winter of 2010–2011:

(A) Fountain Flat Road.

(B) The Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(C) For rubber-tracked snowcoaches only, the Grand Loop Road from Upper Terrace Drive to the junction of the Grand Loop Road and North Entrance Road, and within the Mammoth Hot Springs developed area.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one of more of the methods listed in §1.7(a) of this chapter.

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, and other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(iv) The guiding requirements described in this paragraph (l)(9) do not apply to snowmobiles being operated on the Cave Falls Road.

(10) *Are there limits established for the number of snowmobiles and snowcoaches permitted to operate in the park each day*? The number of snowmobiles and snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

| Park entrance/location | Commercially guided snowmobiles | Commercially guided snowcoaches |
|---|---|---|
| (i) North Entrance * ..... | 12 | 13 |
| (ii) West Entrance ..... | 160 | 34 |
| (iii) South Entrance ..... | 114 | 13 |
| (iv) East Entrance ..... | 20 | 2 |
| (v) Old Faithful * ..... | 12 | 16 |

| Park entrance/location | Commercially guided snowmobiles | Commercially guided snowcoaches |
|---|---|---|
| (vi) Cave Falls ..... | **50 | 0 |

*Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows reallocation of snowmobiles between the North Entrance and Old Faithful as necessary, so long as the total daily number of snowmobiles originating from the two locations does not exceed 24. For example, the concessioner could operate 6 snowmobiles at Old Faithful and 18 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing the availability of visitor services in Yellowstone.

**These snowmobiles operate on an approximately 1-mile segment of road within the park where the use is incidental to other snowmobiling activities in the Caribou-Targhee National Forest. These snowmobiles do not need to be guided or to meet NPS air and sound emissions requirements.

(11) *When may I operate my snowmobile or snowcoach*? The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle for more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds, or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from a state or province in the United States or Canada, respectively.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (1)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (1)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is subject to §§ 2.18(a) and (c), but not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (l)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(iii) Dog sledding and ski-joring are prohibited.

(iv) Bicycles are prohibited on oversnow routes in Yellowstone.

(16) *May I operate a snowplane in Yellowstone National Park?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* (i) Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

(m) *Swimming.* The swimming or bathing in a natural, historical, or archeological thermal pool or stream that has waters originating entirely from a thermal spring or pool is prohibited.

[36 FR 12014, June 24, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 7.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

## § 7.14 Great Smoky Mountains National Park.

(a) *Fishing*—(1) *License.* A person fishing within the park must have in possession the proper State fishing license issued by either Tennessee or North Carolina. A holder of a valid resident or nonresident license issued by either State may fish throughout the park irrespective of State boundaries, except in *Closed and Excluded Waters.*

(2) *Closed and Excluded Waters.* All waters of Mingus Creek, Lands Creek, Chestnut Branch and that portion of LeConte Creek as posted through the park residential area of Twin Creeks, are closed to and excluded from fishing.

(3) *Open Waters.* (i) All of the waters of the Oconaluftee River downstream from where it joins with Raven Fork to the park boundary and that portion of Raven Fork from its junction with the Oconaluftee River upstream and paralleling the Big Cove Road to the park boundary are open to fishing in accordance with the Cherokee Fish and Game Management regulations.

(ii) All other park waters are open to fishing in accordance with National Park Service regulations.

(4) *Season.* Open all year for rainbow and brown trout, smallmouth bass, and redeye (rockbass). All other fish are protected and may not be taken by any means.

(5) *Time.* Fishing is permitted from sunrise to sunset only.

(6) *Fish and equipment and bait.* Fishing is permitted only by use of one handheld rod and line.

(i) Only artificial flies or lures having one single hook may be used.

(ii) The use or possession of any form of fish bait other than artificial flies or lures on any park stream while in possession of fishing tackle is prohibited.

(7) *Size limits.* All trout or bass caught less than the legal length shall be immediately returned unharmed to the water from which taken.

(i) No trout or bass less than 7″ in length may be retained.

(ii) No size limit on redeye (rockbass).

(8) *Possession limit.* (i) Possession limit shall mean and include the number of trout, bass or redeye (rockbass) caught in park waters which may be in

possession, regardless of whether they are fresh, stored in ice chests, or otherwise preserved. A person must stop and desist from fishing for the remainder of the day upon attaining the possession limit.

(ii) Five, fish, trout, bass, or redeye, or a combination thereof, is the maximum number which a person may retain in one day or be in possession of at any one time.

(9) The superintendent may designate certain waters as Experimental Fish Management Waters and issue temporary and special rules regulating fishing use by posting signs and issuance of official public notification. All persons shall observe and abide by such officially posted rules pertaining to these specially designated waters.

(b) *Beer and alcoholic beverages.* The possession of beer or any alcoholic beverages in an open or unsealed container, except in designated picnic, camping, or overnight lodging facilities, is prohibited.

[24 FR 11041, Dec. 30, 1959, as amended at 31 FR 5827, Apr. 15, 1966; 32 FR 21038, Dec. 30, 1967; 33 FR 18156, Dec. 6, 1968; 40 FR 16315, Apr. 11, 1975; 40 FR 25590, June 17, 1975; 48 FR 30294, June 30, 1983; 48 FR 31022, July 6, 1983]

### § 7.15 Shenandoah National Park.

(a) *Backcountry camping.* For purposes of clarification at Shenandoah National Park, ''backcountry camping'' is defined as any use of portable shelter or sleeping equipment in the backcountry. ''Backcountry'' is defined as those areas of the park which are more than 250 yards from a paved road, and more than one-half mile from any park facilities other than trails, unpaved roads and trail shelters. The Superintendent may designate areas where backcountry camping is prohibited if there would be potential damage to park resources or disruption to other park uses. Such areas will be marked on maps available in the Superintendent's office, visitor centers and ranger stations. A person or group of persons may camp overnight at any other backcountry location within the park, except:

(1) No person or group of persons traveling together may camp without a valid backcountry camping permit. The issuance of this permit may be denied when such action is necessary to protect park resources or park visitors, or to regulate levels of visitor use in legislatively-designated wilderness areas;

(2) No person may camp in or with a group of more than nine (9) other persons;

(3) No person or group may backcountry camp:

(i) Within 250 yards or in view from any paved park road or the park boundary;

(ii) Within one-half mile or in view from any automobile campground, lodge, restaurant, visitor center, picnic area, ranger station, administrative or maintenance area, or other park development or facility except a trail, an unpaved road or a trail shelter;

(iii) On or in view from any trail or unpaved road, or within sight of any sign which has been posted by park authorities to designate a no camping area;

(iv) Within view of another camping party, or inside or within view from a trail shelter: *Provided, however,* That backcountry campers may seek shelter and sleep within or adjacent to a trail shelter with other camping groups, during periods of severely unseasonable weather when the protection and amenities of such shelter are deemed essential;

(v) Within 25 feet of any stream; and

(4) No person shall backcountry camp more than two (2) consecutive nights at a single location. The term ''location'' shall mean that particular campsite and the surrounding area within a two hundred fifty (250) yard radius of that campsite.

(b) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(c) *Sanitation.* (1) The possession of food or beverage in discardable glass containers is prohibited in the backcountry.

(2) Except in comfort facilities provided therefor, no person in the backcountry shall urinate or defecate within ten (10) yards of any stream, trail, unpaved road or park facility. Fecal material must be placed in a hole

and be covered with not less than three (3) inches of soil.

[24 FR 11041, Dec. 30, 1959, as amended at 28 FR 1797, Feb. 27, 1963; 32 FR 17661, Dec. 12, 1967; 39 FR 9964, Mar. 15, 1974; 48 FR 30294, June 30, 1983; 49 FR 18450, Apr. 30, 1984; 52 FR 10686, Apr. 2, 1987; 52 FR 19345, May 22, 1987; 63 FR 13343, Mar. 19, 1998]

### §7.16 Yosemite National Park.

(a) *Fishing*—(1) *Open season and limit of catch*. The open season for fishing and the daily bag limit and possession limit shall conform to that of the State of California for the Central Sierra Region, except as otherwise provided by paragraph (k) of this section.

(2)–(3) [Reserved]

(4) *Fishing from horseback*. Fishing from horseback in any lake or stream is prohibited.

(5) *Gathering or securing grubs*. Gathering or securing grubs for bait through the destruction or tearing apart of down trees or logs within sight of roads, trails or inhabited areas is prohibited.

(b) *Closed roads*. (1) The road between Hetch Hetchy Dam and Lake Eleanor is closed to all motor vehicle travel except vehicles belonging to the United States Government, the State of California, or the City of San Francisco, California.

(2) [Reserved]

(c) *Powerless flight*. The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(d) [Reserved]

(e) *Camping*. (1) Camping is permitted in Yosemite National Park for not more than a total of 30 days in any calendar year: *Provided, however*, That during the period from June 1 to September 15, inclusive, camping within the Yosemite Valley is limited to not more than a total of 7 days and camping within all other portions of the park, during the same period, is limited to not more than a total of 14 days.

(2) Quiet shall be maintained at all camps between 10 p.m. and 6 a.m.

(f)–(g) [Reserved]

(h) *Regulations governing eating and drinking establishments and sale of food and drink*. (1) No restaurant, coffee shop, cafeteria, short order cafe, lunch room, tavern, sandwich stand, soda fountain, or other eating and drinking establishment, including kitchens, or other place in which food and drink is prepared for sale elsewhere, may be operated on any privately-owned lands within Yosemite National Park unless a permit for the operation thereof has first been secured from the Superintendent.

(2) The Superintendent will issue such a permit only after an inspection of the premises to be licensed by the County Health Officer and written notice that the premises comply with the substantive requirements of State and County health laws and ordinances which would apply to the premises if the privately-owned lands were not subject to the jurisdiction of the United States.

(3) The Superintendent or his duly authorized representative shall have the right of inspection at all reasonable times for the purpose of ascertaining whether eating and drinking establishments are being operated in a sanitary manner.

(4) No fee will be charged for the issuance of such a permit.

(5) The applicant or permittee may appeal to the Regional Director, National Park Service, from any final action of the Superintendent refusing, conditioning or revoking the permit. Such an appeal, in writing, shall be filed within twenty days after receipt of notice by the applicant or permittee of the action appealed from. Any final decision of the Regional Director may be appealed to the Director of the National Park Service within 15 days after receipt of notice by the applicant or permittee of the Regional Director's decision.

(6) The revocable permit for eating and drinking establishments and sale of food and drink authorized in this paragraph to be issued by the Superintendent shall contain general regulatory provisions as hereinafter set forth, and will include such special conditions as the Superintendent may deem necessary to cover existing local circumstances, and shall be in a form substantially as follows:

FRONT OF PERMIT

No. _____

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

REVOCABLE PERMIT FOR OPERATION OF EATING AND DRINKING ESTABLISHMENTS, AND FOR SALE OF FOOD AND DRINK

Permission is hereby granted _____of _____, during the period from _____ 19____ to _____ 19____, inclusive to operate a

(Specify type of establishment)

on the following described privately-owned lands within Yosemite National Park, over which the United States exercises exclusive jurisdiction _____ subject to the general provisions and any special conditions stated on the reverse hereof.

Issued at _____ this _____ day of _____, 19____.

Superintendent

The undersigned hereby accepts this permit subject to the terms, covenants, obligations and reservations, expressed or implied therein.

Two witnesses to signature(s):

[1] _____

(Address)

(Address)

[1] Sign name or names as written in body of permit; for copartnership, permittees should sign as ''Members of firm''; for corporation, the officer authorized to execute contracts, etc., should sign, with title, the sufficiency of such signature being attested by the secretary, with corporate seal, in lieu of witnesses.

REVERSE OF PERMIT

GENERAL REGULATORY PROVISIONS OF THIS PERMIT

1. Permittee shall exercise this privilege subject to the supervision of the Superintendent of the Park and shall comply with the regulations of the Secretary of the Interior governing the Park.

2. Any building or structure used for the purpose of conducting the business herein permitted shall be kept in a safe, sanitary and sightly condition.

3. Permittee shall dispose of brush and other refuse from the business herein permitted as required by the Superintendent.

4. Permittee shall pay to the United States for any damage resulting to Government-owned property from the operation of the business herein permitted.

5. Permittee, his agents, and employees shall take all reasonable precautions to prevent forest fires and shall assist the Superintendent to extinguish forest fires within the vicinity of the place of business herein permitted, and in the preservation of good order within the vicinity of the business operations herein permitted.

6. Failure of the permittee to comply with all State and County substantive laws and ordinances applicable to eating and drinking establishments and the sale of food and drink, or to comply with any law or any regulations of the Secretary of the Interior governing the Park, or with the conditions imposed by this permit, will be grounds for revocation of this permit.

7. No disorderly conduct shall be permitted on the premises.

8. This permit may not be transferred or assigned without the consent, in writing, of the Superintendent.

9. Neither Members of, nor Delegates to Congress, or Resident Commissioners, officers, agents, or employees of the Department of the Interior shall be admitted to any share or part of this permit or derive directly or indirectly, any pecuniary benefit arising therefrom.

10. The following special provisions are made a part of this permit:

(i) *Motorboats.* Motorboats are prohibited on all the natural lakes and streams of Yosemite National Park.

(j) *Domestic water supplies and sewage disposal systems*—(1) *Sewage disposal systems*—(i) *Construction.* Any dwelling or establishment constructed on privately owned land within Yosemite National Park for the purpose of housing one or more persons must be served by an approved sewage disposal system prior to occupancy. Such system may not be initially constructed or rebuilt without a permit issued by the Superintendent. Such permit shall be issued only after the receipt by the Superintendent of written notification by the County Health Officer that the plans for such construction or reconstruction are consistent with the requirements of the State and county health laws and ordinances applicable to systems not located on lands within the park.

(ii) *Existing systems.* Any sewage disposal system which was constructed and was in use prior to the effective date of this regulation shall be subject to inspection by the County Health Officer or his duly authorized representative for the purpose of ascertaining whether or not such existing sewage

disposal system would meet the requirements of the State and county health laws and ordinances were such system not located on lands within the park. In the event such existing system is found by the Health Officer to be substandard and a hazard to health, the person, corporation, or other organization controlling the structure served by such system shall have one (1) year after service of a written notice by the Superintendent to comply with the requirements of the State and county health laws and ordinances. Such notice shall describe briefly the deficiency as noted by the County Health Officer and shall specify what steps must be taken to achieve conformity with health regulations. In the event the deficiency described in the notice is not remedied within the period set forth above, the structures affected by or served by such sewage system shall be deemed unfit for human habitation and shall be vacated until such deficiency is remedied and a certificate of approval is filed with the Superintendent.

(2) *Water supply facilities*—(i) *Construction of new facilities.* Domestic water supply facilities for the use of two (2) or more families or for use of the general public may not be constructed, installed, or reconstructed on the privately owned land within Yosemite National Park unless the plans for such facilities are consistent with the requirements of State and county health laws and ordinances which would be applicable if such water supply facilities were located on privately owned lands outside of the park. Facilities for such a new water supply system shall not be constructed or reconstructed without a permit issued by the Superintendent. A permit will be issued only after the receipt by the Superintendent of written notification by the County Health Officer that the plans for the construction or reconstruction of the water supply system are consistent with the requirements of the State and county health laws and ordinances applicable to structures and establishments located outside of the park.

(ii) *Existing systems.* All water supply systems for the use of two (2) or more families or for use by the general public, regardless of size and whether or not constructed and in use prior to the effective date of this regulation, shall be subject to inspection from time to time by the County Health Officer or his duly authorized representative for the purpose of ascertaining whether or not such water supply systems meet the requirements of the State and county health laws and ordinances. In the event any existing system is found by the Health Officer to be substandard and a hazard to health, the person, corporation, or other organization controlling the premises served by such system shall have one (1) year after service of a written notice by the Superintendent to comply with the requirements of the State and county health laws and ordinances. Such notice shall describe briefly the deficiency as noted by the County Health Officer and shall specify what steps must be taken to achieve conformity with health regulations. In the event the deficiency described by the notice is not remedied within the period set forth above, the structures affected by such deficiency shall be considered unfit for human habitation and shall be vacated until such deficiency is remedied and certificate of approval by the County Health Officer is filed with the Superintendent.

(3) *Inspection.* The County Health Officer or his duly authorized representative shall have the right of inspection for the purpose of ascertaining whether domestic water supplies and sewage disposal systems located on privately owned lands within Yosemite National Park meet State and county health standards. Inspection may be made by the County Health Officer to assure that construction of such systems, and facilities as may be built, rebuilt, or installed complies with approved plans.

(4) *Issuance of permits.* Permits for the construction or reconstruction of sewage or water supply systems shall be issued without charge by the Superintendent after written notification by the County Health Officer that the plans and specifications for any proposed system are deemed to be in conformity with the requirements of the

State and county health laws and ordinances. Any applicant or permittee aggrieved by an action of the Superintendent in refusing or in conditioning a permit for the construction or reconstruction of a sewage disposal or a water supply system may appeal to the Regional Director, National Park Service. Such appeal shall be filed in writing within 20 days after receipt of notice by the applicant or permittee of the action of the Superintendent. A final decision of the Regional Director may be similarly appealed to the Director of the National Park Service within 15 days after receipt of notice by the applicant or permittee of the Regional Director's decision.

(5) *Permits.* Permit to construct or reconstruct domestic water facilities or a sewage disposal system authorized to be issued by the Superintendent in this paragraph shall contain general regulatory provisions as hereinafter set forth and may include such special conditions as the Superintendent deems necessary. A permit shall be in a form substantially as follows:

No. _____

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

PERMIT TO CONSTRUCT, BUILD, OR REBUILD DOMESTIC WATER SYSTEMS AND SEWAGE DISPOSAL SYSTEMS

Permission is hereby granted _____ of _____ to construct, build, or rebuild a _____ (Specify water system, sewage disposal system) on the following described privately owned lands within Yosemite National Park, over which the United States exercises exclusive jurisdiction _____ subject to the general provisions and any special conditions stated on the reverse hereof.

Issued at _____ this _____ day of _____, 19____.

_____
(Superintendent)

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied therein.

[1] _____

Two witnesses to signature(s):

_____

Address _____

_____

Address _____

[1] Sign name or names as written in body of permit; for copartnership, permittees should sign as ''Members of firm''; for corporation the officer authorized to execute contracts etc., should sign, with title, the sufficiency of such signature being attested by the secretary, with corporate seal, in lieu of witnesses

REVERSE OF PERMIT

GENERAL REGULATORY PROVISIONS OF THIS PERMIT

1. Permittee shall construct, build, or rebuild a domestic water system and/or a sewage disposal system in accordance with the standards of the Mariposa County Health Department.

2. Permittee shall not occupy constructed dwelling or establishment until completion of a bona fide, operational sewage disposal system.

3. Failure of the permittee to comply with all State and county laws and ordinances applicable to domestic water supplies and the disposal of sewage, including household waste, or with the conditions imposed by this permit will be grounds for requiring the permittee to vacate the dwelling or establishment until compliance.

4. Permittee shall take all reasonable precautions to prevent forest fires and shall assist the Superintendent to extinguish forest fires within the vicinity of the structure herein permitted.

5. This permit may not be transferred or assigned without the consent, in writing, of the Superintendent.

6. The following special provisions are made a part of this permit:

(k) Skelton Lakes and Delaney Creek from its beginning at the outlet of the lower Skelton Lake to its interception with the Tuolumne Meadows—Young Lakes Trail, are closed to all public fishing.

(l) Motor vehicles driven or moved upon a park road must be registered and properly display current license plates. Such registration may be with a State or other appropriate authority or, in the case of motor vehicles operated exclusively on park roads, with the superintendent. An annual registration fee of $6 will be charged for vehicles registered with the superintendent which are not connected with the operation of the park.

(m) *Trucking.* (1) The fees for special trucking permits issued in emergencies pursuant to paragraph (b) of § 5.6 of this chapter shall be based on the licensed

capacity of trucks, trailers, or semitrailers, as follows:

| | |
|---|---|
| Trucks, less than 1 ton. | |
| Trucks of 1 ton and over, but not to exceed 10 tons. | |
| Appropriate automobile permit fee. | $5 for each ton or fraction thereof. |

(i) The fee charged is for one round trip between any two park entrances provided such trip is made within one 24-hour period; otherwise the fee is for a one-way trip.

(ii) Trucks carrying bona fide park visitors and/or their luggage or camping equipment may enter the park upon payment of the regular recreation fees.

(2) The fee provided in paragraph (m)(1) of this section also shall apply to permits which the superintendent may issue for trucking through one park entrance to and from privately owned lands contiguous to the park boundaries, except that such fee shall be considered an annual vehicle fee covering the use of park roads between the point of access to such property and the nearest park exit connecting with a State or county road.

[24 FR 11042, Dec. 30, 1959]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 7.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 7.17 Cuyahoga Valley National Recreation Area.

(a) *Alcoholic beverages*—(1) *Possession*. The possession or consumption of a bottle, can, or other receptacle containing an alcoholic beverage which has been opened, a seal broken, or the contents of which have been partially removed is prohibited, except in residences or other areas specifically authorized by the superintendent as to time and place.

(2) *Definition—Alcoholic beverages*. Any liquid beverage containing ½ of 1 percent or more of alcohol by weight.

[47 FR 24299, June 4, 1982]

### § 7.18 Hot Springs National Park.

(a) *Commercial Vehicles*. Permits shall be required for the operation of commercial passenger-carrying vehicles, including taxicabs, carrying passengers for hire over park roads for sightseeing purposes. The fees for such permits shall be as follows:

(1) Fleet operator; equipment that includes any combination of commercial passenger-carrying vehicles, including taxicabs. Calendar-year permit—$25.

(2) Bus operator; equipment limited to a single bus-type vehicle with passenger-carrying seat capacity in excess of eight persons. Calendar-year permit—$20.

(3) Taxicab operator; equipment limited to a single vehicle with a capacity of not over eight passenger-carrying seats. Calendar-year permit—$12.

(4) The fees for permits issued for commercial passenger-carrying vehicle operations starting on or after July 1 of each calender year will be one-half of the respective rates mentioned in paragraphs (a)(1), (2), and (3) of this section.

(b) *Use of water*. The taking or carrying away of water, hot or cold, from any of the springs, fountains, or other sources of supply in Hot Springs National Park for the purpose of sale, or for any use other than personal drinking, is prohibited.

[24 FR 11042, Dec. 30, 1959, as amended at 32 FR 15710, Nov. 15, 1967; 48 FR 30294, June 30, 1983]

### § 7.19 Canyon de Chelly National Monument.

(a) Visitors are prohibited from entering the canyons of Canyon de Chelly National Monument unless accompanied by National Park Service employees or by authorized guides: *Provided, however,* That the Superintendent may designate, by marking on a map which shall be available for public inspection in the Office of the Superintendent and at other convenient locations within the monument, canyons or portions thereof which may be visited or entered without being so accompanied.

(b) The Superintendent may issue permits to properly qualified persons to act as guides for the purpose of accompanying visitors within the canyons.

[32 FR 13129, Sept. 15, 1967]

**§ 7.20 Fire Island National Seashore.**

(a) *Operation of motor vehicles*—(1) *Definitions.* The following definitions shall apply to all provisions of this paragraph (a):

(i) ''Act'' means the Act of September 11, 1964 (Pub. L. 88–587, 78 Stat. 928, 16 U.S.C. 459e et seq.), or as the same may be amended or supplemented, which authorizes the establishment of the Seashore.

(ii) ''Seashore lands'' means any lands or interests in lands owned or hereafter acquired by the United States within the authorized boundaries of the Seashore. It shall also mean any lands or interests in lands owned by the United States which are on the island, outside the authorized boundaries of the Seashore, and managed for recreational purposes by the National Park Service pursuant to an agreement with another Federal agency.

(iii) ''Island'' means the entirety of Fire Island, New York; without regard for property ownership, jurisdiction, or the boundaries of Fire Island National Seashore.

(iv) ''Mainland'' means the land of Long Island, N.Y.

(v) ''Motor vehicle'' means a device which is self-propelled by internal combustion or electrical energy and in, upon, or by which any person or material is or may be transported on land.

(vi) ''Dune crossing'' means an access route over a primary dune which has been designated and appropriately posted.

(vii) ''Public utility vehicle'' means any motor vehicle operated and owned or leased by a public utility or public service company franchised or licensed to supply, on the island, electricity, water, or telephone service, while that vehicle is in use for supplying such service.

(viii) ''Year-round residents'' means those persons who are legally domiciled on the island and who, in addition, physically reside in their fixed and permanent homes on the island continuously, except for brief and occasional absences, for 12 months of the year.

(ix) ''Part-time residents'' means those persons who physically and continuously reside in their homes on the Island for less than 12 months of the year.

(x) ''Essential service vehicle'' means any motor vehicle other than a public utility vehicle whose use on the Island is essential to the continued use of residences on the Island. This may include vehicles used for the following purposes, while in use for such purposes:

(A) Transporting heating fuel and bottled gas.

(B) Sanitation or refuse removal.

(xi) ''Official vehicle'' means any motor vehicle operated and owned or leased by a Federal, State, or local governmental agency, except for law enforcement vehicles and fire fighting apparatus, while that vehicle is being used to transact the official business of that agency.

(xii) ''Construction and business vehicle'' means any motor vehicle other than a public utility vehicle or essential service vehicle involved in construction, maintenance, or repair of structures on the Island or the transportation of materials or supplies to retail business establishments on the Island.

(2) *Routes for motor vehicle travel.* No motor vehicle may be operated on Seashore lands except on routes designated for that purpose and subject to the limitations of this paragraph (a). The following are the routes for off-road motor vehicle travel on Seashore lands, which shall be designated on a map available at the office of the Superintendent or by the posting of signs where appropriate:

(i) Along the Atlantic Ocean on the south shore of Fire Island, within the Seashore boundaries between the water's edge and 20 feet seaward of the beach grass (*Ammophila breviligata*) line. If the water is higher than this 20-foot line, no vehicle travel is permitted.

(ii) A 1-mile route in the interior of the Island, crossing the ''Lighthouse Tract'' from the easterly end of the paved road in Robert Moses State Park to the eastern boundary of the Tract, which is the western boundary of the community of Lighthouse Shores-Kismet Park.

(iii) An interior route which extends intermittently the length of the island,

commonly referred to as the ''Burma Road,'' for limited travel by public utility and law enforcement vehicles and fire fighting apparatus.

(iv) Posted dune crossings from the beach to the ''Burma Road'' or to pathways within the island communities.

(3) *Alternative means of transportation.* In providing for access to the island, the Superintendent shall require maximum possible reliance on those means of transportation which are other than private motor vehicles and which have the minimum feasible impact on Seashore lands. As used in this paragraph (a), the term ''alternative transportation'' shall mean a waterborne conveyance that is licensed for hire and that provides a reasonable means of transportation between the mainland and the island. Such alternative transportation shall be deemed to exist for each particular factual situation in which:

(i) The schedule of the transportation service in question permits departure from an island terminal before 9 a.m. and departure from a mainland terminal after 5 p.m. on the same day; and

(ii) When the interval between the earliest and latest service provided by the transportation service in question on any day exceeds 8 hours, such service provides at least one round trip between the mainland and the island during that interval; and

(iii) The island transportation terminal in question is no more than one mile from the point of origin or destination on the island or from a point on the island to which access by motor vehicle is permitted; and

(iv) The mode of transportation in question is adequate to carry the person or object to be transported.

(4) *Permit required.* No motor vehicle, other than a piece of firefighting apparatus or a motor vehicle operated and owned or leased by a duly constituted law enforcement agency having jurisdiction within the Seashore, shall be operated on Seashore lands without a valid permit issued by the Superintendent.

(5) *Permit eligibility.* Any person, firm, partnership, corporation, organization, or agency falling within the categories listed below may apply to the Superintendent for a permit, using a form to be supplied for that purpose. The following will be eligible to submit permit applications:

(i) Those persons who are year-round residents.

(ii) Those persons who held part-time permits prior to January 1, 1978.

(iii) Those persons, firms, partnerships, corporations, organizations, or agencies which provide services essential to public facilities and the occupancy of residences on the Island.

(iv) Those persons who desire access by motor vehicle to Seashore lands in order to engage in fishing or hunting thereon, provided such access is compatible with conservation and preservation of Seashore resources.

(v) Those owners of estates in real property located on the Island who have a demonstrated need for temporary access to that property on days when there is no alternative transportation.

(vi) Holders of reserved rights of use and occupancy.

(6) *Standards for issuance of permits.* Permits will not be issued for the convenience of travel on Seashore lands. The Superintendent shall approve an application for a motor vehicle permit with appropriate limitations and restrictions or deny the application, in accordance with the provisions of this paragraph (a). Permits will be issued only for those motor vehicles whose travel on Seashore lands is deemed by the Superintendent to be essential to the management or enjoyment of Seashore resources, or to the occupancy of residences or the ownership of real property on the island. In making this determination, the Superintendent shall consider the purposes of the Act in providing for the conservation and preservation of the natural resources of the Seashore and for the enjoyment of these resources by the public; the scope and purpose of such travel; the availability of alternative transportation on the day or days when the applicant for a permit requests to travel on Seashore lands; the present or past issuance of other permits to the applicant; any limitations on numbers of permits established pursuant to paragraph (a)(8); and, in the case of public utility, service, and official vehicles, the feasibility of basing such vehicles and related

equipment on the island rather than the mainland.

(7) *Vehicle restrictions.* Any motor vehicle whose owner or operator has been found to qualify for a permit, according to the standards set forth in paragraphs (a) (5) and (6), must, prior to the issuance of such permit:

(i) Have a valid permit or other authorization for operation on the island issued by the local government agency or agencies within whose jurisdiction the travel is to be performed, if such permission or authorization is required by such agency or agencies.

(ii) Be capable of four-wheel drive operation.

(iii) Have a rated gross vehicle weight not in excess of 10,000 pounds, unless the use of a larger vehicle will result in a reduction of overall motor vehicle travel.

(iv) Meet the requirements of § 4.10(c)(3) of this chapter and conform to all applicable State laws regarding licensing, registration, inspection, insurance, and required equipment.

(8) *Limitations on number of permits.* (i) The Superintendent may limit the total number of permits for motor vehicle travel on Seashore lands, and/or limit the number of permits issued for each category of eligible applicants listed in paragraph (a)(5) of this section as the Superintendent deems necessary for resource protection, public safety, or visitor enjoyment. In establishing or revising such limits, the Superintendent shall consider such factors as the type of use or purpose for which travel is authorized, the availability of other means of transportation, limits established by local jurisdictions, historic patterns of use, conflicts with other users, existing multiple permits held by individuals or a household, aesthetic and scenic values, visitor uses, safety, soil, weather, erosion, terrain, wildlife, vegetation, noise, and management capabilities. A revision of these limitations shall be published as a rule in the FEDERAL REGISTER except in emergency situations when closures may be imposed in accordance with the provisions of § 1.5 and § 1.7 of this chapter.

(ii) Limitations on permits for motor vehicle travel on Seashore lands, according to eligible applicant category, are as follows:

(A) *Year-round residents.* No more than 145 permits at any time are issued to year-round residents. A year-round resident who is denied a permit because the limit has been reached is placed on a waiting list. When the number of outstanding permits drops below 145, permits are issued in order of the date of receipt of the application. When multiple applications are received on the same day, priority is given to persons both living and working full time on the Island. One year-round resident permit is allowed per household. Permit applications are mailed by the Superintendent by December 1 of each year to those year-round residents eligible to renew their permit. The deadline for receipt of completed applications is January 31 of the permit year. Applications received after January 31 are not considered as renewals of existing permits. Should the 145 limit be reached, late applications are placed at the end of the waiting list.

(B) *Part-time residents.* Permits are issued only to part-time residents who held a residential permit as of January 1, 1978. No more than 100 part-time resident permits are issued. A part-time resident who becomes a year-round resident is eligible to apply for a year-round resident permit in accordance with paragraph (a)(8)(ii)(A) of this section. A year-round resident permit holder as of January 1, 1978, who no longer qualifies as a year-round resident, may be eligible to obtain a part-time resident permit as long as the 100 limit is not exceeded and the part-time resident definition is satisfied.

(C) *Holders of reserved rights of use and occupancy.* A holder of a reserved right of use and occupancy, or a lessee thereof, occupying a property acquired by the National Park Service in the eight-mile area described in the Act, is issued a permit consistent with the terms under which the right of use and occupancy is retained.

(D) *Public utility and essential service vehicles.* No more than 30 permits at any time are issued to public utility and essential service vehicles. After consultation with the property owners' association of the appropriate unincorporated community or the village clerk

for the Villages of Ocean Beach and Saltaire, the Superintendent may apportion permits to allow minimal service needs to each community.

(E) *Construction and business vehicles.* No more than 80 permits at any time are issued to construction and business vehicles. An operator of a construction or business vehicle who is denied a permit because the limit has been reached is placed on a waiting list. When the number of outstanding permits drops below 80, permits are issued in order of the date of receipt of the application. An operator of a construction or business vehicle may apply for either a 30-day-per-job permit or a one-year letter permit. Only a year-round construction firm or a year-round business is eligible for a one-year letter permit and only as long as the firm or business remains in year-round operation. Notwithstanding possession of either a 30-day permit or a one-year letter permit, when water transportation is available, a firm or business shall accomplish all transportation of materials, supplies, and crews by use of the nearest available ferry, freight, or other overwater transportation method. When water transportation is available, vehicles permitted under a 30-day permit may remain at the job site but must be removed upon the completion of the job.

(F) *Municipal employees.* A year-round resident who is a full-time employee of one of the two villages or of one of the 15 unincorporated communities identified in the Act is eligible for a permit if such employment necessitates year-round Island residence. Five (5) municipal employee permits are available for each village or community except on the basis of documented community need.

(G) *Recreational vehicles.* Recreational vehicles may travel between Smith Point and Long Cove along the route described in paragraph (a)(2)(i) of this section. A total of 5000 one-way trips per year are available for the recreational vehicle category. Permits for recreational vehicles may be obtained from the Smith Point Visitor Center. Annual recreational vehicle trip counts commence in September of each year and conclude the following June or when the 5000 trip limit is reached, whichever occurs first.

(9) *Permit limitations.* (i) No permit issued under these regulations shall be valid for more than one year. The superintendent may issue permits for lesser periods, as appropriate for the travel required or the time of year at which a permit is issued.

(ii) Permits for public utility, service, and official vehicles shall specify the number of vehicles and identify each vehicle whose use is authorized thereby. Permits for other motor vehicles will apply only to the single, specific vehicle for which issued.

(iii) Permits are not transferable to another motor vehicle or to a new owner or lessee of the vehicle for which issued.

(iv) Permits may specify a single or multiple uses or purposes for which travel on Seashore lands is permitted. The limitations and restrictions on authorized travel set forth in paragraph (a)(10) of this section shall apply, however, depending upon the specific use or purpose for which a permitted motor vehicle is being utilized at the time of travel.

(v) Permits may contain such other limitations or conditions as the Superintendent deems necessary for resource protection, public safety, or visitor enjoyment. Limitations may include, but will not be limited to, restrictions on locations where vehicle travel is authorized and times, dates, or frequency of travel, in accordance with the provisions of this paragraph (a).

(10) *Authorized travel.* (i) Except as specifically provided elsewhere in this paragraph (a)(10), travel across Seashore lands by motor vehicles with valid permits will be authorized only on those days in which the island location, which is the point of origin or destination of travel or is another point to which access by motor vehicle is permitted, is not served by alternative transportation.

When alternative transportation services satisfy the definition of alternative transportation in paragraph (a)(3), the schedule of transportation services available for the island community or communities named in the permit application shall determine the days when travel is not authorized for the motor vehicle to which that permit applies.

(ii) Except as provided in paragraph (a)(10)(iii) of this section, on any day on which travel by motor vehicle is authorized due to a lack of alternative transportation, travel shall be limited to not more than one round trip per vehicle per day between the mainland and the Island, and may be performed at any time except the following periods:

(A) From 9 a.m. to 6 p.m. on all Saturdays, Sundays, and national holidays from May 1 through June 13 and from September 15 through October 31.

(B) From 9 a.m. to 6 p.m. on all weekdays, and from 6 p.m. Friday to 9 a.m. the following Monday on all weekends, from June 14 through September 14.

(iii) *Exceptions.* (A) From the Monday after Labor Day through the Friday before Memorial Day, a year-round resident may make no more than two round trips per day for residential purposes.

(B) The Seashore is closed to all recreational vehicles from January 1 through March 31 and from June 14 through September 14. During the periods when the Seashore is open for recreational vehicle traffic, an operator of a recreational vehicle may make no more than two round trips per day. On weekend days in September and October, a recreational vehicle may enter the Island until 9:00 a.m. A recreational vehicle that has entered the Island may then remain or may depart but may not re-enter the Island until after 6:00 p.m.

(iv) The Superintendent may, for situations where the restrictions in paragraph (a)(10)(ii) would create a severe hardship, authorize additional trips or travel at other hours.

(v) In the case of public utility, service, and official vehicles for which permits have been issued, the Superintendent may authorize travel on Seashore lands at any time that he determines travel by such vehicles is essential, notwithstanding the above limitations and restrictions on authorized travel.

(vi) Recurring travel conducted pursuant to paragraph (a)(10) (iv) or (v) of this section is authorized only pursuant to the terms and conditions of the original permit issued by the Superintendent; single occasion travel is authorized only pursuant to the terms and conditions of a permit issued by the Superintendent on a case by case basis.

(vii) In an emergency involving the protection of life or a threatened substantial loss of property, travel by a motor vehicle which is under permit is authorized at any time.

(viii) The Superintendent may suspend any travel by motor vehicle otherwise permitted under this paragraph (a) when in his judgment such travel is inconsistent with the purpose of the Act or when such factors as weather, tides, or other physical conditions render travel hazardous or would endanger Seashore resources. Such suspension of travel shall be announced by the posting of appropriate signs or verbal order of the Superintendent.

(ix) In accordance with the procedures set forth in §1.5 of this chapter, the Superintendent may establish a limit on the number of motor vehicles permitted on any portion of, or the entirety of, the Seashore lands at any one time when such limits are required in the interests of public safety, protection of the resources of the area, or coordination with other visitor uses.

(x) The provisions of this paragraph (a)(10) shall not apply to firefighting apparatus or to motor vehicles operated and owned or leased by a duly constituted law enforcement agency having jurisdiction within the Seashore.

(11) *Rules of travel.* (i) When two motor vehicles approach from opposite directions in the same track on Seashore lands, both operators shall reduce speed and the operator with the water to his left shall yield the right of way by turning out of the track to the right.

(ii) No motor vehicle shall be operated on any portion of a dune on Seashore lands except at dune crossings.

(iii) No person shall operate a motor vehicle on Seashore lands at a speed in excess of 20 miles per hour.

(iv) The speed of any motor vehicle being operated on Seashore lands shall be reduced to five miles per hour upon approaching or passing within 100 feet of any person not in a motor vehicle, or when passing through or over any dune crossings.

(12) *Violations.* (i) Failure to comply with the conditions of any permit issued pursuant to this paragraph will constitute a violation of these regulations.

(ii) In addition to any penalty required by § 1.3(a) of this chapter for a violation of regulations in this paragraph, the Superintendent may suspend or revoke the permit of a motor vehicle involved in such a violation.

(b) *Operation of Seaplane and Amphibious Aircraft.* (1) Aircraft may be operated on the waters of the Great South Bay and the Atlantic Ocean within the boundaries of Fire Island National Seashore, except as restricted in § 2.17 of this chapter and by the provisions of paragraph (b)(2) of this section.

(2) Except as provided in paragraph (b)(3) of this section, the waters of the Great South Bay and the Atlantic Ocean within the boundaries of Fire Island National Seashore are closed to take-offs, landings, beachings, approaches or other aircraft operations at the following locations:

(i) Within 1000 feet of any shoreline, including islands.

(ii) Within 1000 feet of lands within the boundaries of the incorporated villages of Ocean Beach and Saltaire and the village of Seaview.

(3) Aircraft may taxi on routes perpendicular to the shoreline to and from docking facilities at the following locations:

(i) Kismet—located at approximate longitude 73° 12½′ and approximate latitude 40° 38½′.

(ii) Lonelyville—located at approximate longitude 73° 11′ and approximate latitude 40° 38½′.

(iii) Atlantique—located at approximate longitude 73° 10½′ and approximate latitude 40° 38½′.

(iv) Fire Island Pines—located at approximate longitude 73° 04½′ and approximate latitude 40° 40′.

(v) Water Island—located at approximate longitude 73° 02′ and approximate latitude 40° 40½′.

(vi) Davis Park—located at approximate longitude 73° 00½′ and approximate latitude 40° 41′.

(4) Aircraft operation in the vicinity of marinas, boats, boat docks, floats, piers, ramps, bird nesting areas, or bathing beaches must be performed with due caution and regard for persons and property and in accordance with any posted signs or uniform waterway markers.

(5) Aircraft are prohibited from landing or taking off from any land surfaces, any estuary, lagoon, marsh, pond, tidal flat, paved surface, or any waters temporarily covering a beach; except with prior authorization of the Superintendent. Permission shall be based on the need for emergency service, resource protection, resource management or law enforcement.

(6) Aircraft operations shall comply with all Federal, State and county ordinances and rules for operations as may be indicated in available navigation charts or other aids to aviation which are available for the Fire Island area.

(c) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. This information is being collected in order for the superintendent to issue permits and grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

(d) *Personal watercraft.* (1) Personal watercraft (PWC) may operate in the following locations and under the following conditions:

(i) Great South Bay from the western boundary of the national seashore adjacent to Robert Moses State Park, east to the western boundary of the Sunken Forest, excluding any area within 1,000 feet of the shoreline, except as provided in (ii), including the area surrounding East Fire Island and West Fire Island.

(ii) Navigation channels marked by buoys or identified on the NOAA navigational chart (12352) to include access channels to and from Fair Harbor, Dunewood, Lonelyville, Atlantique, Cherry Grove, Fire Island Pines, Davis Park, Moriches Inlet, Kismet, Saltaire, Ocean Beach, Ocean Bay Park, Point O'Woods, Oakleyville, and Water Island.

(iii) The Long Island Intracoastal Waterway within the park boundaries.

(iv) At ''flat wake'' speeds (maximum 6 mph) within designated marked channels to access town/community docks and harbors/marinas.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[42 FR 62483, Dec. 13, 1977, as amended at 44 FR 44493, July 30, 1979; 47 FR 11011, Mar. 15, 1982; 50 FR 24511, June 11, 1985; 52 FR 7376, 7377, Mar. 10, 1987; 52 FR 10686, Apr. 2, 1987; 70 FR 38767, July 6, 2005]

### § 7.21 John D. Rockefeller, Jr. Memorial Parkway.

(a)(1) *What is the scope of this section?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(15) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (a)(2) also apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, and other non-recreational users authorized by the Superintendent.

*Commercial guide* means a guide who operates a snowmobile or snowcoach for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, ''guide'' also means ''commercial guide.''

*Historic snowcoach* means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

*Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

*Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

*Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

*Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

*Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in the Parkway*? You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and will provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the FEDERAL REGISTER.

(4) *May I operate a snowcoach in the Parkway*? Snowcoaches may only be operated in the Parkway under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(5) *Where may I operate my snowmobile in the Parkway?* (i) You may operate your snowmobile only upon designated

oversnow routes established within the Parkway in accordance with §2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) On U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway.

(B) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(C) Flagg Ranch developed area.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in §1.7(a) of this chapter.

(iii) The route described in paragraph (a)(5)(i)(A) of this section is subject to the air and sound emissions requirements, guiding requirements, and daily entry limits described in §7.13(l) of this part.

(iv) This paragraph (a)(5) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(v) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(6) *What routes are designated for snowcoach use*? (i) Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (a)(6)(i)(A) and (C) of this section. No other routes are open to snowcoach use, except as provided in (a)(6)(ii) of this section.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in §1.7(a) of this chapter.

(iii) The routes described in paragraph (a)(6)(i) of this section are subject to the air and sound emissions requirements and daily entry limits in §7.13(l) of this part.

(iv) This paragraph (a)(6) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(7) *Must I travel with a commercial guide while snowmobiling in the Parkway?* Except as may be required under paragraph (a)(5)(iii) of this section, you are not required to use a guide while snowmobiling in the Parkway.

(8) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the Parkway each day*? (i) A limit of 25 snowmobiles per day applies to the Grassy Lake Road.

(ii) The daily entry limits for snowmobiles and snowcoaches on the route from Flagg Ranch to the South Entrance of Yellowstone are established in §7.13(l) of this part.

(9) *When may I operate my snowmobile or snowcoach*? The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis and the public will be notified of those changes through one or more of the methods listed in §1.7(a) of this chapter.

(10) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) Towing persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (a)(10) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(11) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (a)(11) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is subject to § 2.18(a), (b), and (c), but not to §§ 2.18(d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (a)(12) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(14) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(15) *Is violating any of the provisions of this section prohibited?* (i) Violating any of the terms, conditions or requirements of paragraphs (a)(3) through (a)(14) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

(b) [Reserved]

[74 FR 60190, Nov. 20, 2009]

### § 7.22 Grand Teton National Park.

(a) *Aircraft—Designated airstrip.* (1) Jackson Airport, located in SE¼SE¼ sec. 10, SE¼ and S½SW¼ sec. 11, S½ and NW¼ sec. 14, NW¼NE¼ and E½ NE¼ sec. 15, T. 42 N., R. 116 W., 6th Principal Meridian.

(2) [Reserved]

(b) *Fishing*. (1) The following waters are closed to fishing: The Snake River for a distance of 150 feet below the downstream face of Jackson Lake Dam; Swan Lake; Sawmill Ponds; Hedrick's Pond; Christian Ponds; and Cottonwood Creek from the outlet of Jenny Lake downstream to the Saddle Horse Concession Bridge.

(2) Fishing from any bridge or boat dock is prohibited.

(3) Bait: The use or possession of fish eggs or fish for bait is prohibited, except it shall be permissible to possess or use the following dead, nongame fish for bait on or along the shores of Jackson Lake: Redside shiner, speckled dace, longnose dace, piute sculpin, mottled sculpin, Utah chub, Utah sucker, bluehead sucker, and mountain sucker. Authorized marine bait dealers at Jackson Lake may retain live bait fish in containers: *Provided*, That such fish have been taken from Jackson Lake or waters draining into Jackson Lake: *And provided further*, That such bait fish are dead when sold.

(c) *Stock grazing*. (1) Privileges for the grazing of domestic livestock based on authorized use of certain areas at the time of approval of the Act of September 14, 1950 (64 Stat. 849, Pub. L. 787), shall continue in effect or shall be renewed from time to time, except for failure to comply with such terms and conditions as may be prescribed by the Superintendent in these regulations and after reasonable notice of default and subject to the following provisions of tenure:

(i) Grazing privileges appurtenant to privately owned lands located within the park shall not be withdrawn until title to the lands to which such privileges are appurtenant shall have vested in the United States except for failure to comply with the regulations applicable thereto after reasonable notice of default.

(ii) Grazing privileges appurtenant to privately owned lands located outside the park shall not be withdrawn for a period of twenty-five years after September 14, 1950, and thereafter shall continue during the lifetime of the original permittee and his heirs if they were members of his immediate family as described herein, except for failure to comply with the regulations applicable thereto after reasonable notice of default.

(iii) Members of the immediate family are those persons who are related to and directly dependent upon a person or persons, living on or conducting grazing operations from lands, as of September 14, 1950, which the National Park Service recognized as base lands appurtenant to grazing privileges in the park. Such interpretation excludes mature children who, as of that date, were established in their own households and were not directly dependent upon the base lands and appurtenant grazing recognized by the National Park Service.

(iv) If title to base lands lying outside the park is conveyed, or such base lands are leased to someone other than a member of the immediate family of the permittee as of September 14, 1950, the grazing preference shall be recognized only for a period of twenty-five years from September 14, 1950.

(v) If title to a portion or part of the base land either outside or inside the park is conveyed or such base lands are leased, the new owner or lessee will take with the land so acquired or leased, such proportion of the entire grazing privileges as the grazing capacity in animal unit months of the tract conveyed or leased bears to the original area to which a grazing privilege was appurtenant and recognized. Conveyance or lease of all such base lands will automatically convey all grazing privileges appurtenant thereto.

(vi) Grazing privileges which are appurtenant to base lands located either inside or outside the park shall not be conveyed separately therefrom.

(2) Where no reasonable ingress or egress is available to permittees or nonpermittees who must cross Park lands to reach grazing allotments on non-Federal lands within the exterior boundary of the Park or adjacent thereto, the Superintendent will grant, upon request a temporary nonfee annual permit to herd stock on a designated driveway which shall specify the time to be consumed in each single drive. The breach of any of the terms or conditions of the permit shall be grounds for termination, suspension, or reduction of these privileges.

(3) Grazing preferences are based on actual use during the period March 15, 1938 through September 14, 1950 and no increase in the number of animals or animal unit months will be allowed on Federal lands in the park.

(4)(i) A permittee whose grazing privilege is appurtenant to privately owned lands within the park will be granted total nonuse or reduced benefits for one or more years without nullifying his privilege in subsequent years.

(ii) A permittee whose privilege is appurtenant to base lands outside the park may be granted total nonuse on a year to year basis not to exceed three consecutive years. Total nonuse beyond this time may be granted if necessitated for reasons clearly outside the control of the permittee. Total unauthorized nonuse beyond three consecutive years will result in the termination and loss of all grazing privileges.

(iii) Whenever partial or total nonuse is desired, an application must be made in writing to the Superintendent.

(5) Grazing fees shall be the same as those approved for the Teton National Forest and will be adjusted accordingly.

(6) Permittees or nonpermittees who have stock on Federal lands within the park at any time or place, when or where herding or grazing is unauthorized may be assessed fifty cents per day per animal as damages.

(7) The Superintendent may accept a written relinquishment or waiver of any privileges; however, no such relinquishment or waiver will be effective without the written consent of the owner or owners of the base lands.

(8) Permits. Terms and conditions. The issuance and continued effectiveness of all permits will be subject, in addition to mandatory provisions required by Executive Order or law, to the following terms and conditions:

(i) The permittee and his employees shall use all possible care in preventing forest and range fires, and shall assist in the extinguishing of forest and range fires on, or within, the vicinity of the land described in the permit, as well as in the preservation of good order within the boundaries of the park.

(ii) The Superintendent may require the permittee before driving livestock to or from the grazing allotment to gather his livestock at a designated time and place for the purpose of counting the same.

(iii) Stock will be allowed to graze only on the allotment designated in the permit.

(iv) The permittee shall file with the Superintendent a copy of his stock brand or other mark.

(v) The permittee shall, upon notice from the Superintendent that the allotment designated in the permit is not ready to be grazed at the beginning of the designated grazing season, place no livestock on the allotment for such a period as may be determined by the Superintendent as necessary to avoid damage to the range. All, or a portion of the livestock shall be removed from the area before the expiration of the designated grazing season if the Superintendent determines further grazing would be detrimental to the range. The number of stock and the grazing period may be adjusted by the Superintendent at any time when such action is deemed necessary for the protection of the range.

(vi) No permit shall be issued or renewed until payment of all fees and other amounts due the National Park Service has been made. Fees for permits are due the National Park Service and must be paid at least 15 days in advance of the grazing period. No permit shall be effective to authorize grazing use thereunder until all fees and other amounts due the National Park Service have been paid. A pro rata adjustment of fees will be made in the event of reduction of grazing privileges granted in the permit, except that not more than 50 percent of the total annual grazing fee will be refunded in the event reduced grazing benefits are taken at the election of the permittee after his stock are on the range.

(vii) No building or other structure shall be erected nor shall physical improvements of any kind be established under the permit except upon plans and specifications approved by the National Park Service. Any such facilities, structures, or buildings may be removed or disposed of to a successor

permittee within three months following the termination of the permit; otherwise they shall become the property of the United States without compensation therefor.

(viii) The permittee shall utilize the lands covered by the permit in a manner approved and directed by the Superintendent which will prevent soil erosion thereon and on lands adjoining same.

(ix) The right is reserved to adjust the fees specified in the permit at any time to conform with the fees approved for Teton National Forest, and the permittee shall be furnished a notice of any change of fees.

(x) All livestock are considered as mature animals at six months of age and are so counted in determining animal unit months and numbers of animals.

(xi) The Superintendent may prescribe additional terms and conditions to meet individual cases.

(9) The breach of any of the terms or conditions of the permit shall be grounds for termination, suspension, or reduction of grazing privileges.

(10) Appeals from the decision of the Superintendent to the Regional Director and from the Regional Director to the Director shall be made in accordance with the National Park Service Order No. 14, as amended (19 FR 8824) and Regional Director, Order No. 3, as amended (21 FR 1494).

(11) Nothing in these regulations shall be construed as to prevent the enforcement of the provisions of the general rules and regulations and the special rules and regulations of the National Park Service or of any other provisions of said rules and regulations applicable to stock grazing.

(d) *Camping*. (1) No person, party, or organization shall be permitted to camp more than 30 days in a calendar year in designated sites within the Park.

(2) Except in group campsites and backcountry sites, camping is limited to six persons to a site.

(3) Registration is required for camping at the Jenny Lake Campground; camping in this campground shall not exceed 10 days in any calendar year.

(e) *Vessels*. (1) Motorboats are prohibited except on Jackson, Jenny, and Phelps Lakes. On Jenny Lake, motorboats are restricted to motors not in excess of 7½ horsepower. Additionally, on Jenny Lake, an authorized boating concessioner may operate motorboats under conditions specified by the Superintendent.

(2) Hand-propelled vessels may be used on Jackson, Jenny, Phelps, Emma Matilda, Two Ocean, Taggart, Bradley, Bearpaw, Leigh, and String Lakes and on the Snake River, except within 1,000 feet of the downstream face of Jackson Lake Dam. All other waters are closed to boating.

(3) Sailboats may be used only on Jackson Lake.

(4) No person except an authorized concessioner shall moor or beach a vessel on the shore of a designated harbor area, except in an emergency.

(f) *Management of elk*. The laws and regulations of the State of Wyoming shall govern elk management as associated with formal reduction programs. Such Wyoming laws and regulations which are now or will hereafter be in effect are hereby incorporated by reference as a part of the regulations in this part.

(g)(1) *What is the scope of this section?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (g)(2) also apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

*(i) Commercial guide* means a guide who operates as a snowmobile or snowcoach guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, ''guide'' also means ''commercial guide.''

*(ii) Historic snowcoach* means a Bombardier snowcoach manufactured in

1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

*(iii) Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

*(iv) Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

*(v) Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

*(vi) Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

*(vii) Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with §1.7(a) of this chapter or in the FEDERAL REGISTER.

(4) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the Superintendent.

(5) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in Grand Teton National Park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4

inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified, except that snowmobiles being operated on Jackson Lake may continue to be operated up to 10 years, provided that these snowmobiles' mileage does not exceed 6,000 miles.

(iv) Snowmobiles will be exempt from these air and sound emissions requirements while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the park?* (i) You may operate your snowmobile upon the frozen water surface of Jackson Lake, a route established in accordance with §2.18(c) of this chapter, under the following conditions:

(A) You are ice fishing, and licensed or otherwise permitted to fish in Wyoming;

(B) You possess the proper fishing gear; and

(C) You limit your snowmobile travel to a direct route to and from and between fishing locations on the lake.

(ii) The Superintendent may open or close this route, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized uses on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in §1.7(a) of this chapter.

(iii) This paragraph (g)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow route will be available from Park Headquarters.

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park?* You are not required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the number of snowmobiles permitted to operate in the park each day?* (i) The number of snowmobiles allowed to operate in the park each day on Jackson Lake is 25.

(ii) The Superintendent may adjust this number up or down, not to exceed a daily limit of 40 snowmobiles, after taking into consideration the location of wintering wildlife, appropriate snow cover, noise monitoring results, public safety and other factors. The Superintendent will provide notice of such adjustment by one or more of the methods listed in §1.7(a) of this chapter.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours or dates will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in §1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (g)(11) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (g)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is subject to § 2.18(a), (b), and (c), but not subject to § 2.18(d) and (e) and § 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?*

(i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(15) *May I operate a snowplane in the park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on the designated routes through the park identified in the following paragraphs (g)(16)(i) through (iv). Requirements established in this section related to air and sound emissions, daily entry limits, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. The following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from the east park boundary to a point

approximately 2 miles east of Moran Junction. If necessary for the proper administration of visitor use and resource protection, the Superintendent may extend this designated route to the Moran Entrance Station.

(iv) The Superintendent may designate additional routes if necessary to provide access to other adjacent public lands.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may only use those routes designated in paragraph (g)(16) of this section to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* The Superintendent may establish reasonable and direct snowmobile access routes to the inholding or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to private properties within or adjacent to the park:

(i) From the Antelope Flats Road off U.S. 26/89/191 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the ''Townsend Property.''

(iii) From the Moose-Wilson Road to the land commonly referred to as the ''Barker Property.''

(iv) From the Moose-Wilson Road to the property commonly referred to as the ''Halpin Property.''

(v) From Highway 26/89/191 to those lands commonly referred to as the ''Meadows'', the ''Circle EW Ranch'', the ''Moulton Property'', the ''Levinson Property'' and the ''Macmahon Property.''

(vi) From Cunningham Cabin pullout on U.S. 26/89/191 near Triangle X to the piece of land commonly referred to as the ''Lost Creek Ranch.''

(vii) The Superintendent may designate additional routes if necessary to provide reasonable access to inholdings or adjacent private property.

(viii) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* The routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited* (i) Violating any of the terms, conditions or requirements of paragraphs (g)(3) through (g)(19) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

[24 FR 11043, Dec. 30, 1959, as amended at 27 FR 9515, Sept. 26, 1962; 32 FR 7772, May 27, 1967; 36 FR 16065, Aug. 19, 1971; 48 FR 19171, Apr. 28, 1983; 48 FR 30294, June 30, 1983; 60 FR 13630, Mar. 14, 1995; 60 FR 55791, Nov. 3, 1995; 66 FR 7267, Jan. 22, 2001; 67 FR 69477, Nov. 18, 2002; 68 FR 69287, Dec. 11, 2003; 69 FR 65364, Nov. 10, 2004; 72 FR 70802, Dec. 13, 2007; 73 FR 74610, Dec. 9, 2008; 74 FR 60192, Nov. 20, 2009]

## § 7.23 Badlands National Park.

(a) *Commercial vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, local commercial vehicles may operate on the park road between the Northeast entrance and the Interior entrance in accordance with the provisions of this section.

(2) The term ''Local Commercial Vehicles'', as used in this section, will include the definition of ''commercial vehicle'' in § 5.6(a), but specifically includes only those vehicles that originate from, or are destined to, the following U.S. Postal Service ZIP code areas:

Allen 57714
Belvedere 57521
Cottonwood 57775
Creighton 57729
Interior 57750
Kadoka 57543

Kyle 57752
Long Valley 57547
Owanka 57767
Philip 57567
Scenic 57780
Wall 57790
Wanblee 57577
Wasta 57791

(3) The Superintendent may require a permit and establish terms and conditions in accordance with §1.6 of this chapter for the operation of local commercial vehicles on the park road between the park's Northeast and Interior entrances. The Superintendent may charge a fee for any permits issued to commercial vehicles in accordance with a fee schedule established annually.

(4) The commercial transport on the park road between the Northeast and Interior entrances of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste that requires placarding, or any marine pollutant that requires marking, as defined in 49 CFR Subtitle B, is prohibited; except for local bulk deliveries of gasoline, fuel oil and LP gas; provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and may issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(5) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section, is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or Federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(6) The transportation or use of oversize or overweight commercial vehicles on the park road between the Northeast and Interior entrances is prohibited; provided, however that the Superintendent may issue permits for transportation or use of such vehicles and may condition such permits on the use of special routes within the park in order to minimize impacts to park facilities and resources and also may issue permits when the transportation or use of such vehicles is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(7) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

(b) [Reserved]

[62 FR 2580, Jan. 17, 1997]

### § 7.24 Upper Delaware Scenic and Recreational River.

*Fishing*. Fishing in any manner authorized under applicable State law is allowed.

[53 FR 3748, Feb. 9, 1988]

### § 7.25 Hawaii Volcanoes National Park.

(a) *Fishing*—(1) *Commercial fishing*. Commercial fishing from parklands (above the high waterline) other than as provided for below is prohibited.

(2) *Nets*. The use of nets in fishing from parklands (above the high waterline) except for throw nets, is prohibited.

(3) *Kalapana extension area; special fishing privileges*. (i) Pursuant to the act of June 20, 1938 (52 Stat. 781; 16 U.S.C. 391b and 396a) Native Hawaiian residents of the villages adjacent to the Kalapana extension area added to the park by the above act and visitors under their guidance are granted the exclusive privileges of fishing or gathering seafood from parklands (above the high waterline) along the coastline of such extension area. These persons may engage in commercial fishing under proper State permit.

(ii) For the purposes of this section, the term ''native Hawaiian'' means any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778 (Act of June 20, 1938; 52 Stat. 784; 16 U.S.C. 396a).

(b) *Backcountry registration*. No person shall explore or climb about the

lava tubes or pit craters in the park without first registering with the superintendent and indicating the approximate length of time involved in the exploration and the number of people in the party. This section does not apply to the maintained trail through Thruston Lava Tube, nor the maintained trail down and across Kilauea Iki pit crater.

[34 FR 9338, June 13, 1969, as amended at 48 FR 30295, June 30, 1983]

### § 7.26 Death Valley National Monument.

(a) *Mining*. Mining in Death Valley National Monument is subject to the following regulations, which are prescribed to govern the surface use of claims therein:

(1) The claim shall be occupied and used exclusively for mineral exploration and development and for no other purpose except that upon written permission of an authorized officer or employee of the National Park Service the surface of the claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(2) The owner of the claim and all persons holding under him shall conform to all rules and regulations governing occupancy of the lands within the National Monument.

(3) The use and occupancy of the surface of mining claims as prescribed in paragraphs (a) (1) and (2) of this section shall apply to all such claims located after the date of the act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447), within the limits of the National Monument as fixed by Proclamation No. 2028 of February 11, 1933, and enlarged by Proclamation No. 2228 of March 26, 1937, and to all mining claims on lands hereafter included in the National Monument, located after such inclusion, so long as such claims are within the boundaries of said Monument.

(4) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. Applications for permits shall be accompanied by a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee's maintaining the road or trail in a passable condition as long as it is used by the permittee or his successors.

(5) From and after the date of publication of this section, no construction, development, or dumping upon any location or entry, lying wholly or partly within the areas set forth in paragraphs (a)(5) (i) to (iii) of this section, shall be undertaken until the plans for such construction, development, and dumping, insofar as the surface is affected thereby, shall have been first submitted to and approved in writing by an authorized officer or employee of the National Park Service:

(i) All land within 200 feet of the center-line of any public road.

(ii) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one quarter of a mile thereof on unsurveyed public land.

(iii) All land within any site developed or approved for development by the National Park Service as a residential, administrative, or public campground site. Such sites shall include all land within the exterior boundaries thereof as conspicuously posted by the placing of an appropriate sign disclosing that the boundaries of the developed site are designated on a map of the site which will be available for inspection in the office of the Superintendent. If not so posted, such sites shall include all land within 1,000 feet of any Federally owned buildings, water and sewer systems, road loops, and camp tables and fireplaces set at designated camp sites.

(b) *Use of water*. No works or water system of any kind for the diversion, impoundment, appropriation, transmission, or other use of water shall be constructed on or across Monument lands, including mining claims, without a permit approved by an authorized officer or employee of the National Park Service. Application for such permit shall be accompanied by plans of the proposed construction. The permit shall contain the following conditions: (1) No diversion and use of the water

shall conflict with the paramount general public need for such water; (2) such water systems shall include taps or spigots at points to be prescribed by the Superintendent, for the convenience of the public; and (3) all appropriations of water, in compliance with the State water laws, shall be made for public use in the name of the United States and in accordance with instructions to be supplied by an authorized officer or employee of the National Park Service.

(c) *Permits*. Application for any permit required by this section shall be made through the Superintendent of the Monument.

(d) *Filing of copies of mining locations*. From and after the publication of this paragraph, in order to facilitate the administration of the regulations in this part, copies of all mining locations filed in the Office of the County Recorder shall be furnished to the office of the Superintendent, Death Valley National Monument, by the person filing the mining location in his own behalf or on behalf of any other person.

(e) *Aircraft*. The following are designated as locations where the operation of aircraft is allowed:

(1) Death Valley Airport, latitude 36°27′50″ N., longitude 116°52′50″ W.

(2) Stovepipe Wells Airport, latitude 36°36′15″ N., longitude 117°09′30″ W.

[24 FR 11044, Dec. 30, 1959, as amended at 49 FR 18450, Apr. 30, 1984]

### § 7.27 Dry Tortugas National Park.

(a) *What terms do I need to know?* The following definitions apply to this section only:

(1) *Bait fish* means any of the following:

(i) Ballyhoo (family *Exocioetidae* and genus *Hemiramphus*), other genus may be included in this family;

(ii) Minnow (families *Cyprinodontidae*, *Peciliidae*, or *Aherinidae*);

(iii) Mojarra (family *Gerreidae*);

(iv) Mullet (family *Mugilidae*);

(v) Pilchard (family *Clupeidae*); or

(vi) Pinfish (family *Sparidae*, genus *Lagodon*).

(2) *Cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand, measuring 14 feet or less stretched length (stretched length is defined as the distance from the horn at the center of the net with the net gathered and pulled taut, to the lead line).

(3) *Designated anchorage* means any area of sand within one nautical mile of the Fort Jefferson Harbor Light.

(4) *Dip net* means a hand held device for obtaining bait, the netting of which is fastened in a frame. A dip net may not exceed 3 feet at its widest point.

(5) *Finfish* means a member of subclasses Agnatha, Chondrichthyes, or Osteichthyes.

(6) *Flat wake speed* means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per hour.

(7) *Guide operations* means the activity of a person, partnership, firm, corporation, or other entity to provide services for hire to visitors of the park. This includes, but is not limited to, fishing, diving, snorkeling, and wildlife viewing.

(8) *Live rock* means any living marine organism or assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells.

(9) *Lobster* means any of the following:

(i) Shovelnosed or Spanish Lobster (*Scyllarides aequinocti*);

(ii) Slipper lobster (*Parribacus antarcticus*);

(iii) Caribbean spiny lobster (*Panulirus argus*); or

(iv) Spotted spiny lobster (*Panulirus guttatus*).

(10) *Marine life* means:

(i) Sponges, sea anenomes, corals, jellyfish, sea cucumbers, starfish, sea urchins, octopus, crabs, shrimp, barnacles, worms, conch; and

(ii) Other animals belonging to the Phyla Porifera, Cnidaria, Echinodermata, Mollusca, Bryozoa, Brachiopoda, Arthropoda, Platyhilmenthes, and Annelida.

(11) *Not available for immediate use* means not readily accessible for immediate use (*e.g.*, by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or being securely covered and lashed to a deck or bulkhead).

(12) *Ornamental tropical fish* means a brightly colored fish, often used for aquarium purposes and which lives in close relationship to coral communities, belonging to the families Syngathidae, Apogonidae, Pomacentridae, Scaridae, Blennidae, Callionymidae, Gobiidae, Ostraciidae, or Diodontidae.

(13) *Permit*, in the case of 36 CFR part 7.27, means an authorization in writing or orally (e.g., via radio or telephonically).

(14) *Research Natural Area* (RNA) at Dry Tortugas National Park means the 46-square-statute-mile area in the northwest portion of the park enclosed by connecting with straight lines the adjacent points of 82°51′ W and 24°36′ N, and 82°58′ W and 24°36′ N west to the park boundary, but excluding:

(i) The designated anchorage;

(ii) Garden Key, Bush Key and Long Key; or

(iii) The central portion of Loggerhead key including the lighthouse and associated buildings.

(15) *Shrimp* means a member of the genus *Farfantepenaeus*, Penaeus sp.

(b) *Are there recreational fishing restrictions that I need to know?*

(1) Yes. After consulting with and obtaining the concurrence of the Florida Fish and Wildlife Conservation Commission, based on management objectives and the park fisheries research, the Superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including, but not limited to, species of fish that may be taken, seasons, and hours during which fishing may take place, methods of taking, and size, bag, and possession limits. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter. In emergency situations, after consulting with the Florida Fish and Wildlife Conservation Commission, the Superintendent may impose temporary closures and establish conditions or restrictions necessary, but not exceeding 30 days in duration which may be extended for one additional 30 day period, pertaining to fishing, including, but not limited to, species of fish that may be taken, seasons, and hours during which fishing may take place, methods of taking, and size, bag, and possession limits. In emergency situations where consultation in advance is not possible, the Superintendent will consult with the Florida Fish and Wildlife Conservation Commission within 24-hours of the initiation of the temporary closure or restriction.

(2) Only the following may be legally taken from Dry Tortugas National Park:

(i) Fin fish by closely attended hook-and-line;

(ii) Bait fish by closely attended hook and line, dip net, or cast net and limited to 5 gallons per vessel per day; and

(iii) Shrimp may be taken by dip net or cast net.

(3) The following waters and areas are closed to fishing:

(i) The Research Natural Area (RNA): Fish and fishing gear may be possessed aboard a vessel in the RNA, provided such fish can be shown not to have been harvested from within, removed from, or taken within the RNA, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through the RNA, provided further that such vessel is in continuous transit through the RNA. Gear capable of harvesting fish may be aboard a vessel in the RNA, provided such gear is not available for immediate use when entering and during transit through the RNA and no presumption of fishing activity shall be drawn therefrom;

(ii) Garden Key moat;

(iii) Within any swimming and snorkeling areas designated by buoys;

(iv) Within 50 feet of the historic coaling docks;

(v) Helipad areas, including the gasoline refueling dock.

(4) The following are prohibited:

(i) Possessing lobster within the boundaries of the park, unless the individual took the lobster outside park waters and has the proper State/Federal licenses and permits. Vessels with legally taken lobster aboard which was taken outside the park may not have persons overboard in park waters. The presence of lobster aboard a vessel in park waters, while one or more persons from such vessel are overboard, constitutes prima facie evidence that the

lobsters were harvested from park waters in violation of this chapter.

(ii) Taking fish by pole spear, Hawaiian sling, rubber powered, pneumatic, or spring loaded gun or similar device known as a speargun, air rifles, bows and arrows, powerheads, or explosive powered guns. Operators of vessels within the park must break down and store all weapons described in this paragraph so that they are not available for immediate use.

(iii) Use of a hand held hook, gig, gaff, or snare, except that a gaff may be used for landing a fish lawfully caught by hook and line when consistent with all requirements in this section, including size and species restrictions.

(iv) Taking, possessing, or touching any ornamental tropical fish or marine life except as expressly provided in this section.

(v) Dragging or trawling a dip net or cast net.

(vi) The use of nets except as provided in paragraphs (b)(3)(ii)and (iii) of this section.

(vii) Engaging in guide operations (fee for service), including but not limited to fishing and diving, except in accordance with the provisions of:

(A) A permit, contract, or other commercial use authorization; or

(B) Other written agreement with the United States administered under this chapter.

(c) *Are any areas of the park closed to the public?* Yes. The following areas are closed to the public:

(1) The elkhorn (*Acropora palmata*) and staghorn (*Acropora prolifera*) coral patches adjacent to and including the tidal channel southeast of Long and Bush Keys and extending to 100 yards from the exterior edge of either patch;

(2) Hospital and Long Keys; and

(3) Areas that the Superintendent designates in accordance with §1.5 and noticed to the public through one or more of the methods listed in §1.7 of this chapter.

(d) *What restrictions apply on Loggerhead Key?*

(1) The Superintendent will, as necessary to protect park resources, visitors, or employees:

(i) Designate areas on Loggerhead Key open for public use;

(ii) Establish closures or restrictions on and around the waters of Loggerhead Key; and

(iii) Establish conditions for docking, swimming or wading, and hiking.

(2) The Superintendent will notify the public of designations, closures or restrictions through one or more of the methods listed in §1.7 of this chapter.

(e) *What restrictions apply to anchoring a vessel in the park?*

(1) Anchoring in the Research Natural Area (RNA) is prohibited.

(2) All vessels in the RNA must use designated mooring buoys.

(3) Anchoring between sunset and sunrise is limited to the designated anchorage area at Garden Key.

(4) Vessels engaged in commercial fishing or shrimping must not anchor in any of the channels, harbors, or lagoons in the vicinity of Garden Key, Bush Key, or the surrounding shoals outside of Bird Key Harbor, except in cases of emergency involving danger to life or property. (Emergencies may include, adverse weather conditions, mechanical failure, medical emergencies, or other public safety situations.)

(f) *What vessel operations are prohibited?* The following vessel operations are prohibited:

(1) Operating a vessel in the Fort Jefferson Moat; and

(2) Operating a vessel above a flat wake speed in the Garden Key and Bird Key Harbor areas.

(g) *What restrictions apply to discharging materials in park waters?*

(1) Discharging or depositing materials or substances of any kind within the boundaries of the park is prohibited, except for the following:

(i) *Research Natural Area:* cooling water or engine exhaust.

(ii) *Park Waters Outside the Research Natural Area:*

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting recreational fishing activities in the park;

(B) Water generated by routine vessel operations (e.g., deck wash down and graywater from sinks, consisting of only water and food particles;

(C) Vessel cooling water, engine exhaust, or bilge water not contaminated by oil or other substances.

(2) The Superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of these requirements through one or more of the methods listed in § 1.7 of this chapter.

(h) *What are the permit requirements in the park?*

(1) A permit, issued by the Superintendent, is required for all non-commercial vessels for which occupants are engaged in recreational activities, including all activities in the RNA. Permitted recreational activities include but are not limited to use of mooring buoys, snorkeling, diving, wildlife viewing, and photography.

(2) A permit, issued by the Superintendent, is required for a person, group, institution, or organization conducting research activities in the park.

(3) Vessels transiting the park without interruption shall not require a permit.

(i) *How are corals and other underwater natural features protected in the park?*

(1) Taking, possessing, removing, damaging, touching, handling, harvesting, disturbing, standing on, or otherwise injuring coral, coral formation, seagrass or other living or dead organisms, including marine invertebrates, live rock, and shells, is prohibited.

(2) Vessel operators are prohibited from allowing their vessel to strike, injure, or damage coral, seagrass, or any other immobile organism attached to the seabed.

(3) Vessel operators are prohibited from allowing an anchor, chain, rope or other mooring device to be cast, dragged, or placed so as to strike, break, abrade, or otherwise cause damage to coral formations, sea grass, or submerged cultural resources.

(j) *What restrictions apply on or near shipwrecks?*

(1) No person may destroy, molest, remove, deface, displace, or tamper with wrecked or abandoned vessels of any type or condition, or any cargo pertaining thereto.

(2) Surveying, inventorying, dismantling, or recovering any wreck or cargo within the boundaries of the park is prohibited unless permitted in writing by the Superintendent.

(k) *How are aircraft operations restricted?*

(1) Landing an aircraft in Dry Tortugas National Park may occur only in accordance with a permit issued by the Superintendent under § 1.6 of this chapter.

(2) When landing is authorized by permit, the following requirements also apply:

(i) Aircraft may be landed on the waters within a radius of 1 mile of Garden Key, but a landing or takeoff may not be made within 500 feet of Garden Key, or within 500 feet of any closed area.

(ii) Operation of aircraft is subject to § 2.17 of this chapter, except that seaplanes may be taxied closer than 500 feet to the Garden Dock while en route to or from the designated ramp, north of the dock.

(iii) Seaplanes may be moored or brought up on land only on the designated beach, north of the Garden Key dock.

[71 FR 76164, Dec. 20, 2006]

## § 7.28 Olympic National Park.

(a) *Fishing*—(1) *General Provisions*. All waters within Olympic National Park are open to fishing in conformance with those seasons and limits published annually by the Washington State Department of Game and the Washington State Department of Fisheries applicable in the same watershed in adjoining counties, except as provided for below.

(i) *Possession limit*. This shall be the same as the daily limit for all species; *Provided however*, it is lawful to possess four steelhead over 20 inches regardless of weight. In the Queets River and tributaries the summer season possession limit is two steelhead over 20 inches.

(ii) *General summer season*. Daily steelhead catch limit shall not exceed two fish, *Provided however:*

(A) The Queets River and tributaries shall have a summer season daily limit of one steelhead over 20 inches in length.

(B) The Quinault River is closed to the taking of steelhead all year above the confluence of the North and East Forks, but is open in its entirety during the general summer season to the taking of two rainbow trout with a

minimum six of 10 inches and maximum size of 20 inches.

(2) *Salmon Fishing*. Salmon fishing is permitted on the following park waters, exclusive of tributaries, when adjacent State waters are open:

Dickey River.
Hoh River below confluence of South Fork.
Kalaloch Creek.
Ozette River.
Queets River below Tshletshy Creek.
Quillayute River.
Quinault River below the bridge connecting North Fork and Graves Creek Roads.
Salmon River.

Seasons and bag limits shall be established annually after consultation with the State and any affected Indian tribe.

(3) *Conservation waters*. After consultation with the State and, where appropriate, the concerned Indian tribe, the superintendent may, by local publication and conspicuous posting of signs, alter the season and change daily limits for spawning, conservation or research purposes.

(4) *Closed waters*. That portion of the Morse Creek watershed within the park (except Lake Angeles and P.J. Lake) and that section of Kalaloch Creek which is used as domestic water supply (as posted) are closed to fishing. Fishing from boats is prohibited on the Hoh River upstream from the South Fork Hoh boat launch.

(5) *Fishing gear*. Fishing with a line, gear or tackle having more than two spinners, spoons, blades, flashers, or like attractions, or with more than one rudder, or more than two hooks (single, double, or treble barbed) attached to such line, gear, or tackle, is prohibited.

(6) *Bait*. The use of nonpreserved fish eggs is permitted.

(7) *License*. A license to fish in park waters is not required; however, an individual fishing for steelhead or salmon in park waters, except treaty Indians fishing in the exercise of rights secured by treaties of the United States, shall have in his/her possession a State of Washington punch card for the species being sought. Steelhead and salmon shall be accounted for on these cards as required by State regulations.

(8) *Indian treaty fishing*. (i) Subject to the limitations set forth below, all waters within the Olympic National Park which have been adjudicated to be usual and accustomed fishing places of an Indian tribe, having treaty-secured off-reservation fishing rights, are open to fishing by members of that tribe in conformance with applicable tribal or State regulations conforming to the orders of the United States District Court.

(ii) *Identification cards and tags*. Members of the tribes having treaty-secured fishing rights shall carry identification cards conforming to the requirements prescribed by the United States District Court and issued either by the Bureau of Indian Affairs or the applicable tribe when fishing in accordance with the tribe's reserved treaty fishing right. Such persons shall produce said card for inspection upon request of a National Park Service enforcement officer. A tribally issued identification tag shall be attached to any unattended fishing gear in park waters.

(iii) *Conservation closures and catch limits*. The superintendent may close a stream or any portion thereof to Indian treaty fishing or limit the number of fish that may be taken when it is found either that it is:

(A) Reasonable and necessary for the conservation of a run as those terms are used by the United States District Court to determine the permissible limitations on the exercise of Indian treaty rights; or

(B) Necessary to secure the proper allocation of harvest between Indian treaty fisheries and other fisheries as prescribed by the court.

(iv) *Catch reports*. Indian fishermen shall furnish catch reports in such form as the superintendent, after consultation with the applicable tribe, shall have prescribed.

(v) *Prohibition of fish cultural activities*. No fish cultural, planting, or propagation activity shall be undertaken in park waters without prior written permission of the superintendent.

(vi) *Applicability of other park regulations*. Indian treaty fishing shall be in conformity with National Park Service general regulations in parts 1–6 of this chapter.

(b) *Boating*. All vessels are prohibited on park waters except as provided below:

(1) Hand propelled vessels and sailboats are permitted on park waters except the following:

Dosewalips River.

(2) Motorboats are permitted on the following waters:

Lake Crescent.
Lake Cushman.
Lake Mills.
Dickey River in coastal strip.
Hoh River in coastal strip.
Quillayute River in coastal strip.
Quinault River below the bridge connecting North Fork and Graves Creek Roads.

(c) *Dogs and cats.* Dogs (except guide dogs) and cats are prohibited on any park land or trail, except on designated park roads and parking areas or within one-quarter mile of an established automobile campground or concessioner overnight facility.

(d) [Reserved]

(e) *Privately owned lands*—(1) *Water supply and sewage disposal systems.* The provisions of this paragraph apply to the privately owned lands within Olympic National Park. The provisions of this paragraph do not excuse compliance by eating, drinking, or lodging establishments with § 5.10 of this chapter.

(i) *Facilities.* (*a*) Subject to the provisions of paragraph (e)(1)(iii) of this section, no person shall occupy any building or structure, intended for human habitation or use, unless such building is served by water supply and sewage disposal systems that comply with the standards prescribed by the State and county laws and regulations applicable in the county within whose exterior boundaries such building is located.

(*b*) No person shall construct, rebuild or alter any water supply or sewage disposal system without a written permit issued by the Superintendent. The Superintendent will issue such permit only after receipt of written notification from the appropriate Federal, State, or county officer that the plans for such system comply with the State or county standards. There shall be no charge for such permits. Any person aggrieved by an action of the Superintendent with respect to any such permit or permit application may appeal in writing to the Director, National Park Service, U.S. Department of the Interior, Washington, DC 20240.

(ii) *Inspections.* (*a*) The appropriate State or county officer, the Superintendent, or their authorized representatives or an officer of the U.S. Public Health Service, may inspect any water supply or sewage disposal system, from time to time, in order to determine whether such system complies with the State and county standards: *Provided, however,* That inspection shall be made only upon consent of the occupant of the premises or pursuant to a warrant.

(*b*) Any water supply or sewage disposal system may be inspected without the consent of the occupant of the premises or a warrant if there is probable cause to believe that such system presents an immediate and severe danger to the public health.

(iii) *Defective systems.* (*a*) If upon inspection, any water supply system or sewage disposal system is found by the inspecting officer not to be in conformance with applicable State and county standards, the Superintendent will send to the ostensible owner and/or the occupant of such property, by certified mail, a written notice specifying what steps must be taken to achieve compliance. If after 1 year has elapsed from the mailing of such written notice the deficiency has not been corrected, such deficiency shall constitute a violation of this regulation and shall be the basis for court action for the vacation of the premises.

(*b*) If upon inspection, any water supply or sewage disposal system is found by the inspecting officer not to be in conformance with established State and county standards and it is found further that there is immediate and severe danger to the public health or the health of the occupants or users, the Superintendent shall post appropriate notices at conspicuous places on such premises, and thereafter, no person shall occupy or use the premises on which the system is located until the Superintendent is satisfied that remedial measures have been taken that will assure compliance of the system with established State and county standards.

(2) *State forest practice laws.* Any person, firm, or corporation harvesting or cutting timber on privately owned lands within that portion of Olympic

National Park over which jurisdiction has been ceded by the State of Washington to the United States of America shall comply with the standards concerning forest practices established from time to time by or pursuant to the laws of the State of Washington which would apply to such operations if they were not being conducted in Olympic National Park and personnel of the Park will consult and cooperate with State officials in the administration of this regulation. Although forest practices standards established from time to time by or pursuant to the laws of the State of Washington shall apply, no person, firm, or corporation harvesting timber, on such privately owned lands shall be required to obtain permits or licenses from, or pay fees to, the State of Washington or its political subdivisions in connection with the harvesting or cutting of timber on such lands. Prior to the initiation of harvesting or cutting of timber on privately owned lands over which jurisdiction has been ceded to the United States, such operations shall be registered with the Superintendent of Olympic National Park.

(3) *Conflict with Federal laws.* If the standards established from time to time by or pursuant to the laws of the State of Washington, specified in paragraphs (e) (1) and (2) of this section, are lower than or conflict with any established by Federal laws or regulations applicable to privately owned lands within Olympic National Park, the latter shall prevail.

(f) *Snowmobile use.* (1) The use of snowmobiles is prohibited except in areas and on routes designated by the superintendent by the posting of appropriate signs or by marking on a map available at the office of the superintendent, or both. The following routes have been designated for snowmobile use within Olympic National Park:

(i) Staircase Road from the park boundary to the Staircase Ranger Station.

(ii) Whiskey Bend Road from the function of the Elwha Road to the Whiskey Bend trailhead.

(iii) Boulder Creek Road from Glines Canyon Dam to the end of the road.

(iv) North Fork Quinault Road from the end of the plowed portion to the North Fork Ranger Station.

(v) South Shore Road from the end of the plowed portion to the Graves Creek Ranger Station.

(2) [Reserved]

[24 FR 11045, Dec. 30, 1959, as amended at 34 FR 5844, Mar. 28, 1969; 34 FR 6331, Apr. 10, 1969; 35 FR 10359, June 25, 1970; 35 FR 14133, Sept. 5, 1970; 46 FR 37896, July 23, 1981; 47 FR 54930, Dec. 7, 1982; 48 FR 1488, Jan. 13, 1983; 48 FR 30295, June 30, 1983]

## § 7.29 Gateway National Recreation Area.

(a) *Operation of motor vehicles.* The operation of motor vehicles, other than authorized emergency vehicles, is prohibited outside of established public roads and parking areas, except on beaches and oversand routes designated by the Superintendent by the posting of appropriate signs and identified on maps available at the office of the Superintendent. These beaches and routes will be designated after consideration of the criteria contained in sections 3 and 4 of E.O. 11644, (37 FR 2877) and § 4.10(b) of this chapter.

(b) *Off-road vehicle operation.* (1) Operation of motor vehicles, (including the various forms of vehicles used for travel oversand, such as but not limited to, ''beach buggies'') on beaches or on designated oversand routes without a permit from the Superintendent is prohibited. Before a permit will be issued, each vehicle will be inspected to assure that it contains the following equipment which must be carried in the vehicle at all times while on the beaches or on the designated oversand routes:

(i) Shovel;

(ii) Jack;

(iii) Tow rope or chain;

(iv) Board or similar support;

(v) Low pressure tire gauge.

Prior to the issuance of such permits, operators must show compliance with Federal and State regulations and applicable to licensing, registering, inspecting, and insuring of such vehicles. Such permits shall be affixed to the vehicles as instructed at the time of issuance.

(2) Driving off designated, marked oversand routes or beaches is prohibited.

(3) Vehicles shall not be parked in designated oversand routes or interfere with moving traffic.

(4) When the process of freeing a vehicle which has been stuck results in ruts or holes, the ruts or holes shall be filled by the operator of such vehicle before it is removed from that area.

(5) The operation of a motorcycle on an oversand vehicle route or beach is prohibited.

(6) The Superintendent may establish limits on the number of oversand vehicles permitted on designated oversand routes and beaches when such limitations are necessary in the interest of public safety, protection of the ecological and environmental values of the area, coordination with other visitor uses.

(c) *Public lewdness*. Section 245.00 of the New York Penal Code is hereby adopted and incorporated into the regulations of this part. Section 245.00 provides that:

> A person is guilty of public lewdness when he intentionally exposes the private and intimate parts of his body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in private premises under circumstances in which he may readily be observed from either a public place or from other private premises, and with intent that he be so observed.

[41 FR 19220, May 11, 1976, as amended at 44 FR 44157, July 27, 1979; 52 FR 10686, Apr. 2, 1987]

### § 7.30 Devils Tower National Monument.

(a) *Climbing*. Registration with a park ranger is required prior to any climbing above the talus slopes on Devils Tower. The registrant is also required to sign in immediately upon completion of a climb in a manner specified by the registering ranger.

[42 FR 20462, Apr. 20, 1977]

### § 7.31 Perry's Victory and International Peace Memorial.

*Snowmobiles*. After consideration of existing special situations, i.e., depth of snow, and depending on local weather conditions, the superintendent may permit the use of snowmobiles on that portion of land situated between State Route 357 and the seawall which designates the north boundary of the Memorial. This route will extend from the extreme northeast corner of the boundary to the middle of the intersection of State Route 357 and Toledo Avenue.

[47 FR 55392, Dec. 9, 1982]

### § 7.32 Pictured Rocks National Lakeshore.

(a) *Snowmobiles*. (1) Snowmobile use is permitted on designated portions of roadways and lakes in Pictured Rocks National Lakeshore. The designated routes for snowmobiles will be confined to the frozen waters of Lake Superior, Grand Sable Lake, on the major lakeshore visitor use roads that are unplowed, or on road shoulders of plowed park roads in conformance with State law. The designated snowmobile routes are:

(i) The Sand Point Road from the park boundary to Lake Superior.

(ii) The woodlands road from the park boundary off City Limits Road southwest to Becker Farm and down to the Sand Point Road.

(iii) The road to Miner's Falls, Miner's Castle parking area, and the Miner's Beach parking area.

(iv) The road from the park boundary in section 32, T48N, R17W, to the end of the road to Chapel Falls.

(v) The road from Country Road H–58 at the park boundary to the Little Beaver Lake Campground.

(vi) The road from County Road H–58 to the Twelvemile Beach Campground.

(vii) The road from County Road H–58 to the Hurricane River Campground.

(viii) The road from County road H–58 to the Log Slide.

(ix) The section of Michigan Dimension Road from the park boundary to the Log Slide.

(x) The frozen waters of Lake Superior and Grand Sable Lake.

(2) Maps showing designated routes shall be available at park headquarters and at ranger stations.

(3) Snowmobile use outside designated routes is prohibited. The prohibition shall not apply to emergency administrative travel by employees of the National Park Service or law enforcement agencies.

(b) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(c) *Hunting*. The following lakeshore areas are closed to hunting:

(1) *Sand Point area*. All that portion of Sand Point described as the area below the top of the bluff in Sections 19 and 30, T47N, R18W, and that area situated within the corporate limits of the City of Munising, including the Sand Point Road.

(2) *Developed public use areas*. (i) The area within 150 yards of any campsite located within the Little Beaver, Twelvemile Beach, and Hurricane River Campgrounds.

(ii) The area within 150 yards of the Miners Castle overlooks, paved walkways and vehicle parking lot. Also 100 feet from the centerline of the paved Miners Castle Road and the area within 100 feet of Miners Falls parking lot, trail and associated platforms.

(iii) The area within 100 feet of: the Chapel Falls parking lot; the Little Beaver backpacker parking lot; the Twelvemile Beach picnic area parking lot; the Log Slide parking lot, platforms and walkways; the Grand Sable Lake picnic area and parking lot; the Grand Sable Lake boat launch and parking lot; the Grand Sable Lake overlook parking lot.

(iv) The area within 150 yards of any structure at the Au Sable Light Station, and within 100 feet of the trail between the lower Hurricane River Campground and the light station.

(v) The area within 150 yards of the Sable Falls parking lot and building, including the viewing platforms and associated walkway system to the mouth of Sable Creek. Also included is the area 100 feet from the centerline of the paved Sable Falls Road.

(vi) The area within 150 yards of: the Grand Sable Visitor Center parking lot and barn; the structures comprising the Grand Marais quarters and maintenance facility.

(vii) The 8.6 acre tract comprising structures and lands administered by the National Park Service on Coast Guard Point in Grand Marais.

(3) *Hunting season*. Hunting is prohibited park wide during the period of April 1 through Labor Day.

(d) *Personal Watercraft (PWC)*. (1) PWC are allowed on the waters within Pictured Rocks National Lakeshore, from the western boundary of the lakeshore to the east end of Miners Beach.

(2) PWC may be launched only from a designated launch site at Sand Point.

(3) PWC users may beach their craft only at Sand Point Beach and Miners Beach.

(4) The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[47 FR 54932, Dec. 7, 1982, as amended at 49 FR 18450, Apr. 30, 1984; 60 FR 47703, Sept. 14, 1995; 70 FR 61905, Oct. 27, 2005]

## § 7.33 Voyageurs National Park.

(a) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(b) *Snowmobiles*. (1) The following lakes and trails within Voyageurs National Park are open to snowmobile use:

(i) The frozen waters of Rainy, Kabetogama, Namakan, Mukooda, Little Trout and Sand Point Lakes.

(ii) The Moose River Railroad Grade from the park boundary north to Ash River, and then east to Moose Bay, Namakan Lake.

(iii) The portage trail between Grassy Bay and Little Trout Lake.

(iv) The Chain of Lakes Trail from its intersection with the Black Bay to Moose Bay portage, across Locator, War Club, Quill, Loiten, and Shoepack Lakes, to Kabetogama Lake.

(2) Snowmobile use is allowed across the following marked safety portages: Black Bay to Moose Bay, Lost Bay to Saginaw Bay, Laurins Bay to Kettle Falls, Squirrel Narrows, Squaw Narrows, Grassy Bay, Namakan Narrows, Swansons Bay, Mukooda Lake to Sand Point Lake (north), Mukooda Lake to Sand Point Lake (south), Mukooda Lake to Crane Lake, Tar Point, Kohler Bay, and Sullivan Bay to Kabetogama Lake.

(3) The Superintendent may determine yearly opening and closing dates for snowmobile use, and temporarily close trails or lake surfaces, taking into consideration public safety, wildlife management, weather, and park management objectives.

(4) Maps showing the designated routes are available at park headquarters and at ranger stations.

(5) Snowmobile use outside open designated routes and lake surfaces is prohibited.

(c) *Aircraft.* (1) Aircraft may be operated on the entire water surface and frozen lake surface of the following lakes, except as restricted in paragrah (c)(4) of this section and § 2.17 of this chapter: Rainy, Kabetogama, Namakan, Sand Point, Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda.

(2) Approaches, landings and take-offs shall not be made within 500 feet of any developed facility, boat dock, float, pier, ramp or beach.

(3) Aircraft may taxi to and from a dock or ramp designated for their use for the purpose of mooring and must be operated with due care and regard for persons and property and in accordance with any posted signs or waterway markers.

(4) Areas within the designated lakes may be closed to aircraft use by the Superintendent taking into consideration public safety, wildlife management, weather and park management objectives.

[49 FR 18450, Apr. 30, 1984, as amended at 56 FR 3421, Jan. 30, 1991; 60 FR 39258, Aug. 2, 1995]

### § 7.34 Blue Ridge Parkway.

(a) *Snowmobiles.* After consideration of any special situations, i.e. prescheduled or planned park activities such as conducted hikes or winter bird and wildlife counts, and depending on local weather conditions, the Superintendent may allow the use of snowmobiles on the paved motor road and overlooks used by motor vehicle traffic during other seasons between U.S. 220, Milepost 121.4 and Adney Gap, Milepost 136.0. The public will be notified of openings through the posting of signs.

(b) *Fishing.* (1) Fishing is prohibited from one-half hour after sunset until one-half hour before sunrise.

(2) Fishing from the dam at Price Lake or from the footbridge in Price Lake picnic area in Watauga County, N.C., and from the James River Parkway Bridge in Bedford and Amherst Counties, Va., is prohibited.

(3) The following waters are subject to the restrictions indicated:

(i) *North Carolina.* Basin Creek and its tributaries in Doughton Park; Trout Lake in Moses H. Cone Memorial Park; Ash Bear Pen Pond, Boone Fork River, Cold Prong Branch, Laurel Creek, Sims Creek, Sims Pond in Julian Price Memorial Park, and Camp Creek.

(A) On all of the above-designated waters in North Carolina the use of bait other than artificial lures having a single hook is prohibited, except that on Basin Creek and its tributaries and Boone Fork River from Price Lake Dam downstream to the Parkway boundary the use of bait other than single hook artificial flies is prohibited.

(B) On all of the above-designated waters in North Carolina the daily creel and size limits shall be posted around the lake shorelines and along the stream banks.

(ii) *Virginia.* Peaks of Otter Lake in Bedford County, Va.

(A) On the above-designated water in Virginia the use of bait other than artificial lures having one single hook is prohibited.

(B) On the above-designated water in Virginia the daily creel and size limits shall be as posted on the lake shoreline.

(4) Prohibited bait in waters in paragraphs (b)(3) (i) and (ii) of this section: Possession of or use as bait of insects, worms, and other similar organic bait or parts thereof adjacent to, on, or in streams or lakes while in possession of fishing tackle, is prohibited.

(c) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(d) *Boating.* (1) The use of any vessel, as defined in § 3.1 of this chapter on the waters of the Blue Ridge Parkway is prohibited except on the waters of Price Lake.

(2) Vessels using Price Lake shall be restricted to vessels propelled solely by oars or paddles.

(3) Vessels using Price Lake may be launched only at established or designated ramps and shall be removed from the water for the night. Campers

shall remove their vessels from the water to their campsites at night.

[24 FR 11032, Dec. 30, 1959, as amended at 34 FR 11969, July 16, 1969; 36 FR 20945, Nov. 2, 1971; 37 FR 20247, Sept. 28, 1972; 42 FR 61042, Dec. 1, 1977; 46 FR 39818, Aug. 5, 1981; 48 FR 30295, June 30, 1983; 49 FR 18450, Apr. 30, 1984; 52 FR 10686, Apr. 2, 1987; 52 FR 20388, June 1, 1987]

### § 7.35 Buffalo National River.

(a) *Fishing*. (1) Unless otherwise designated by the Superintendent, fishing in a manner authorized under applicable State law is allowed.

(2) The Superintendent may designate times when and locations where and establish conditions under which the digging of bait for personal use is allowed.

(3) The Superintendent may designate times when and locations where and establish conditions under which the collection of terrestrial and aquatic insects for bait for personal use is allowed.

(4) Violating a designation or condition established by the Superintendent is prohibited.

(b) *Frogs, Turtles* and *Crayfish*. (1) The Superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and crayfish for personal use.

(2) Violating a designation or condition established by the Superintendent is prohibited.

(c) *Motorized Vessels*. (1) Except for a vessel propelled by a gasoline, diesel or other internal combustion engine with a rating of 10 horsepower or less, operating a motorized vessel from Erbie Ford to the White River is prohibited.

(2) Operating a vessel propelled by a motor is prohibited above Erbie Ford.

(3) The provisions of paragraph (c) do not apply to a vessel operated for official use by an agency of the United States, the State of Arkansas or one of its political subdivisions.

[52 FR 19343, May 22, 1987]

### § 7.36 Mammoth Cave National Park.

(a) *Fishing*—(1) *General*. Trot and throw lines shall contain hooks which are spaced at least 30 inches apart.

(2) *Seines*. (i) The use of seines is permitted only in the following runs and creeks to catch minnows and crawfish for bait: Bylew, First, Second, Pine, Big Hollow, Buffalo, Ugly, Cub, Blowing Spring, Floating Mill Branch, Dry Branch, and Mill Branch.

(ii) Seines shall not exceed 4 × 6 feet and the mesh shall not be larger than one-quarter inch.

(3) *Live bait*. (i) Worms are the only form of live bait which may be used in the Sloans Crossing Pond (also known as Beaver Pond), Green Pond, Doyle Pond, and First Creek Lake. Live minnows and worms may be used in all other waters.

(ii) [Reserved]

(b)(1) *Cave entry*. Except for those portions of the caves open to the general public, no person shall enter any cave within the boundaries of the park without first obtaining a permit from the Superintendent. Permits will be issued to persons who are qualified and experienced in cave exploration, who possess the needed equipment for safe entry and travel, and who are engaged in scientific research projects which in the opinion of the Superintendent are compatible with the purpose for which the park was established.

(2) Persons on guided cave tours must stay on the established designated trails and remain with the guides and tour group at all times. Exploration of side passages, going ahead of the lead guide and tour group or dropping behind the following guide or tour group is prohibited.

(3) Persons on ''self-guided'' or ''semi-guided'' cave tours must stay in the established, designated trails at all times. Exploration of side passages or taking alternate routes is prohibited.

[36 FR 506, Jan. 14, 1971, as amended at 42 FR 31454, June 21, 1977; 48 FR 30295, June 30, 1983]

### § 7.37 Jean Lafitte National Historical Park.

(a) *Fishing*. (1) Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(2) Within the Barataria Marsh unit, the superintendent may designate times and locations and establish conditions governing the taking of crayfish upon a written determination that the taking of crayfish:

(i) Is consistent with the purposes for which the unit was established; and

(ii) Will not be detrimental to other park wildlife or the reproductive potential of the species to be taken; and

(iii) Will not have an adverse effect on the ecosystem.

(3) Violation of established conditions or designations for the taking of crayfish is prohibited.

[49 FR 18450, Apr. 30, 1984]

### § 7.38 Isle Royale National Park.

(a) *Aircraft, designated landing areas.* (1) The portion of Tobin Harbor located in the NE¼ of sec. 4, T. 66 N., R. 33 W.; the SE¼ of sec. 33, T. 67N., R. 33 W., and the SW¼ of sec. 34, T. 67 N., R. 33 W.

(2) The portion of Rock Harbor located in the SE¼ of sec. 13, the N½ of sec. 24, T. 66 N., R. 34 W., and the W½ of sec. 18, T. 66 N., R. 33 W.

(3) The portion of Washington Harbor located in the N½ of sec. 32, all of sec. 29, SE¼ of sec. 30, and the E½ of sec. 31, T. 64 N., R. 38 W.

(b) *Underwater diving.* No person shall undertake diving in the waters of Isle Royale National Park with the aid of underwater breathing apparatus without first registering with the Superintendent.

(c) *Mammals.* Dogs, cats, and other mammals may not be brought into or possessed in the park area, except for guide dogs accompanying the blind.

[35 FR 7793, May 21, 1970, as amended at 42 FR 21777, Apr. 29, 1977]

### § 7.39 Mesa Verde National Park.

(a) Visiting of cliff dwellings is prohibited except when persons are accompanied by a uniformed National Park Service employee. However, the Superintendent may issue special written permits to persons engaged in scientific investigations authorizing such persons to visit the cliff dwellings without escort. The Superintendent shall approve issuance of a permit provided:

(1) That the investigation plan proposed, in purpose and in execution, is compatible with the purposes for which the park was established;

(2) That the investigation proposed will not jeopardize the preservation of park resources;

(3) That the study undertaken will have demonstrable value to the National Park Service in its management or understanding of park resources; and

(4) That the permit applicants are adequately experienced and equipped so as to insure that the objectives of paragraphs (a) (1), (2), and (3) of this section will be obtained.

(b) Hiking is permitted only on trails designated for that purpose by the Superintendent by the posting of appropriate signs or by marking on a map which shall be available for inspection by the public at park headquarters and other convenient locations within the park. Persons hiking on the Pictograph Point or Spruce Canyon Trails must register in advance with the Superintendent.

(c) *Commercial automobiles and buses.* The prohibition against the admission of commercial automobiles and buses to Mesa Verde National Park, contained in §5.4 of this chapter shall be subject to the following exceptions: Motor vehicles operated on an infrequent and nonscheduled tour on which the visit to the park is an incident to such tour, carrying only round trip passengers traveling from the point of origin of the tour, will be accorded admission to the park upon establishing to the satisfaction of the Superintendent that the tour originated from such place and in such manner as not to provide, in effect, a regular and duplicating service conflicting with, or in competition with, the services provided for the public pursuant to contract authorization with the Secretary.

[24 FR 11049, Dec. 30, 1959, as amended at 37 FR 23334, Nov. 2, 1972]

### § 7.40 Hopewell Village National Historic Site.

(a) *Fishing.* (1) Fishing between sunset and sunrise is prohibited.

[24 FR 11049, Dec. 30, 1959, as amended at 33 FR 3227, Feb. 21, 1968]

### § 7.41 Big Bend National Park.

(a) *Fishing; closed waters.* Special ponds and springs reserved for species of rare fish are closed to fishing and bait collecting. The taking or release of any form of fish life in these ponds

or springs is prohibited except by special authorization by the Superintendent. These ponds and springs will be posted as closed to fishing and bait collecting and molestation.

(b) *Fishing; method.* (1) Fishing with pole and line, rod and reel, and trot and throw line is permitted all year from the United States side of the Rio Grande.

(2) Use of seine. The use of seines and nets is prohibited except minnow seines no greater than 20 feet in length may be used for taking of minnows for bait.

(c) *Fishing; limit of catch.* The limit of catch per person per day or in possession shall be 25 fish, except that minnows caught for bait shall not be accountable for the purpose of this section.

[24 FR 11049, Dec. 30, 1959, as amended at 27 FR 8616, Aug. 29, 1962; 52 FR 10686, Apr. 2, 1987]

### § 7.42 Pipestone National Monument.

(a) An American Indian desiring to quarry and work ''catlinite'' pipestone shall first secure a permit from the Superintendent. The Superintendent shall issue a permit to any American Indian applicant, *Provided*, that: (1) In the judgment of the Superintendent, the number of permittees then quarrying or working the pipestone is not so large as to be inconsistent with preservation of the deposit and (2) a suitable area is available for conduct of the operation. The permit shall be issued without charge and shall be valid only during the calendar year in which it is issued.

(b) An American Indian desiring to sell handicraft products produced by him, members of his family, or by other Indians under his supervision or under contract to him, including pipestone articles, shall apply to the Superintendent. The Superintendent shall grant the permit provided that (1) in his judgment the number of permittees selling handicraft products is not so large as to be inconsistent with the enjoyment of visitors to the Pipestone National Monument and (2) a suitable area is available for conduct of the operation. The permit shall be issued without charge and shall be valid only during the calendar year in which it is issued.

[34 FR 5377, Mar. 19, 1969]

### § 7.43 Natchez Trace Parkway.

(a)–(b) [Reserved]

(c) *Vehicles*—(1) *Trucks.* Trucks over one ton rated capacity are not permitted on the parkway. Trucks, not exceeding one ton rated capacity, are permitted to travel on the Natchez Trace Parkway when used solely for transportation of persons, their baggage, camping equipment and related articles for recreational purposes only. Trucks used for the purpose of hauling non-recreational materials are not permitted.

(2) *Animal-drawn vehicles.* Animal-drawn vehicles or implements are prohibited on the main parkway road.

(3) *Farm vehicles.* Farm vehicles, including agricultural implements, with or without load carrying capacity, and whether or not self-propelled, are prohibited on the parkway, except when such travel is authorized by the Superintendent or when such travel is in connection with the construction, operation, or maintenance of the parkway.

(4) *Recreational vehicles.* Recreational vehicles, including but not limited to self-propelled mobile homes, campers, housetrailers, and vehicles up to 1½ ton rated capacity, when such recreational vehicles are used solely to carry persons for recreational purposes together with their baggage, camping equipment, and related articles for vacation or recreational purposes, are permitted on the parkway.

(5) *Trailers.* Trailers are permitted when used non-commercially to transport baggage, camping equipment, horses for recreational riding, small boats and other similar items used for vacation or recreational purposes, provided they meet the following criteria:

(i) Utility type trailers must be enclosed or covered and are not to exceed 5 feet by 8 feet.

(ii) Trailers must be equipped with red taillights, red stoplights and mechanical turn signals. Clearance lights are required on trailers over 6 feet high.

(iii) Only one trailer of any type may be towed by any one vehicle along the

parkway. The towing vehicle and trailer must not exceed 55 feet in length.

(6) *Buses*. Commercial passenger carrying buses, when used for touring purposes, may travel the Natchez Trace Parkway by obtaining special written permission in advance from the Superintendent or his representative. School buses may travel on the parkway without such written permission when transporting people for special recreational or educational purposes.

(7) *Towed vehicles other than trailers*. Such vehicles must be towed with a rigid tow bar which does not require a driver for the towed vehicle. Tow bar must be equipped with safety chains that are so connected to the towed and towing vehicles and to the tow bar that, if the tow bar fails, it will not drop to the ground and the chains shall be of sufficient strength to prevent breakaway of the towed vehicle in the event of such tow bar failure. The towed vehicle must be equipped with brakelights, taillights, and signal lights in accordance with applicable State regulations. The towing vehicle and towed vehicle must not exceed 55 feet in length.

(d) *Beer and alcoholic beverages*. The possession of beer or any alcoholic beverage in an open or unsealed container is prohibited, except in designated picnic, lodging, residence, and camping areas.

[34 FR 9751, June 24, 1969, as amended at 39 FR 30833, Aug. 26, 1974; 48 FR 30295, June 30, 1983; 52 FR 10686, Apr. 2, 1987]

### § 7.44 Canyonlands National Park.

(a) *Motorized Vehicle Use*. Motorized vehicles are prohibited in Salt Creek Canyon above Peekaboo campsite.

(b) [Reserved]

[69 FR 32876, June 14, 2004]

### § 7.45 Everglades National Park.

(a) *Information collection*. The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et.seq., and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the Superintendent to issue permits used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

(b) *Prohibited conveyances*. Only hand-propelled vessels may be operated upon those areas of emergent vegetation commonly called marshes, wetlands, or ''the glades.'' Operation of a motorized vessel in such areas is prohibited.

(c) *Definitions*. The following definitions shall apply to this section:

(1) *Ballyhoo* means a member of the genus Hemiramphus (family: Exocoetidae).

(2) *Cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand.

(3) *Commercial fishing* means the activity of taking or harvesting, or attempting to take or harvest any edible or non-edible form of fresh or salt water aquatic life for the purpose of sale or barter.

(4) *Dipnet* means a hand-held device for obtaining bait, the netting of which is fastened in a frame.

(5) *Guide fishing* means the activity, of a person, partnership, firm, corporation, or other commercial entity to provide fishing services, for hire, to visitors of the park.

(6) *Minnow* means a fish used for bait from the family Cyprinodointidae, Poeciliidae, or Atherinidae.

(7) *Mojarra* or ''goats'' means a member of the family Gerreidae.

(8) *Oyster* means a mollusk of the suborder Ostraeaccea.

(9) *Personal watercraft* means a vessel powered by an outboard motor, water-jet or an enclosed propeller or impeller system, where persons ride standing, sitting or kneeling primarily on or behind the vessel, as opposed to standing or sitting inside; these craft are sometimes referred to by, but not limited to, such terms as ''wave runner,'' ''jet ski,'' ''wet bike,'' or ''Sea-doo.''

(10) *Pilchard* means a member of the herring family (Clupeidae), generally used for bait.

(11) *Pinfish* means a member of the genus Lagodon (family: Spiradae).

(d) *Fishing*. (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with procedures found at §§1.5 and 1.7 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, creel and possession limits.

(3) The following waters are closed to fishing:

(i) All waters of T. 58 S., R. 37 E., sections 10 through 15, inclusive, measured from Tallahassee meridian and base, in the vicinity of Royal Palm Visitor Center, except Hole in the Donut or Hidden Lake, and Pine Island Lake.

(ii) All waters in T.54 S., R. 36 E., sections 19, 30, and 31, and in T. 55 S., R. 36 E., sections 6, 7, 18, 19, and 30, measured from Tallahassee meridian and base, in the vicinity of Shark Valley Loop Road from Tamiami Trail south.

(4) A person engaged in guide fishing must possess a guide fishing permit issued by the Superintendent and administered under the terms of §1.6 of this chapter. Guide fishing without a valid permit is prohibited.

(5) Except for taking finfish, shrimp, bait, crabs, and oysters, as provided in this section or as modified under 36 CFR 1.5, the taking, possession, or disturbance of any fresh or saltwater aquatic life is prohibited.

(6) Methods of taking. Except as provided in this section, only a closely attended hook and line may be used for fishing activities within the park.

(i) Crabbing for stone or blue crabs may be conducted using attended gear only and no more than five (5) traps per person. Persons using traps must remain within one hundred (100) feet of those traps. Unattended gear or use of more than five (5) traps per person is prohibited.

(ii) Shrimp, mullet, and bait fish (minnows, pilchards, pinfish, mojarras, ballyhoo or bait mullet (less than eight (8) inches in total length) may be taken with hook and line, dipnet (not exceeding 3 feet at its widest point) or cast net, for use as bait or personal consumption.

(iii) A dipnet or cast net may not be dragged, trawled, or held suspended in the water.

(7) Tagging, marking, fin clipping, mutilation or other disturbance to a caught fish, prior to release is prohibited without written authorization from the Superintendent.

(8) Fish may not be fileted while in the park, except that:

(i) Up to four (4) filets per person may be produced for immediate cooking and consumption at designated campsites or on board vessels equipped with cooking facilities.

(ii) Fish may be fileted while at the designated park fish cleaning facilities, before transportation to their final destination.

(9) Nets and gear that are legal to use in State waters, and fish and other edible or non-edible sea life that are legally acquired in State waters but are illegal to possess in the waters of Everglades National Park may be transported through the park only over Indian Key Pass, Sand Fly Pass, Rabbit Key Pass, Chokoloskee Pass and across Chokoloskee Bay, along the most direct route to or from Everglades City, Chokoloskee Island or Fakahatchee Bay.

(i) Boats traveling through these passages with such nets, gear, fish, or other edible products of the sea must remain in transit unless disabled or weather and sea conditions combine to make safe passage impossible, at which time the boats may be anchored to await assistance or better conditions.

(ii) [Reserved]

(e) *Boating.* (1) The Superintendent may close an area to all motorized vessels, or vessels with motors greater than a specified horsepower, or impose other restrictions as necessary, in accordance with §§1.5 and 1.7 of this chapter.

(2) For purposes of this section, a vessel in which the motor(s) is (are) removed from the gunnels or transom and stored to be inoperable, is considered to be not motorized.

(3) The following areas are closed to all vessels:

(i) T. 54 S., R. 36 E., sections 19, 30, 31; T. 55 S., R. 36 E., sections 6, 7, 18, 19, and 30, bordering the Shark Valley Loop Road from the Tamiami Trail south.

(ii) Eco Pond, Mrazek Pond, Royal Palm Ponds except for Hidden Lake,

Parachute Key ponds north of the Main Park Road, and Lake Chekika.

(4) The following inland fresh water areas are closed to the use of motorized vessels: Coot Bay Pond, Nine Mile Pond, Paurotis Pond, Sweetbay Pond, Big Ficus Pond, Sisal Pond, Pine Glade Lake, Long Pine Key Lake, Tower Lake, Hidden Lake, Pine Island, and L–67 canal.

(5) The following coastal waters, designated by statute as wilderness (Pub. L. 95–625), are closed to the use of motorized vessels: Mud, Bear, East Fox, Middle Fox, Little Fox, and Gator Lakes; Homestead Canal; all associated small lakes on Cape Sable inland from Lake Ingraham; Cuthbert, Henry, Little Henry, Seven Palm, Middle, Monroe, Long, and the Lungs Lakes; Alligator Creek from the shoreline of Garfield Bight to West Lake; all inland creeks and lakes north of Long Sound, Joe Bay, and Little Madeira Bay except those ponds and lakes associated with Taylor River.

(6) Except to effect a rescue, or unless otherwise officially authorized, no person shall land on keys of Florida Bay except those marked by signs denoting the area open, or on the mainland shorelines from Terrapin Point eastward to U.S. Highway 1, including the shores of all inland bays and waters and those shorelines contiguous with Long Sound, Little Blackwater Sound, and Blackwater Sound.

(7) West Lake Pond and West Lake shall be closed to all vessels when they are being used by feeding birds. At all other times, these areas shall be open only to hand-propelled vessels or Class A motorboats powered by motors not to exceed 6 horsepower.

(8) Vessels used as living quarters shall not remain in or be operated in the waters of the Park for more than 14 days without a permit issued by the Superintendent. Said permit will prescribe anchorage location, length of stay, sanitary requirements and such other conditions as considered necessary.

(f) Violation of any of the provisions of § 7.45 is prohibited.

[59 FR 58785, Nov. 15, 1994; 60 FR 6022, Feb. 1, 1995, as amended at 72 FR 13706, Mar. 23, 2007]

## § 7.46 Virgin Islands Coral Reef National Monument.

(a) *Extractive uses.* (1) All extractive uses are prohibited within the boundaries of the Monument, including, but not limited to, harvest or collection of fish, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, corals, sponges and all associated reef invertebrates, and sand, water, plants, seeds, fruit, marine mammals, marine birds, gas, minerals, and rocks.

(2) All submerged cultural resources are protected under the Archeological Resource Protection Act and the Abandoned Shipwrecks Act.

(b) *Exceptions.* (1) Exceptions to prohibited extractive uses are limited to bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John. The Superintendent shall issue permits for such uses.

(2) Bait fishing shall be permitted with cast net at a distance greater than ten feet from the seaward edge of the mangrove prop root system.

(3) A maximum of three gallons of baitfish is allowed per fisherman per day.

(4) Blue runner shall be caught using hand lines and chum (a mixture of ground up baitfish and sand to attract the fish).

(5) Any fish caught other than blue runner shall be released.

(6) Vessels involved in the catch of blue runner may use moorings designated for that purpose.

(c) *Marine Operations.* No dredging, excavating, or filling operations of any kind are permitted, and no equipment, structures, by-product or excavated materials associated with such operations may be deposited in or on the waters or ashore within the boundaries of the monument.

(d) *Wrecks.* No person shall destroy or molest, remove, deface, displace or tamper with wrecked or abandoned waterborne craft of any type or condition, submerged cultural resources, or any cargo pertaining thereto, unless permitted in writing by an authorized official of the National Park Service.

(e) *Boats.* (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to

strike or otherwise cause damage to any underwater feature.

(2) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(3) Anchoring will only be permitted in emergency situations to protect life and property.

(4) Anchoring shall only be permitted from 48 hours prior to landfall of the hurricane to 48 hours following passage of the hurricane.

(5) No lines or ropes shall be attached to mangroves or other shoreline vegetation.

[68 FR 16435, Apr. 4, 2003]

### § 7.47 Carlsbad Caverns National Park.

(a) *Cave entry*. (1) With the exception of the regular trips into Carlsbad Caverns under the guidance or supervision of employees of the National Park Service, no person shall enter any cave or undeveloped part or passage of any cave without a permit.

(2) *Permits*. The Superintendent may issue written permits for cave entry without escort only to persons engaged in scientific or educational investigations. The Superintendent shall approve issuance of a permit provided:

(i) That the investigation planned will have demonstrable value to the National Park Service in its management or understanding of park resources, and

(ii) That the permit applicant is adequately equipped and experienced so as to ensure the protection and preservation of park resources.

(3) *Solo exploration*. Solo exploration or investigation is not permitted in any cave or undeveloped part or passageway of any cave within the park.

[34 FR 8356, May 30, 1969, as amended at 41 FR 24123, June 15, 1976; 48 FR 30295, June 30, 1983]

### § 7.48 Lake Mead National Recreation Area.

(a) *Aircraft, designated airstrips*. (1)(i) The entire water surface of Lakes Mead and Mohave are designated landing areas, except as restricted in § 2.17 of this chapter.

(ii) Aircraft may not be operated under power on those water surface areas designated as special anchorages, including fairways, as defined in 33 CFR 110.127.

(2) Temple Bar landing strip, located at approximate latitude 36°01′ N., approximate longitude 114°20′ W.

(3) Pearce Ferry landing strip, located at approximate latitude 30°04′37″ N., approximate longitude 114°02′44″ W.

(4) Cottonwood landing strip located at approximate latitude 35°29′ N., approximate longitude 114°40′ W.

(5) [Reserved]

(6) Echo Bay landing strip located at approximate latitude 36°19′ N., approximate longitude 114°27′ W.

(b) *Powerless flight*. The use of devices designed to carry persons through the air in powerless flight is allowed except in harbors, swim beaches, developed areas, and in other locations designated as closed to this activity.

(c) *Parking*. Vehicles or boat trailers, or vehicle/boat trailer combinations, may be left unattended for periods up to 7 days, when parked in parking areas adjacent to designated boat launching sites, without written permission obtained in advance from the superintendent. Any vehicle or boat trailer or vehicle/boat trailer combination which is left in parking areas adjacent to designated boat launching sites in excess of 7 days without written permission obtained in advance from the superintendent may be impounded by the superintendent.

(d) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(e) The Superintendent may exempt motor vessels participating in a regatta that has been authorized by permit issued by the Superintendent from the noise level limitations imposed by § 3.7 of this chapter.

(f) *Personal Watercraft*. (1) A person may launch and operate a personal watercraft in park waters or beach a personal watercraft on park lands, except in the following areas:

(i) In the designated Primitive area known as the Gypsum Beds, which is described as Arizona T31N; R20W Portions of sections 2, 3, 10 and 11; and

(ii) In the designated Primitive area known as the Virgin River, which is described as Nevada T36N; R68E Portions of Sections 25, 26, 34, 35, 36; and

(iii) In the designated Primitive/Semiprimitive area in Black Canyon, from the Willow Beach Harbor to Hoover Dam, prohibited from the first Tuesday following Labor Day weekend through Friday of Memorial Day weekend; and prohibited only on Sundays and Mondays from the Sunday of Memorial Day weekend through the Monday of Labor Day weekend, which is described as Nevada T22S; R65E Portions of Sections 32; T23S; R65E Portions of Sections 5, 8, 17, 20, 21, 28, 29, 34; T23½S; R65E Portions of Sections 34; T23S; R65E Portions of Sections 1, 2, and 12. Arizona T30N; R23W Portions of Sections 3, 10, 15, 22, 27, 34; T29N; R23W Portions of Sections 2, 12, 13; T29N; R22W Portions of Sections 18, 19, 20, 29; and

(iv) In the designated Semiprimitive area known as the Muddy River Confluence with Lake Mead (Overton Wildlife Management Area), which is described as Nevada T16S; R68E Portions of Sections 28, 29, 32, 33 and 34 and T17; R68E; and

(v) In the designated Semiprimitive area known as Grand Wash Bay, which is described as Arizona T33N; R16W Portions of Sections 16, 17, 21, 22, 27, 28, 29, 33 and 34, and T32½ N; R16W Portions of Sections 32 and 33; and

(vi) In the designated Semiprimitive area known as Bonelli Bay, which is described as Arizona T31N; R20W Portions of Sections 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29 and 30.

(2) A person may not operate a personal watercraft at a speed in excess of flat wake speed within 200 feet of any beach occupied by bathers, boats at the shoreline, or persons in the water or at the shoreline.

(3) After December 31, 2012, no one may operate a personal watercraft that does not meet the 2006 emission standards set by EPA for the manufacturing of two-stroke engines. A person operating a personal watercraft that meets the EPA 2006 emission standards through the use of direct-injection two-stroke or four-stroke engines, or the equivalent thereof, is not subject to this prohibition and will be allowed to operate as described in this section.

(4) The Superintendent may limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[32 FR 15751, Nov. 16, 1967, as amended at 34 FR 1950, Feb. 11, 1969; 34 FR 18857, Nov. 26, 1969; 36 FR 21881, Nov. 17, 1971; 38 FR 5245, Feb. 27, 1973; 49 FR 18450, Apr. 30, 1984; 53 FR 29681, Aug. 8, 1988; 68 FR 17306, Apr. 9, 2003; 72 FR 13706, Mar. 23, 2007]

### § 7.49 Cape Lookout National Seashore.

(a) Personal watercraft (PWC) may be operated within Cape Lookout National Seashore only under the following conditions:

(1) PWC must be operated at flat-wake speed;

(2) PWC must travel perpendicular to shore;

(3) PWC may only be operated within the seashore to access the following sound side special use areas:

(i) North Core Banks:

| Access | Location |
|---|---|
| (A) Ocracoke Inlet. | Wallace Channel dock to the demarcation line in Ocracoke Inlet near Milepost 1. |
| (B) Milepost 11B | Existing sound-side dock at mile post 11B approximately 4 miles north of Long Point. |
| (C) Long Point .. | Ferry landing at the Long Point Cabin area. |
| (D) Old Drum Inlet. | Sound-side beach near Milepost 19 (as designated by signs), approximately ½ mile north of Old Drum inlet (adjacent to the cross-over route) encompassing approximately 50 feet. |

(ii) South Core Banks:

| Access | Location |
|---|---|
| (A) New Drum Inlet. | Sound-side beach near Milepost 23 (as designated by signs), approximately ¼ mile long, beginning approximately ½ mile south of New Drum Inlet. |
| (B) Great Island Access. | Carly Dock at Great Island Camp, near Milepost 30 (noted as Island South Core Banks-Great Island on map). |

(iii) Cape Lookout:

| Access | Location |
|---|---|
| (A) Lighthouse Area North. | A zone 300 feet north of the NPS dock at the lighthouse ferry dock near Milepost 41. |
| (B) Lighthouse Area South. | Sound-side beach 100 feet south of the "summer kitchen" to 200 feet north of the Cape Lookout Environmental Education Center Dock. |
| (C) Power Squadron Spit. | Sound-side beach at Power Squadron Spit across from rock jetty to end of the spit. |

(iv) *Shackleford Banks:*

| Access | Location |
|---|---|
| (A) West End Access. | Sound-side beach from Whale Creek west to Beaufort Inlet, except the area between the Wade Shores toilet facility and the passenger ferry dock. |

(b) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[71 FR 53031, Sept. 8, 2006]

### § 7.50 Chickasaw Recreation Area.

(a) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed on Arbuckle Reservoir and Veterans Lake.

(b) *Personal watercraft (PWC)*. (1) PWC may operate on Lake of the Arbuckles except in the following closed areas:

(i) The Goddard Youth Camp Cove.

(ii) A 150 foot wide zone around the picnic area at the end of Highway 110 known as ''The Point'', beginning at the buoy line on the north side of the picnic area and extending south and east into the cove to the east of the picnic area.

(iii) The cove located directly north of the north branch of F Loop Road.

(iv) A 150 foot wide zone around the Buckhorn Campground D Loop shoreline.

(2) PWC may not be operated at greater than flat wake speed in the following locations:

(i) The Guy Sandy arm north of the east/west buoy line located near Masters Pond.

(ii) The Guy Sandy Cove west of the buoy marking the entrance to the cove.

(iii) Rock Creek north of the east/west buoy line at approximately 034°27′50″ North Latitude.

(iv) The Buckhorn Ramp bay, east of the north south line drawn from the Buckhorn Boat Ramp Breakwater Dam.

(v) A 150 foot wide zone along the north shore of the Buckhorn Creek arm starting at the north end of the Buckhorn Boat Ramp Breakwater Dam and continuing southeast to the Buckhorn Campground D Loop beach.

(vi) The cove south and east of Buckhorn Campground C and D Loops.

(vii) The cove located east of Buckhorn Campground B Loop and adjacent to Buckhorn Campground A Loop.

(viii) The second cove east of Buckhorn Campground B Loop, fed by a creek identified as Dry Branch.

(ix) Buckhorn Creek east of the east/west buoy line located at approximately 096°59′3.50″ Longitude, known as the G Road Cliffs area.

(x) Within 150 feet of all persons, docks, boat launch ramps, vessels at anchor, vessels from which people are fishing, and shoreline areas near campgrounds.

(3) PWC may only be launched from the following boat ramps:

(i) Buckhorn boat ramp.

(ii) The Point boat ramp.

(iii) Guy Sandy boat ramp.

(iv) Upper Guy Sandy boat ramp.

(4) The fueling of PWC is prohibited on the water surface. Fueling is allowed only while the PWC is away from the water surface and on a trailer.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[49 FR 18451, Apr. 30, 1984, as amended at 69 FR 53640, Sept. 2, 2004]

### § 7.51 Curecanti Recreation Area.

(a) *Hunting*. Hunting is allowed at times and locations designated as open for hunting.

(b) *Trapping*. Trapping is allowed at times and locations designated as open for trapping.

(c) *Snowmobiles*. Snowmobiles are permitted to operate within the boundaries of Curecanti National Recreation Area provided:

(1) That the operators and machines conform to the laws and regulations governing the use of snowmobiles as stated in this chapter and those applicable to snowmobile use promulgated by the State of Colorado where they prove to be more stringent or restrictive than those of the Department of the Interior.

(2) That their use is confined to the frozen surface of Blue Mesa Lake, and designated access roads. A map of areas and routes open to snowmobile use will be available in the office of the superintendent.

(3) That for the purposes of this section, snowmobile gross weight will be limited to a maximum of 1200 lbs. (machine and cargo) unless prior permission is granted by the superintendent.

(d) *Personal Watercraft (PWC).* PWC may operate within Curecanti National Recreation Area in the following designated areas and under the following conditions:

(1) PWC may operate and land on Blue Mesa Reservoir between Beaver Creek and Blue Mesa dam, except that PWC may not operate in the buoyed barricaded section in the vicinity of the dam.

(2) PWC must operate at ''flat wake'' speeds within Blue Mesa Reservoir in the following areas upstream of designated buoys:

(i) Soap Creek arm at approximate longitude 107°8′9″ N latitude 38°30′16″ W.

(ii) West Elk arm at approximate longitude 107°16′45″ N latitude 38°29′43″ W.

(iii) Cebolla arm at approximate longitude 107°12′16″ N latitude 38°27′37″ W.

(iv) Lake Fork arm at approximate longitude 107°18′19″ N latitude 38°27′2″ W.

(3) PWC must operate at ''flat wake'' speeds in the following areas:

(i) Within 100' of shoreline inside Dry Creek cove.

(ii) Within 500' of shoreline along old highway 50 and Bay of Chickens.

(iii) Within the buoyed area around Elk Creek and Lake Fork marinas.

(iv) Within the buoyed area at Iola, Stevens Creek, and Ponderosa boat launch.

(v) From Lake city bridge east to Beaver Creek.

(vi) Within 100′ of shoreline adjacent to Stevens Creek campground.

(4) PWC may only be launched from designated boat launch sites.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[49 FR 18451, Apr. 30, 1984, as amended at 49 FR 34480, Aug. 31, 1984; 71 FR 55119, Sept. 21, 2006]

### § 7.52 Cedar Breaks National Monument.

(a) *Snowmobiles.* (1) During periods when snow depth prevents regular vehicular travel in the Monument, snowmobiling will be permitted on the main Monument road and parking areas from the south boundary to the north boundary and on the Panguitch Lake road from its junction with the main Monument road east to the east park boundary. In addition, the paved walkway from the Visitor Center parking lot to the Point Supreme overlook is also open for snowmobile travel.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobile. Such roadway is available for snowmobile use only when the designated road or parking area is closed by snow depth to all other motor vehicle use by the public. These routes will be marked by signs, snow poles, or other appropriate means.

The park Superintendent shall determine the opening and closing dates for use of designated snowmobile routes each year. Routes will be open to snowmobile travel when they are considered to be safe for travel but not necessarily free of safety hazards.

(3) Snowmobile use outside designated routes is prohibited. This prohibition shall not apply to emergency administrative travel by employees of the National Park Service or its contractors or concessioners or law enforcement agencies.

(b) [Reserved]

[49 FR 29375, July 20, 1984]

### § 7.53 Black Canyon of the Gunnison National Monument.

(a) *Snowmobiles.* (1) During periods when snow depth prevents regular vehicular travel to the North Rim of the Monument, as determined by the superintendent, snowmobiling will be permitted on the graded, graveled North Rim Drive and parking areas

from the north monument boundary to North Rim Campground and also to the Turnaround.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when there is sufficient snow cover and when these roads and parking areas are closed to all other motor vehicle use by the public. These routes will be marked by signs, snow poles, or other appropriate means. Snowmobile use outside designated routes is prohibited.

(b) [Reserved]

[49 FR 34478, Aug. 31, 1984]

### § 7.54 Theodore Roosevelt National Park.

(a) *Snowmobiles*. (1) Designated routes open to snowmobile use are the portions of the Little Missouri River which contain the main river channel as it passes through both units of Theodore Roosevelt National Park. Ingress and egress to and from the designated route must be made from outside the boundaries of the park. There are no designated access points to the route within the park.

(2) The superintendent shall determine the opening and closing dates for the use of designated snowmobile routes each year, taking into consideration snow, weather and river conditions. He shall notify the public by posting of appropriate signs at the main entrance to both units of the park. The superintendent may, by the posting of appropriate signs, require persons to register or obtain a permit before operating any snowmobiles within the park. The operation of snowmobiles shall be in accordance with State laws in addition to the National Park Service regulations.

(b) [Reserved]

[49 FR 34479, Aug. 31, 1984]

### § 7.55 Lake Roosevelt National Recreation Area.

(a) *Hunting*. Hunting is allowed at times and locations designated as open for hunting.

(b) *Aircraft*. Float planes may be operated on Lake Roosevelt on those waters not administered by Indians as part of the Indian Zone, *i.e.*, mid-channel to the shore of the non-Indian side of the Lake. A map showing the waters where aircraft may be operated will be available in the office of the superintendent.

(c) *Personal Watercraft (PWC)*. (1) PWCs are allowed on the waters within Lake Roosevelt National Recreation Area except in the following areas:

(i) Crescent Bay Lake.

(ii) Kettle River above the Hedlund Bridge.

(2) Launch and retrieval of PWC are permitted only at designated launch ramps. Launching and retrieval of PWC at Napoleon Bridge launch ramp is prohibited.

(3) PWC may land anywhere along the shoreline except in designated swimming areas.

(4) PWC may not be operated at greater than flat-wake speeds in the following locations:

(i) Upper Hawk Creek from the waterfall near the campground through the area known as the ''narrows'' to the confluence of the lake, marked by ''flat wake'' buoy(s).

(ii) Within 200 feet of launch ramps, marina facilities, campground areas, water skiers, beaches occupied by swimmers, or other persons in the water.

(iii) The stretch of the Spokane Arm from 200 feet west of the Two Rivers Marina on the downstream end, to 200 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[49 FR 18451, Apr. 30, 1984, as amended at 69 FR 35526, June 25, 2004]

### § 7.56 Acadia National Park.

(a) *Designated Snowmobile Routes*. The designated routes for snowmobile shall be:

(1) Park Loop Road (except section from Stanley Brook intersection north to the gate at Penobscot Mountain Parking Area) and connecting roads as

follows: Paradise Hill Road (Visitor Center to Junction Park Loop Road); Stanley Brook Road; Ledgelawn Extension Road; Sieur de Monts (gate to Loop Road); West Street; Cadillac Mountain Summit Road; entrance roads to Wildwood Stable.

(2) Portions of Carriage Paths as follows: A section of Carriage Path 1.8 miles in length from the parking area at the north end of Eagle Lake down the east side of the lake to connection with Park Loop Road at Bubble Pond Rest Area. A section of Carriage Path 0.6 miles in length from Wildwood Stable to connection with Park Loop Road south of the entrance road to Penobscot Mountain Parking Area.

(3) Hio Truck Road from Seawall Campground north to State Route 102.

(4) The paved camper access roads within Seawall Campground.

(5) Marshall Brook Truck Road from Seal Cove Road to Marshall Brook.

(6) Seal Cove Road from Park Boundary in Southwest Harbor to State Route 102 in Seal Cove.

(7) Western Mountain Road from Park Boundary west of Worcester Landfill to Seal Cove Pond.

(8) The two crossroads connecting Western Mountain Road and Seal Cove Road.

(9) Long Pond Truck Road including Spur Road to Pine Hill.

(10) Lurvey Spring Road from Junction with Long Pond Road in Southwest Harbor to intersection with Echo Lake Beach Road.

(11) The Echo Lake Entrance Road from State Route 102 to Echo Lake Beach Parking Area.

[48 FR 1195, Jan. 11, 1983]

### § 7.57 Lake Meredith National Recreation Area.

(a) The operation of motor vehicles within the Lake Meredith Recreation Area is prohibited outside of established public roads, parking areas, except within the cutbanks of Blue Creek, comprising about 275 acres, and except below the 3,000 ft. contour on the following described lands, being known as the Rosita Area on the Canadian River flood plain:

Beginning at property corner 191 at coordinates 536,112.90N and 1,894,857.49E thence in a straight line S05°14′47″ E, 3349.09 ft. to property corner 192, thence in a straight line N85°03′12″ E, 6999.38 ft., to property corner 193, thence in a straight line N58°29′53″ E, 3737.77 ft., to property corner 194, thence in a straight line N51°20′25″ E, 1457.45 ft., to property corner 195, thence in a straight line S74°40′44″ E, 4064.61 ft., to property corner 196, thence in a straight line N79°59′22″ E, 3118.40 ft. to property corner 197A, thence in a northeasterly direction to property corner 200, thence in a straight line N56°24′11″ E, 1073.57 ft., to property corner 201, thence in a straight line S80°04′22″ E, 2684.69 ft., to property corner 202, thence in a straight line N69°21′31″ E, 2974.09 ft. to property corner 203, thence in a straight line S37°59′16″ E, 1538.83 ft., to property corner 204, thence in a straight line N28°36′59″ E, 744.10 ft., to property corner 205, thence in a straight line N00°19′04″ E, 1136.41 ft., to property corner 206, thence in a westerly direction to property corner 181, thence in a straight line S89°51′52″ W, 1434.80 ft. to property corner 182, thence in a straight line N75°53′25″ W, 4267.11 ft., to property corner 183, thence in a straight line S76°16′20″ W, 3835.45 ft., to property corner 184, thence in a westerly direction to property corner 189, thence in a straight line S71°35′59″ W, 2901.46 ft., to property corner 190, thence in a straight line S78°24′18″ W, 6506.70 ft. to the point of beginning as shown on Bureau of Reclamation drawing number 662–525–1431 dated July 9, 1965, such Rosita Area comprising about 1,500 acres.

(b) *Safety Helmets.* The operator and each passenger of a motorcycle shall wear a safety helmet while riding on a motorcycle in an off-road area designated in paragraph (a) of this section.

(c) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed except in locations designated as closed to this activity. The superintendent may designate times and locations where such activity is allowed only under the terms and conditions of a permit.

(d) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(e) *Hunting.* Hunting is allowed at times and locations designated as open for hunting.

(f) *Trapping.* Trapping is allowed at times and locations designated as open for trapping.

(g) *Personal watercraft (PWC).* (1) PWC may operate on Lake Meredith except in the following closed areas: stilling basin below Sanford Dam, within 750 feet of the Sanford Dam intake tower, and on the waters of the Canadian River.

(2) PWC may operate on Lake Meredith under the following conditions:

(i) Fueling of PWC is prohibited on the lake, except at the marina fuel dock with an attendant providing the fuel service, or onshore and out of the water.

(ii) Carrying of fuel in an external or portable container onboard a PWC is prohibited.

(iii) PWC may only be launched at designated launch sites established by the Superintendent in accordance with 36 CFR 1.5 and 1.7.

(iv) PWC may not operate at greater than flat wake speed in the following designated areas: North Turkey Creek, Bugbee Canyon, North Canyon, North Cove, South Canyon, Sexy Canyon, Amphitheater Canyon, the coves between day markers 9 and 11, Fritch Canyon, Short Creek, Evans Canyon and Canal Canyon. Flat wake areas are designated by buoys marked with ''flat wake'' or other similar markings. The location of those buoys may be adjusted by the Superintendent based on reservoir water levels.

(3) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[36 FR 14694, Aug. 10, 1971, as amended at 40 FR 762, Jan. 3, 1975; 48 FR 30295, June 30, 1983; 49 FR 18451, Apr. 30, 1984; 52 FR 10686, Apr. 2, 1987; 69 FR 30223, May 27, 2004; 72 FR 13706, Mar. 23, 2007]

### § 7.58 Cape Hatteras National Seashore.

(a) *Hunting.* (1) Lands within the Seashore on which hunting is legally permitted are designated as follows:

(i) Ocracoke Island, except Ocracoke village.

(ii) Hatteras Island, 500 acres, in three disconnected strips 250 feet wide measuring eastward from mean high water mark on Pamlico Sound between villages of Salvo and Avon and Buxton, and between Frisco and Hatteras.

(iii) Bodie Island, 1,500 acres, between high water mark of Roanoke Sound and a line 2,000 feet west of and parallel to U.S. Highway 158, and from the north dike of the Goosewing Club property on the north to the north boundary of the Dare County tract on the south.

(2) Seashore lands on which hunting is not permitted will be posted accordingly.

(3) This hunting plan will be administered and enforced by the National Park Service, through the Service's authorized local representative, the Superintendent of the Seashore, hereinafter referred to as the Superintendent.

(4) The State of North Carolina will assist in the enforcement of applicable State and Federal hunting laws and otherwise in carrying out this plan.

(5) Hunting will be restricted to waterfowl. Season length, opening and closing dates, bag limits and species of waterfowl which may be taken will be in accordance with the rules and regulations issued by the North Carolina Wildlife Resources Commission and the U.S. Fish and Wildlife Service.

(6) Hunting privileges will be free for all hunters possessing a North Carolina State hunting license and Federal migratory bird hunting stamp.

(7) Permanent blinds will be constructed exclusively by the Seashore and these will be built only on Bodie Island. Setting up and use of temporary or portable blinds by hunters will be permitted on Hatteras and Ocracoke Islands.

(8) Minimum distance between blinds on Seashore land and ponds within the designated hunting areas will be 300 yards unless other conditions, such as natural screening, justify a shorter distance.

(9) Hunting on Ocracoke Island will be permitted and managed in the same manner as Hatteras Island.

(10) ''Jump shooting'' of waterfowl will be permitted only on Hatteras and

Ocracoke Islands and is prohibited within 300 yards of any blind.

(11) Properly licensed and authorized guides may provide hunting guide service within the designated hunting areas in the Seashore. They will not be permitted to solicit business within the boundaries of the Seashore and all arrangements with hunters must be made outside of those boundaries. Guides will be required to possess a North Carolina State guide license and to fulfill all requirements and conditions imposed by that license. Fees charged by guides must be approved in advance by the Superintendent. Each guide must also possess a permit issued by the Superintendent which authorizes him to guide hunters within the Seashore and the amount of the fees which he may charge.

(12) Guides shall have no permanent or seasonal blind rights within the Seashore and no special privileges other than those specified in this section.

(13) At 5:00 a.m. each morning the day of hunting a drawing for blind assignments will be conducted at the check-out station. Advance reservations for permission to draw will be accepted through the United States mail only. Reservations postmarked prior to 12:01 a.m. of September 25 will not be accepted. The postmark date and hour will establish and govern the priority of drawing. Maximum reservation by any person shall be three (3) consecutive days in any week, Monday through Saturday, and limited to a total of six (6) days during the season. Reservations shall have priority over nonreservations at drawing time. In the event a reservation is to be canceled, the Superintendent shall be informed by the party prior to drawing time for the date or dates of the reservation.

(14) The first departure from a blind by a person terminates his hunting privilege within Bodie Island for that day and the blinds may be reassigned by the Superintendent, Cape Hatteras National Seashore Recreational Area, or his duly authorized representative, for use by others later the same day. Vacating parties must check out and furnish information regarding their take at the checking station on Bodie Island located near the north boundary of the hunting area.

(15) Hunters and guides shall provide their own decoys and are required to leave the blind which they used in a clean, sanitary and undamaged condition.

(16) All hunters taking banded fowl shall turn in the bands at the check-out station.

(17) Details of this plan, interpretations and further information regarding it will be published in local newspapers and issued in circular form free to all interested persons.

(18) Access to blinds will be by designated foot trails. Vehicles will not be permitted to drive to the blind sites.

(19) Trained dogs will be permitted for retrieving providing they are kept under restraint by the hunter.

(20) Blinds will be limited to two persons without a guide and three including the guide. Only two guns will be permitted in each blind.

(21) All other regulations will be in accordance with the North Carolina State and Federal migratory bird hunting laws.

(b) *Fishing*—(1) *Definitions*. As used in this part:

(i) *Seashore*. Cape Hatteras National Seashore.

(ii) *Permittee*. A person authorized to engage in commercial fishing from seashore beaches.

(iii) *Legal resident of an established village*. An individual (excluding a corporation, partnership, or other artificial person) having domicile in one of the following Outer Banks villages referred to in section 1 of the Act of August 17, 1937 (50 Stat. 669):

Corolla, Duck, Kitty Hawk, Kill Devil Hills, Collington, Nags Head, Manteo, Wanchese, Rodanthe, Waves, Salvo, Avon, Buxton, Frisco, Hatteras, Ocracoke.

(iv) *Commercial fishing*. All operations preparatory to, during, and subsequent to the taking of fish by any means if a primary purpose of the taking is to sell fish.

(v) *Commercial fishing permit*. Written revocable authorization, issued by the Superintendent to an eligible individual, to engage in commercial fishing from the Seashore beaches. The permit will be issued on an annual basis commencing on October 1st of each year.

(2) *Commercial fishing permit required.* A commercial fishing permit is required before engaging in commercial fishing from the seashore beaches.

(3) *Permits.* Commercial fishing permits may be issued by the Superintendent or his authorized representative limited to individuals meeting the following criteria of eligibility:

(i) A legal resident of an established village.

(ii) Possession of a valid North Carolina commercial fishing license or engagement in a joint commercial fishing venture with a North Carolina commercial fishing licensee.

The permit shall be carried at all times while engaged in commercial fishing and shall be displayed upon request by the Superintendent or his representative. When two or more individuals engage in a joint commercial fishing venture involving a splitting of profits or any other assumption of proprietary interests, each individual must qualify for and have a commercial fishing permit. An employee hired by a permittee for a specific wage with no financial interest in the activity need not have a permit.

(4) *Revocation of permit.* The Superintendent may revoke the commercial fishing permit of any permittee who ceases to meet the criteria of eligibility set forth in paragraph (c)(3) of this section or who violates any General, Special, or other related regulation governing activities at the Seashore.

(5) *Beach sanitation and conservation of aquatic life.* Notwithstanding any General Regulation of the National Park Service to the contrary, all fishermen, commercial and sport, landing fish on the Seashore by any method and not using such fish because of size, edible quality, or other reason, shall immediately release and return such fish alive in the waters from which taken. No dead fish or part thereof may be left on any shore, beach, dock, pier, fish cleaning table or thrown back into the waters, but must be disposed of only at points or places designated for the disposal thereof or removed from the seashore area.

(6) *Sport-fishing Zone.* A zone is established for the protection and enhancement of recreational sport-fishing commencing at Beach Access Ramp No. 22 and continuing south and west along the ocean shore, including Cape Point (Cape Hatteras), to Beach Access Ramp No. 30. Within this zone commercial fishing, as specified in the Act of August 17, 1937 (50 Stat. 669), is permitted, except between the hours of 12:01 a.m. on Saturday to 11:59 p.m. on Sunday from October 1 through April 30, commercial fishermen are not permitted to haul seines or nets onto the beach within the Zone.

[24 FR 11052, Dec. 30, 1959, as amended at 38 FR 33081, Nov. 30, 1973; 40 FR 4135, Jan. 28, 1975; 40 FR 56888, Dec. 5, 1975; 48 FR 30295, June 30, 1983; 52 FR 10686, Apr. 2, 1987]

### § 7.59 Grand Portage National Monument.

(a) *Snowmobiles.* After consideration of existing special situations, i.e. depth of snow, and depending on local weather conditions, the superintendent may permit the use of snowmobiles on the following designated routes within the National Monument:

(1) The trail from County Road 73 (near the Grand Portage Trading Post) which moves across the Grand Portage to County Road 17 near the Catholic Church.

(2) The powerline right-of-way road from Country Road 73 which moves across the Grand Portage Trail.

(3) The logging road which moves across the Grand Portage Trail in NE ¼, SE ¼, Section 32, T64N, R6E.

(4) Abandoned Highway 61 which moves across the Grand Portage Trail.

(5) The logging road which moves across the Grand Portage Trail in SE ¼, NW ¼, Section 25, T64N, R5E.

(b) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

[47 FR 45005, Oct. 13, 1982, as amended at 49 FR 18451, Apr. 30, 1984]

### § 7.60 Herbert Hoover National Historic Site.

(a) *Snowmobiles.* After consideration of existing special situations, i.e., depth of snow, and depending on local weather conditions, the Superintendent may permit the use of snowmobiles on the shoulder of the paved motor road known as Parkside Drive between Main Street of West Branch,

Iowa and Interstate Highway 80, which is used by motor vehicle traffic during other seasons in conformance with State law.

[47 FR 54933, Dec. 7, 1982]

### § 7.61 Fort Caroline National Memorial.

(a) *Fishing*. Fishing is prohibited within the Memorial.

[26 FR 3363, Apr. 20, 1961, as amended at 32 FR 16213, Nov. 28, 1967]

### § 7.62 Lake Chelan National Recreation Area.

(a) *Snowmobiles*. After consideration of existing special situations, i.e., depth of snow, and depending on local weather conditions, the superintendent may designate as open to the use of snowmobiles the following locations within the Lake Chelan National Recreation Area:

(1) All open areas, designated trails and roadways on public land below the 1320-foot contour line within the Stehekin Valley, except cross-country ski trails and within the perimeter of the Buckner Orchard. Snowmobile use on open public lands or designated trails will be limited to permanent, year-round residents of the Stehekin Valley.

(2) That portion of the Stehekin Valley Road normally open to use by motor vehicles from the 1320-foot contour line to the park boundary.

(b) *Aircraft*. The following are designated as locations where the operation of aircraft is allowed:

(1) The entire water surface of Lake Chelan.

(2) The Stehekin landing field, located at approximate latitude 48°21′ N, approximate longitude 120°43′ W.

(c) *Weapons*. The following location is designated for target practice between the hours of sunrise and sunset, subject to all applicable Federal, State, and local laws: in the SE ¼ of sec. 8, T. 33 N., R. 17 E., WM, approximately 100 yards east of mile point 7 on the Stehekin Valley Road, a converted borrow pit.

[49 FR 18451, Apr. 30, 1984, as amended at 49 FR 19652, May 9, 1984; 54 FR 48869, Nov. 28, 1989]

### § 7.63 Dinosaur National Monument.

(a) *Commercial hauling*. Ranchers and stockmen owning, leasing or renting private lands, or holding grazing permits issued by the Bureau of Land Management on designated grazing allotments adjacent to the Artesia Entrance Road, Blue Mountain Road, and Deerlodge Park Road, are authorized to use these roads for trucking or hauling ranching and agricultural supplies and materials, including livestock, for use in normal ranching and stock growing operations.

(b) *Stock grazing*. (1) Privileges for the grazing of domestic livestock based on authorized use of certain areas at the time of approval of the act of September 8, 1960 (74 Stat. 857, Pub. L. 86–729), shall continue in effect or shall be renewed from time to time, except for failure to comply with such terms and conditions as may be prescribed by the Superintendent in these regulations and after reasonable notice of default and subject to the following provisions of tenure:

(i) Grazing privileges appurtenant to privately owned lands located within the Monument shall not be withdrawn until title to the lands to which such privileges are appurtenant shall have vested in the United States except for failure to comply with the regulations applicable thereto after reasonable notice of default.

(ii) Grazing privileges appurtenant to privately owned lands located outside the Monument shall not be withdrawn for a period of twenty-five years after September 8, 1960, and thereafter shall continue during the lifetime of the original permittee and his heirs if they were members of his immediate family as described herein except for failure to comply with the regulations applicable thereto after reasonable notice of default.

(iii) Members of the immediate family are those persons who are related to and directly dependent upon a person or persons, living on or conducting grazing operations from lands, as of September 8, 1960, which the National Park Service recognized as base lands appurtenant to grazing privileges in the monument. Such interpretation excludes mature children who, as of that date, were established in their own

households and were not directly dependent upon the base lands and appurtenant grazing recognized by the National Park Service.

(iv) If title to base lands lying outside the monument is conveyed, or such base lands are leased to someone other than a member of the immediate family of the permittee as of September 8, 1960, the grazing preference shall be recognized only for a period of twenty-five years from September 8, 1960.

(v) If title to a portion or part of the base land either outside or inside the monument is conveyed or such base lands are leased, the new owner or lessee will take with the land so acquired or leased after September 8, 1960, such proportion of the entire grazing privileges as the grazing capacity in animal unit months of the tract conveyed or leased bears to the original area to which a grazing privilege was appurtenant and recognized. Conveyance or lease of all such base lands will automatically convey all grazing privileges appurtenant thereto.

(vi) Grazing privileges which are appurtenant to base lands located either inside or outside the monument as of September 8, 1960, shall not be conveyed separately therefrom.

(2) Where no reasonable ingress or egress is available to permittees or nonpermittees who must cross monument lands to reach grazing allotments or non-Federal lands within the exterior boundary of the monument or adjacent thereto, the Superintendent will grant, upon request, a temporary nonfee annual permit to herd stock on a designated driveway which shall specify the time to be consumed in each single drive.

(3) After September 8, 1960, no increase in the number of animal unit months will be allowed on Federal lands in the monument.

(4)(i) A permittee whose privileges are appurtenant to base lands either inside or outside the monument may be granted total nonuse on a year to year basis not to exceed three consecutive years. Total nonuse beyond this time may be granted if necessitated for reasons clearly outside the control of the permittee. Total unauthorized nonuse beyond three consecutive years will result in the termination and loss of all grazing privileges.

(ii) Whenever partial or total non-use is desired an application must be made in writing to the Superintendent.

(5) Grazing fees shall be the same as those approved for the Bureau of Land Management and will be adjusted accordingly.

(6) Permittees or nonpermittees who have stock on Federal lands within the monument at any time or place, when or where herding or grazing is unauthorized may be assessed fifty cents per day per cow or horse and ten cents per day per sheep as damages.

(7) The Superintendent may accept a written relinquishment or waiver of any privileges; however, no such relinquishment or waiver will be effective without the written consent of the owner or owners of the base lands.

(8) Permits. Terms and conditions. The issuance and continued effectiveness of all permits will be subject, in addition to mandatory provisions required by Executive Order or law, to the following terms and conditions:

(i) The permittee and his employees shall use all possible care in preventing forest and range fires, and shall assist in the extinguishing of forest and range fires on, or within, the vicinity of the land described in the permit, as well as in the preservation of good order within the boundaries of the Monument.

(ii) The Superintendent may require the permittee before driving livestock to or from the grazing allotment to gather his livestock at a designated time and place for the purpose of counting the same.

(iii) Stock will be allowed to graze only on the allotment designated in the permit.

(iv) The permittee shall file with the Superintendent a copy of his stock brand or other mark.

(v) The permittee shall, upon notice from the Superintendent that the allotment designated in the permit is not ready to be grazed at the beginning of the designated grazing season, place no livestock on the allotment for such a period as may be determined by the Superintendent as necessary to avoid damage to the range. All, or a portion of the livestock shall be removed from the area before the expiration of the

designated grazing season if the Superintendent determines further grazing would be detrimental to the range. The number of stock and the grazing period may be adjusted by the Superintendent at any time when such action is deemed necessary for the protection of the range.

(vi) No permit shall be issued or renewed until payment of all fees and other amounts due the National Park Service has been made. Fees for permits are due the National Park Service and must be paid at least 15 days in advance of the grazing period. No permit shall be effective to authorize grazing use thereunder until all fees and other amounts due the National Park Service have been paid. A pro rata adjustment of fees will be made in the event of reduction of grazing privileges granted in the permit, except that not more than 50 percent of the total annual grazing fee will be refunded in the event reduced grazing benefits are taken at the election of the permittee after his stock are on the range.

(vii) No building or other structure shall be erected nor shall physical improvements of any kind be established under the permit except upon plans and specifications approved by the National Park Service. Any such facilities, structures, or buildings may be removed or disposed of to a successor permittee within three months following the termination of the permit; otherwise they shall become the property of the United States without compensation therefor.

(viii) The permittee shall utilize the lands covered by the permit in a manner approved and directed by the Superintendent which will prevent soil erosion thereon and on lands adjoining same.

(ix) The right is reserved to adjust the fees specified in the permit at any time to conform with the fees approved for the Bureau of Land Management, and the permittee shall be furnished a notice of any change of fees.

(x) All livestock are considered as mature animals at 6 months of age and are so counted in determining animal unit months and numbers of animals.

(xi) The Superintendent may prescribe additional terms and conditions to meet individual cases.

(9) The breach of any of the terms or conditions of the permit shall be grounds for termination, suspension, or reduction of grazing privileges.

(10) Appeals from the decision of the Superintendent to the Regional Director, and from the Regional Director to the Director shall be made in accordance with National Park Service Order No. 14, as amended (19 FR 8824) and Regional Director, Order No. 3, as amended (21 FR 1494).

(11) Nothing in these regulations shall be construed as to prevent the enforcement of the provisions of the General Rules and Regulations and the Special Rules and Regulations of the National Park Service or of any other provisions of said rules and regulations applicable to stock grazing.

(c) *Snowmobiles.* (1) Designated routes which will be open to smowmobile use are approximately 20 miles of the Harpers Corner Road in Colorado and approximately 2 miles of the Cub Creek Road in Utah. The Harpers Corner Road section extends from the Plug Hat Overlook to the Echo Park Road Turnoff. The Cub Creek Road section extends from the Chew Ranch Road, 1 mile north of the Green River Bridge, to the point where the Cub Creek Road leaves the southern boundary of the monument.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when there is sufficient snow cover and when these roads are closed to all other motor vehicle use by the public.

(3) Snowmobile use outside designated routes is prohibited. The superintendent shall determine the opening and closing dates for use of the designated snowmobile routes each year.

[27 FR 2150, Mar. 16, 1962, as amended at 27 FR 3659, Apr. 18, 1962; 34 FR 7330, May 6, 1969; 49 FR 34481, Aug. 31, 1984; 60 FR 55791, Nov. 3, 1995]

### § 7.64 Petersburg National Battlefield.

(a) *Alcoholic beverages.* The possession or drinking of alcoholic beverages in any public place or in any motor vehicle is prohibited, except with the written permission of the Superintendent.

(b) *Maintenance of vehicles.* Washing, cleaning, waxing, or lubricating motor vehicles or repairing or performing any mechanical work upon motor vehicles, except in emergencies, in any public place is prohibited.

(c) *Definition.* As used in paragraphs (a) and (b) of this section, the term ''public place'' shall mean any place, building, road, picnic area, parking space, or other portion of Petersburg National Battlefield to which the public has access.

[41 FR 40107, Sept. 17, 1976]

### § 7.65 Assateague Island National Seashore.

(a) *Hunting.* (1) Hunting, except with a shotgun, bow and arrow, or by falconry is prohibited. Hunting with a shotgun, bow and arrow, or by means of falconry is permitted in accordance with State law and Federal regulations in designated hunting areas.

(2) Hunting, or taking of a raptor for any purpose is prohibited except as provided for by permit in § 2.5 of this chapter.

(3) A hunter shall not enter upon Service-owned lands where a previous owner has retained use for hunting purposes, without written permission of such previous owner.

(4) Waterfowl shall be hunted only from numbered Service-owned blinds except in areas with retained hunting rights; and no firearm shall be discharged at waterfowl from outside of a blind unless the hunter is attempting to retrieve downed or crippled fowl.

(5) Waterfowl hunting blinds in public hunting areas shall be operated within two plans:

(i) First-come, first-served.

(ii) Advance written reservation.

The superintendent shall determine the number and location of first-come, first-served and/or advance reservation blinds.

(6) In order to retain occupancy rights, the hunter must remain in or near the blind except for the purpose of retrieving waterfowl. The leaving of decoys or equipment for the purpose of holding occupancy is prohibited.

(7) Hunters shall not enter the public waterfowl hunting area more than 1 hour before legal shooting time and shall be out of the hunting area within 45 minutes after close of legal shooting time. The blind shall be left in a clean and sanitary condition.

(8) Hunters using Service-owned shore blinds shall enter and leave the public hunting area via designated routes from the island.

(9) Prior to entering and after leaving a public hunting blind, all hunters shall check in at the registration box located on the trail to the blind he is or has been using.

(10) Parties in blinds are limited to two hunters and two guns unless otherwise posted at the registration box for the blinds.

(11) The hunting of upland game shall not be conducted within 300 yards of any waterfowl hunting blind during waterfowl season.

(12) Hunting on seashore lands and waters, except as designated pursuant to § 1.5 and § 1.7, is prohibited.

(b) *Operation of oversand vehicles*—(1) *Definitions.* In addition to the definitions found in § 1.4 of this chapter, the following terms or phrases, when used in this section, have the meanings hereinafter respectively ascribed to them.

(i) *Oversand vehicle.* Any motorized vehicle which is capable of traveling over sand including—but not limited to—over-the-road vehicles such as beachbuggies, four-wheel-drive vehicles, pickup trucks, and standard automobiles.

(ii) *Self-Contained vehicle.* Any towed or self-propelled camping vehicle that is equipped with a toilet and a permanently installed, waste, storage tank capable of holding a minimum of 2 days volume of material.

(iii) *Primary dune.* Barriers or mounds of sand which are either naturally created or artificially established bayward of the beach berm which absorb or dissipate the wave energy of high tides and coastal storms.

(iv) *Dunes crossing.* A maintained vehicle accessway over a primary dune designated and marked as a dunes crossing.

(2) *Oversand permits.* No oversand vehicle, other than an authorized emergency vehicle, shall be operated on a beach or designated oversand route in the park area except under an oversand permit issued by the Superintendent.

(i) The Superintendent is authorized to establish a system of special recreation permits for oversand vehicles and to establish special recreation permit fees for these permits, consistent with the conditions and criteria of 36 CFR part 71.

(ii) No permit will be issued for a vehicle:

(A) Which is not equipped to travel over sand and which does not contain the following equipment to be carried at all times when traveling on a beach or designated oversand route in the park: shovel, jack, tow rope or chain, board or similar support for the jack, and low pressure tire gauge;

(B) Which does not conform to applicable State laws having to do with licensing, registering, inspecting, and insuring of such vehicles;

(C) Which fails to comply with provisions of § 4.10; and

(D) Which does not meet the following standards: On four-wheel-drive vehicles and trailers towed by any vehicle:

| | Per unit |
|---|---|
| Maximum vehicle length | 26 ft. |
| Maximum vehicle width | 8 ft. |
| Minimum vehicle ground clearance | 7 in. |
| Gross vehicle weight rating may not exceed | 10,000 lb. |
| Maximum number of axles | 2 |
| Maximum number of wheels (per axle) | ..... |

On two-wheel-drive vehicles, in addition to the six items listed immediately above: Minimum width of tire tread contact on sand, 8 in. each wheel. Tires with regular mud/snow grip tread, not acceptable. *Provided*, That the Superintendent may issue a single trip permit for a vehicle of greater weight or length when such use is not inconsistent with the purposes of the regulations.

(iii) Before issuing a permit, the Superintendent may check the vehicle to determine whether it complies with the requirements of paragraphs (b)(2)(ii)(A) through (D) of this section.

(iv) Oversand permits are not transferable and shall be carried by the operator of the vehicle for which it has been issued while traveling in the park. It shall be displayed as directed by the Superintendent at the time of issuance.

(3) *Authorized and prohibited travel.* (i) Except as otherwise provided in this section and in applicable sections of parts 2 and 4 of this chapter, travel by oversand vehicles is permitted south of Assateague State Park, daily throughout the year at any time, on a designated oversand route bayward of the primary dune and on designated portions of a beach seaward of the primary dune.

(ii) Travel by motorcycles is permitted only on public highways and parking areas within the park area.

(iii)(A) Travel by self-contained vehicles is permitted under paragraph (b)(3)(i) of this section provided that no overnight parking is allowed on a beach seaward of the primary dunes at any time.

(B) South of Assateague State Park such vehicles may use designated self-contained areas bayward of the primary dunes for overnight parking. *Except*, That towed travel trailers may travel no farther south than the northern limits of the Big Fox Levels.

(iv) Travel by oversand vehicles, other than authorized emergency vehicles, is prohibited on the following portions of the park area subject, however, to existing rights of ingress and egress.

(A) Between the Assateague State Park and the Ocean City Inlet.

(B) On the beach seaward of the primary dune within designated portions of the North Beach public use complex.

(C) *Provided*, *however*, That the Superintendent may establish times when oversand vehicles may use a portion of the beach in a public use complex by posting appropriate signs or marking on a map available at the office of the Superintendent—or both.

(4) *Rules of the road.* (i) Oversand vehicles shall be operated only in established tracks on designated portions of the park area. No such vehicles shall be operated on any portion of a dune except at posted crossings nor shall such vehicles be driven so as to cut circles or otherwise needlessly deface the sand.

(ii) Oversand vehicles shall not be parked so as to interfere with the flow of traffic on designated oversand routes. Such vehicles may not park overnight on a beach seaward of the primary dune unless one member of the party is actively engaged in fishing at all times. Towed travel trailers used as

self-contained vehicles in the off-road portion of the park area may not be parked on a beach seaward of the primary dunes.

(iii) Upon approaching or passing within 100 feet of a person on foot, the operator of an oversand vehicle shall reduce speed to 15 miles per hour. Speed at other times on any designated oversand route shall not exceed 25 miles per hour.

(iv) When two vehicles approach from opposite directions in the same track, both operators shall reduce speed; and the operator with the ocean on his right shall pull out of the track to allow the other vehicle to pass.

(v) Passengers shall not ride on the fenders, hood, roof, or tailgate, or in any other position outside of a moving oversand vehicle; and such vehicles shall not be used to tow a person on any recreational device over the sand or in the air or water of the park area.

(vi) During an emergency, the Superintendent may close the park; or he may suspend for such period as he shall deem advisable any or all of the foregoing regulations in the interest of public safety; and he may announce such closure or suspension by whatever means are available.

(c) *Personal Watercraft*. (1) Personal Watercraft (PWC) are allowed in Assateague Island National Seashore within the following locations and under the following conditions:

(i) *Ocean City Inlet:* PWC may operate, transit, launch in water or beach on land between the north shore of Assateague Island and the south margin of the established Ocean City Inlet channel, between Lighted Buoy #10 at approximate latitude 38.19.30N, longitude 75.05.30W and Lighted Buoy #11 at approximate latitude 38.19.16N, longitude 75.09.0W

(ii) *Chincoteague Bay:* PWC may operate, transit or launch in waters between the established Park boundary and the western shore of Assateague Island, from Assateague Point north to that portion of Horse Marsh located due east of the Memorial Park boat ramp on Chincoteague Island.

(iii) *Oceanside:* PWC are allowed to beach along the ocean side of the island only in the case of personal injury or mechanical failure.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[35 FR 45, Jan. 3, 1970, as amended at 39 FR 31633, Aug. 30, 1974; 41 FR 15008, Apr. 9, 1976; 48 FR 30295, June 30, 1983; 52 FR 10686, Apr. 2, 1986; 68 FR 32375, May 30, 2003]

### § 7.66 North Cascades National Park.

(a) *Bait for fishing*. The use of nonpreserved fish eggs is permitted.

(b) *Snowmobiles*. After consideration of existing special situations, i.e., depth of snow, and depending on local weather conditions, the superintendent may designate as open to the use of snowmobiles the following locations within the National Park:

(1) The Cascade River Road between the park boundary and the Cascade Pass Trailhead parking area.

(2) The Stehekin Valley Road between the park boundary and Cottonwood Camp.

[34 FR 11545, July 12, 1969, as amended at 49 FR 19652, May 9, 1984]

### § 7.67 Cape Cod National Seashore.

(a) Off-road operation of motor vehicles.

(1) *What do I need to do to operate a vehicle off road?* To operate a vehicle off road at Cape Cod National Seashore, you must meet the requirements in paragraphs (b) through (e) of this section. You also must obtain a special permit if you:

(i) Will use an oversand vehicle (see paragraphs (a)(6) and (a)(7) of this section for details);

(ii) Will use an oversand vehicle to camp (see paragraph (a)(8) of this section for details); or

(iii) Are a commercial operator (see paragraph (a)(9) of this section for details).

(2) *Where and when can I operate my vehicle off road?* You may operate a vehicle off road only under the conditions specified in the following table. However, the Superintendent may close any access or oversand route at any time for weather, impassable conditions due to changing beach conditions, or to protect resources.

| Route | When you may use the route |
|---|---|
| On the outer beach between the opening to Hatches Harbor, around Race Point to High Head, including the North and South Beach access routes at Race Point and the bypass route at Race Point Light. | April 15 through November 15, except Exit 8 to High Head which is closed April 1 through July 20. |
| Off road vehicle corridor from Exit 8 to High Head | July 21 through November 15. |
| Access road at High Head from the inland parking area to the primary dune. | January 1 through December 31. |
| Designated dune parking area at High Head (for fishing only) | January 1 through December 31. |
| Power Line Route access and fishing parking area | Only when the Superintendent opens the route due to high tides, beach erosion, shorebird closure or other circumstances which will, as a result, warrant public use of this access way. |
| On controlled access routes for residents or caretakers of individual dune cottages in the Province Lands. | January 1 through December 31. |
| On commercial dune taxi routes following portions of the outer beach and cottage access routes as described in the appropriate permit. | April 15 through November 15. |
| On the outer beach from High Head to Head of the Meadow | July 1 through August 31. |
| Coast Guard beach in Truro to Long Nook beach | April 15 through November 15 (hours posted). |

(3) *May I launch a boat from a designated route?* Boat trailering and launching by a permitted vehicle from a designated open route corridor is permitted.

(4) *What travel restrictions and special rules must I obey?* You must comply with all applicable provisions of this chapter, including part 4, as well as the specific provisions of this section.

(i) On the beach, you must drive in a corridor extending from a point 10 feet seaward of the spring high tide drift line to the berm crest. You may drive below the berm crest only to pass a temporary cut in the beach, and you must regain the crest immediately following the cut. Delineator posts mark the landward side of the corridor in critical areas.

(ii) On an inland oversand route, you must drive only in a lane designated by pairs of delineator posts showing the sides of the route.

(iii) An oversand route is closed at any time that tides, nesting birds, or surface configuration prevent vehicle travel within the designated corridor.

(iv) When two vehicles meet on the beach, the operator of the vehicle with the water on the left must yield, except that self-contained vehicles always have the right of way.

(v) When two vehicles meet on a single-lane oversand route, the operator of the vehicle in the best position to yield must pull out of the track only so far as necessary to allow the other vehicle to pass safely, and then must back into the established track before resuming the original direction of travel.

(vi) If you make a rut or hole while freeing a stuck vehicle, you must fill the rut or hole before you remove the vehicle from the immediate area.

(5) *What activities are prohibited?* The following are prohibited:

(i) Driving off a designated oversand route.

(ii) Exceeding a speed of 15 miles per hour unless posted otherwise.

(iii) Parking a vehicle in an oversand route so as to obstruct traffic.

(iv) Riding on a fender, tailgate, roof, door or any other location on the outside of a vehicle.

(v) Driving a vehicle across a designated swimming beach at any time when it is posted with a sign prohibiting vehicles.

(vi) Operating a motorcycle on an oversand route.

(6) *What special equipment must I have in my vehicle?* You must have in your vehicle all the equipment required by the Superintendent, including:

(i) Shovel;

(ii) Tow rope, chain, cable or other similar towing device;

(iii) Jack;

(iv) Jack support board;

(v) Low air pressure tire gauge; and

(vi) Five tires that meet or exceed established standards.

(7) *What requirements must I meet to operate an oversand vehicle?* You may operate an oversand vehicle only if you first obtain an oversand permit from

the Superintendent. The Superintendent administers the permit system for oversand vehicles and charges fees that are designed to recover NPS administrative costs.

(i) The oversand permit is a Special Use Permit issued under the authority of 36 CFR 1.6 and 4.10. You must provide the following information for each vehicle for which you request a permit:

(A) Name and address of registered owner;

(B) Driver's license number and State of issue;

(C) Vehicle license plate number and State of issue; and

(D) Vehicle description, including year, make, model and color; make, model and size of tires.

(ii) Before we issue a permit, you must:

(A) Demonstrate that your vehicle is equipped as required in paragraph (a)(6) of this section;

(B) Provide evidence that you have complied with all Federal and State licensing registering, inspecting and insurance regulations; and

(C) View an oversand vehicle operation educational program and ensure that all other potential operators view the same program.

(iii) The Superintendent will affix the permit to your vehicle at the time of issuance.

(iv) You must not transfer your oversand permit from one vehicle to another.

(8) *What requirements must I meet to operate an oversand vehicle in the off season?* To operate an oversand vehicle between November 16 and April 14, you must obtain from the Superintendent an oversand permit and a limited access pass. We will issue you a limited access pass if you have a valid oversand permit (see paragraph (a)(7) of this section) and if you have viewed an educational program that outlines the special aspects of off season oversand use.

(i) You may operate a vehicle during the off-season only on the portion of the beach between High Head and Hatches Harbor.

(ii) You must not operate a vehicle during the off-season within two hours either side of high tide.

(iii) We may issue a limited access pass for the following purposes:

(A) Access to town shellfish beds at Hatches Harbor;

(B) Recovery of personal property, flotsam and jetsam from the beach;

(C) Caretaker functions at a dune cottage; or

(D) Fishing.

(9) *What requirements must I meet to use an oversand vehicle for camping?* You may use an oversand vehicle to camp on the beach only in the manner authorized in this section or as authorized by the Superintendent through another approved permitting process.

(i) You must possess a valid permit issued under paragraph (a)(7) of this section.

(ii) You may camp only in a self-contained vehicle that you park in a designated area. A self-contained vehicle has a self-contained water or chemical toilet and a permanently installed holding tank with a minimum capacity of 3 days waste material. There are two designated areas with a maximum combined capacity of 100 vehicles.

(A) You must drive the self-contained vehicle off the beach to empty holding tanks at a dumping station at intervals of no more than 72 hours.

(B) Before returning to the beach, you must notify the Oversand Station as specified by the Superintendent.

(iii) You must not drive a self-contained vehicle outside the limits of a designated camping area except when entering or leaving the beach by the most direct authorized route.

(iv) You are limited to a maximum of 21 days camping on the beach from July 1 through Labor Day.

(10) *What special requirements must I meet if I have a commercial vehicle?* (i) To operate a passenger vehicle for hire on a designated oversand route, you must obtain a permit from the Superintendent. The Superintendent issues the permit under the authority of 36 CFR 1.6, 4.10 and 5.6.

(ii) You must obey all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire.

(iii) You must provide the following information for each vehicle that will use a designated oversand route:

(A) Name and address of tour company and name of company owner;

(B) Make and model of vehicle;

(C) Vehicle license plate number and State of issue; and

(D) Number of passenger seats.

(11) *How will the Superintendent manage the off-road vehicle program?* (i) The Superintendent will issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(ii) The Superintendent will monitor the use and condition of the oversand routes to review the effects of vehicles on natural, cultural, and aesthetic resources in designated corridors. If the Superintendent finds that resource degradation or visitor impact is occurring, he/she may amend, rescind, limit the use of, or close designated routes. The Superintendent will do this consistent with 36 CFR 1.5 and 1.7 and all applicable Executive Orders;

(iii) The Superintendent will consult with the Cape Cod National Seashore Advisory Commission regarding management of the off-road vehicle program.

(iv) The Superintendent will recognize and use volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use. The Superintendent will do this in accordance with 16 U.S.C. 18 g–j.

(v) The Superintendent will report annually to the Secretary of the Interior and to the public the results of the monitoring conducted under this section, subject to availability of funding.

(12) *What are the penalties for violating the provisions of this section?* Violation of a term or condition of an oversand permit issued in accordance with this section is prohibited. A violation may also result in the suspension or revocation of the permit.

(13) *Has OMB approved the collection of information in this section?* As required by 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget has approved the information collection requirement contained in this section. The OMB approval number is 1024–0026. We are collecting this information to allow the Superintendent to issue off-road vehicle permits. You must provide the information in order to obtain a permit.

(b) *Aircraft.* (1) Land based aircraft may be landed only at the Provincetown Airport approximately one-half mile south of Race Point Beach in the Provincelands area.

(2) Float equipped aircraft may be landed only on federally controlled coastal water in accordance with Federal, State, and local laws and regulations.

(c) *Motorboats.* Motorboats are prohibited from all federally owned ponds and lakes within the seashore in Truro and Provincetown.

(d) *Shellfishing.* Shellfishing, by permit from the appropriate town, is permitted in accordance with applicable Federal, State, and local laws.

(e) *Public nudity.* Public nudity, including public nude bathing, by any person on Federal land or water within the boundaries of Cape Cod National Seashore is prohibited. Public nudity is a person's intentional failure to cover with a fully opaque covering that person's own genitals, pubic areas, rectal area, or female breast below a point immediately above the top of the areola when in a public place. Public place is any area of Federal land or water within the Seashore, except the enclosed portions of bathhouses, restrooms, public showers, or other public structures designed for similar purposes or private structures permitted within the Seashore, such as trailers or tents. This regulation shall not apply to a person under 10 years of age.

(f) *Hunting.* (1) Hunting is allowed at times and locations designated as open for hunting.

(2) Only deer, upland game, and migratory waterfowl may be hunted.

(3) Hunting is prohibited from March 1 through August 31 of each year.

[35 FR 8446, May 29, 1970, as amended at 40 FR 12789, Mar. 21, 1975; 40 FR 19197, May 2, 1975; 49 FR 18451, Apr. 30, 1984; 50 FR 31181, Aug. 1, 1985; 63 FR 9147, Feb. 24, 1998]

### § 7.68 Russell Cave National Monument.

(a) *Caves*—(1) *Closed Areas.* Entering, exploring, or remaining within any cave area other than the public archeological exhibit without prior written permission of the Superintendent is prohibited.

(2) *Permits.* Permits for entry into other than public exhibit areas of the cave will be issued within limitations

of safety provided the applicant satisfies the Superintendent that he has proper equipment for cave exploration, such as lighting equipment, protective headwear, and appropriate shoes or boots. Other reasonable administrative requirements may be imposed by the Superintendent provided reasonable notice of these requirements is given to the applicant.

(3) *Solo Exploration.* Solo exploration is not permitted in the caves other than in the public archeological exhibit areas.

[35 FR 7557, May 15, 1970]

### § 7.69 Ross Lake National Recreation Area.

(a) *Snowmobiles.* After consideration of existing special situations, i.e., depth of snow, and depending on local weather conditions, and subject to any and all restrictions or prohibitions further imposed by the State of Washington on Highway 20, the superintendent may designate as open to the use of snowmobiles the following locations within the Ross Lake National Recreation Area:

(1) State Highway 20, that portion normally closed to motor vehicles during the winter season.

(2) The Hozomeen entrance road from the U.S./Canadian border to the end of the road at East Landing.

(3) Access and circulatory roads in the Hozomeen developed area normally open to public motor vehicle use.

(4) The Thornton Lake Road from State Highway 20 to Thornton Lake Trailhead parking area.

(5) The Damnation Creek Road from its junction with the Thornton Lake Road to the North Cascades National Park boundary.

(6) The Newhalem Creek Road from State Highway 20 to its junction with the down-river road on the south side of the Skagit River.

(7) The down-river road on the south side of the Skagit River from its junction with the Newhalem Creek Road to the end of the road across the Skagit River from the mouth of Sky Creek.

(b) *Aircraft.* The operation of aircraft is allowed on the entire water surface of Diablo Lake and Ross Lake, except that operating an aircraft under power on water surface areas within 1,000 feet of Diablo Dam or Ross Dam or on those posted as closed for fish spawning is prohibited.

(c) *Weapons.* The following location is designated for target practice between the hours of sunrise and sunset, subject to all applicable Federal, State, and local laws: in the SE ¼ of sec. 19, and the NE ¼ of sec. 30, T. 37 N., R. 12 E., WM, approximately 200 yards northwest of State Route 20 near mile marker 119, the area known as the Newhalem rifle range.

[49 FR 19652, May 9, 1984 as amended at 50 FR 51856, Dec. 20, 1985; 54 FR 48869, Nov. 28, 1989]

### § 7.70 Glen Canyon National Recreation Area.

(a) *Designated airstrips.* (1) Wahweap, latitude 36°59′45″ N., longitude 111°30′45″ W.

(2) Bullfrog, latitude 37°33′00″ N., longitude 110°42′45″ W.

(3) Halls Crossing, latitude 37°28′10″ N., longitude 110°42′00″ W.

(4) Hite, latitude 37°53′30″ N., longitude 110°23′00″ W.

(5) Gordon Flats, latitude 38°10′30″ N., longitude 110°09′00″ W.

(6) The entire surface of Lake Powell, subject to the restrictions contained in § 2.17 of this chapter.

(b) *Unattended property.* Vehicles or boat trailers, or vehicle/boat trailer combinations, may be left unattended for periods of up to 14 days, when parked in parking areas adjacent to designated boat launching sites, without the prior permission of the Superintendent. Any vehicle or boat trailer or vehicle/boat trailer combination which is left in parking areas adjacent to designated boat launching sites for over 14 days may be impounded by the Superintendent.

(c) *Colorado River white-water boat trips.* The following regulations shall apply to all persons using the waters of, or Federally owned land administered by the National Park Service along the Colorado River within Glen Canyon National Recreation Area, from the Lees Ferry launch ramp downstream to the eastern boundary of Grand Canyon National Park:

(1) No person shall operate a vessel engaging in predominantly upstream travel or having a total horsepower in

excess of 55 without a permit from the Superintendent.

(2) U.S. Coast Guard approved life preservers shall be worn by every person while traveling in boats or rafts on this section of the river, or while lining or portaging near rough water. One extra preserver must be carried on each vessel for each ten (10) passengers.

(3) No person shall conduct, lead or guide a river trip through Glen Canyon Recreation Area unless such person possesses a permit issued by the Superintendent of Grand Canyon National Park. The National Park Service reserves the right to limit the number of such permits issued, or the number of persons traveling on trips authorized by such permits when in the opinion of the National Park Service such limitations are necessary in the interest of public safety or protection of the ecological and environmental values of the area.

(i) The Superintendent of Grand Canyon National Park shall issue a permit upon a determination that the person leading, guiding, or conducting a river trip is experienced in running rivers in white-water navigation of similar difficulty, and possesses appropriate equipment, which is identified in the terms and conditions of the permit.

(ii) No person shall conduct, lead, guide, or outfit a commercial river trip without first securing the above permit and possessing an additional permit authorizing the conduct of a commercial or business activity in the recreation area.

(iii) An operation is commercial if any fee, charge, or other compensation is collected for conducting, leading, guiding, or outfitting a river trip. A river trip is not commercial if there is a bona fide sharing of actual expenses.

(4) All human waste will be taken out of the Canyon and deposited in established receptacles, or will be disposed of by such means as is determined by the Superintendent.

(5) No person shall take a dog, cat, or other pet on a river trip.

(6) The kindling of a fire is permitted only on beaches. All fires must be completely extinguished only with water before abandoning the area.

(7) Swimming and bathing are permitted except in locations immediately above rapids, eddies, and riffles or near rough water.

(8) No camping is allowed along the Colorado River bank between the Lees Ferry launch ramp and the Navajo Bridge.

(9) All persons issued a river trip permit shall comply with all terms and conditions of the permit.

(d) *Assembly and launching of river rafts and boats.* The following regulations shall apply to all persons designated under paragraph (e) of this section (Colorado white-water trips):

(1) The assembly and launching of rafts or boats, and parking or storing of any related equipment or supplies is restricted to those areas designated by the Superintendent.

(2) Within such designated areas, the Superintendent may assign or limit space and designate time periods of operation for each individual river trip or operator.

(e) *PWC.* (1) A person may launch and operate a PWC in park waters or beach a PWC on park lands, except in the following areas:

(i) On the Colorado River between Glen Canyon Dam and the downstream river boundary of Glen Canyon National Recreation Area where it adjoins Grand Canyon National Park.

(ii) On the Colorado River upstream of Sheep Canyon.

(iii) On the San Juan River upstream of Clay Hills pullout.

(iv) On the Escalante River upstream of Coyote Creek.

(v) On the Dirty Devil River upstream of Utah Highway 95 bridge.

(2) A person may not operate a PWC at speed in excess of flat wake speed on the Escalante River from Cow Canyon to Coyote Creek.

(3) After December 31, 2012, no one may operate a PWC that does not meet the 2006 emission standards set by EPA for the manufacturing of two-stroke engines. A person operating a PWC that meets the EPA 2006 emission standards through the use of direct injection two-stroke or four-stroke engines, or the equivalent thereof, is not subject to this prohibition and will be allowed to operate as described in this section.

(4) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[32 FR 5424, Mar. 31, 1967, as amended at 33 FR 11358, Aug. 9, 1968; 34 FR 2206, Feb. 14, 1969; 34 FR 11302, July 8, 1969; 36 FR 23294, Dec. 8, 1971; 40 FR 27030, June 26, 1975; 41 FR 27723, July 6, 1976; 42 FR 25857, May 20, 1977; 48 FR 30295, June 30, 1983; 68 FR 55465, Sept. 26, 2003; 72 FR 13706, Mar. 23, 2007]

## § 7.71 Delaware Water Gap National Recreation Area.

(a) [Reserved]

(b) *Designated snowmobile routes*. (1) A route in Middle Smithfield Township, Monroe County, Pennsylvania, bounded by the Delaware River on the east and Hidden Lake on the west. The route begins at the Smithfield Beach parking area and is in two loops. Loop One is a small trail approximately 3 miles long and follows the west bank of the Delaware River and closely parallels the east side of L. R. 45012 (commonly known as the River Road). Loop Two is approximately 6 miles long and begins at the northwest end of Loop One; it goes northeasterly between the Delaware River and River Road for about one mile until it crosses River Road; then southwesterly along the ridge which is south of Hidden Lake to a point opposite the west end of Hidden Lake, and then goes southeasterly until it returns to Loop One near River Road. Maps of the route are available at Smithfield Beach and at the office of the superintendent. Both loops are marked by appropriate signs.

(2) [Reserved]

(c) *Technical rock climbing*—(1) *Definition*. The term ''technical rock climbing'' is defined to mean climbing where such technical climbing aids as pitons, carabiners or snap links, ropes, expansion bolts, or other mechanical equipment are used to make the climb.

(2) *Registration*. Registration is required with the Superintendent prior to any technical rock climbing. The registrant is required to notify the Superintendent upon completion of the climb.

(d) *Commercial Vehicles*. (1) Notwithstanding the prohibition of commercial vehicles set forth at § 5.6 of this chapter, the following commercial vehicles are authorized to use that portion of U.S. Highway 209 located within the Delaware Water Gap National Recreation Area:

(i) Those operated by businesses based within the recreation area;

(ii) Those operated by businesses which as of July 30, 1983, operated a commercial vehicular facility in Monroe, Pike, or Northampton Counties, PA, and the vehicle operation originates or terminates at such facility;

(iii) On a first come-first served basis, up to 125 northbound and up to 125 southbound commercial vehicles per day serving businesses or persons in Orange County, Rockland County, Ulster County or Sullivan County, New York; and

(iv) Those operated in order to provide services to businesses and persons located in or contiguous to the boundaries of the recreation area.

(2) Contiguous Areas. All land within the exterior boundaries of Lehman, Delaware, Milford, Dingman, Stroud, Westfall, Middle Smithfield, Smithfield and Upper Mount Bethel townships is deemed contiguous to the recreation area.

(e) *Commercial vehicle fees*—(1) *Fee Schedule:* Fees are charged for those commercial vehicular uses described in paragraphs (d)(1)(i), (ii) and (iii) of this section based on the number of axles and wheels on a vehicle, regardless of load or weight, as follows:

| | |
|---|---|
| (i) Two-axle car, van or truck | $3 |
| (ii) Two-axle vehicle with trailer | $5 |
| (iii) Two-axle 6-wheeled vehicle | $8 |
| (iv) Three-axle vehicle | $10 |
| (v) Four-axle vehicle | $13 |
| (vi) Five or more-axle vehicle | $18 |

The fees charged are for one trip, one way.

(2) *Exceptions*. The following commercial vehicles are exempt from the commercial fee requirements.

(i) Vehicles necessary to provide services to businesses or persons within, or contiguous to the recreation area.

(ii) Any vehicle owned by a Federal, State or municipal agency.

(iii) Any vehicle owned or operated by a publicly owned utility company.

(iv) Any vehicle operated by a nonprofit or educational organization.

(v) Any commercially licensed vehicle or vehicle otherwise identified as a commercial vehicle, when at that particular time it is being used for noncommercial purposes.

(f) *Powerless flight*. The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(g) *Fishing*. Unless otherwise designated, fishing in any manner authorized under applicable State law is allowed.

[34 FR 13595, Aug. 23, 1969, as amended at 47 FR 4256, Jan. 29, 1982; 48 FR 30295, June 30, 1983; 48 FR 46780, 46782, Oct. 14, 1983; 49 FR 9421, Mar. 13, 1984; 49 FR 18451, Apr. 30, 1984; 50 FR 34130, Aug. 23, 1985; 51 FR 40419, Nov. 7, 1986; 52 FR 34777, Sept. 15, 1987; 69 FR 57181, Sept. 24, 2004]

### § 7.72 Arkansas Post National Memorial.

(a) *Launching, beaching, or landing of vessels*. Except in emergencies, no vessel shall be launched, beached, or landed from or on lands within the Arkansas Post National Memorial.

[35 FR 13206, Aug. 19, 1970]

### § 7.73 Buck Island Reef National Monument.

(a) *Extractive uses*. All extractive uses are prohibited within the boundaries of the Monument, including but not limited to harvest or collection (on the land or in the water) of fish for any use, marine mammals, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, hermit crabs (soldier crabs), seashells, corals, dead coral, sea fans, sponges and all associated reef invertebrates, plants, fruits and seeds, firewood, driftwood, rocks, sand, gas, oil, and minerals.

(b) *Marine operations*. No dredging, excavating or filling operations of any kind are permitted, and no equipment, structures, byproducts or excavated materials associated with such operations may be deposited in or on the waters or ashore within the boundaries of the Monument.

(c) *Wrecks*. No person shall destroy molest, remove, deface, displace or tamper with wrecked or abandoned waterborne craft of any type or condition, or any cargo pertaining thereto, unless permitted in writing by an authorized official of the National Park Service.

(d) *Boats*. (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater features.

(2) Anchoring or maneuvering watercraft within the waters that contain underwater marked swimming trails and interpretive signs is prohibited.

(3) Anchoring is prohibited except by permit issued by the Superintendent for deep sand bottom areas or for administrative purposes.

(4) Anchoring will be allowed in emergency situations only to protect life and property.

(5) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(e) *Fishing*. (1) All forms of fishing are prohibited including, but not limited to, spearfishing, rod and reel, handline, nets, gill or trammel, traps or pots, snares, hooks, poison, cast nets, trawl, seine, and long-line.

(2) The use or possession of any type of fishing equipment or any of the items listed in paragraph (a) of this section is prohibited within the boundaries of the Monument.

[29 FR 17091, Dec. 15, 1964, as amended at 48 FR 30295, June 30, 1983; 68 FR 16435, Apr. 4, 2003]

### § 7.74 Virgin Islands National Park.

(a) [Reserved]

(b) *Marine operations*. No dredging, excavating or filling operations of any kind are permitted, and no equipment, structures, byproducts or excavated materials associated with such operations may be deposited in or on the waters or ashore within the boundaries of the Park.

(c) *Wrecks*. No person shall destroy, molest, remove, deface, displace or tamper with wrecked or abandoned waterborne craft of any type or condition, or any cargo pertaining thereto unless

permitted in writing by an authorized official of the National Park Service.

(d) *Boats.* (1) No watercraft shall be operated in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater features.

(2) Anchoring or maneuvering watercraft within the waters that contain underwater marked swimming trails and interpretive signs is prohibited.

(3) Vessels desiring to enter Trunk Bay must enter and depart between the two outer buoys delineating the prescribed anchorage area, and shall anchor within described area, and no other, making sure the vessel will lie within this area regardless of wind or sea conditions: Except, that hand-propelled craft may be used to transport passengers and equipment between the anchorage area and the beach.

(4) All vessels carrying passengers for hire shall comply with applicable laws and regulations of the United States Coast Guard and Territory of the Virgin Islands.

(e) *Fishing.* (1) Taking of fishes or any other marine life in any way except with rod or line, the rod or line being held in the hand, is prohibited: *Provided,* That fish may be taken by pots or traps of conventional Virgin Islands design and not larger than five feet at the greatest dimension, and bait fish may be taken by nets of no greater overall length than 20 feet and of mesh not larger than 1 inch stretched: *Provided further,* That paragraphs (e) (3), (4), and (5) of this section shall apply.

(2) The use or possession of any type of spearfishing equipment within the boundaries of the park is prohibited.

(3) The species of crustaceans known as Florida Spiny Lobster (Panulirus argus) may be taken by hand or handheld hook. No person shall take female lobsters with eggs; or take more than two lobsters per person per day; or have in possession more than two days' limit: *Provided,* That paragraph (e)(5) of this section shall apply.

(4) Species of mollusks commonly known as whelks and conchs may be taken by hand. No person shall take more than two conchs or one gallon of whelks, or both, per day, or have in possession more than two days' limit: *Provided,* That paragraph (e)(5) of this section shall apply.

(5) All known means of taking fish, crustaceans, mollusks, turtles, or other marine life are prohibited in Trunk Bay and in other waters containing underwater signs and markers.

[29 FR 17091, Dec. 15, 1964, as amended at 48 FR 30296, June 30, 1983]

## § 7.75 Padre Island National Seashore.

(a) *Off-road motor vehicle and motorcycle operation.* (1) The following regulations pertain to the operation of motor vehicles and motorcycles off established roads and parking areas. The operation of such vehicles and motorcycles is subject also to the applicable provisions of part 4 of this chapter and paragraphs (e) and (g) of this section.

(i) No person may operate a motor vehicle or motorcycle without a valid operator's license or learner's permit in his possession; an operator who has a learner's permit must be accompanied by an adult who has a valid operator's license; a driver's license or learner's permit must be displayed upon the request of any authorized person.

(ii) In addition to the requirements of § 4.10 of this chapter, every motor vehicle and motorcycle must have an operable horn, windshield wiper or wipers (except motorcycles), brake light or lights, and rearview mirror.

(iii) Motor vehicles and motorcycles must have valid license plates.

(iv) Every motor vehicle and motorcycle must have a valid State vehicle inspection certificate when such certificate is required for highway use in the State in which the vehicle is licensed.

(v) When two motor vehicles or motorcycles meet on the beach, the operator of the vehicle in southbound traffic shall yield the right-of-way, where necessary, by turning out of the track to the right.

(2) *Off-road motor vehicle and motorcycle use areas and routes.* The following routes and areas are open to such vehicles: (i) Travel is permitted on all of the beach adjacent to the Gulf of Mexico, except for the approximately 4½ miles of beach between the North and South Beach Access Roads.

(ii) The route west of Big Shell Beach, locally known as the Back Road. This route begins on the beach adjacent to the Gulf of Mexico approximately three miles south of Yarborough Pass and returns to the beach approximately 15 miles south of Yarborough Pass.

(iii) The route beginning on the beach adjacent to the Gulf of Mexico approximately 11 miles south of Yarborough Pass and ending with its intersection with the Back Road approximately one mile west of the beach. This route is locally known as the Dunn Ranch Road.

(iv) Travel is permitted in an area within 200 feet of the north bank of the Mansfield Channel, beginning on the beach adjacent to the Gulf of Mexico and ending approximately ¾ mile west of the beach.

(b) *Hunting*. (1) Hunting is prohibited, except that during the open season prescribed by State and Federal agencies, the hunting of waterfowl is allowed upon the waters of Laguna Madre wherever a floating vessel of any type is capable of being operated, at whatever tide level may exist. Provided, however, that the waters surrounding North and South Bird Islands and other designated rookery islands are closed to all hunting as posted. Hunting, where authorized, is allowed in accordance with all applicable Federal, State and local laws for the protection of wildlife.

(2) The erecting of a structure for use as a hunting blind is prohibited except that a temporary blind may be used when removed at the end of each hunting day.

(c)–(d) [Reserved]

(e) *Prohibited vehicle operations*. The following operations are prohibited on and off established roads and parking areas.

(1) The use of ground effect or aircushion vehicles is prohibited.

(2) The use of vehicles propelled by the wind, commonly known as sail cars, is prohibited.

(3) Towing of persons behind vehicles on a sled, box, skis, surfboard, parachute, or in any other way is prohibited.

(4) Riding on fenders, tailgate, roof, or any other position outside of the vehicle is prohibited.

(f) [Reserved]

(g) *Speed*. Except where different speed limits are indicated by posted signs or markers, speed of automobiles and other vehicles shall not exceed 25 miles per hour where driving is permitted on the beach.

(h) *Mineral exploration and extraction*—(1) *Scope*. The regulations in this paragraph are made, prescribed, and published pursuant to the Act of September 28, 1962, 76 Stat. 651, 16 U.S.C. 459d–3 (1964), to provide for the occupation and use of so much of the surface of the land or waters within the Padre Island National Seashore—for all purposes reasonably incident to the mining and removal of oil and gas minerals and of other minerals which can be removed by similar means—in a manner that will be consistent with development of recreational facilities by the Secretary of the Interior, with surface use of the lands and waters in the Seashore by the public for recreational purposes and with preservation of the area's natural features and values. The provisions of these regulations shall govern also any right of occupation or use of the surface within the boundaries of the Seashore, granted by the Secretary subsequent to April 11, 1961, for the exploration, development, production, storing, processing or transporting of oil and gas minerals that are removed from outside the boundaries of the Seashore. They shall not apply to such rights of occupation or use existing on April 11, 1961, which are reasonably necessary.

(2) *Operator*. As used in this paragraph, an operator shall mean anyone who in accordance with the provisions of the aforesaid Act of September 28, 1962, possesses the right (whether as owner of a mineral interest, lessee, holder of operating rights, or otherwise), to mine or remove minerals from lands within the Padre Island National Seashore or the right to occupy or use the surface of Seashore lands for the exploration, development, production, storing, processing or transporting of oil and gas minerals that are removed from outside the boundaries of the Seashore.

(3)*Exercise of non-Federal Oil and Gas Rights.* Before entering the National Seashore for the purpose of conducting any operations pursuant to a mineral interest authorized under the Act providing for establishment of the Seashore, the operator shall comply with the requirements of part 9, subpart B of this chapter.

(4) All activities relating to the exercise of mineral interests which take place within the boundaries of the park shall be in accordance with an approved Plan of Operations.

(5) *Applicability of State laws.* All operators, as defined in subparagraph (2) of this paragraph shall abide by all rules and regulations as may be prescribed by the Texas Railroad Commission or other authority of the State of Texas.

[31 FR 3458, Mar. 5, 1966, as amended at 39 FR 40156, Nov. 14, 1974; 43 FR 6229, Feb. 14, 1978; 48 FR 30296, June 30, 1983; 51 FR 35647, Oct. 7, 1986; 52 FR 10686, Apr. 2, 1987]

### § 7.76 Wright Brothers National Memorial.

(a) *Designated airstrip.* Wright Brothers National Memorial Airstrip, located at Kill Devil Hills, N.C.

(b) *Use of airstrip.* Except in emergencies, no aircraft may be parked, stopped, or left unattended at the designated airstrip for more than 24 consecutive hours, or for more than a total of 48 hours during any 30-day period.

[32 FR 2564, Feb. 7, 1967]

### § 7.77 Mount Rushmore National Memorial.

(a) Climbing Mount Rushmore is prohibited.

[32 FR 13071, Sept. 14, 1967]

### § 7.78 Harpers Ferry National Historical Park.

(a) All persons shall register at park headquarters before climbing any portion of the cliff face of Maryland Heights. A registrant shall check out, upon completion of climbing, in the manner specified by the registering official.

[34 FR 8356, May 30, 1969]

### § 7.79 Amistad Recreation Area.

(a) *Hunting.* (1) Hunting is allowed at times and locations designated as open for hunting.

(2) The hunting season and species allowed to be taken will be designated on an annual basis by the superintendent.

(3) Deer, javelina, and turkey may be taken only by long bow and arrow. Water fowl and game birds may be taken only by shotguns and bird shot. The use of all other weapons for hunting is prohibited.

(b) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(c) *Personal Watercraft (PWC).* (1) PWCs are allowed within Amistad National Recreation Area with the following exceptions:

(i) The following areas are closed to PWC use:

(A) Hidden Cave Cove (where marked by buoys), located on the Rio Grande.

(B) Painted Canyon (where marked by buoys), located on the Rio Grande.

(C) Seminole Canyon, starting 0.5 miles from the mouth of the Rio Grande.

(D) Government coves at Diablo East and Rough Canyon to include the water and shoreline to the top of the ridge/property line.

(E) All terrestrial cave and karst features.

(F) The Lower Rio Grande area below Amistad Dam.

(G) The water area extending 1000 feet out from the concrete portion of Amistad Dam.

(ii) PWC are prohibited from landing on any island posted as closed.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[34 FR 6524, Apr. 16, 1969, as amended at 34 FR 15415, Oct. 3, 1969; 49 FR 18451, Apr. 30, 1984; 69 FR 30216, May 27, 2004; 72 FR 13706, Mar. 23, 2007]

### § 7.80 Sleeping Bear Dunes National Lakeshore.

(a) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at

times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(b) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

[49 FR 18451, Apr. 30, 1984]

### § 7.81 Point Reyes National Seashore.

(a) *Powerless flight*. The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

[49 FR 18451, Apr. 30, 1984]

### § 7.82 Apostle Islands National Lakeshore.

(a) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(b) *Snowmobiles*. (1) Snowmobiles may be operated for authorized purposes in the following designated areas within the Lakeshore:

(i) The frozen surface of Lake Superior that surrounds every island from the shoreline out to the authorized boundary;

(ii) The frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary;

(iii) The ¼ mile section of the Big Sand Bay Road that passes through the park mainland unit to non-NPS property.

(2) Snowmobile use is authorized solely for the purpose of providing access for legal forms of:

(i) Ice fishing;

(ii) Hunting and trapping;

(iii) Winter camping;

(iv) Other non-motorized recreational activities; and

(v) Access to non-NPS property by owners, and to NPS properties by ''use and occupancy'' lessees and their guests.

(3) Snowmobiles may be used for administrative, law enforcement, and emergency services as determined by the Superintendent.

(4) Snowmobile use in areas and for purposes other than those stated in paragraphs (b)(1) and (b)(2) of this section is prohibited.

(5) Maps showing designated use areas are available at park headquarters.

(c) *Off-road vehicles*. (1) Off-road motor vehicles may be operated for authorized purposes in the following designated areas within the Lakeshore:

(i) The frozen surface of Lake Superior that surrounds every island from the shoreline out to the authorized boundary; and

(ii) The frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary.

(2) Off-road motor vehicle use is authorized solely for the purpose of providing access for legal forms of:

(i) Ice fishing;

(ii) Hunting and trapping;

(iii) Winter camping;

(iv) Other non-motorized recreational activities; and

(v) Access to non-NPS property by owners, and to NPS properties by ''use and occupancy'' lessees and their guests.

(3) Off-road motor vehicles may be used for administrative, law enforcement, and emergency services as determined by the Superintendent.

(4) Off-road motor vehicle use in areas and for purposes other than those stated in paragraphs (c)(1) and (c)(2) is prohibited.

(5) Maps showing designated use areas are available at park headquarters.

(d) *Ice augers and power engines*. (1) *Ice auger* means a portable gasoline or electric powered engine connected to a rotating helical shaft for boring through the frozen surface of a lake.

(2) *Power engine* means a mobile gasoline or electric powered engine or device that is connected to a rotating saw blade or teeth linked in an endless chain for cutting through the frozen ice surface of a lake.

(3) Notwithstanding the requirements of 36 CFR 2.12(a)(3), operation of an ice auger or power engine is authorized on designated portions of Lake Superior for the specific purpose of cutting through the ice surface to provide access for legal ice fishing activity.

(4) Areas designated for use of an ice auger or power engine include:

(i) The frozen surface of Lake Superior that surrounds every island from

the shoreline out to the authorized boundary; and

(ii) The frozen surface of Lake Superior from Sand Point to the mainland unit's eastern boundary.

(5) Maps showing designated use areas are available at park headquarters.

(6) Use of an ice auger or power engine on any land surface or frozen water surface outside of designated use areas is prohibited without a permit.

[49 FR 18451, Apr. 30, 1984, as amended at 70 FR 16716, Apr. 1, 2005]

### § 7.83 Ozark National Scenic Riverways.

(a) *Restrictions for motorized vessels.* (1) On waters situated within the boundaries of Ozark National Scenic Riverways, the use of a motorized vessel is limited to a vessel equipped with an outboard motor only.

(2) For the purposes of this section, horsepower ratings on a particular motor will be based upon the prevailing industry standard of power output at the propeller shaft as established by the manufacturer.

(3) The use of a motorized vessel is allowed as follows:

(i) Above the Big Spring landing on the Current River and below Alley Spring on the Jacks Fork River with an outboard motor not to exceed 40 horsepower.

(ii) Above Round Spring on the Current River and above Alley Spring on the Jacks Fork River with an outboard motor not to exceed 25 horsepower.

(iii) Above Akers Ferry on the Current River from May 1 to September 15 with an outboard motor not to exceed 10 horsepower.

(iv) Above Bay Creek on the Jacks Fork River from March 1 to the Saturday before Memorial Day with an outboard motor not to exceed 10 horsepower.

(4) Operating a motorized vessel other than as allowed in § 7.83(a) is prohibited.

(b) *Scuba Diving.* (1) Scuba diving is prohibited within all springs and spring branches on federally owned land within the boundaries of Ozark National Scenic Riverways without a written permit from the superintendent.

(2) *Permits.* The superintendent may issue written permits for scuba diving in springs within the boundaries of the Ozark National Scenic Riverways; *Provided,*

(i) That the permit applicant will be engaged in scientific or educational investigations which will have demonstrable value to the National Park Service in its management or understanding of riverways resources.

(ii) [Reserved]

(c) *Commercial Activities.* The activities listed herein constitute commercial activities which are prohibited within the boundaries of Ozark National Scenic Riverways, except in accordance with the provisions of a permit, contract, or other written agreement with the United States. The National Park Service reserves the right to limit the number of such permits, contracts or other written agreements, when, in the judgment of the Service, such limitation is necessary in the interest of visitor enjoyment, public safety, or preservation or protection of the resources or values of the Riverways.

(1) The sale or rental of any goods or equipment to a member or members of the public which is undertaken in the course of an ongoing or regular commercial enterprise.

(2) The performance of any service or activity for a member or members of the public in exchange for monetary or other valuable consideration.

(3) The delivery or retrieval within the boundaries of Ozark National Scenic Riverways of watercraft or associated boating equipment which has been rented to a member or members of the public at a location not within the Riverways, when such delivery or retrieval is performed by a principal, employee or agent of the commercial enterprise offering the equipment for rental and when these services are performed as an integral part, necessary complement, or routine adjunct of or to the rental transaction, whether or not any charge, either separately or in combination with any other charge, is made for these services.

(4) The performance, by a principal, employee, or agent of a commercial enterprise, within the boundaries of Ozark National Scenic Riverways of

any other service or activity for which a fee, charge or other compensation is not collected, but which is an integral part, necessary complement, or routine adjunct of or to any commercial transaction undertaken by that enterprise for which monetary or other valuable consideration is charged or collected, even though such transaction is initiated, performed, or concluded outside the boundaries of the Riverways.

(5) The solicitation of any business, employment, occupation, profession, trade, work or undertaking, which is engaged in with some continuity, regularity or permanency for any livelihood, gain, benefit, advantage, or profit.

(d) *Fishing*. (1) Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(2) The superintendent may designate times and locations and establish conditions under which the digging of bait for personal use is allowed.

(e) *Frogs, turtles and crayfish*. (1) The superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and/or crayfish upon a written determination that the taking of frogs, turtles and/or crayfish:

(i) Is consistent with the purposes for which the area was established; and

(ii) Will not be detrimental to other park wildlife or the reproductive potential of the species to be taken; and

(iii) Will not have an adverse effect on the ecosystem.

(2) Violation of established conditions or designations is prohibited.

[38 FR 5851, Mar. 5, 1973, as amended at 41 FR 23959, June 14, 1976; 49 FR 18451, Apr. 30, 1984; 50 FR 43388, Oct. 25, 1985; 56 FR 30696, July 5, 1991; 56 FR 37158, Aug. 5, 1991]

### § 7.84 Channel Islands National Park.

(a) [Reserved]

(b) *Wrecks*. No person shall destroy, molest, remove, deface, displace, or tamper with wrecked and abandoned water or airborne craft or any cargo pertaining thereto.

(c) *Fishing*. The taking of any fish, crustaceans, mollusk, or other marine life shall be in compliance with State regulations except that:

(1) No invertebrates may be taken in water less than five (5) feet in depth.

(2) The taking of abalone and lobsters for commercial purposes is prohibited in the following areas:

(i) *Anacapa Island*. Northside to exterior boundary of the monument between east end of Arch Rock 119°21′–34°01′ and west end of island, 119°27′–34°01′.

(ii) *Santa Barbara Island*. Eastside to exterior boundary of monument 119°02′–33°28′ and 119°02′–33°29′30″.

(3)(i) The use of all nets is prohibited within the outer edge of the kelp line surrounding Anacapa and Santa Barbara Islands.

(ii) The use of trammel or gill nets is prohibited in less than 20 fathoms of water in all areas surrounding Anacapa and Santa Barbara Islands.

(4) The Superintendent shall require all persons fishing commercially within Channel Islands National Monument, on waters open for this purpose, to obtain an annual permit from him. Such permits shall be issued on request except that:

(i) Lobster permits for Anacapa and Santa Barbara Islands will be issued only to applicants who filed with the California State Department of Fish and Game fish receipts for lobsters caught at Anacapa and Santa Barbara Islands during the period July 1, 1968, to July 1, 1971.

(ii) Abalone permits for Anacapa and Santa Barbara Islands will be issued only to applicants who filed with the California State Department of Fish and Game fish receipts for abalone caught at Anacapa and Santa Barbara Islands during the period July 1, 1968, to July 1, 1971.

[38 FR 5622, Mar. 17, 1973, as amended at 48 FR 30296, June 30, 1983]

### § 7.85 Big Thicket National Preserve.

(a) *Hunting*. Except as otherwise provided in this section, hunting is permitted in accordance with § 2.2 of this chapter.

(1) Hunting is permitted only during designated seasons, as defined for game animals or birds by the State of Texas. During other periods of the year, no hunting is permitted.

(2) During applicable open seasons, only the following may be hunted:

(i) Game animals, rabbits, and feral or wild hogs.

(ii) Game birds and migratory game birds.

(3) The use of dogs or calling devices for hunting game animals or fur-bearing animals is prohibited.

(4) The use or construction of stands, blinds or other structures for use in hunting or for other purposes is prohibited.

(b) *Trapping*. Trapping, for fur-bearing animals only, is permitted in accordance with § 2.2 of this chapter.

(c) *Hunting and Trapping Permits*. In addition to applicable State licenses or permits, a permit from the Superintendent is required for hunting or trapping on Preserve lands. Permits will be available, free of charge, at Preserve headquarters and can be obtained in person or by mail.

(d) *Firearms, Traps, and Other Weapons*. Except as otherwise provided in this paragraph, § 2.4 of this chapter shall be applicable to Preserve lands.

(1) During open hunting or trapping seasons, the possession and use of firearms or other devices capable of destroying animal life is permitted in accordance with § 2.4 of this chapter.

(2) The possession of firearms or other weapons at night, from one hour after sunset to one hour before sunrise is prohibited.

[45 FR 46072, July 9, 1980, as amended at 48 FR 30296, June 30, 1983]

### § 7.86 Big Cypress National Preserve.

(a) *Motorized vehicles*—(1) *Definitions*. (i) The term ''motorized vehicle'' means automobiles, trucks, glades or swamp buggies, airboats, amphibious or air cushion vehicles or any other device propelled by a motor and designed, modified for or capable of cross country travel on or immediately over land, water, marsh, swampland or other terrain, except boats which are driven by a propeller in the water.

(ii) The term ''operator'' means any person who operates, drives, controls or has charge of a motorized vehicle.

(iii) The term ''Preserve lands'' means all federally owned or controlled lands and waters administered by the National Park Service within the boundaries of the Preserve.

(2) *Travel in Preserve areas*. (i) Unless closed or restricted by action of the Superintendent under paragraph (a)(2)(iii), the following areas, which are shown on a map numbered BC–91–001, dated November 1975, and available for public inspection at the office of the Superintendent, are open to motorized vehicles:

(A) The area south and west of Loop Road (State Road #B94).

(B) The area north of Tamiami Trail.

(ii) The following areas which are shown on a map numbered BC–91–001, dated November 1975, and available for public inspection at the office of the Superintendent, are closed to motorized vehicles:

(A) The areas between the Loop Road (State Hwy. #B94) and the Tamiami Trail (U.S. Hwy. #B41), except that the Superintendent may issue a permit to provide for reasonable access by legal residents or to provide access by authorized oil and gas companies.

(B) Big Cypress Florida Trail, Section 1, One marked main hiking trail, from Tamiami Trail to Alligator Alley; and the two marked loop trails are closed to the use of all motorized vehicles, except that vehicles may cross the trails.

(iii) The Superintendent may temporarily or permanently close or restrict the use of any areas and routes otherwise designated for use of motor vehicles, or close or restrict such areas or routes to the use of particular types of motor vehicles by the posting of appropriate signs, or by marking on a map which shall be available for public inspection at the office of the Superintendent, or both. In determining whether to close or restrict the uses of the areas or routes under this paragraph, the Superintendent shall be guided by the criteria contained in sections 3 and 4 of E.O. 11644 (37 FR 2877) as amended, and shall also consider factors such as other visitor uses, safety, wildlife management, noise, erosion, geography, vegetation, resource protection, and other management considerations. Prior to making a temporary or permanent closure the Superintendent shall consult with the executive director of the Florida Game and Fresh Water Fish Commission. Prior to instituting a permanent closure of an area or route, notice of such intention

shall be published in the FEDERAL REGISTER and the public shall be provided a period of 30 days to comment.

(3) *Operations, limitations and equipment*—(i) *Vehicle operation.* (A) Motorized vehicle permits shall be required after December 21, 1980.

(B) Motorized vehicles shall not be operated in a manner causing, or likely to cause, significant damage to or disturbance of the soil, wildlife habitat, improvements, cultural, or vegetative resources. Cutting, grading, filling or ditching to establish new trails or to improve old trails is prohibited, except under written permit where necessary in the exploration for, extraction or removal of oil and gas.

(ii) Vehicle Limitations and Equipment.

(A) [Reserved]

(B) The Superintendent, by the posting of appropriate signs or by marking on a map, which shall be available for public inspection at the office of the Superintendent, may require during dry periods, that a motorized vehicle or a particular class of motorized vehicle, operated off established roads and parking areas, shall be equipped with a spark arrestor that meets Standard 5100–1a of the Forest Service, U.S. Department of Agriculture, or the 80 percent efficiency level when determined by the appropriate Society of Automotive Engineers (SAE) Standard.

(C) A motorized vehicle, except an airboat, when operated off of established roads and parking areas during the period from one-half hour after sunset to one-half hour before sunrise, shall display at least one forward-facing white headlight and one red lighted taillight each of which shall be visible for a distance of 500 feet in their respective directions under clear atmospheric conditions.

(D) Airboats and amphibious vehicles shall fly a safety flag at least 10 inches wide by 12 inches long at a minimum height of 10 feet above the bottom of the vehicle or boat, and shall display one white light aft visible for 360° at a distance of 500 feet when running during the period from one-half hour before sunset to one-half hour after sunrise.

(b) *Camp structures.* (1) Buildings or other structures on lands not owned by claimants to these structures existing prior to the effective date of these regulations, may be occupied and used by said claimants pursuant to a nonrenewable, nontransferrable permit. This use shall be for a maximum term of five (5) years from the date of Federal acquisition for preserve purposes of the land upon which the structures are situated or five years from the effective date of these regulations, whichever occurs first: *Provided, however,* That the claimant to the structures by application:

(i) Reasonably demonstrates by affidavit, bill of sale or other documentation proof of possessory interest or right of occupancy in the cabin or structure;

(ii) Submits a sketch and photograph of the cabin or structure and a map showing its geographic location;

(iii) Agrees to vacate or remove the structure from the preserve upon the expiration of the permit, and

(iv) Acknowledges in the permit that he/she has no interest in the real property.

(2) Structures built after the effective date of these regulations will be removed upon acquisition by the Federal Government of the lands upon which the structures are situated.

(3) Structures that are razed or destroyed by fire or storm, or deteriorate structurally to the point of being unsafe or uninhabitable shall not be rebuilt and the permit shall be cancelled. This shall not be deemed to prohibit routine maintenance or upkeep on an existing structure.

(4) The National Park Service reserves the right to full and unrestricted use of the lands under permit including, but not limited to, such purposes as managed hunting programs executed in accordance with applicable State Game and Fish laws and regulations, use of existing roads and trails, and unrestricted public access.

(c) *Aircraft: Designated landing sites.* (1) Except as provided below, aircraft may be landed in the preserve only at improved landing strips for which a permit has been issued and which were in existence and in usable condition at the time the lands were acquired for preserve purposes, or the effective date of these regulations, whichever occurs

first. A permit may be issued to the former land owner or airstrip user upon application to the Superintendent. The application shall include a sketch showing location; a copy of the airstrip license, if any; a description of the size of strip, type of landing surface, height of obstructions, special markings; and a list of the camps served.

(2) A map showing the locations, size, and limitations of each airstrip designated under a permit shall be available for public inspection at the office of the Superintendent.

(3) Rotorcraft used for purposes of oil and gas exploration or extraction, as provided for in part 9, subpart B of this chapter, may be operated only in accordance with an approved operating plan or a permit issued by the Superintendent.

(d) [Reserved]

(e) *Hunting, Fishing, Trapping and Gathering.* (1) Hunting, fishing and trapping are permitted in accordance with the general regulations found in parts 1 and 2 of this chapter and applicable Florida law governing Cooperative Wildlife Management Areas.

(2) The Superintendent may permit the gathering or collecting by hand and for personal use only of the following:

(i) Tree snails (Liguus Fasciatus);

*Provided, however,* That under conditions where it is found that significant adverse impact on park resources, wildlife populations or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering, or otherwise restrict the collecting of these items. Portions of a park area in which restrictions apply shall be designated on a map which shall be available for public inspection at the office of the Superintendent, or by the posting of appropriate signs, or both.

(f) *Grazing.* (1) Grazing privileges shall be available under permit to owners or lessees who were actually using land within the Preserve for grazing purposes on October 11, 1974, or who elected to request a permit at the time the land was acquired for preserve purposes (See 36 CFR 2.60).

(2) Such permit may be renewed during the lifetime of the permittee or his spouse.

(3) The breach of any of the terms or conditions of the permit or the regulations applicable thereto shall be grounds for termination, suspension or denial of grazing privileges.

(4) Except as provided below, failure to use land under permit for grazing or to renew the permit shall automatically terminate the permit and grazing privileges. The Superintendent may issue a nonuse permit on an annual basis not to exceed three consecutive years, except that nonuse beyond this time may be permitted if necessitated by reasons clearly outside the control of the permittee.

(5) Annual fees based on Departmental regulations (43 CFR 4125.1–1 (m)) will be charged for all livestock grazing upon preserve lands.

(6) Each permittee shall comply with the range management plan approved by the Superintendent for the area under permit.

(7) State laws and regulations relating to fencing, sanitation and branding are applicable to graziers using preserve lands.

(8) The National Park Service reserves the right to full and unrestricted use of the lands under permit including, but not limited to, such purposes as managed hunting programs executed in accordance with applicable State Game and Fish laws and regulations, use of existing roads and trails, unrestricted public access, and the right to revoke the permit if the activity is causing or will cause considerable adverse effect on the soil, vegetation, watershed or wildlife habitat.

(9) Corporations formed by owners or lessees who were actually using lands within the preserve for grazing purposes on October 11, 1974, may be issued annual permits for a period not to exceed twenty-five (25) years from the date of acquisition for preserve purposes.

[44 FR 45128, Aug. 1, 1979, as amended at 48 FR 30296, June 30, 1983]

### § 7.87 Kaloko-Honokohau National Historical Park.

(a) *Is public nudity prohibited at Kaloko-Honokohau National Historical Park?* Yes. Public nudity, including nude bathing, by any person on Federal land or water within the boundaries of Kaloko-Honokohau National Historical Park is prohibited. This section does

not apply to a person under 10 years of age.

(b) *What is public nudity?* Public nudity is a person's failure, when in a public place, to cover with a fully opaque covering that person's genitals, pubic areas, rectal area or female breast below a point immediately above the top of the areola.

(c) *What is a public place?* A public place is any area of Federal land or water subject to Federal jurisdiction within the boundaries of Kaloko-Honokohau National Historical Park, except the enclosed portions of restrooms or other structures designed for privacy or similar purposes.

[64 FR 19483, Apr. 21, 1999]

### § 7.88 Indiana Dunes National Lakeshore.

(a) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(b) *Powerless flight.* The use of devices to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent pursuant to the terms and conditions of a permit.

[49 FR 18451, Apr. 30, 1984]

### § 7.89 New River Gorge National River.

(a) *Hunting*—(1) *May I hunt within New River Gorge National River?* Yes, you may hunt if you:

(i) Possess a valid West Virginia State hunting license or permit, or are exempt under provisions of West Virginia law.

(ii) Comply with the hunting seasons, harvest limits, and any other conditions established by the State of West Virginia.

(iii) Do not violate any closures or limitations established by the Superintendent for reasons of public safety, resource protection, or other management considerations.

(2) *Do West Virginia state hunting laws apply within New River Gorge National River?* Yes, non-conflicting State hunting laws are adopted as part of the regulations in this section and apply within New River Gorge National River.

(b) [Reserved]

[68 FR 55317, Sept. 25, 2003]

### § 7.90 [Reserved]

### § 7.91 Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.

(a) *Water sanitation.* (1) Vessels with marine toilets so constructed as to permit wastes to be discharged directly into the water shall have such facilities sealed to prevent discharge.

(2) Chemical or other type marine toilets with approved holding tanks or storage containers will be permitted, but will be discharged or emptied only at designated sanitary pumping stations.

(b) Overnight occupancy of a vessel on the Whiskeytown Lake is prohibited.

(c) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(d) *Gold Panning.* (1) As used in this section, the term ''gold panning'' means the attempted or actual removal of gold from a stream by using either a metal or plastic gold pan and a trowel, spoon or other digging implement having a blade surface not exceeding 4 inches wide and 8 inches long.

(2)(i) Unless otherwise designated by the superintendent, gold panning is allowed on all streams. Streams, or portions thereof, that are designated closed to gold panning are marked on a map available for public inspection at the office of the superintendent, or by the posting of signs, or both.

(ii) Prior to engaging in gold panning, a person shall register with, and pay a special recreation permit fee to, the superintendent. The superintendent shall establish the special recreation permit fee in accordance with regulations in part 71 of this chapter.

(iii) A person may remove gold from the Unit only in accordance with these regulations.

(3) The following are prohibited:

(i) Removing gold by any method other than gold panning, including, but not limited to, the use of suction, a crevice cleaner, screen separator, view box, sluice box, rocker, dredge or any other mechanical or hydraulic device,

or skin diving equipment such as a snorkel, mask or wetsuit.

(ii) Using any toxic substance or chemical, including mercury, in gold panning activities.

(iii) Conducting gold panning outside the confines of existing stream water levels, or digging into a stream bank, or digging that results in the disturbance of the ground surface or the undermining of any vegetation, historic feature or bridge abutment.

[36 FR 14267, Aug. 3, 1971, as amended at 38 FR 5245, Feb. 27, 1973; 49 FR 18452, Apr. 30, 1984; 54 FR 23649, June 2, 1989]

### § 7.92 Bighorn Canyon National Recreation Area.

(a) *Aircraft-designated airstrip.* (1) Fort Smith landing strip, located at approximate latitude 45°19′ N., approximate longitude 107°55′41″ W. in the S½S½SE¼ sec. 8, and the S½SW¼SW¼ sec. 9, T. 6 S., R. 31 E., Montana Principal Meridian.

(2) [Reserved]

(b) *Snowmobiles.* (1) Designated routes to be open to snowmobile use: On the west side of Bighorn Lake, beginning immediately east of the Wyoming Game and Fish Department Residence on the Pond 5 road northeast to the Kane Cemetery. North along the main traveled road past Mormon Point, Jim Creek, along the Big Fork Canal, crossing said canal and terminating on the south shore of Horseshoe Bend, and the marked lakeshore access roads leading off this main route to Mormon Point, north and south mouth of Jim Creek, South Narrows, and the lakeshore road between Mormon Point and the south mouth of Jim Creek. On the east side of Bighorn Lake beginning at the junction of U.S. Highway 14A and the John Blue road, northerly on the John Blue road to the first road to the left, on said road in a westerly direction to its terminus at the shoreline of Bighorn Lake. All frozen lake surfaces are closed to snowmobiling.

(2) On roads designated for snowmobile use only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated road or parking area is closed by snow depth to all other motor vehicles used by the public. These routes will be marked by signs, snow poles or other appropriate means. The superintendent shall determine the opening and closing dates for use of designated snowmobile routes each year. Routes will be open to snowmobile travel when they are considered to be safe for travel but not necessarily free of safety hazards. Snowmobiles may travel in these areas with the permission of the superintendent, but at their own risk.

(3) Snowmobile use outside designated routes is prohibited.

(c) *Fishing.* Unless otherwise designated, fishing in any manner authorized under applicable State law is allowed.

(d) *Personal Watercraft (PWC).* (1) PWC use is allowed in Bighorn Canyon National Recreation Area, except in the following areas:

(i) In the gated area south of Yellowtail Dam's west side to spillway entrance works and Bighorn River from Yellowtail Dam to cable 3,500 feet north.

(ii) At Afterbay Dam from fenced areas on west side of dam up to the dam.

(iii) In Afterbay Lake, the area between dam intake works and buoy/cable line 100 feet west.

(iv) At Government docks as posted.

(v) At the Ok-A-Beh gas dock, except for customers.

(vi) From Yellowtail Dam upstream to the log boom.

(vii) In Bighorn Lake and shoreline south of the area known as the South Narrows (legal description R94W, T57N at the SE corner of Section 6, the SW corner of Section 5, the NE corner of Section 7, and the NW corner of Section 8). Personal watercraft users are required to stay north of the boundary delineated by park installed buoys.

(2) The Superintendent may temporarily limit, restrict, or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

[36 FR 21666, Nov. 12, 1971, as amended at 48 FR 29845, June 30, 1983; 52 FR 34777, Sept. 15, 1987; 70 FR 31353, June 1, 2005]

### § 7.93 Guadalupe Mountains National Park.

(a) *Cave entry*. No person shall enter any cave or passageway of any cave without a permit.

[48 FR 30296, June 30, 1983]

### § 7.94 Harry S Truman National Historic Site.

The Truman Home structure at Harry S Truman National Historic Site is closed to all public use and access until June 1, 2010.

[74 FR 51239, Oct. 6, 2009]

### § 7.95 [Reserved]

### § 7.96 National Capital Region.

(a) *Applicability of regulations*. This section applies to all park areas administered by National Capital Region in the District of Columbia and in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland and to other federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the act of March 17, 1948 (62 Stat. 81).

(b) *Athletics*—(1) *Permits for organized games*. Playing baseball, football, croquet, tennis, and other organized games or sports except pursuant to a permit and upon the grounds provided for such purposes, is prohibited.

(2) *Wet grounds*. Persons holding a permit to engage in athletics at certain times and at places authorized for this use are prohibited from exercising the privilege of play accorded by the permit if the grounds are wet or otherwise unsuitable for play without damage to the turf.

(3) *Golf and tennis; fees*. No person may use golf or tennis facilities without paying the required fee, and in compliance with conditions approved by the Regional Director. Trespassing, intimidating, harassing or otherwise interfering with authorized golf players, or interfering with the play of tennis players is prohibited.

(4) *Ice skating*. Ice skating is prohibited except in areas and at times designated by the Superintendent. Skating in such a manner as to endanger the safety of other persons is prohibited.

(c) *Model planes*. Flying a model powered plane from any park area is prohibited without a permit.

(d) *Fishing*. Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(e) *Swimming*. Bathing, swimming or wading in any fountain or pool except where officially authorized is prohibited. Bathing, swimming or wading in the Tidal Basin, the Chesapeake and Ohio Canal, or Rock Creek, or entering from other areas covered by this section the Potomac River, Anacostia River, Washington Channel or Georgetown Channel, except for the purpose of saving a drowning person, is prohibited.

(f) *Commercial vehicles and common carriers*—(1) *Operation in park areas prohibited*; *exceptions*. Commercial vehicles and common carriers, loaded or unloaded, are prohibited on park roads and bridges except on the section of Constitution Avenue east of 19th Street or on other roads and bridges designated by the Superintendent, or when authorized by a permit or when operated in compliance with paragraph (f)(2) of this section.

(2) *George Washington Memorial Parkway; passenger-carrying vehicles; permits; fees*. (i) Taxicabs licensed in the District of Columbia, Maryland, or Virginia, are allowed on any portion of the George Washington Memorial Parkway without a permit or payment of fees.

(ii) Passenger-carrying vehicles for hire or compensation, other than taxicabs, having a seating capacity of not more than fourteen (14) passengers, excluding the operator, when engaged in services authorized by concession agreement to be operated from the Washington National Airport and/or Dulles International Airport, are allowed on any portion of the George Washington Memorial Parkway in Virginia without a permit or payment of fees. However, when operating on a sightseeing basis an operator of such a vehicle shall comply with paragraph (f)(2)(iv) of this section.

(iii) Passenger-carrying vehicles for hire or compensation, other than those to which paragraphs (f)(2) (i) and (ii) of this section apply, are allowed on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, under the following conditions:

(A) When operating on a regular schedule: to provide passenger service on any portion between Mount Vernon and the Arlington Memorial Bridge, or to provide limited direct nonstop passenger service from Key Bridge to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return, or to provide limited direct nonstop passenger service from the interchange at Route 123 to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return. Permittees shall file a schedule of operation and all schedule changes with the Regional Director showing the number of such vehicles and total miles to be operated on the parkway.

(B) When operating nonscheduled direct, nonstop service primarily for the accommodation of air travelers arriving at or leaving from Dulles International Airport or Washington National Airport: between Dulles International Airport and a terminal in Washington, DC, over the George Washington Memorial Parkway between Virginia Route 123 and Key Bridge; or between Washington National Airport and a terminal in Washington, D.C., over the George Washington Memorial Parkway between Washington National Airport and 14th Street Bridge; or between Dulles International Airport and Washington National Airport over the George Washington Memorial Parkway between Virginia Route 123 and Washington National Airport. Permittees shall file a report of all operations and total miles operated on the George Washington Memorial Parkway with the Regional Director.

(C) Permits are issued to operators of vehicles described in paragraphs (f)(2)(iii) (A) and (B) normally for a period of one year, effective from July 1 until the following June 30, at the rate of one cent (1) per mile for each mile each such vehicle operates upon the parkway. Payment shall be made quarterly within twenty (20) days after the end of the quarter based upon a certification by the operator of the total mileage operated upon the parkway.

(iv) Sightseeing passenger-carrying vehicles for hire or compensation other than taxicabs may be permitted on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, to provide sightseeing service on any portion of the parkway. Permits may be issued either on an annual basis for a fee of three dollars ($3.00) for each passenger-carrying seat in such vehicle; on a quarterly basis for a fee of seventy-five cents (75) per seat; or on a daily basis at the rate of one dollar ($1.00) per vehicle per day.

(3) *Taxicabs*—(i) *Operations around Memorials*. Parking, except in designated taxicab stands, or cruising on the access roads to the Washington Monument, the Lincoln Memorial, the Jefferson Memorial, and the circular roads around the same, of any taxicab or hack without passengers is prohibited. However, this section does not prohibit the operation of empty cabs responding to definite calls for hack service by passengers waiting at such Memorials, or of empty cabs which have just discharged passengers at the entrances of the Memorials, when such operation is incidental to the empty cabs' leaving the area by the shortest route.

(ii) *Stands*. The Superintendent may designate taxicab stands in suitable and convenient locations to serve the public.

(4) The provisions of this section prohibiting commercial trucks and common carriers do not apply within other Federal reservations in the environs of the District of Columbia and do not apply on that portion of Suitland Parkway between the intersection with Maryland Route 337 and the end of the Parkway at Maryland Route 4, a length of 0.6 mile.

(5) *Parking*. Violation of a traffic control device regulating parking is punishable by fine. In any violation of a traffic control device regulating parking, proof that the described vehicle was parked in violation, together with proof that the defendant was at the

time the registered owner of the vehicle, shall constitute a prima facie presumption that the registered owner of the vehicle was the person who committed the violation.

(g) *Demonstrations and special events*—(1) *Definitions.* (i) The term ''demonstrations'' includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(ii) The term ''special events'' includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under paragraph (g)(1)(i) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(iii) The term ''national celebration events'' means the annually recurring special events regularly scheduled by the National Capital Region, which are listed in paragraph (g)(4)(i) of this section.

(iv) The term ''White House area'' means all park areas, including sidewalks adjacent thereto, within these bounds; on the south, Constitution Avenue NW.; on the north, H Street NW.; on the east, 15th Street, NW.; and on the west, 17th Street NW.

(v) The term ''White House sidewalk'' means the south sidewalk of Pennsylvania Avenue NW., between East and West Executive Avenues NW.

(vi) The term ''Lafayette Park'' means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue NW.; on the north, H Street NW.; on the east, Madison Place NW.; and on the west, Jackson Place NW.

(vii) The term ''Ellipse'' means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue NW.; on the north, E Street, NW.; on the west, 17th Street NW.; and on the east, 15th Street NW.

(viii) The term ''Regional Director'' means the official in charge of the National Capital Region, National Park Service, U.S. Department of the Interior, or an authorized representative thereof.

(ix) The term ''other park areas'' includes all areas, including sidewalks adjacent thereto, other than the White House area, administered by the National Capital Region.

(x) The term ''Vietnam Veterans Memorial'' means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(2) *Permit requirements.* Demonstrations and special events may be held only pursuant to a permit issued in accordance with the provisions of this section except:

(i) Demonstrations involving 25 persons or fewer may be held without a permit *provided* that the other conditions required for the issuance of a permit are met and *provided further* that the group is not merely an extension of another group already availing itself of the 25-person maximum under this provision or will not unreasonably interfere with other demonstrations or special events.

(ii) Demonstrations may be held in the following park areas without a permit *provided* that the conduct of such demonstrations is reasonably consistent with the protection and use of the indicated park area and the other

requirements of this section. The numerical limitations listed below are applicable only for demonstrations conducted without a permit in such areas. Larger demonstrations may take place in these areas pursuant to a permit.

(A) *Franklin Park*. Thirteenth Street, between I and K Streets NW., for no more than 500 persons.

(B) *McPherson Square*. Fifteenth Street, between I and K Streets NW., for no more than 500 persons.

(C) *U.S. Reservation No. 31*. West of 18th Street and south of H Street NW., for no more than 100 persons.

(D) *Rock Creek and Potomac Parkway*. West of 23rd Street, south of P Street NW., for no more than 1,000 persons.

(E) *U.S. Reservation No. 46*. North side of Pennsylvania Avenue, west of Eighth Street and south of D Street, SE., for no more than 25 persons and south of D Street SE., for no more than 25 persons.

(3) *Permit applications*. Permit applications may be obtained at the Office of Public Affairs, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at least 48 hours in advance of any proposed demonstration or special event. This 48-hour period will be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The Regional Director shall accept permit applications only during the hours of 8 a.m.–4 p.m., Monday through Friday, holidays excepted. All demonstration applications, except those seeking waiver of the numerical limitations applicable to Lafayette Park (paragraph (g)(5)(ii) of this section), are deemed granted, subject to all limitations and restrictions applicable to said park area, unless denied within 24 hours of receipt. However, where a permit has been granted, or is deemed to have been granted pursuant to this subsection, the Regional Director may revoke that permit pursuant to paragraph (g)(6) of this section.

(i) *White House area*. No permit may be issued authorizing demonstrations in the White House area, except for the White House sidewalk, Lafayette Park and the Ellipse. No permit may be issued authorizing special events, except for the Ellipse, and except for annual commemorative wreath-laying ceremonies relating to the statutes in Lafayette Park.

(ii) *Other park areas*. No permits may be issued authorizing demonstrations or special events in the following other park areas:

(A) The Washington Monument, which means the area enclosed within the inner circle that surrounds the Monument's base, except for the official annual commemorative Washington birthday ceremony.

(B) The Lincoln Memorial, which means that portion of the park area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level, except for the official annual commemorative Lincoln birthday ceremony.

(C) The Jefferson Memorial, which means the circular portion of the Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns, except for the official annual commemorative Jefferson birthday ceremony.

(D) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies. Note: The darkened portions of the diagrams at the conclusion of paragraph (g) of this section show the areas where demonstrations or special events are prohibited.

(4) *Permit processing*. (i) NPS processes permit applications for demonstrations and special events in order of receipt. NPS will not accept applications more than one year in advance of a proposed continuous event (including set-up time, if any). Use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations in this section.

(ii) Specific national celebration events have priority use of particular park areas as shown in the following table:

| The following event . . . | Has priority use of the following area . . . | At the following time . . . |
|---|---|---|
| (A) Lighting of the National Christmas Tree and Christmas Pathway of Peace. | Northern half of the oval portion of the Ellipse. | The last four weeks in December as well as necessary set-up and take-down between October 1 through February 1. |
| (B) Cherry Blossom Festival | Park areas adjacent to the Tidal Basin and the sidewalk areas adjacent to Constitution Avenue, between 15th & 17th Streets NW. | Two weeks usually in late March or early April as well as the an additional two weeks for the necessary set-up and take-down. |
| (C) Fourth of July Celebration | Washington Monument Grounds and the Lincoln Memorial Reflecting Pool area. | Time required for necessary staging and fireworks set-up and take-down, totaling three weeks in late June and early July. |
| (D) Smithsonian Folklife Festival | The area bounded on the south by Jefferson Drive NW; on the north by Madison Drive, NW; on the east by 7th Street, NW; on the west by 14th Street, NW. | For a two-week period in approximately late June and early July and an additional eight weeks for the necessary set-up and take-down. |
| (E) Columbus Day Commemorative Wreath-Laying. | At the Columbus statue on the Union Plaza. | On Columbus Day. |
| (F) Presidential Inaugural Ceremonies | See paragraph (g)(4)(iii) of this section | See paragraph (g)(4)(iii) of this section. |

(iii) In connection with Presidential Inaugural Ceremonies the following areas are reserved for priority use as set forth in this paragraph.

(A) The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant for the exclusive use of the Presidential Inaugural Committee on Inaugural Day.

(B) Portions of Pennsylvania Avenue, National Historic Park and Sherman Park, as designated in the maps included in paragraph (g)(4)(iii)(E) of this section, for the exclusive use of the Presidential Inaugural Committee on Inaugural Day for:

(*1*) Ticketed bleachers viewing and access areas, except that members of the public may use a ticketed bleacher seat that has not been claimed by the ticket holder 10 minutes before the Inaugural Parade is scheduled to pass the bleacher's block;

(*2*) Portable toilets, except that they will be available to the public;

(*3*) Television and radio media and Armed Forces Inaugural Committee parade support structures;

(*4*) The area in front of the John A. Wilson Building for the District of Columbia reviewing stand;

(*5*) Viewing areas designated for individuals with disabilities, except that they will be available to any disabled persons.

(C) The area of the National Mall between 14th and 1st Streets, for the exclusive use of the Armed Forces Inaugural Committee on Inaugural Day for the assembly, staging, security and weather protection of the pre-Inaugural parade components and floats on Inaugural Day, except for:

(*1*) The placement of jumbotrons and sound towers by the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies so that the Inaugural ceremony may be observed by the Joint Congressional Committee's ticketed standing room ticket holders between 4th and 1st Streets and the general public between 7th and 4th Streets; and

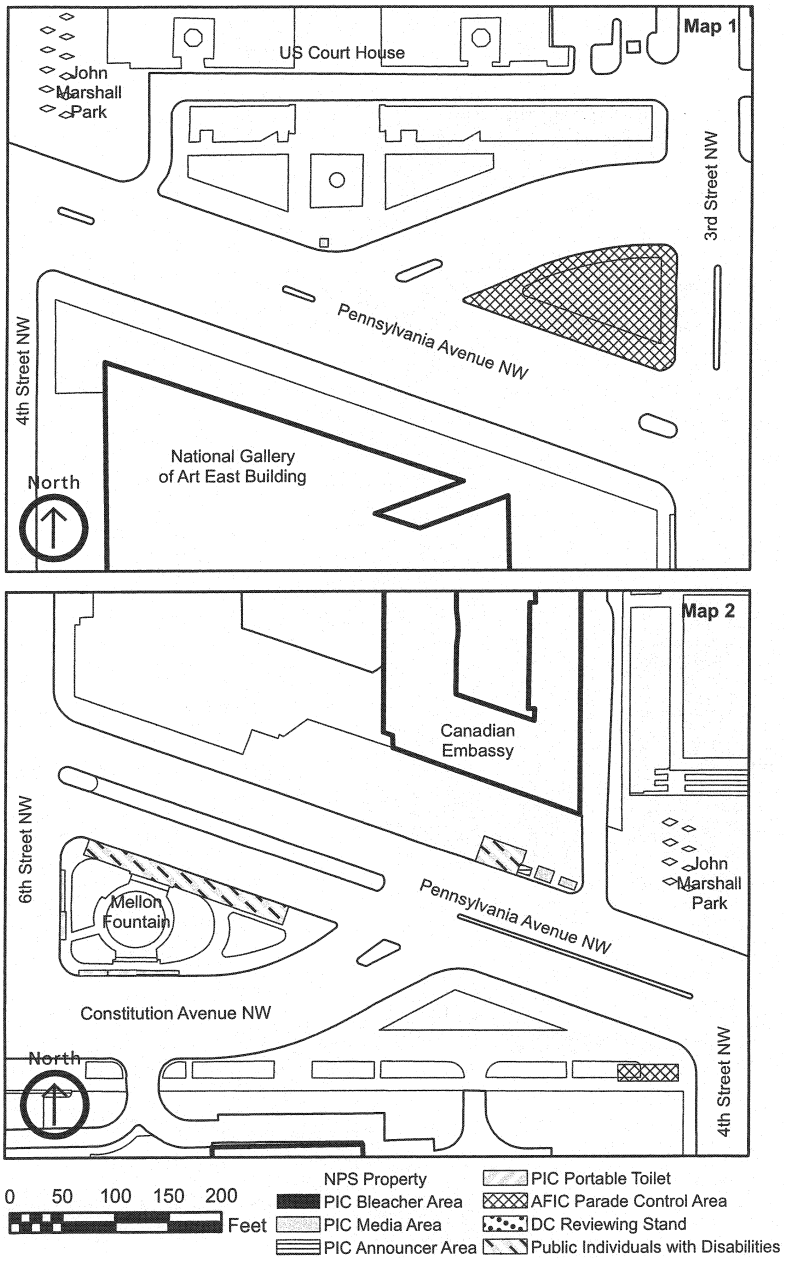
(*2*) A 150-foot-by-200-foot area on the National Mall just east of 7th Street, for the exclusive use of the Presidential Inaugural Committee for television and radio media broadcasts on Inaugural Day.

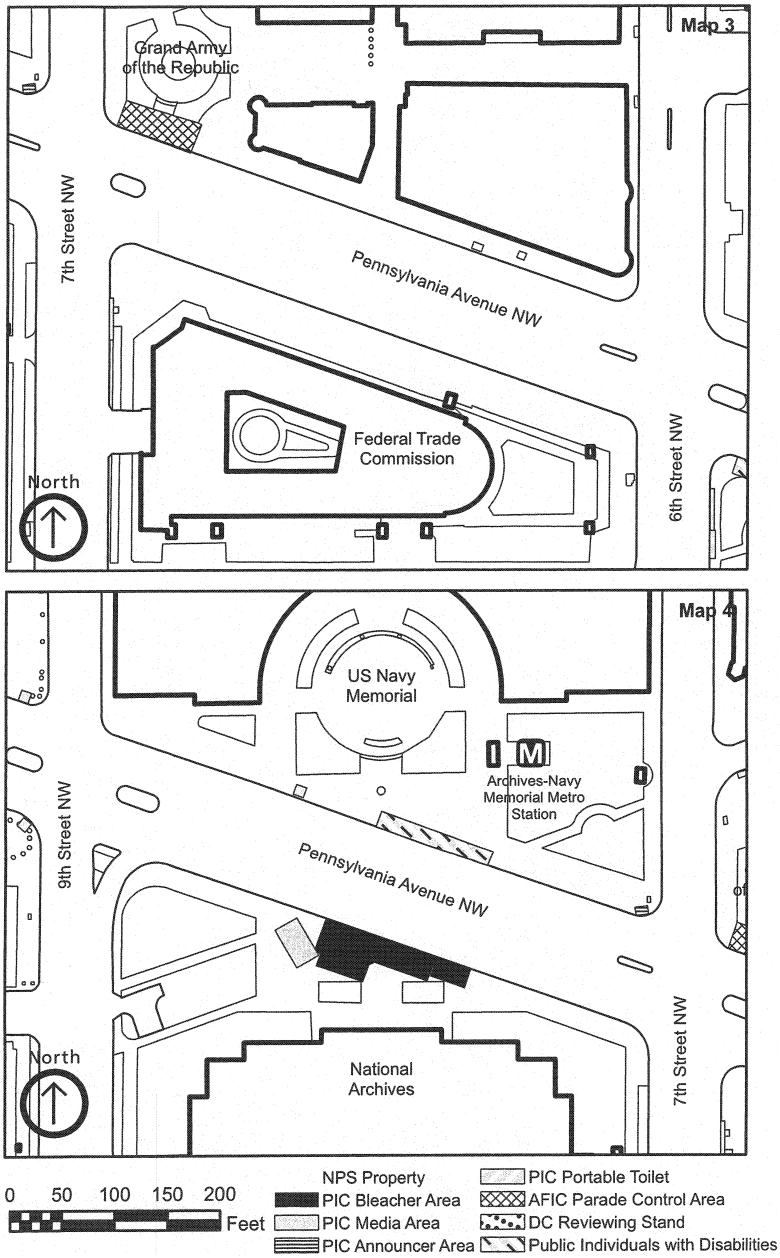
(D) The Presidential Inaugural Committee may also use portions of its designated areas reasonably necessary for setting up and taking down stands, bleachers, media and parade support structures as shown in the following table:

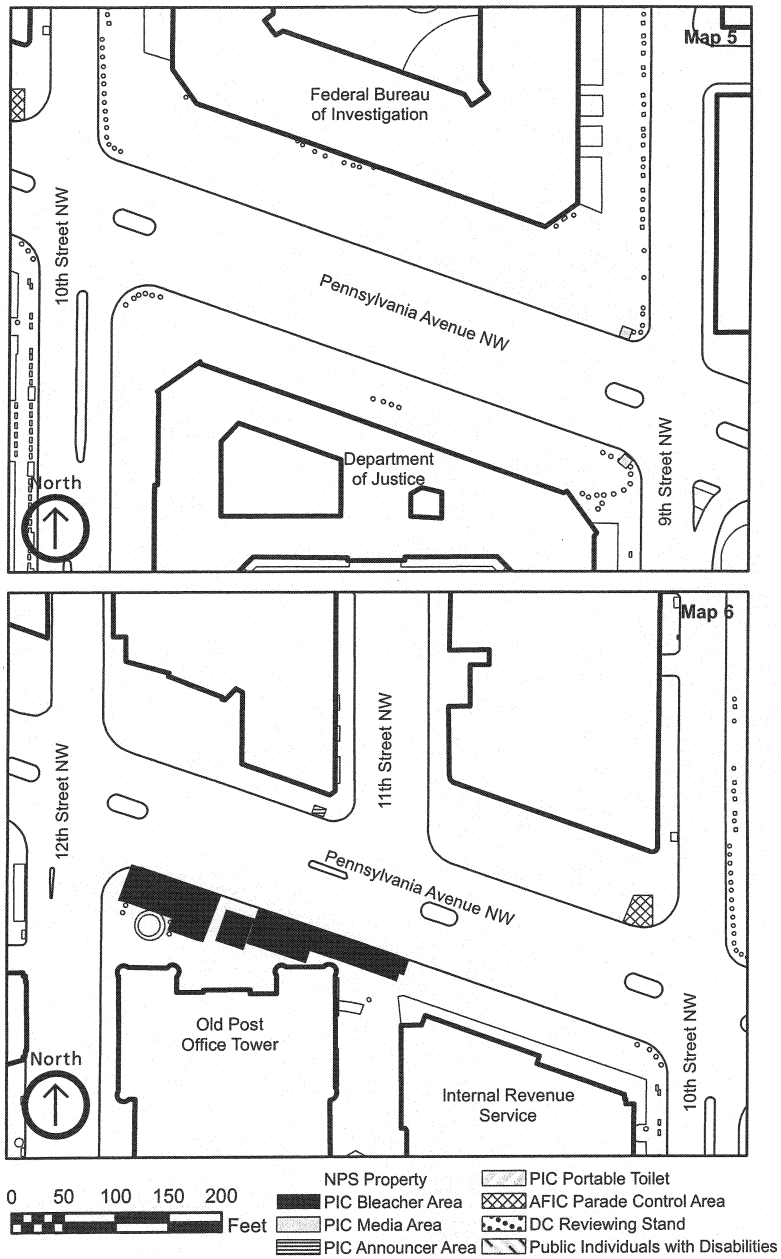
| The Presidential Inaugural Committee may use the following area . . . | During the following period . . . |
|---|---|
| (1) The White House sidewalk and Lafayette Park. | November 1 through March 1. |
| (2) Pennsylvania Avenue, National Historic Park and Sherman Park. | December 7 through February 10. |
| (3) The National Mall between 14th and 1st Streets. | January 6 through January 30. |

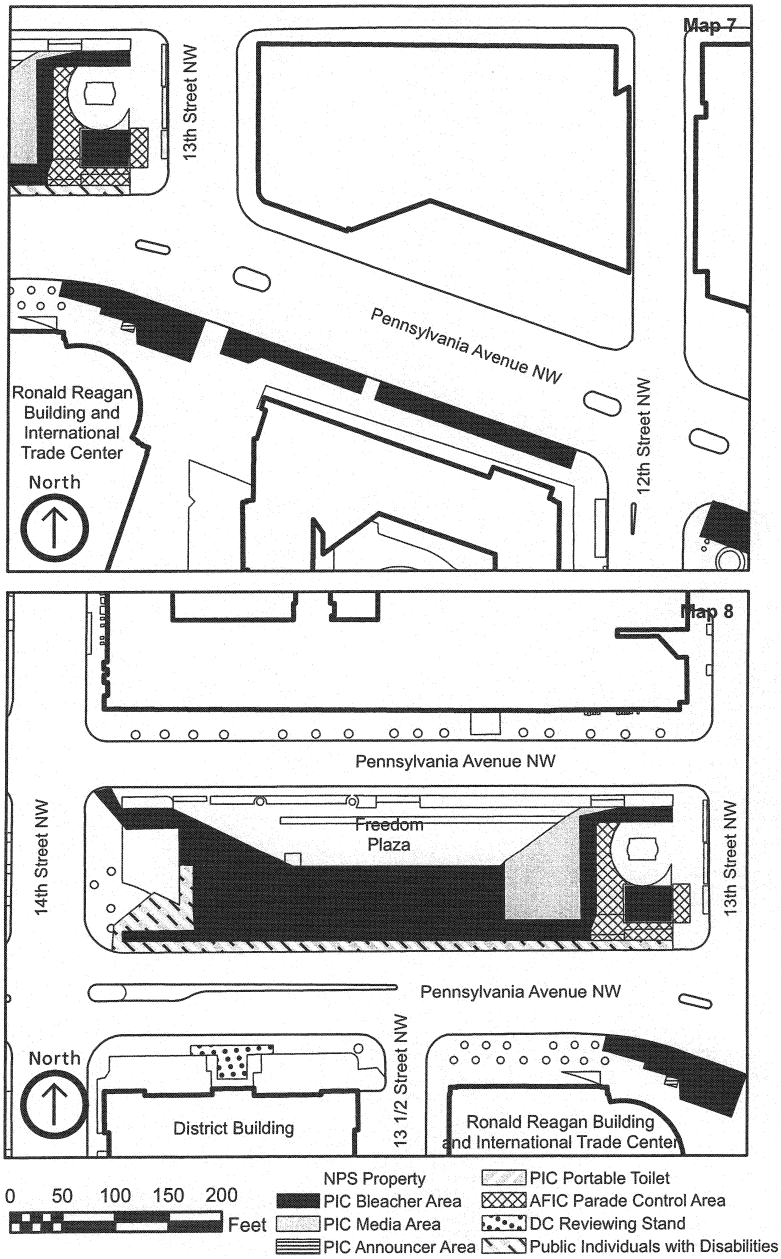
(E) Maps of designated portions of Pennsylvania Avenue, National Historic Park and Sherman Park referred

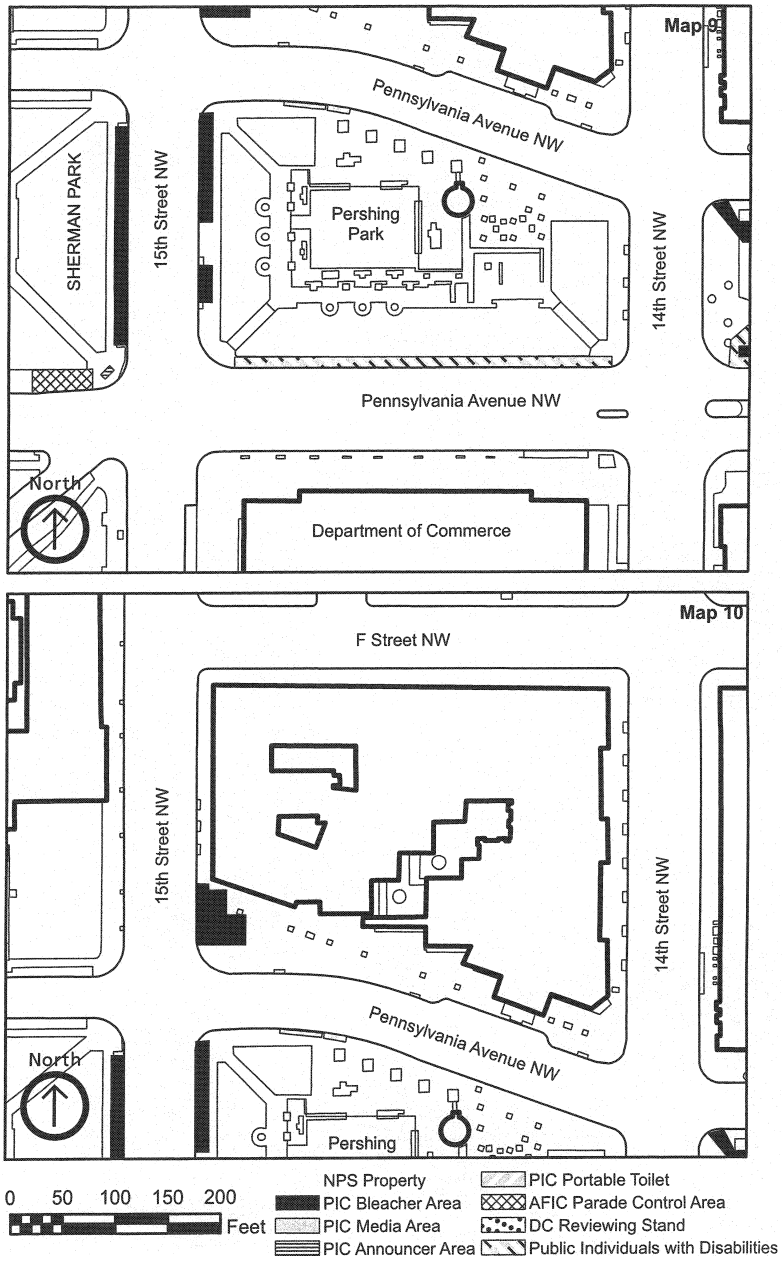
to in paragraph (g)(4)(iii)(B) of this section are as follows:




Map 3
Grand Army of the Republic
7th Street NW
Pennsylvania Avenue NW
Federal Trade Commission
6th Street NW
North
Map 4
US Navy Memorial
Archives-Navy Memorial Metro Station
9th Street NW
Pennsylvania Avenue NW
7th Street NW
North
National Archives
0 50 100 150 200
Feet
NPS Property
PIC Bleacher Area
PIC Media Area
PIC Announcer Area
PIC Portable Toilet
AFIC Parade Control Area
DC Reviewing Stand
Public Individuals with Disabilities


Map 5
Federal Bureau of Investigation
10th Street NW
Pennsylvania Avenue NW
Department of Justice
9th Street NW
North
Map 6
12th Street NW
11th Street NW
Pennsylvania Avenue NW
Old Post Office Tower
Internal Revenue Service
10th Street NW
North
0 50 100 150 200
Feet
NPS Property
PIC Bleacher Area
PIC Media Area
PIC Announcer Area
PIC Portable Toilet
AFIC Parade Control Area
DC Reviewing Stand
Public Individuals with Disabilities


Map 7
13th Street NW
Pennsylvania Avenue NW
12th Street NW
Ronald Reagan Building and International Trade Center
North
Map 8
Pennsylvania Avenue NW
14th Street NW
Freedom Plaza
13th Street NW
Pennsylvania Avenue NW
North
13 1/2 Street NW
District Building
Ronald Reagan Building and International Trade Center
0 50 100 150 200
Feet
NPS Property
PIC Bleacher Area
PIC Media Area
PIC Announcer Area
PIC Portable Toilet
AFIC Parade Control Area
DC Reviewing Stand
Public Individuals with Disabilities




(iv) Other demonstrations or special events are permitted in park areas under permit for the National Celebration Events listed in paragraph (g)(4)(ii) of this section to the extent that they do not significantly interfere with the National Celebration Events.

Except for Inaugural ceremony activities, no activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(v) NPS will issue a permit for a demonstration on the White House sidewalk and in Lafayette Park at the same time only if the requirements of this paragraph are met. The organization, group, or other sponsor of the demonstration must undertake in good faith all reasonable action, including the provision of sufficient marshals, to ensure that the sponsor:

(A) Maintains good order and self-discipline in conducting the demonstration and any necessary movement of persons; and

(B) Observes the numerical limitations and waiver provisions described in paragraphs (g)(5)(i) and (ii) of this section.

(vi) NPS will issue permits authorizing demonstrations or special events for the periods shown in the following table. NPS may extend these periods for demonstrations only, unless another application requests use of the particular area and that application precludes double occupancy.

| Park area | Permit validity period | Permit validity period for inaugural activities |
|---|---|---|
| (A) White House area, except the Ellipse. | 7 days | Between October 24 through April 1 for reasonable and necessary set-up and take-down activities for the White House Sidewalk and Lafayette Park. |
| (B) The Ellipse and all other park areas. | 4 months | Between December 7 through February 10 for reasonable and necessary set-up and take-down activities for Pennsylvania Avenue, National Historic Park and Sherman Park. |

(vii) A permit may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, will be proposed by the Regional Director to the applicant.

(B) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(C) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, the Regional Director shall propose an alternate site to the applicant, if available for the activity; in this connection, the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(D) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

(5) *Permit limitations.* Issuance of a permit is subject to the following limitations:

(i) No more than 750 persons are permitted to conduct a demonstration on the White House sidewalk at any one time.

(ii) No more than 3,000 persons are permitted to conduct a demonstration in Lafayette Park at any one time.

(A) The Regional Director may waive the 3,000 person limitation for Lafayette Park and/or the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence.

(B) In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (g)(3) of this section.

(iii) No permit will be issued for a demonstration on the White House

Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration undertakes in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in paragraphs (g)(5) (i) and (ii) of this section are observed.

(iv) The Regional Director may restrict demonstrations and special events weekdays (except holidays) between the hours of 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(v) Special events are not permitted unless approved by the Regional Director. In determining whether to approve a proposed special event, the Regional Director shall consider and base the determination upon the following criteria:

(A) Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.

(B) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(C) Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.

(D) Whether the proposed event is duplicative of events previously offered in National Capital Region or elsewhere in or about Washington, DC.

(E) Whether the activities contemplated for the proposed special event are in conformity with all applicable laws and regulations.

(vi) In connection with permitted demonstrations or special events, temporary structures may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for electrical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Regional Director, except that:

(A) Structures are not permitted on the White House sidewalk.

(B) All such temporary structures shall be erected in such a manner so as not to harm park resources unreasonably and shall be removed as soon as practicable after the conclusion of the permitted demonstration or special event.

(C) The Regional Director may impose reasonable restrictions upon the use of temporary structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.

(D) Any structures utilized in a demonstration extending in duration beyond the time limitations specified in paragraphs (g)(5)(iv) (A) and (B) of this section shall be capable of being removed upon 24 hours notice and the site restored, or, the structure shall be secured in such a fashion so as not to interfere unreasonably with use of the park area by other permittees authorized under this section.

(E) Individuals or groups of 25 persons or fewer demonstrating under the small group permit exemption of paragraph (g)(2)(i) of this section are not allowed to erect temporary structures other than small lecterns or speakers'

platforms. This provision does not restrict the use of portable signs or banners.

(vii) No signs or placards shall be permitted on the White House sidewalk except those made of cardboard, posterboard or cloth having dimensions no greater than three feet in width, twenty feet in length, and one-quarter inch in thickness. No supports shall be permitted for signs or placards except those made of wood having cross-sectional dimensions no greater than three-quarter of an inch by three-quarter of an inch. Stationary signs or placards shall be no closer than three feet from the White House sidewalk fence. All signs and placards shall be attended at all times that they remain on the White House sidewalk. Signs or placards shall be considered to be attended only when they are in physical contact with a person. No signs or placards shall be tied, fastened, or otherwise attached to or leaned against the White House fence, lamp posts or other structures on the White House sidewalk. No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however,* that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

(viii) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue NW., between Pennsylvania Avenue NW., and E Street NW., or on the north sidewalk of E Street NW., between East and West Executive Avenues NW.; *Provided, however,* that such property, except structures, may be momentarily placed or set down in the immediate presence of the owner on those sidewalks.

(ix) The following are prohibited in Lafayette Park:

(A) The erection, placement or use of structures of any kind except for the following:

(*1*) Structures that are being hand-carried are allowed.

(*2*) When one hundred (100) or more persons are participating in a demonstration in the Park, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(*3*) When less than one hundred (100) persons are participating in a demonstration in the Park, a temporary ''soapbox'' speaker's platform is allowed as long as such platform is being erected, dismantled or used, *providing that* only one speaker's platform is allowed per demonstrating group, and *provided further that* the speaker's platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(*4*) For the purpose of this section, the term ''structure'' includes props and displays, such as coffins, crates, crosses, theaters, cages, and statues; furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns; shelters, such as tents, boxes and other enclosures; wagons and carts; and all other similar types of property which might tend to harm park resources including aesthetic interests. *Provided however* that the term ''structure'' does not include signs; bicycles, baby carriages and baby strollers lawfully in the Park that are temporarily placed in, or are being moved across, the Park, and that are attended at all times while in the Park (the term ''attended' is defined as an individual being within three (3) feet of his or her bicycle, baby carriage or baby stroller); and wheelchairs and other devices for the handicapped in use by handicapped persons.

(B) The use of signs except for the following:

(*1*) Hand-carried signs are allowed regardless of size.

(*2*) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter (¼) inch in thickness (exclusive of braces that are reasonably

required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, *provided that* no individual may have more than two (2) such signs in the Park at any one time, and *provided further that* such signs must be attended at all times (the term ''attended' is defined as an individual being within three (3) feet of his or her sign(s)), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-feet by four-feet signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or otherwise placed together so as to form an enclosure of two or more sides, etc.

(x) Stages and sound amplification may not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

(xi) Sound amplification equipment is allowed in connection with permitted demonstrations or special events, provided prior notice has been given to the Regional Director, except that:

(A) Sound amplification equipment may not be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Regional Director determines is necessary for crowd-control purposes.

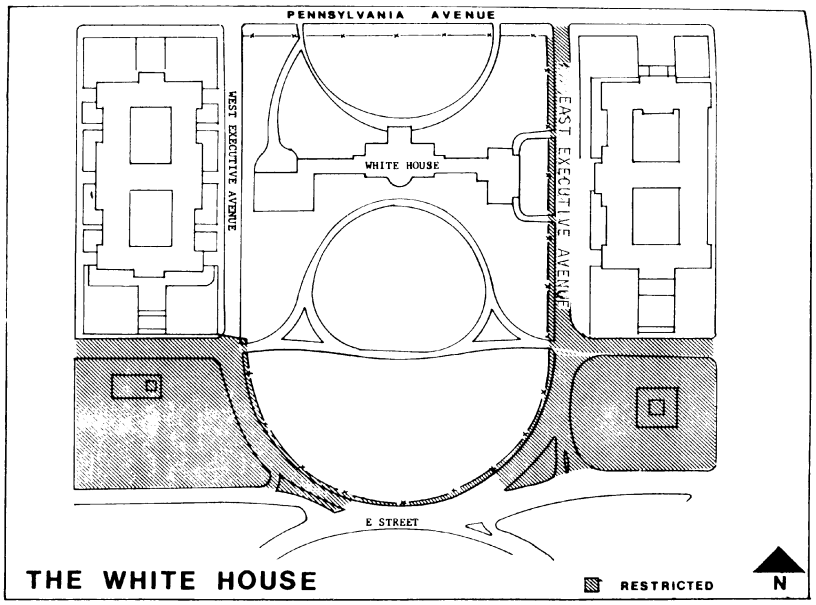
(B) The Regional Director reserves the right to limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

(xii) A permit may contain additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources, the use of nearby areas by other persons, and other legitimate park value concerns.

(xiii) A permit issued under this section does not authorize activities outside of areas under administration by the National Capital Region. Applicants may also be required to obtain a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in other than park areas.

(6) *Permit revocation*. A permit issued for a demonstration is revocable only upon a ground for which an application therefor would be subject to denial under paragraphs (g) (4) or (5) of this section. Any such revocation, prior to the conduct of the demonstration, shall be in writing and shall be approved by the Regional Director. During the conduct of a demonstration, a permit may be revoked by the ranking U.S. Park Police supervisory official in charge if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. A permit issued for a special event is revocable, at any time, in the reasonable discretion of the Regional Director.

(7) Further information on administering these regulations can be found in policy statements published at 47 FR 24299, June 4, 1982, and at 47 FR 24302, June 4, 1982. Copies of the policy statements may be obtained from the Regional Director.


PENNSYLVANIA AVENUE
WEST EXECUTIVE AVENUE
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THE WHITE HOUSE
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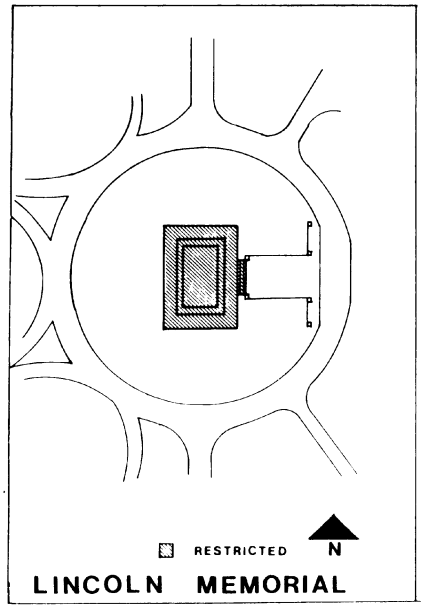
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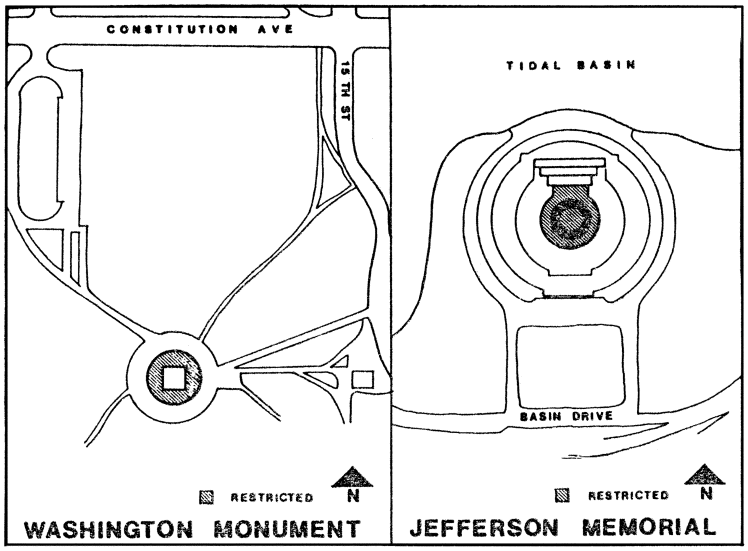


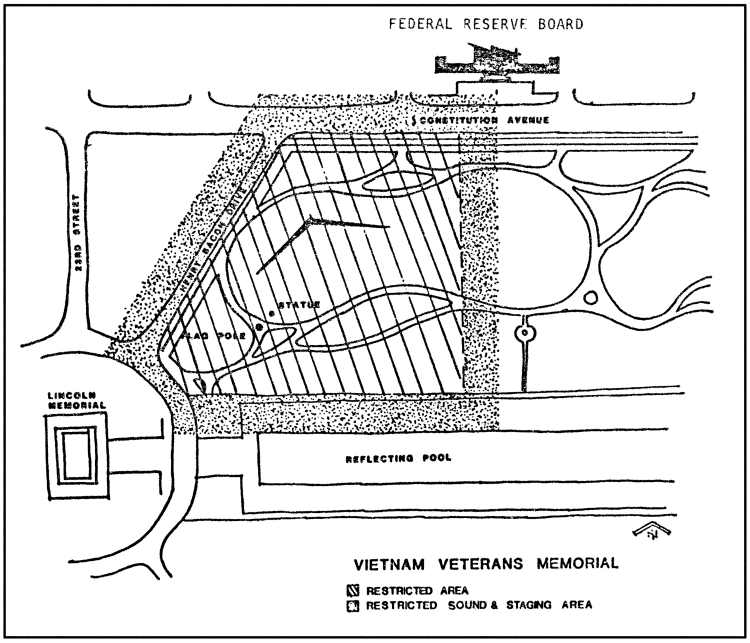


(h) *Soliciting.* Soliciting or demanding gifts, money, goods or services is prohibited.

(i) *Camping.* (1) Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making

any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground. Upon the posting of such limitations in the campground, no person shall camp for a period longer than that specified for the particular campground.

(2) Further information on administering these regulations can be found in policy statements published at 47 FR 24302 (June 4, 1982). Copies of the policy statements may be obtained from the Regional Director.

(j)(1) In Lafayette Park the storage of construction material, tools, lumber, paint, tarps, bedding, luggage, pillows, sleeping bags, food, clothing, literature, papers and all other similar property is prohibited.

(2) Notwithstanding (j)(1) of this section, a person in Lafayette Park may have literature, papers, food, clothing, blankets and a reasonable cover to protect such property, occupying up to three (3) cubic feet of space, so long as such property is attended at all times while in the Park (the term ''attended'' is defined as a person being within three (3) feet of his or her property).

(k) *Sales.* (1) No sales shall be made nor admission fee charged and no article may be exposed for sale without a permit except as noted in the following paragraphs.

(2) No merchandise may be sold during the conduct of special events or demonstrations except for books, newspapers, leaflets, pamphlets, buttons and bumper stickers. A permit is required for the sale or distribution of permitted merchandise when done with the aid of a stand or structure. Such stand or structure may consist of one table per site, which may be no larger than 2½ feet by 8 feet or 4 feet by 4 feet. The dimensions of a sales site may not exceed 6 feet wide by 15 feet long by 6 feet high. With or without a permit, such sale or distribution is prohibited in the following areas:

(i) Lincoln Memorial area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level.

(ii) Jefferson Memorial area enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns.

(iii) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

(iv) The interior of all park buildings, including, but not limited to, those portions of Ford's Theatre administered by the National Park Service.

(v) The White House Park area bounded on the north by H Street, NW; on the south by Constitution Avenue, NW; on the west by 17th Street, NW; and on the east by 15th Street, NW; except for Lafayette Park, the White House sidewalk (the south Pennsylvania Avenue, NW sidewalk between East and West Executive Avenues) and the Ellipse; *Provided, however,* that the free distribution of literature conducted without the aid of stands or structures, is permitted on East Executive Avenue.

(vi) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway); *Provided, however,* that the free distribution of literature conducted without the aid of stands or structures, is permitted on the Constitution Avenue and Henry Bacon Drive sidewalks adjacent to the Vietnam Veterans Memorial.

(3) Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(l) *Rock Creek Park.* (1) Notwithstanding the provisions of 36 CFR 5.1, the Superintendent of Rock Creek Park may permit the recognition of and the advertising by the primary sponsor or sponsors of not more than two professional tennis tournaments per year at the Rock Creek Tennis Center.

(2) All activities conducted under this paragraph shall be appropriate to park values and consistent with the protection of park resources and shall comply with criteria specified in a written permit.

(3) Any permit issued under this paragraph shall be valid only for those periods of time during which a professional tennis tournament is being held, and shall limit all advertising and recognition to the confines of the tennis stadium structure and the contiguous paved plaza, not to include any of the fields or paved parking lots except within the interior of permitted tents on Parking Lot A. These areas shall be marked on a map available in the Superintendent's office.

(4) No advertising or recognition activities may take place without a written permit as specified in this paragraph. Any person who violates a provision of this paragraph is subject to the penalty provisions of 36 CFR 1.3 and revocation of the permit if a permit exists.

(m) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0021. The information is being collected to provide notification to park managers, United States Park Police, Metropolitan Police, and the Secret Service of the plans of organizers of large-scale demonstrations and special events in order to assist in the provision of security and logistical support. This information will be used to further those purposes. The obligation is required to obtain a benefit.

[51 FR 37011, Oct. 17, 1986, as amended at 57 FR 4576, Feb. 6, 1992; 57 FR 29797, July 7, 1992; 60 FR 17649, Apr. 7, 1995; 60 FR 33351, June 28, 1995; 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997; 62 FR 32203, June 13, 1997; 72 FR 54843, Sept. 27, 2007; 73 FR 67744, Nov. 17, 2008; 75 FR 8807, Feb. 26, 2010]

### § 7.97 Golden Gate National Recreation Area.

(a) *Boat landings—Alcatraz Island.* Except in emergencies, the docking of any privately-owned vessel, as defined in § 1.4 of this chapter, or the landing of any person at Alcatraz Island without a permit or contract is prohibited. The Superintendent may issue a permit upon a determination that the applicant's needs cannot be provided by authorized commercial boat transportation to Alcatraz Island and that the proposed activities of the applicant are compatible with the preservation and protection of Alcatraz Island.

(b) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this chapter and, in non-developed areas, as follows:

(1) Bicycle use is permitted on routes which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the superintendent and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes in Golden Gate National Recreation Area.

(ii) 5 miles per hour: On blind curves and when passing other trail users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle or on the operator an activated white

light that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(d) *Dogs—Crissy Field and Ocean Beach Snowy Plover Areas.* (1) Dogs must be restrained on a leash not more than six feet in length starting July 1 and ending May 15, in the following areas:

(i) Crissy Field Wildlife Protection Area (WPA): Dog walking restricted to on-leash only in the area encompassing the shoreline and beach north of the Crissy Field Promenade (excluding the paved parking area, sidewalks and grass lawn of the former Coast Guard Station complex) that stretches east from the Torpedo Wharf to approximately 700 feet east of the former Coast Guard station, and all tidelands and submerged lands to 100 yards offshore.

(ii) Ocean Beach Snowy Plover Protection Area (SPPA): Dog walking restricted to on-leash only in the area which encompasses the shoreline and beach area west of the GGNRA boundary, between Stairwell 21 to Sloat Boulevard, including all tidelands and submerged lands to 1,000 feet offshore.

(2) Notice of these annual restrictions will be provided through the posting of signs at the sites, on maps identifying the restricted areas on the park's official website and through maps made available at other places convenient to the public.

[38 FR 32931, Nov. 29, 1973, as amended at 49 FR 18452, Apr. 30, 1984; 57 FR 58716, Dec. 11, 1992; 73 FR 54321, Sept. 19, 2008]

### § 7.100 Appalachian National Scenic Trail.

(a) *What activities are prohibited?* (1) The use of bicycles, motorcycles or other motor vehicles is prohibited. The operation of snowmobiles is addressed in paragraph (b).

(2) The use of horses or pack animals is prohibited, except in locations designated for their use.

(b) *Where can I operate my snowmobile?* (1) You may cross the Appalachian National Scenic Trail corridor by using established, State-approved snowmobile trails in Maine, New Hampshire, Vermont, Massachusetts and Connecticut that are allowed by deeded right-of-way reserved by the seller or by public road right-of-way. You may also cross National Park Service administered lands within the Appalachian National Scenic Trail corridor at the following locations:

(2) Nahmakanta Lake Spur—The spur snowmobile route that leads from Maine Bureau of Parks and Lands Debsconeag Pond Road to the southeastern shore of Nahmakanta Lake.

(3) Lake Hebron to Blanchard-Shirley Road Spur—The spur snowmobile route that leads from Lake Hebron near Monson, Maine to the Maine Interconnecting Trail System Route 85 near the Blanchard-Shirley Road.

(4) Massachusetts Turnpike to Lower Goose Pond Crossing—That part of the Massachusetts Interconnecting Trail System Route 95 from the Massachusetts Turnpike Appalachian Trail Bridge to the northeastern shore of Lower Goose Pond.

(5) Temporary crossings of National Park Service administered Appalachian Trail corridor lands may be designated by the Park Manager in the Superintendent's Compendium of Orders when designated snowmobile routes are temporarily dislocated by timber haul road closures.

(6) Maps that show the crossings of National Park Service administered lands within the Appalachian National Scenic Trail may be obtained from the Park Manager, Appalachian National Scenic Trail, Harpers Ferry Center, Harpers Ferry, West Virginia 25425.

(c) *Is powerless flight permitted?* The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the Park Manager, pursuant to the terms and conditions of a permit.

[67 FR 8481, Feb. 25, 2002]

## PART 8—LABOR STANDARDS APPLICABLE TO EMPLOYEES OF NATIONAL PARK SERVICE CONCESSIONERS

Sec.
8.1 Definitions.
8.2 Basis and purpose.
8.3 Applicability.
8.4 Federal and State labor laws.
8.5 Access for investigators.

8.6 Complaints; appeal.
8.7 Record keeping.
8.8 Filing of labor agreements.
8.9 Posting of regulations.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 462(k).

SOURCE: 24 FR 11053, Dec. 30, 1959, unless otherwise noted.

### § 8.1 Definitions.

As used in this part:

(a) *National park* includes a national monument or other area under the administrative jurisdiction of the National Park Service of the Department of the Interior.

(b) *Concessioner* includes any individual, partnership, corporation, or other business entity engaged in operating facilities within or without a national park for the accommodation of visitors to the park under a contract with or permit from the Secretary or the Director.

(c) *Employee* includes any individual employed by a concessioner in connection with operations covered by a contract with or permit from the Secretary or the Director.

(d) *Executive or department head* includes any employee whose primary duty is the management of the business of the concessioner, or a customarily recognized department thereof, and who customarily and regularly directs the work of other employees with authority to employ and discharge other employees, or whose suggestions and recommendations as to the employment, discharge, advancement or promotion of such employees will be given particular weight by the concessioner, and who customarily and regularly exercises discretionary powers.

(e) *State* means any State, Territory, possession, or the District of Columbia.

[24 FR 11053, Dec. 30, 1959, as amended at 62 FR 30234, June 3, 1997]

### § 8.2 Basis and purpose.

The public using the national parks is better served when the employees of the concessioners enjoy the benefits of fair labor standards and when, in this respect, they are treated at least as well as those employed in similar occupations outside such areas, but within the same State. This principle is the basis of the regulations in this part and their purpose is its implementation.

### § 8.3 Applicability.

This part shall not apply to:

(a) Concessioners providing and operating medical services.

(b) Personal servants.

(c) Employees engaged in agricultural activities, including the care, handling, and feeding of livestock.

(d) Detectives, watchmen, guards, and caretakers.

(e) Bona fide executives or department heads.

(f) Solicitors or outside salesmen whose compensation is chiefly on a commission basis.

(g) Professional sports instructors and entertainers.

(h) The following employees, when approved by the Director: Employees for whom relief is clearly impracticable because of peculiar conditions arising from the fact that operations are carried on in areas having no resident population or are located at long distances from a supply of available labor; employees whose employment requires special or technical training or skill, where no person capable of providing relief is available within a reasonable distance; employees in small units accessible only by trail or remote from centers of activity, or operating on a small volume of business primarily for the convenience of the public.

### § 8.4 Federal and State labor laws.

A concessioner shall comply with all standards established pursuant to Federal or State labor laws, such as those concerning minimum wages, child labor, hours of work, and safety, that apply in the State in which the concession facility is located. All concessioners shall comply with Federal child labor regulations regardless of their annual volume of business or any other exemptions provided by Federal law.

[51 FR 24656, July 8, 1986]

### § 8.5 Access for investigators.

Concessioners shall permit representatives of this Department and, when appropriate and authorized representatives of other Federal or State agencies, access to any of their places of employment for the purpose of examining pay rolls and other records and

otherwise to ascertain the facts with respect to compliance with the regulations in this part and State labor laws. The report of any investigation concerning a violation of the regulations in this part shall be submitted to the superintendent of the national park involved.

[24 FR 11053, Dec. 30, 1959. Redesignated at 51 FR 24656, July 8, 1986]

### § 8.6 Complaints; appeal.

Any question pertaining to the interpretation or application of or compliance with this part which cannot be satisfactorily settled between a concessioner and his employee, employees, or employee representative may be referred for review by any of the parties concerned to the Director, National Park Service. Any person adversely affected by the decision of the Director, National Park Service, may appeal to the Director, Office of Hearings and Appeals, in accordance with the general rules set forth in Department Hearings and Appeals Procedures, 43 CFR part 4, subpart B, and the special procedural rules in subpart G of 43 CFR part 4, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

[36 FR 7184, Apr. 15, 1971. Redesignated at 51 FR 24656, July 8, 1986]

### § 8.7 Record keeping.

Concessioners shall for a period of 3 years keep records of the name, age, address, and occupation of each of their employees, the rate of pay and the amount paid to each employee each pay day, the hours worked each day and each work week by each employee and such other information concerning employees as the Director may require.

[24 FR 11053, Dec. 30, 1959. Redesignated at 51 FR 24656, July 8, 1986]

### § 8.8 Filing of labor agreements.

Within 60 days after the effective date of the regulations in this part (January 1, 1949), concessioners shall file with the Director of the National Park Service a copy of each labor agreement in effect on the effective date of the regulations in this part, covering rates of pay, hours of work, and conditions of employment duly negotiated with their employees as a whole or by class, craft, or other appropriate unit. Thereafter, on July 1 of each year concessioners shall file copies of all such agreements then in effect with the Director of the National Park Service.

[24 FR 11053, Dec. 30, 1959. Redesignated at 51 FR 24656, July 8, 1986]

### § 8.9 Posting of regulations.

Concessioners shall post in a conspicuous place easily accessible to all employees copies of the regulations in this part in such form as the Director may approve.

[24 FR 11053, Dec. 30, 1959. Redesignated at 51 FR 24656, July 8, 1986]

## PART 9—MINERALS MANAGEMENT

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## Subpart A—Mining and Mining Claims

AUTHORITY: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 et seq.); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 et seq.)).

SOURCE: 42 FR 4835, Jan. 26, 1977, unless otherwise noted.

### § 9.1 Purpose and scope.

These regulations control all activities within units of the National Park System resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims without regard to the means or route by which the operator gains access to the claim. The purpose of these regulations is to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units is preserved for the benefit of present and future generations. These regulations apply to all operations, as defined herein, conducted within the boundaries of any unit of the National Park System.

[53 FR 25162, July 2, 1988]

### § 9.2 Definitions.

The terms used in this part shall have the following meanings:

(a) *Secretary*. The Secretary of the Interior.

(b) *Operations*. All functions, work and activities in connection with mining on claims, including: prospecting, exploration, surveying, development and extraction; dumping mine wastes and stockpiling ore; transport or processing of mineral commodities; reclamation of the surface disturbed by such activities; and all activities and uses reasonably incident thereto, including construction or use of roads or other means of access on National Park System lands, regardless of whether such activities and uses take place on Federal, State, or private lands.

(c) *Operator*. A person conducting or proposing to conduct operations.

(d) *Person*. Any individual, partnership, corporation, association, or other entity.

(e) *Superintendent*. The Superintendent, or his designee, of the unit of the National Park System containing claims subject to these regulations.

(f) *Surface mining*. Mining in surface excavations, including placer mining, mining in open glory-holes or mining pits, mining and removing ore from open cuts, and the removal of capping or overburden to uncover ore.

(g) *The Act*. The Act of September 28, 1976, 90 Stat. 1342, 16 U.S.C. 1901 et seq.

(h) *Commercial vehicle*. Any motorized equipment used for transporting the product being mined or excavated, or for transporting heavy equipment used in mining operations.

(i) *Unit*. Any National Park System area containing a claim or claims subject to these regulations.

(j) *Claimant*. The owner, or his legal representative, of any claim lying within the boundaries of a unit.

(k) *Claim*. Any valid, patented or unpatented mining claim, mill site, or tunnel site.

(l) *Significantly disturbed for purposes of mineral extraction.* Land will be considered significantly disturbed for purposes of mineral extraction when there has been surface extraction of commercial amounts of a mineral, or significant amounts of overburden or spoil have been displaced due to the extraction of commercial amounts of a mineral. Extraction of commercial amounts is defined as the removal of ore from a claim in the normal course of business of extraction for processing or marketing. It does not encompass the removal of ore for purposes of testing, experimentation, examination or preproduction activities.

(m) *Designated roads.* Those existing roads determined by the Superintendent in accordance with 36 CFR 1.5 to be open for the use of the public or an operator.

(n) *Production.* Number of tons of a marketable mineral extracted from a given operation.

[42 FR 4835, Jan. 26, 1977, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997]

### §9.3 Access permits.

(a) All special use or other permits dealing with access to and from claims within any unit are automatically revoked 120 days after January 26, 1977. All operators seeking new or continued access to and from a claim after that date must file for new access permits in accordance with these regulations, unless access to a mining claim is by pack animal or foot. (See §9.7 for restrictions on assessment work and §9.9(d) and §9.10(g) for extensions of permits.)

(b) Prior to the issuance of a permit for access to any claim or claims, the operator must file with the Superintendent a plan of operations pursuant to §9.9. No permit shall be issued until the plan of operations has been approved in accordance with §9.10.

(c) No access to claims outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using such roads for access to such claims must comply with the terms of §9.15 where applicable.

(d) In units of the National Park System in Alaska, regulations at 43 CFR part 36 govern access to claims, and the provisions of 36 CFR 9.3 (a), (b) and (c) are inapplicable.

[42 FR 4835, Jan. 26, 1977, as amended at 53 FR 25162, July 5, 1988]

### §9.4 Surface disturbance moratorium.

(a) For a period of four years after September 28, 1976, no operator of a claim located within the boundaries of Death Valley National Monument, Mount McKinley National Park, or Organ Pipe Cactus National Monument (see also claims subject to §9.10(a)(3)) shall disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976, except as provided in this section. However, where a claim is subject, for a peroid of four years after September 28, 1976, to this section solely by virtue of §9.10(a)(3), the date before which there must have been significant disturbance for purposes of mineral extraction is January 26, 1977.

(b) An operator of a claim in one of these units seeking to enlarge an existing excavation or otherwise disturb the surface for purposes of mineral exploration or development shall file with the Superintendent an application stating his need to disturb additional surface in order to maintain production at an annual rate not to exceed an average annual production level of said operations for the three calendar years 1973, 1974, and 1975. Accompanying the application shall be a plan of operations which complies with §9.9 and verified copies of production records for the years 1973, 1974, and 1975.

(c) If the Regional Director finds that the submitted plan of operations complies with §9.9, that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, and that the plan of operations meets the applicable standard of approval of §9.10(a)(1), he shall issue a permit allowing the disturbance of the surface of

the lands contiguous to the existing excavation to the minimum extent necessary to effect such enlargement. For the purpose of this section ''lands contiguous to the existing excavation'' shall include land which actually adjoins the existing excavation or which could logically become an extension of the excavation; for example, drilling to determine the extent and direction to which the existing excavation should be extended may be permitted at a site which does not actually adjoin the excavating.

(d) The appropriate reclamation standard to be applied will be determined by the nature of the claim. (See §§ 9.11(a)(1) and (a)(2).)

(e) Operations conducted under a permit pursuant to this section shall be subject to all the limitations imposed by this part.

(f) For the purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

### § 9.5 Recordation.

(a) Any unpatented mining claim in a unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 (41 FR 46357) or 36 CFR 9.5 as promulgated on January 26, 1977, is, pursuant to section 8 of the Act, conclusively presumed to be abandoned and shall be void.

(b) Any unpatented mining claim in a unit established after September 28, 1976, or in an area added to an existing unit after that date, shall be recorded with the Bureau of Land Management in accordance with the provisions of section 314 of the Federal Land Policy and Management Act (FLPMA), 90 Stat. 2769, 43 U.S.C. 1744, and regulations implementing it (43 CFR 3833.1).

(c) A claimant of an unpatented mining claim in any unit must file annually with the Bureau of Land Management a notice of intention to hold a claim or evidence of annual assessment work required by section 314 of FLPMA, as implemented by 43 CFR 3833.2. A copy of each such filing will be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(d) The effect of failure to file the instruments required by paragraphs (b) and (c) of this section shall be controlled by 43 CFR 3833.4. Recordation or filing under this section shall not render any claim valid which would not otherwise be valid under applicable law and shall not give the claimant any rights to which he is not otherwise entitled by law.

(Act of September 28, 1976 (16 U.S.C. 1901 *et seq.*), Act of August 25, 1916 (16 U.S.C. 1 and 2–4) and 245 DM (42 FR 12931), as amended)

[44 FR 20427, Apr. 5, 1979]

### § 9.6 Transfers of interest.

(a) Whenever a claimant who has recorded his unpatented claim(s) with the Superintendent pursuant to the requirements of § 9.5 sells, assigns, bequeaths, or otherwise conveys all or any part of his interest in his claim(s), the Superintendent shall be notified within 60 days after completion of the transfer of: The name of the claim(s) involved; the name and legal address of the person to whom an interest has been sold, assigned, bequeathed, or otherwise transferred; and a description of the interest conveyed or received. Copies of the transfer documents will be provided by the Superintendent to the Bureau of Land Management. Failure to so notify the Superintendent shall render any existing access permit void.

(b) If the transfer occurs within the period of 12 months from the effective date of the Act and the prior owner has not recorded the unpatented claim with the Superintendent in accordance with these regulations, the holder by transfer shall have the remainder of the 12-month period to record the unpatented claim. Failure to record shall be governed by the provisions of § 9.5(c).

### § 9.7 Assessment work.

(a) An access permit and approved plan of operations must be obtained by a claimant prior to the performance of any assessment work required by Revised Statute 2324 (30 U.S.C. 28) on a claim in a unit.

(b) Permits will be issued in accordance with the following:

(1) In units subject to the surface disturbance moratorium of section 4 of

the Act and §9.4, no access permits will be granted for the purpose of performing assessment work.

(2) It has been determined that in all other units the Secretary will not challenge the validity of any unpatented claim within a unit for the failure to do assessment work during or after the assessment year commencing September 1, 1976. The Secretary expressly reserves, however, the existing right to contest claims for failure to do such work in the past. No access permits will be granted solely for the purpose of performing assessment work in these units except where claimant establishes the legal necessity for such permit in order to perform work necessary to take the claim to patent, and has filed and had approved a plan of operations as provided by these regulations. (For exploratory or development type work, see §9.9.)

**§9.8 Use of water.**

(a) No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the right to the water has been perfected under applicable State law, has a priority date prior to the establishment of the unit and there has been a continued beneficial use of that water right.

(b) If an operator whose operations will require the use of water from a point of diversion within the boundaries of the unit can show that he has a perfected State water right junior to the reserved water right of the United States and can demonstrate that the exercise of that State water right will not diminish the Federal right, which is that amount of water necessary for the purposes for which the unit was established, he will be authorized to use water from that source for operations, if he has complied with all other provisions of these regulations.

**§9.9 Plan of operations.**

(a) No operations shall be conducted within any unit until a plan of operations has been submitted by the operator to the Superintendent and approved by the Regional Director. All operations within any unit shall be conducted in accordance with an approved plan of operations.

(b) The proposed plan of operations shall relate, as appropriate, to the proposed operations (e.g. exploratory, developmental or extraction work) and shall include but is not limited to:

(1) The names and legal addresses of the following persons: The operator, the claimant if he is not the operator, and any lessee, assignee, or designee thereof;

(2) A map or maps showing the proposed area of operations; existing roads or proposed routes to and from the area of operations; areas of proposed mining; location and description of surface facilities, including dumps;

(3) A description of the mode of transport and major equipment to be used in the operations;

(4) A description of the proposed operations and an estimated timetable for each phase of operations and the completion of operations;

(5) The nature and extent of the known deposit to be mined. When the claim is located in a National Monument in Alaska and is unpatented, a completed Supplemental Claim Information Statement shall be submitted describing the quantity, quality, and any previous production of the deposit;

(6) A mining reclamation plan demonstrating compliance with the requirements of §9.11;

(7) All steps taken to comply with any applicable Federal, State, and local laws or regulations, including the applicable regulations in 36 CFR, chapter I;

(8) In units subject to the surface disturbance moratorium of section 4 of the Act and §9.4, proof satisfactory to the Regional Director that the surface of the area on which the operation is to occur was significantly disturbed for purposes of mineral extraction prior to February 29, 1976, or if the area was not so disturbed, proof, including production records for the years 1973, 1974, and 1975, that new disturbance is necessary to maintain an average annual rate of production not to exceed that of the years 1973, 1974, and 1975;

(9) An environmental report analyzing the following:

(i) The environment to be affected by the operations,

(ii) The impacts of the operations on the unit's environment,

(iii) Steps to be taken to insure minimum surface disturbance,

(iv) Methods for disposal of all rubbish and other solid and liquid wastes,

(v) Alternative methods of extraction and the environmental effects of each,

(vi) The impacts of the steps to be taken to comply with the reclamation plan, and

(10) Any additional information that is required to enable the Regional Director to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and issuance or denial of the access permit.

(c) In all cases the plan must consider and discuss the unit's Statement for Management and other planning documents, and activities to control, minimize or prevent damage to the recreational, biological, scientific, cultural, and scenic resources of the unit.

(d) Any person conducting operations on January 26, 1977, shall be required to submit a plan of operations to the Superintendent. If otherwise authorized, operations in progress on January 26, 1977, may continue for 120 days from that date without having an approved plan. After 120 days from January 26, 1977, no such operations shall be conducted without a plan approved by the Regional Director, unless access is extended under the existing permit by the Regional Director. (See § 9.10(g).)

[42 FR 4835, Jan. 26, 1977, as amended at 44 FR 11069, Feb. 27, 1979]

### § 9.10 Plan of operations approval.

(a) The Regional Director shall not approve a plan of operations:

(1) For existing or new operations if the claim was patented without surface use restriction, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands; or

(2) For operations which had not significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been patented, or if the patent is subject to surface use restrictions, where the operations would preclude management for the purpose of preserving the pristine beauty of the unit for present and future generations, or would adversely affect or significantly injure the ecological or cultural resources of the unit. No new surface mining will be permitted under this paragraph except under this standard; or

(3) For operations which had significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been taken to patent, or the patent is subject to surface use restrictions, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands. Provided, however, operations under this paragraph shall be limited by the provisions of § 9.4, notwithstanding the limitation of that section's applicability to the three enumerated units;

(4) Where the claim, regardless of when it was located, has not been patented and the operations would result in the destruction of surface resources, such as trees, vegetation, soil, water resources, or loss of wildlife habitat, not required for development of the claim; or

(5) Where the operations would constitute a violation of the surface disturbance moratorium of section 4 of the Act; or

(6) Where the plan does not satisfy each of the requirements of § 9.9.

(b) Within 60 days of the receipt of a proposed plan of operations, the Regional Director shall make an environmental analysis of such plan, and

(1) Notify the operator that he has approved or rejected the plan of operations; or

(2) Notify the operator of any changes in, or additions to the plan of operations which are necessary before such plan will be approved; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional 30 days, is necessary to complete such review, and

setting forth the reasons why additional time is required; *Provided, however*, That days during which the area of operations is inaccessible for such reasons as inclement weather, natural catastrophy, etc., for inspection shall not be included when computing either this time period, or that in paragraph (b) of this section; or

(4) Notify the operator that the plan cannot be considered for approval until forty-five (45) days after a final environmental impact statement, if required, has been prepared and filed with the Council on Environmental Quality.

(c) Failure of the Regional Director to act on a proposed plan of operations and related permits within the time period specified shall constitute an approval of the plan and related permits for a period of three (3) years.

(d) The Regional Director's analysis may include:

(1) An examination of the environmental report filed by the operator;

(2) An evaluation of measures and timing required to comply with reclamation requirements;

(3) An evaluation of necessary conditions and amount of the bond or security deposit to cover estimated reclamation costs;

(4) An evaluation of the need for any additional requirements in access permit; and

(5) A determination regarding the impact of this operation and the cumulative impact of all operations on the management of the unit.

(e) Prior to approval of a plan of operations, the Regional Director shall determine whether any properties included in, or eligible for inclusion in, the National Register of Historic Places or National Registry of Natural Landmarks may be affected by the proposed activity. This determination will require the acquisition of adequate information, such as that resulting from field surveys, in order to properly determine the presence of and significance of cultural resources within the area to be affected by mining operations. Whenever National Register properties or properties eligible for inclusion in the National Register would be affected by mining operations, the Regional Director shall comply with section 106 of the National Historic Preservation Act of 1966 as implemented by 36 CFR part 800.

(1) The operator shall not injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance. Failure to comply with this requirement shall constitute a violation of the Antiquities Act (16 U.S.C. 431–433) (see 43 CFR part 3).

(2) The operator shall immediately bring to the attention of the Superintendent any cultural and/or scientific resource that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

(3) The responsibility for, and cost of investigations and salvage of such values that are discovered during operations will be that of the operator, where the claim is unpatented.

(f) The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from mining operations, and shall be responsible for the reestablishment, restoration, or referencing of any monuments, corners and bearing trees which are destroyed, obliterated, or damaged by such mining operations.

(g) Pending approval of the plan of operations, the Regional Director may approve, on a temporary basis, the continuation of existing operations if necessary to enable timely compliance with these regulations and with Federal, State, or local laws, or if a halt to existing operations would result in an unreasonable economic burden or injury to the operator. Such work must be conducted in accordance with all applicable laws, and in a manner prescribed by the Regional Director and designed to minimize or prevent significant environmental effects.

(h) Approval of each plan of operations is expressly conditioned upon

the Superintendent having such reasonable access to the claim as is necessary to properly monitor and insure compliance with the plan of operations.

### § 9.11 Reclamation requirements.

(a) As contemporaneously as possible with the operations, but in no case later than six (6) months after completion of operations and within the time specified in an approved mining reclamation plan, unless a longer period is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the claim was patented without surface use restriction, the operator shall at a minimum:

(i) Remove all above ground structures, equipment, and other manmade debris used for operations; and

(ii) Rehabilitate the area of operations to a condition which would not constitute a nuisance; or would not adversely affect, injure or damage, federally owned lands.

(2) On any claim which was patented with surface use restrictions or is unpatented, each operator must take steps to restore natural conditions and processes, which steps shall include, but are not limited to:

(i) Removing all above ground structures, equipment and other manmade debris;

(ii) Providing for the prevention of surface subsidence;

(iii) Replacing overburden and spoil, wherever economically and technologically practicable;

(iv) Grading to reasonably conform the contour of the area of operations to a contour similar to that which existed prior to the initiation of operations, where such grading will not jeopardize reclamation;

(v) Replacing the natural topsoil necessary for vegetative restoration; and

(vi) Reestablishing native vegetative communities.

(b) Reclamation under paragraph (a)(2) of this section is unacceptable unless it provides for the safe movement of native wildlife, the reestablishment of native vegetative communities, the normal flow of surface and reasonable flow of subsurface waters, the return of the area to a condition which does not jeopardize visitor safety or public use of the unit, and return of the area to a condition equivalent to its pristine beauty.

(c) Reclamation required by this section shall apply to operations authorized under this part, except that all terms relating to reclamation of previously issued special use permits revoked by this part for operations to be continued under an approved plan of operations shall be incorporated into the operator's reclamation plans.

### § 9.12 Supplementation or revision of plan of operations.

(a) An approved plan of operations may require reasonable revision or supplementation to adjust the plan to changed conditions or to correct oversights.

(1) The Regional Director may initiate an alteration by notifying the operator in writing of the proposed alteration and the justification therefor. The operator shall have thirty (30) days to comment on the proposal.

(2) The operator may initiate an alteration by submitting to the Superintendent a written statement of the proposal, and the justification therefor.

(b) Any proposal initiated under paragraph (a) of this section by either party shall be reviewed and decided by the Regional Director in accordance with § 9.10. Where the operator believes he has been aggrieved by a decision under this paragraph, he may appeal the decision pursuant to § 9.14.

### § 9.13 Performance bond.

(a) Upon approval of a plan of operations the operator shall be required to file a suitable performance bond with satisfactory surety, payable to the Secretary or his designee. The bond shall be conditioned upon faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the plan of operations as approved, revised or supplemented.

(b) In lieu of a performance bond, an operator may elect to deposit with the Secretary, or his designee, cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be at least equal to the required sum of the bond.

(c) The bond or security deposit shall be in an amount equal to the estimated cost of completion of reclamation requirements either in their entirety or in a phased schedule for their completion as set forth in the approved, supplemented or revised plan of operations.

(d) In the event that an approved plan of operations is revised or supplemented in accordance with §9.12, the Superintendent may adjust the amount of the bond or security deposit to conform to the plan of operations as modified.

(e) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until such time as the Superintendent determines that successful reclamation of the area of operations has occurred.

(f) When all required reclamation requirements of an approved plan of operations are completed, the Superintendent shall notify the operator that performance under the bond or security deposit has been completed and that it is released.

**§9.14 Appeals.**

(a) Any operator aggrieved by a decision of the Regional Director in connection with the regulations in this part may file with the Regional Director a written statement setting forth in detail the respects in which the decision is contrary to, or in conflict with, the facts, the law, these regulations, or is otherwise in error. No such appeal will be considered unless it is filed with the Regional Director within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of such written statement from the aggrieved operator, the Regional Director shall promptly review the action or decision and either reverse his original decision or prepare his own statement, explaining that decision and the reasons therefor, and forward the statement and record on appeal to the Director, National Park Service, for review and decision. Copies of the Regional Director's statement shall be furnished to the aggrieved operator, who shall have 20 days within which to file exceptions to the Regional Director's decision. The Department has the discretion to initiate a hearing before the Office of Hearing and Appeals in a particular case. (See 43 CFR 4.700.)

(b) The official files of the National Park Service on the proposed plan of operations and any testimony and documents submitted by the parties on which the decision of the Regional Director was based shall constitute the record on appeal. The Regional Director shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to the Director of the National Park Service. The National Park Service shall make the record available to the operator upon request.

(c) If the Director considers the record inadequate to support the decision on appeal, he may provide for the production of such additional evidence or information as may be appropriate, or may remand the case to the Regional Director, with appropriate instructions for further action.

(d) On or before the expiration of forty-five (45) days after his receipt of the exceptions to the Regional Director's decision, the Director shall make his decision in writing; *Provided, however,* That if more than forty-five (45) days are required for a decision after the exceptions are received, the Director shall notify the parties to the appeal and specify the reason(s) for delay. The decision of the Director shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based. The decision of the Director shall be the final administrative action of the agency on a proposed plan of operations.

(e) A decision of the Regional Director from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Director. The Director shall promptly rule on requests for stays. A decision of the Director on request for a stay shall constitute a final administrative decision.

### § 9.15 Use of roads by commercial vehicles.

(a) After January 26, 1977, no commercial vehicle shall use roads administered by the National Park Service without first being registered with the Superintendent.

(1) A fee shall be charged for such registration based upon a posted fee schedule, computed on a ton-mile basis. The fee schedule posted shall be subject to change upon 60 days notice.

(2) An adjustment of the fee may be made at the discretion of the Superintendent where a cooperative maintenance agreement is entered into with the operator.

(b) No commercial vehicle which exceeds roadway load limits specified by the Superintendent shall be used on roads administered by the National Park Service unless authorized by written permit from the Superintendent.

(c) Should a commercial vehicle used in operations cause damage to roads or other facilities of the National Park Service, the operator shall be liable for all damages so caused.

### § 9.16 Penalties.

Undertaking any operation within the boundaries of any unit in violation of this part shall be deemed a trespass against the United States, and the penalty provisions of 36 CFR part 1 are inapplicable to this part.

### § 9.17 Public inspection of documents.

(a) Upon receipt of the plan of operations the Superintendent shall publish a notice in the FEDERAL REGISTER advising the availability of the plan for public review.

(b) Any document required to be submitted pursuant to the regulations in this part shall be made available for public inspection at the Office of Superintendent during normal business hours. The availability of such records for inspection shall be governed by the rules and regulations found at 43 CFR part 2.

### § 9.18 Surface use and patent restrictions.

(a) The regulations in 43 CFR 3826.2–5 and 3826.2–6, 3826.4–1(g) and 3826.4–1(h), and 3826.5–3 and 3826.5–4 will apply to any claimant who wishes to take his claim to patent in Olympic National Park, Glacier Bay National Monument or Organ Pipe Cactus National Monument.

(b) The additional provisions of 43 CFR subpart 3826 and 36 CFR 7.26 and 7.45(a) will continue to apply to existing permits until 120 days after January 26, 1977, unless extended by the Regional Director. (See § 9.10(g).

[42 FR 4835, Jan. 26, 1977, as amended at 48 FR 30296, June 30, 1983]

## Subpart B—Non-Federal Oil and Gas Rights

AUTHORITY: Act of August 25, 1916, 39 Stat. 535 (16 U.S.C. 1, *et seq.*); and the acts establishing the units of the National Park System, including but not limited to: Act of April 25, 1947, 61 Stat. 54 (16 U.S.C. 241, *et seq.*); Act of July 2, 1958, 72 Stat. 285 (16 U.S.C. 410, *et seq.*); Act of October 27, 1972, 86 Stat. 1312 (16 U.S.C. 460dd, *et seq.*): Act of October 11, 1974, 88 Stat. 1256 (16 U.S.C. 698–698e); Act of October 11, 1974, 88 Stat. 1258 (16 U.S.C. 698f–698m); Act of December 27, 1974, 88 Stat. 1787 (16 U.S.C. 460ff *et seq.*).

SOURCE: 43 FR 57825, Dec. 8, 1978, unless otherwise noted.

### § 9.30 Purpose and scope.

(a) These regulations control all activities within any unit of the National Park System in the exercise of rights to oil and gas not owned by the United States where access is on, across or through federally owned or controlled lands or waters. Such rights arise most frequently in one of two situations: (1) When the land is owned in fee, including the right to the oil and gas, or (2) When in a transfer of the surface estate to the United States, the grantor reserved the rights to the oil and gas. These regulations are designed to insure that activities undertaken pursuant to these rights are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment and other resource values, and to insure to the extent feasible that all units of the National Park System are left unimpaired for the enjoyment of future generations.

These regulations are not intended to result in the taking of a property interest, but rather to impose reasonable regulations on activities which involve and affect federally-owned lands.

(b) Regulations controlling the exercise of minerals rights obtained under the Mining Law of 1872 in units of the National Park System can be found at 36 CFR part 9, subpart A. In area where oil and gas are owned by the United States, and leasing is authorized, the applicable regulations can be found at 43 CFR, Group 3100.

(c) These regulations allow operators the flexibility to design plans of operations only for that phase of operations contemplated. Each plan need only describe those functions for which the operator wants immediate approval. For instance, it is impossible to define, at the beginning of exploratory activity, the design that production facilities might take. For this reason, an operator may submit a plan which applies only to the exploratory phase, allowing careful preparation of a plan for the production phase after exploration is completed. This allows for phased reclamation and bonding at a level commensurate with the level of operations approved. However, it must be noted that because of potential cumulative impacts, and because of qualitative differences in the nature of the operations, approval of a plan of operations covering one phase of operations does not guarantee later approval of a plan of operations covering a subsequent phase.

[43 FR 57825, Dec. 8, 1978, as amended at 44 FR 37914, June 29, 1979]

### §9.31 Definitions.

The terms used in this subpart shall have the following meanings:

(a) *Secretary*. The Secretary of the Interior.

(b) *Director*. The Director of the National Park Service or his designee.

(c) *Operations*. All functions, work and activities within a unit in connection with exploration for and development of oil and gas resources, the right to which is not owned by the United States, including: gathering basic information required to comply with this subpart, prospecting, exploration, surveying, preproduction development and production; gathering, onsite storage, transport or processing of petroleum products; surveillance, inspection, monitoring, or maintenance of equipment; reclamation of the surface disturbed by such activities; and all activities and uses reasonably incident thereto performed within a unit, including construction or use of roads, pipelines, or other means of access or transportation on, across, or through federally owned or controlled lands and waters, regardless of whether such activities and uses take place on Federal, State or private lands.

(d) *Operator*. A person conducting or proposing to conduct operations.

(e) *Person*. Any individual, firm, partnership, corporation, association, or other entity.

(f) *Superintendent*. The Superintendent, or his designee, of the unit of the National Park System containing lands subject to the rights covered by these regulations.

(g) *Commercial Vehicle*. Any motorized equipment used in direct or indirect support of operations.

(h) *Unit*. Any National Park System area.

(i) *Owner*. The owner, or his legal representative, of the rights to oil and gas being exercised.

(j) *Designated Roads*. Those existing roads determined by the Superintendent in accordance with 36 CFR 1.5 and §4.19 to be open for the use of the general public or for the exclusive use of an operator.

(k) *Oil*. Any viscous combustible liquid hydrocarbon or solid hydrocarbon substance easily liquifiable on warming which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas without resort to manufacturing process.

(l) *Gas*. Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(m) *Site*. Those lands or waters on which operations are to be carried out.

(n) *Contaminating substances*. Those substances, including but not limited to, salt water or any other injurious or toxic chemical, waste oil or waste

emulsified oil, basic sediment, mud with injurious or toxic additives, or injurious or toxic substances produced or used in the drilling, development, production, transportation, or on-site storage, refining, and processing of oil and gas.

(o) *Statement for Management.* A National Park Service planning document used to guide short- and long-term management of a unit; to determine the nature and extent of planning required to meet the unit's management objectives; and, in the absence of more specific planning documents, to provide a general framework for directing park operations and communicating park objectives to the public.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997]

**§ 9.32 Access.**

(a) No access on, across or through lands or waters owned or controlled by the United States to a site for operations will be granted except for operations covered by § 9.33 and, except as provided by § 9.38, until the operator has filed a plan of operations pursuant to § 9.36 and has had the plan of operations approved in accordance with § 9.37. An approved plan of operations serves as the operator's access permit.

(b) No operations shall be conducted on a site within a unit, access to which is on, across or through federally-owned or controlled lands or waters except in accordance with an approved plan of operations, the terms of § 9.33 or approval under § 9.38.

(c) Any operator intending to use aircraft of any kind for access to a federally-owned or controlled site must comply with these regulations. Failure of an operator to receive the proper approval under these regulations prior to using aircraft in this manner is a violation of both these regulations and 36 CFR 2.17.

(d) No access to a site outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using designated roads for access to such a site must comply with the terms of § 9.50 where applicable.

(e) Any operator on a site outside the boundaries of a unit must comply with these regulations if he is using directional drilling techniques which result in the drill hole crossing into the unit and passing under any land or water the surface of which is owned by the United States. Except, that the operator need not comply in those areas where, upon application of the operator or upon his own action, the Regional Director is able to determine from available data, that such operations pose no significant threat of damage to park resources, both surface and subsurface, resulting from surface subsidence, fracture of geological formations with resultant fresh water acquifer contamination, or natural gas escape, or the like.

**§ 9.33 Existing operations.**

(a) Any person conducting operations on January 8, 1979 in accordance with a Federal or State issued permit may continue to do so as provided by this section. After expiration of such existing permits no operations shall be conducted except under an approved plan of operations, unless access is granted by the Regional Director under § 9.38.

(1) All Federal special use permits dealing with access on, across or through lands or waters owned or controlled by the United States to a site for the conduct of operations within any unit issued prior to January 8, 1979 shall expire according to their terms and shall not be renewed, unless by the terms of the existing permit it must be renewed.

(2) All operations on a site in a unit access to which is on, across, or through federally owned or controlled lands or waters conducted pursuant to a valid State access permit may be continued for the term of that permit, exclusive of any renewal period whether mandatory or discretionary, if conducted in accordance with the permit.

(b) Any person conducting operations on January 8, 1979 in a unit where Federal or State permits were not required prior to January 8, 1979 may continue those operations pending a final decision on his plan of operations; *Provided,* That:

(1) The operator (within thirty (30) days of January 8, 1979), notifies the

Superintendent in writing of the nature and location of the operations; and

(2) Within sixty (60) days after such notification, the operator submits, in accordance with these regulations, a substantially complete proposed plan of operations for those operations;

(3) Failure to comply with §9.33(b) (1) and (2) shall constitute grounds for the suspension of operations.

(c) At any time when operations which are allowed to continue under §9.33 (a) and (b) pose an immediate threat of significant injury to federally owned or controlled lands or waters, the Superintendent shall require the operator to suspend operations immediately until the threat is removed or remedied. The Superintendent must, within five (5) days of this suspension notify the operator in writing of the reasons for the suspension and of his right to appeal the suspension under §9.48.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979]

### §9.34 Transfers of interest.

(a) Whenever an owner of rights being exercised under an approved plan of operations sells, assigns, bequeaths, or otherwise conveys all or any part of those rights, he, his agent, executor, or representative must notify the Superintendent within sixty (60) days of the transfer of: the site(s) involved; the name and address of the person to whom an interest has been conveyed; and a description of the interest transferred. Failure to so notify the Superintendent shall render the approval of any previously approved plan of operations void.

(b) The transferring owner shall remain responsible for compliance with the plan of operations and shall remain liable under his bond until such time as the Superintendent is notified of the transfer in accordance with paragraph (a). At that time the Superintendent will prohibit the new owner from operating until such time as the new owner has filed with the Superintendent: (1) A statement ratifying the existing plan of operations and stating his intent to be bound thereby, or a new plan of operations, and (2) a suitable substitute performance bond which complies with the requirements of §9.48.

### §9.35 Use of water.

No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the operator shows either that his right to the use of the water is superior to any claim of the United States to the water, or where the operator's claim to the water is subordinate to that of the United States that the removal of the water from the water system will not damage the unit's resources. In either situation, the operator's use of water must comply with appropriate State water laws.

### §9.36 Plan of operations.

(a) The proposed plan of operations shall include, as appropriate to the proposed operations, the following:

(1) The names and legal addresses of the following persons: The operator, and the owner(s) or lessee(s) (if rights are State-owned) other than the operator;

(2) Copy of the lease, deed, designation of operator, or assignment of rights upon which the operator's right to conduct operations is based;

(3) A map or maps showing the location of the perimeter of the area where the operator has the right to conduct operations, as described in §9.36(a)(2), referenced to the State plane coordinate system or other public land survey as acceptable to the Superintendent;

(4) A map or maps showing the location, as determined by a registered land surveyor or civil engineer, of a point within a site of operations showing its relationship to the perimeter of the area described in §9.36(a)(2) and to the perimeter of the site of operations; the location of existing and proposed access roads or routes to the site; the boundaries of proposed surface disturbance; the location of proposed drilling; location and description of all surface facilities including sumps, reserve pits and ponds; location of tank batteries,

production facilities and gathering, service and transmission lines; wellsite layout; sources of construction materials such as fill; and the location of ancillary facilities such as camps, sanitary facilities, water supply and disposal facilities, and airstrips. The point within the site of operations identified by registered land surveyor or civil engineer shall be marked with a permanent ground monument acceptable to the Superintendent, shall contain the point's State plane coordinate values, and shall be placed at least to an accuracy of third order, class I, unless otherwise authorized by the Superintendent;

(5) A description of the major equipment to be used in the operations, including a description of equipment and methods to be used for the transport of all waters used in or produced by operations, and of the proposed method of transporting such equipment to and from the site;

(6) An estimated timetable for any phase of operations for which approval is sought and the anticipated date of operation completion;

(7) The geologic name of the surface formation;

(8) The proposed drilling depth, and the estimated tops of important geologic markers;

(9) The estimated depths at which anticipated water, brines, oil, gas, or other mineral bearing formations are expected to be encountered;

(10) The nature and extent of the known deposit or reservoir to be produced and a description of the proposed operations, including:

(i) The proposed casing program, including the size, grade, and weight of each string, and whether it is new or used;

(ii) The proposed setting depth of each casing string, and the amount of type of cement, including additives, to be used;

(iii) The operator's minimum specifications for pressure control equipment which is to be used, a schematic diagram thereof showing sizes, pressure ratings, and the testing procedures and testing frequency;

(iv) The type and characteristics of the proposed circulating medium or mediums to be employed for rotary drilling and the quantities and types of mud and weighting material to be maintained;

(v) The testing, logging, and coring programs to be followed;

(vi) Anticipated abnormal pressures or temperatures expected to be encountered; or potential hazards to persons and the environment such as hydrogen sulfide gas or oil spills, along with plans for mitigation of such hazards;

(11) A description of the steps to be taken to comply with the applicable operating standards of § 9.41 of this subpart;

(12) Provisions for reclamation which will result in compliance with the requirements of § 9.39:

(13) A breakdown of the estimated costs to be incurred during the implementation of the reclamation plan;

(14) Methods for disposal of all rubbish and other solid and liquid wastes, and contaminating substances;

(15) An affidavit stating that the operations planned are in compliance with all applicable Federal, State and local laws and regulations;

(16) Background information, including:

(i) A description of the natural, cultural, social and economic environments to be affected by operations, including a description and/or map(s) of the location of all water, abandoned, temporarily abandoned, disposal, production, and drilling wells of public record within a two-mile radius of the proposed site. Where such information is available from documents identified in § 9.36(d), specific reference to the document and the location within the document where such information can be found will be sufficient to satisfy this requirement;

(ii) The anticipated direct and indirect effects of the operations on the unit's natural, cultural, social, and economic environment;

(iii) Steps to be taken to insure minimum surface disturbance and to mitigate any adverse environmental effects, and a discussion of the impacts which cannot be mitigated;

(iv) Measures to protect surface and subsurface waters by means of casing and cement, etc.;

(v) All reasonable technologically feasible alternative methods of operations, their costs, and their environmental effects, and

(vi) The effects of the steps to be taken to achieve reclamation;

(17) Any other facets of the proposed operations which the operator wishes to point out for consideration; and

(18) Any additional information that is required to enable the Superintendent to establish whether the operator has the right to conduct operations as specified in the plan of operations; to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit; and to make a recommendation to the Regional Director regarding approval or disapproval of the plan of operations and the amount of the performance bond to be posted.

(b) Where any information required to be submitted as part of a proposed plan of operations has been submitted to the Superintendent in substantially the same form in a prior approved plan of operations, a specific cross-reference to that information contained in the prior approved plan of operations will be sufficient to incorporate it into the proposed plan and will satisfy the applicable requirement of this section.

(c) Information and materials submitted in compliance with this section will not constitute a plan of operations until information required by §9.36(a)(1) through (18), which the Superintendent determines as pertinent to the type of operations proposed, has been submitted to and determined adequate by the Regional Director.

(d) In all cases the plan of operations must consider and discuss the unit's Statement for Management and other planning documents as furnished by the Superintendent, and activities to control, minimize or prevent damage to the recreational, biological, physical, scientific, cultural, and scenic resources of the unit, and any reclamation procedures suggested by the Superintendent.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979]

**§9.37 Plan of operations approval.**

(a) The Regional Director shall not approve a plan of operations:

(1) Until the operator shows that the operations will be conducted in a manner which utilizes technologically feasible methods least damaging to the federally-owned or controlled lands, waters and resources of the unit while assuring the protection of public health and safety.

(2) For operations at a site the surface estate of which is not owned by the Federal government, where operations would constitute a nuisance to Federal lands or waters in the vicinity of the operations, would significantly injure federally-owned or controlled lands and waters; or

(3) For operations at a site the surface estate of which is owned or controlled by the Federal government, where operations would substantially interfere with management of the unit to ensure the preservation of its natural and ecological integrity in perpetuity, or would significantly injure the federally-owned or controlled lands or waters; *Provided, however,* That if the application of this standard would, under applicable law, constitute a taking of a property interest rather than an appropriate exercise of regulatory authority, the plan of operations may be approved if the operations would be conducted in accordance with paragraph (a)(1) of this section, unless a decision is made to acquire the mineral interest.

(4) Where the plan of operations does not satisfy each of the requirements of §9.36 applicable to the operations proposed.

(b) Within sixty (60) days of the receipt of a plan of operations, the Regional Director shall make an environmental analysis of such plan, and:

(1) Notify the operator that the plan of operations has been approved or rejected, and, if rejected, the reasons for the rejection; or

(2) Notify the operator that the plan of operations has been conditionally approved, subject to the operator's acceptance of specific provisions and stipulations; or

(3) Notify the operator of any modification of the plan of operations which is necessary before such plan will be

approved or of additional information needed to effectively analyze the effects that the operations will have on the preservation, management and use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and the amount of the performance bond to be posted; or

(4) Notify the operator that the plan of operations is being reviewed, but that more time, not to exceed an additional thirty days, is necessary to complete such review, and setting forth the reasons why additional time is required. *Provided, however,* That days during which the area of operations is inaccessible for such reasons as inclement weather, natural catastrophe, acts of God, etc., for inspection shall not be included when computing either this time period, or that in subsection (b) above; or

(5) Notify the operator that the plan of operations has been reviewed, but cannot be considered for approval until forty-five (45) days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(6) Notify the operator that the plan of operations is being reviewed, but that more time to provide opportunities for public participation in the plan of operations review and to provide sufficient time to analyze public comments received is necessary. Within thirty (30) days after closure of the public comment period specified by the Regional Director, he shall comply with § 9.37(b) (1) through (5).

(c) The Regional Director shall act as expeditiously as possible upon a proposed plan of operations consistent with the nature and scope of the operations proposed. Failure to act within the time limits specified in this section shall constitute a rejection of the plan of operations from which the operator shall have a right to appeal under § 9.49.

(d) The Regional Director's analysis shall include:

(1) An examination of all information submitted by the operator;

(2) An evaluation of measures and timing required to comply with reclamation requirements;

(3) An evaluation of necessary conditions and amount of the bond or security deposit (See § 9.48);

(4) An evaluation of the need for any additional requirements in the plan;

(5) A determination regarding the impact of this operation and cumulative impacts of all proposed and existing operations on the management of the unit; and

(6) A determination whether implementation by the operator of an approved plan of operations would be a major Federal action significantly affecting the quality of the human environment or would be sufficiently controversial to warrant preparation of an environmental statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969.

(e) Prior to approval of a plan of operations, the Regional Director shall determine whether any properties included in, or eligible for inclusion in the National Register of Historic Places or National Registry of Natural Landmarks may be affected by the proposed operations. This determination will require the acquistion of adequate information, such as that resulting from field surveys, in order to properly determine the presence and significance of cultural resources within the areas to be affected by operations. Whenever National Register properties or properties eligible for inclusion in the National Register would be affected by operations, the Regional Director shall comply with section 106 of the Historic Preservations Act of 1966 as implemented by 36 CFR part 800.

(f) Approval of each plan of operations is expressly conditioned upon the Superintendent having such reasonable access to the site as is necessary to properly monitor and insure compliance with the plan of operations.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979]

### § 9.38 Temporary approval.

(a) The Regional Director may approve on a temporary basis:

(1) Access on, across or through federally-owned or controlled lands or waters for the purpose of collecting basic information necessary to enable timely compliance with these regulations. Such temporary approval shall be for a period not in excess of sixty (60) days.

(2) The continuance of existing operations, if their suspension would result

in an unreasonable economic burden or injury to the operator; provided that such operations must be conducted in accordance with all applicable laws, and in a manner prescribed by the Regional Director designed to minimize or prevent significant environmental damage; and provided that within sixty (60) days of the granting of such temporary approval the operator either:

(i) Submits an initial substantially complete plan of operations; or

(ii) If a proposed plan of operations has been submitted, responds to any outstanding requests for additional information.

(b) The Regional Director may approve new operations on a temporary basis only when:

(1) The Regional Director finds that the operations will not cause significant environmental damage or result in significant new or additional surface disturbance to the unit; and either

(2) The operator can demonstrate a compelling reason for the failure to have had timely approval of a proposed plan of operations; or

(3) The operator can demonstrate that failure to grant such approval will result in an unreasonable economic burden or injury to the operator.

[43 FR 57825, Dec. 8, 1978, as amended at 44 FR 37914, June 29, 1979]

### § 9.39 Reclamation requirements.

(a) Within the time specified by the reclamation provisions of the plan of operations, which shall be as soon as possible after completion of approved operations and shall not be later than six (6) months thereafter unless a longer period of time is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the Federal government does not own the surface estate, the operator shall at a minimum:

(i) Remove or neutralize any contaminating substances; and

(ii) Rehabilitate the area of operations to a condition which would not constitute a nuisance or would not adversely affect, injure, or damage federally-owned lands or waters, including removal of above ground structures and equipment used for operations, except that such structures and equipment may remain where they are to be used for continuing operations which are the subject of another approved plan of operations or of a plan which has been submitted for approval.

(2) On any site where the surface estate is owned or controlled by the Federal government, each operator must take steps to restore natural conditions and processes. These steps shall include but are not limited to:

(i) Removing all above ground structures, equipment and roads used for operations, except that such structures, equipment and roads may remain where they are to be used for continuing operations which are the subject of another approved plan of operations or of a plan which has been submitted for approval, or unless otherwise authorized by the Regional Director consistent with the unit purpose and management objectives;

(ii) Removing all other man-made debris resulting from operations;

(iii) Removing or neutralizing any contaminating substances;

(iv) Plugging and capping all nonproductive wells and filling dump holes, ditches, reserve pits and other excavations;

(v) Grading to reasonably conform the contour of the area of operations to a contour similar to that which existed prior to the initiation of operations, where such grading will not jeopardize reclamation;

(vi) Replacing the natural topsoil necessary for vegetative restoration; and

(vii) Reestablishing native vegetative communities.

(b) Reclamation under paragraph (a)(2) of this section is unacceptable unless it provides for the safe movement of native wildlife, the reestablishment of native vegetative communities, the normal flow of surface and reasonable flow of subsurface waters, and the return of the area to a condition which does not jeopardize visitor safety or public use of the unit.

### § 9.40 Supplementation or revision of plan of operations.

(a) A proposal to supplement or revise an approved plan of operations may be made by either the operator or the Regional Director to adjust the

plan to changed conditions or to address conditions not previously contemplated by notifying the appropriate party in writing of the proposed alteration and the justification therefore.

(b) Any proposed supplementation or revision of a plan of operations initiated under paragraph (a) of this section by either party shall be reviewed and acted on by the Regional Director in accordance with § 9.37. If failure to implement proposed changes would not pose an immediate threat of significant injury to federally-owned or controlled lands or waters, the operator will be notified in writing sixty (60) days prior to the date such changes become effective, during which time the operator may submit comments on proposed changes. If failure to implement proposed changes would pose immediate threat of significant injury to federally-owned or controlled lands or waters, the provisions of § 9.33(c) apply.

### § 9.41 Operating standards.

The following standards shall apply to operations within a unit:

(a) Surface operations shall at no time be conducted within 500 feet of the banks of perennial, intermittent or ephemeral watercourses; or within 500 feet of the high pool shoreline of natural or man-made impoundments; or within 500 feet of the mean high tideline; or within 500 feet of any structure or facility (excluding roads) used for unit interpretation, public recreation or for administration of the unit, unless specifically authorized by an approved plan of operations.

(b) The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from operations and shall be responsible for the reestablishment, restoration, or referencing of any monuments, corners and bearing trees which are destroyed, obliterated, or damaged by such operations.

(c) Whenever drilling or producing operations are suspended for 24 hours or more, but less than 30 days, the wells shall be shut in by closing wellhead valves or blowout prevention equipment. When producing operations are suspended for 30 days or more, a suitable plug or other fittings acceptable to the Superintendent shall be used to close the wells.

(d) The operator shall mark each and every operating derrick or well in a conspicuous place with his name or the name of the owner, and the number and location of the well, and shall take all necessary means and precautions to preserve these markings.

(e) Around existing or future installations, e.g., well, storage tanks, all high pressure facilities, fences shall be built for protection of unit visitors and wildlife, and protection of said facilities unless otherwise authorized by the Superintendent. Fences erected for protection of unit visitors and wildlife shall be of a design and material acceptable to the Superintendent, and where appropriate, shall have at least one gate which is of sufficient width to allow access by fire trucks. Hazards within visitor use areas will be clearly marked with warning signs acceptable to the Superintendent.

(f) The operator shall carry on all operations and maintain the site at all times in a safe and workmanlike manner, having due regard for the preservation of the environment of the unit. The operator shall take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations and lease tanks, and shall remove from the property or store in an orderly manner all scrap or other materials not in use.

(g) Operators will be held fully accountable for their contractor's or subcontractor's compliance with the requirements of the approved plan of operations.

[43 FR 57825, Dec. 8, 1978; 44 FR 37915, June 29, 1979]

### § 9.42 Well records and reports, plots and maps, samples, tests and surveys.

Any technical data gathered during the drilling of any well, including daily drilling reports and geological reports, which are submitted to the State pursuant to State regulations, or to any other bureau or agency of the Federal government shall be available for inspection by the Superintendent upon his request.

### §9.43 Precautions necessary in areas where high pressures are likely to exist.

When drilling in ''wildcat'' territory, or in any field where high pressures are likely to exist, the operator shall take all necessary precautions for keeping the well under control at all times and shall install and maintain the proper high-pressure fittings and equipment to assure proper well control. Under such conditions the surface string must be cemented through its length, unless another procedure is authorized or prescribed by the Superintendent, and all strings of casing must be securely anchored.

### §9.44 Open flows and control of "wild" wells.

The operator shall take all technologically feasible precautions to prevent any oil, gas, or water well from blowing open or becoming ''wild,'' and shall take immediate steps and exercise due diligence to bring under control any ''wild'' well, or burning oil or gas well.

### §9.45 Handling of wastes.

Oilfield brine, and all other waste and contaminating substances must be kept in the smallest practicable area, must be confined so as to prevent escape as a result of percolation, rain, high water or other causes, and such wastes must be stored and disposed of or removed from the area as quickly as practicable in such a manner as to prevent contamination, pollution, damage or injury to the lands, water (surface and subsurface), facilities, cultural resources, wildlife, and vegetation of or visitors of the unit.

### §9.46 Accidents and fires.

The operator shall take technologically feasible precautions to prevent accidents and fires, shall notify the Superintendent within 24 hours of all accidents involving serious personal injury or death, or fires on the site, and shall submit a full written report thereon within ninety (90) days. This report supersedes the requirement outlined in 36 CFR 2.17, but does not relieve persons from the responsibility of making any other accident reports which may be required under State or local laws.

### §9.47 Cultural resource protection.

(a) Where the surface estate of the site is owned by the United States, the operator shall not, without written authorization of the Superintendent, injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance in violation of the Antiquities Act (16 U.S.C. 431–433 (See 43 CFR part 3).

(b) Once approved operations have commenced, the operator shall immediately bring to the attention of the Superintendent any cultural or scientific resource encountered that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

### §9.48 Performance bond.

(a) Prior to approval of a plan of operations, the operator shall be required to file a suitable performance bond with satisfactory surety, payable to the Secretary or his designee. The bond shall be conditioned upon faithful compliance with applicable regulations, and the plan of operations as approved, revised or supplemented. This performance bond is in addition to and not in lieu of any bond or security deposit required by other regulatory authorities.

(b) In lieu of a performance bond, an operator may elect to deposit with the Secretary or his designee, cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be at least equal to the required sum of the bond. When bonds are to serve as security, there must be provided to the Secretary a power of attorney.

(c) In the event that an approved plan of operations is revised or supplemented in accordance with §9.40, the Regional Director may adjust the amount of the bond or security deposit to conform to the modified plan of operations.

(d) The bond or security deposit shall be in an amount:

(1) Equal to the estimated cost of reclaiming the site, either in its entirety or in phases, that has been damaged or destroyed as a result of operations conducted in accordance with an approved, supplemented, plan of operations; plus

(2) An amount set by the Superintendent consistent with the type of operations proposed, to bond against the liability imposed by § 9.51(a); to provide the means for rapid and effective cleanup; and to minimize damages resulting from an oil spill, the escape of gas, wastes, contaminating substances, or fire caused by operations. This amount shall not exceed twenty-five thousand dollars ($25,000) for geophysical surveys when using more than one field party or five thousand dollars ($5,000) when operating with only one field party, and shall not exceed fifty thousand dollars ($50,000) for each wellsite or other operation.

(3) When an operator's total bond or security deposit with the National Park Service amounts to two hundred thousand dollars ($200,000) for activities conducted within a given unit, no further bond requirements shall be collected for additional activities conducted within that unit, and the operator may substitute a blanket bond of two hundred thousand dollars ($200,000) for all operations conducted within the unit.

(e) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until such time as the Superintendent determines that successful reclamation of the area of operations has occurred and, where a well has been drilled, the well has been properly plugged and abandoned. If all efforts to secure the operator's compliance with pertinent provisions of the approved plan of operations are unsuccessful, the operator's surety company will be required to perform reclamation in accordance with the approved plan of operations.

(f) Within thirty (30) days after determining that all reclamation requirements of an approved plan of operations are completed, including proper abandonment of the well, the Regional Director shall notify the operator that the period of liability under the bond or security deposit has been terminated.

[43 FR 57825, Dec. 8, 1978; 44 FR 37915, June 29, 1979]

### § 9.49 Appeals.

(a) Any operator aggrieved by a decision of the Regional Director in connection with the regulations in this subpart may file with the Regional Director a written statement setting forth in detail the respects in which the decision is contrary to, or is in conflict with the facts, the law, or these regulations, or is otherwise in error. No such appeal will be considered unless it is filed with the Regional Director within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of such written statement from the aggrieved operator, the Regional Director shall promptly review the action or decision and either reverse his original decision or prepare his own statement, explaining that decision and the reasons therefor, and forward the statement and record on appeal to the Director for review and decision. Copies of the Regional Director's statement shall be furnished to the aggrieved operator, who shall have thirty (30) days within which to file exceptions to the Regional Director's decision. The Department has the discretion to initiate a hearing before the Office of Hearing and Appeals in a particular case (See 43 CFR 4.700).

(b) The official files of the National Park Service on the proposed plan of operations and any testimony and documents submitted by the parties on which the decision of the Regional Director was based shall constitute the record on appeal. The Regional Director shall maintain the record under separate cover and shall certify that it was the record on which his decision was based at the time it was forwarded to the Director of the National Park Service. The National Park Service shall make the record available to the operator upon request.

(c) If the Director considers the record inadequate to support the decision on appeal, he may provide for the production of such additional evidence or information as may be appropriate,

or may remand the case to the Regional Director, with appropriate instructions for further action.

(d) On or before the expiration of forty-five (45) days after his receipt of the exceptions to the Regional Director's decision, the Director shall make his decision in writing: provided however, that if more than forty-five (45) days are required for a decision after the exceptions are received, the Director shall notify the parties to the appeal and specify the reason(s) for delay. The decision of the Director shall include: (1) A statement of facts; (2) conclusions; and (3) reasons upon which the conclusions are based. The decision of the Director shall be the final administrative action of the agency on a proposed plan of operations.

(e) A decision of the Regional Director from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Director. The Director shall promptly rule on requests for stays. A decision of the Director on request for a stay shall constitute a final administrative decision.

(f) Where, under this subpart, the Superintendent has the authority to make the original decision, appeals may be taken in the manner provided by this section, as if the decision had been made by the Regional Director, except that the original statement of appeal shall be filed with the Superintendent, and if he decides not to reverse his original decision, the Regional Director shall have, except as noted below, the final review authority. The only decision of a Regional Director under this paragraph which shall be appealable by the Director is an appeal from a suspension under §9.51(b). Such an appeal shall follow the procedure of paragraphs (a)–(3) of this section.

[43 FR 57825, Dec. 8, 1978; 44 FR 37915, June 29, 1979]

### §9.50 Use of roads by commercial vehicles.

(a) After January 8, 1978, no commercial vehicle shall use roads administered by the National Park Service without being registered with the Superintendent. Roads must be used in accordance with procedures outlined in an approved plan of operations.

(1) A fee shall be charged for such registration and use based upon a posted fee schedule. The fee schedule posted shall be subject to change upon sixty (60) days of notice.

(2) An adjustment of the fee may be made at the discretion of the Superintendent where a cooperative maintenance agreement is entered into with the operator.

(b) No commercial vehicle which exceeds roadway load limits specified by the Superintendent shall be used on roads administered by the National Park Service unless authorized in writing by the Superintendent, or unless authorized by an approved plan of operations.

(c) Should a commercial vehicle used in operations cause damage to roads, resources or other facilities of the National Park Service, the operator shall be liable for all damages so caused.

### §9.51 Damages and penalties.

(a) The operator shall be held liable for any damages to federally-owned or controlled lands, waters, or resources resulting from his failure to comply with either his plan of operations, or, where operations are continued pursuant to §9.33, failure to comply with the applicable permit or, where operations are temporarily approved under §9.38, failure to comply with the terms of that approval.

(b) The operator agrees, as a condition for receiving an approved plan of operations, that he will hold harmless the United States and its employees from any damages or claims for injury or death of persons and damage or loss of property by any person or persons arising out of any acts or omissions by the operator, his agents, employees or subcontractors done in the course of operations.

(c) Undertaking any operations within the boundaries of any unit in violation of this Subpart shall be deemed a trespass against the United States and shall be cause for revocation of approval of the plan of operations.

(1) When a violation by an operator under an approved plan of operations is discovered, and if it does not pose an

immediate threat of significant injury to federally-owned or controlled lands or waters, the operator will be notified in writing by the Superintendent and will be given ten (10) days to correct the violation; if the violation is not corrected within ten (10) days, approval of the plan of operations will be suspended until such time as the violation is corrected.

(2) If the violation poses an immediate threat of significant injury to federally-owned or controlled lands or waters, approval of the plan of operations will be immediately suspended until such time as the violation is corrected. The operator will be notified in writing within five (5) days of any suspension and shall have the right to appeal that decision under § 9.48.

(3) Failure to correct any violation or damage to federally owned or controlled lands, waters or resources caused by such violations will result in revocation of plan of operations approval.

[43 FR 57825, Dec. 8, 1978; 44 FR 37915, June 29, 1979]

### § 9.52 Public inspection of documents.

(a) When a Superintendent receives a request for permission for access on, across or through federally-owned or controlled lands or waters for the purpose of conducting operations, the Superintendent shall publish a notice of this request in a newspaper of general circulation in the county(s) in which the lands are situated, or in such publications as deemed appropriate by the Superintendent.

(b) Upon receipt of the plan of operations in accordance with § 9.35(c), the Superintendent shall publish a notice in the FEDERAL REGISTER advising the availability of the plan for public review and comment. Written comments received within thirty (30) days will become a part of the official record. As a result of comments received or if otherwise deemed appropriate by the Superintendent, he may provide additional opportunity for public participation to review the plan of operations.

(c) Any document required to be submitted pursuant to the regulations in this Subpart shall be made available for public inspection at the office of the Superintendent during normal business hours, unless otherwise available pursuant to § 9.51(b). This does not include those records only made available for the Superintendent's inspection under § 9.41 of this Subpart or those records determined by the Superintendent to contain proprietary or confidential information. The availability of such records for inspection shall be governed by the rules and regulations found at 43 CFR part 2.

[43 FR 57825, Dec. 8, 1978; 44 FR 37915, June 29, 1979]

## Subpart C [Reserved]

## Subpart D—Alaska Mineral Resource Assessment Program

AUTHORITY: 16 U.S.C. 410hh; 16 U.S.C. 3101, *et seq.*; 16 U.S.C. 1, *et seq.*; 16 U.S.C. 347; 16 U.S.C. 410bb; 16 U.S.C. 431; 16 U.S.C. 1131 *et seq.*

SOURCE: 56 FR 22652, May 16, 1991, unless otherwise noted.

### § 9.80 Purpose.

These regulations govern the conduct of the mineral resource assessment activities authorized under § 1010 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101, *et seq.*, in units of the National Park System in Alaska. The regulations are designed to ensure that authorized Federal agencies and their contractors carry out mineral resource assessment activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units, or biological or ecological systems in the units; is compatible with the purposes for which the units are established; and ensures that all units are left unimpaired and preserved for the enjoyment of present and future generations.

### § 9.81 Scope and applicability.

These regulations apply to all activities conducted by authorized agencies and their contractors on public lands in units of the National Park System in Alaska under the Alaska Mineral Resource Assessment program (AMRAP) as authorized by section 1010

of ANILCA. AMRAP activities conducted under this subpart shall be performed in accordance with ANILCA, the regulations in this subpart, the terms and conditions of an approved permit, and other applicable statutes and regulations, and amendments thereto.

### §9.82 Definitions.

The terms used in this subpart shall have the following meaning:

(a) *AMRAP* means the Alaska Mineral Resource Assessment Program authorized by section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150.

(b) *AMRAP Activities* means any project, method, technique or other activity incidental to mineral resource assessments conducted by authorized AMRAP agencies or their contractors in units of the National Park System in Alaska pursuant to section 1010 of ANILCA under an approved permit. AMRAP activities include access into, across, through, or over a unit of the National Park System for the conduct of those activities. Only mineral resource assessment methods or techniques that do not result in lasting impacts on park resources and values may be permitted as AMRAP activities. Mineral resource assessment techniques may include aerial photography; remote sensing; hand-sampling of geologic materials; hand-sampling or hand-augering methods for geochemical analyses; and geophysical techniques such as magnetic, electrical, electromagnetic, chemical, radioactive, and gravitational methods. Mineral resource assessment activities may be permitted as long as:

(1) No explosives are used,

(2) They are consistent with §9.86 of this subpart, and

(3) They are consistent with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) and National Park Service policies concerning wilderness management and the use of motorized equipment in wilderness areas.

Core and test drilling, including exploratory drilling of oil and gas test wells, are explicitly prohibited as AMRAP activities in units of the National Park System.

(c) *AMRAP agencies* means those agencies of the U.S. Department of the Interior that are authorized by the Secretary to perform mineral resource assessment activities pursuant to section 1010 of ANILCA.

(d) *Superintendent* means the Superintendent, or his/her designee, of the unit of the National Park System in Alaska where AMRAP activities are conducted or proposed to be conducted.

[56 FR 22652, May 16, 1991, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997]

### §9.83 Coordination of AMRAP activities in National Park System units.

(a) To facilitate compliance with this Subpart, each AMRAP agency will designate a coordinator for AMRAP activities in Alaska who will be the central point of communications with the NPS. The AMRAP agency is responsible for notifying the Regional Director of such designation.

(b) By January 1 of each year, the designated coordinators for the AMRAP agencies will, in consultation with the Regional Director, schedule an interagency meeting to be held by January 31 of each year. Representatives of the AMRAP agencies and the NPS will meet to develop a mutually agreeable schedule of AMRAP projects and activities in Alaska units of the National Park System. Where practicable, AMRAP agencies will consolidate their field activities, including access and field camps, to minimize disturbance to park resources and values.

### §9.84 Application requirements.

(a) By February 15 of each year, the designated coordinator of each AMRAP agency will forward to the Regional Director an application pursuant to §9.84(b) for proposed AMRAP projects and activities discussed and reviewed at the annual coordination meeting held under §9.83(b). Applications requiring additional information will be promptly returned to, or discussed with, the coordinator of the involved AMRAP agency to resolve any deficiencies.

(b) Applications will be submitted in a form and manner prescribed by the Regional Director and will contain at a minimum:

(1) The name of the AMRAP agency and responsible office and, where applicable, its designated contractual representative that will conduct the proposed activities;

(2) The name, office address and telephone numbers of the AMRAP agency persons or contractor persons who will supervise the proposed activities, and a list of all individual's names, addresses and telephone numbers who will be present at field activities;

(3) A list of any previous AMRAP activities or prior geologic and mineral resource assessments that have occurred in the proposed study area;

(4) A discussion of overall project objectives, schedules and products, and how the proposed activities for the current application relate to those objectives;

(5) A description of the activities proposed for approval, including a detailed description of the collection techniques, sampling methods and equipment to be used in each area;

(6) Topographic maps identifying the specific areas in units of the National Park System where the agency proposes to conduct each AMRAP activity;

(7) The approximate dates on which the AMRAP activities for each area are proposed to be commenced and completed;

(8) A description of access means and routes for each area in which work is proposed including an estimate of the number of flights or number of vehicle trips;

(9) A description of the field support requirements proposed for locations on lands within units of the National Park System, including camp sites, fuel storage areas, and any other requirements;

(10) A discussion which documents that proposed activities will be carried out in an environmentally sound manner utilizing the least impacting technology suitable for the purposes of the project; and

(11) A description of how any disturbed areas, such as camp sites, will be reclaimed.

### § 9.85 Environmental compliance.

Each AMRAP agency is responsible for obtaining all required Federal, State, and local permits and must provide sufficient information to the NPS to ensure appropriate compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), and other applicable statutes.

### § 9.86 Application review process and approval standards.

(a) The Regional Director will review applications submitted pursuant to § 9.84 and will ensure that final action is taken on such applications by April 15 of each year. If additional review time is necessary to ensure compliance with this Subpart or with other applicable laws, Executive Orders and regulations, the Regional Director will promptly notify the AMRAP agency coordinator of the anticipated date of a final decision.

(b) The Regional Director is responsible for approving AMRAP activities in units of the National Park System in Alaska.

(c) To be approved, proposed AMRAP activities must be designed to be carried out in an environmentally sound manner, as determined in appropriate environmental documentation, that:

(1) Does not result in lasting environmental impacts that appreciably alter the natural character of the units or the integrity of the biological or ecological systems in the units; and

(2) Is compatible with the purposes and values for which the units are established; and

(3) Does not adversely affect the natural and cultural resources, visitor use, or administration of the area.

### § 9.87 Permitting requirements and standards.

(a) AMRAP activities approved by the Regional Director may be conducted in units of the National Park System pursuant to a permit issued by the Superintendent in accordance with this subpart, 36 CFR 1.6, and other applicable regulations, guidelines and policies.

(b) The NPS may restrict the conduct of AMRAP activities in certain areas and during sensitive periods, such as nesting, calving and spawning seasons,

to minimize impacts to fish and wildlife or to comply with existing policies or directives.

(c) All project areas affected by AMRAP activities shall be left in an unimpaired state by the AMRAP agency and its contractors. All costs borne by the NPS in cleaning or restoring an area affected by AMRAP activities will be recoverable from the AMRAP agency.

(d) Copies of all published information or written reports resulting from AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director.

(e) The NPS reserves the right, without prior notice to the AMRAP agency or its contractors, to observe or inspect AMRAP activities to determine whether such activities are being conducted pursuant to this subpart and the terms and conditions of the approved permit.

### § 9.88 Permit modification, suspension, and cancellation.

(a) A proposal to modify, supplement, or otherwise amend an approved permit shall be made by an AMRAP agency by written request to the Regional Director. The Regional Director shall review and promptly act on the proposed modification pursuant to the standards set forth in § 9.86. An AMRAP agency may not undertake any of the activities proposed in the modification until the Regional Director approves the modification and the Superintendent amends the approved permit.

(b) The Superintendent may modify, suspend or cancel an AMRAP agency's permit by notifying the agency in writing, or orally in an emergency situation, when the Superintendent determines that:

(1) Changes to the permit are necessary to address conditions not previously anticipated; or

(2) There is imminent threat of serious, irreparable, or immediate harm or danger to public health and safety, or the natural and cultural resources and values of the unit; or

(3) The AMRAP agency or its contractors fails to comply with the provisions of ANILCA or of any other applicable law or regulation, the provisions and conditions of the approved permit and any modification thereto, or any written or field orders issued by the Superintendent.

(c) Modification, suspension, or cancellation of an approved permit pursuant to paragraph (b) of this section shall be effective immediately upon receipt of oral or written notice from the Regional Director or the Superintendent. Notices issued orally shall be followed by written notice sent by certified mail within three (3) working days confirming and explaining the action. Suspensions shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Superintendent. Cancellation notices shall state the reason for cancellation and shall be sent by the Superintendent to the AMRAP agency at least fourteen (14) days in advance of the date the cancellation will become effective.

(d) Suspension or cancellation of a permit to conduct AMRAP activities shall not relieve the AMRAP agency or its contractors of the obligation to restore any location in accordance with the requirements of this subpart and to comply with all other obligations specified in this subpart and in the permit.

### § 9.89 Appeals.

Written appeals made within 30 days of notification of a final decision by the Regional Director pursuant to this subpart shall be reviewed by the Director of the National Park Service. Resolution of any outstanding issues shall follow current Department of the Interior procedures for resolving interagency disputes.

## PART 10—DISPOSAL OF CERTAIN WILD ANIMALS

Sec.
10.1 Animals available.
10.2 Charges.
10.3 Application; requirements.
10.4 Shipment.

AUTHORITY: Secs. 1–3, 39 Stat. 535, as amended; 42 Stat. 1214, 45 Stat. 1644, secs. 1, 2, 52 Stat. 708, secs. 1, 2, 67 Stat. 495, 496; 16 U.S.C. 1, 1b, 1c, 2, 3, 36, 36a, 141c.

SOURCE: 24 FR 11054, Dec. 30, 1959, unless otherwise noted.

### § 10.1 Animals available.

From time to time there are surplus live elk, buffaloes and bears in Yellowstone National Park, and live buffaloes in Wind Cave National Park which the Secretary may, in his discretion, dispose of to Federal, State, county and municipal authorities for preserves, zoos, zoological gardens, and parks. When surplus live elk and buffaloes are available from these national parks, the Secretary may, in his discretion, dispose of these to individuals and private institutions.

### § 10.2 Charges.

No charge will be made for the animals, but the receiver will be required to make a deposit with the appropriate superintendent to defray the expense of capturing, crating, and transporting them to the point of shipment. The receiver may also be required to pay for the services of a veterinarian for testing, vaccinating, and treating the animals at the park for communicable diseases and parasites. Estimates of such expenses will be furnished by the appropriate superintendent upon request.

### § 10.3 Application; requirements.

(a) Applications for animals should be directed to the appropriate superintendent, stating the kind, number, age, and sex of animals desired. The post office address for Yellowstone National Park is Yellowstone Park, Wyoming, and for Wind Cave National Park is Hot Springs, South Dakota.

(b) Applicants desiring animals which are to be held in enclosures must show that they have suitable facilities for the care of the animals. Operators of game farms or private preserves must submit evidence of their authority to engage in such operations.

(c) When any animals are desired for liberation on private lands, the application must be accompanied by the written concurrence of the State agency having jurisdiction over wildlife. When any animals are desired for liberation on lands in the vicinity of lands owned or controlled by the Federal Government, the application must be accompanied by the written concurrence of the agency or agencies having jurisdiction over the Federally owned or controlled lands.

(d) Applications will not be granted when the animals are to be slaughtered, or are to be released without adequate protection from premature hunting.

### § 10.4 Shipment.

(a) Elk, buffaloes, and bears may be obtained at the Park and be removed by truck. Elk and buffaloes, when not transported by truck, must be crated individually for rail shipment in less than carload lots. Bears must be crated individually regardless of the number furnished or the character of the conveyance.

(b) The receiver must furnish shipping crates constructed in accordance with National Park Service specifications.

## PART 11—ARROWHEAD AND PARKSCAPE SYMBOLS

Sec.
11.1 Definitions.
11.2 Uses.
11.3 Power to revoke.
11.4 Penalties.

AUTHORITY: Sec. 3, 39 Stat. 535; 16 U.S.C. 3.

### § 11.1 Definitions.

(a) The term *Arrowhead Symbol*, as used in this part, refers to the insignia of the National Park Service prescribed as its official symbol by notice published in the FEDERAL REGISTER of March 15, 1962 (27 FR 2486). That symbol, use of which had been limited by notice published in the FEDERAL REGISTER of October 22, 1968 (33 FR 15605–06), has been reinstated as the Service's official emblem. The term ''Parkscape Symbol,'' as used in this part, is the same insignia referred to in the FEDERAL REGISTER notice of October 22, 1968, as the ''National Park Service Symbol.'' The ''Parkscape Symbol'' has been prescribed as the official tie tack or pin to be worn by all National Park Service uniformed employees. Moreover, the tie tack or pin may be worn by employees of the Service when not in uniform as a part of their civilian attire.

(b) The term *commercial use* as used in the regulations of this part refers to use of the ''Arrowhead Symbol'' or the ''Parkscape Symbol'' on souvenirs or

other items of merchandise presented for sale to the public by private enterprise operating either within or outside of areas of the National Park System.

(c) The term *noncommercial use* as used in the regulations of this part refers to nongovernmental use of the ''Arrowhead Symbol'' or the ''Parkscape Symbol'' other than as described in paragraph (c) of this section.

[35 FR 8734, June 5, 1970, as amended at 62 FR 30234, June 3, 1997]

### § 11.2 Uses.

The Director may permit the reproduction, manufacture, sale, and use of the ''Arrowhead Symbol'' or the ''Parkscape Symbol'', with or without charge, for uses that will contribute to purposes of education and conservation as they relate to the program of the National Park Service. All other uses are prohibited.

[36 FR 16508, Aug. 21, 1971]

### § 11.3 Power to revoke.

Permission granted under this part by the Director may be rescinded by him at any time upon a finding that the use of the symbol or symbols involved is injurious to their integrity or inconsistent with the purposes of the National Park Service in the fields of conservation and recreation, or for disregard of any limitations or terms contained in the permits.

[35 FR 8734, June 5, 1970, as amended at 36 FR 16508, Aug. 21, 1971]

### § 11.4 Penalties.

Whoever manufactures, sells or uses the ''Arrowhead Symbol'' or the ''Parkscape Symbol'' in violation of the regulations of this part shall be subject to the penalties prescribed in section 701 of title 18 of the United States Code.

[35 FR 8734, June 5, 1970, as amended at 36 FR 16508, Aug. 21, 1971]

## PART 12—NATIONAL CEMETERY REGULATIONS

Sec.
12.1 Applicability and scope.
12.2 Purpose of National Cemeteries.
12.3 Definitions.
12.4 Special events and demonstrations.
12.5 Interments.
12.6 Disinterments and exhumations.
12.7 Headstones and markers.
12.8 Memorial headstones and markers.
12.9 Commemorative monuments.
12.10 Floral and commemorative tributes.
12.11 Recreational activities.
12.12 Information collection.

AUTHORITY: 16 U.S.C. 1, 3, 9a, and 462(k); E.O. 6166, 6228 and 8428.

SOURCE: 51 FR 8979, Mar. 14, 1986, unless otherwise noted.

### § 12.1 Applicability and scope.

The regulations in this part apply to the national cemeteries administered by the National Park Service. These regulations supplement regulations found in parts 1–5 and 7 of this chapter and provide procedural guidance for the administration, operation and maintenance of these cemeteries.

### § 12.2 Purpose of National Cemeteries.

National cemeteries are established as national shrines in tribute to the gallant dead who have served in the Armed Forces of the United States. Such areas are protected, managed and administered as suitable and dignified burial grounds and as significant cultural resources. As such, the authorization of activities that take place in national cemeteries is limited to those that are consistent with applicable legislation and that are compatible with maintaining the solemn commemorative and historic character of these areas.

### § 12.3 Definitions.

The following definitions apply only to the regulations in this part:

*Burial section* means a plot of land within a national cemetery specifically designated to receive casketed or cremated human remains.

*Close relative* means a surviving spouse, parent, adult brother or sister, or adult child.

*Commemorative monument* means a monument, tablet, structure, or other commemorative installation of permanent materials to honor more than one veteran.

*Demonstration* means a demonstration, picketing, speechmaking, marching, holding a vigil or religious service or any other like form of conduct that

involves the communication or expression of views or grievances, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.

*Eligible person* means an individual authorized by Federal statute and VA Policy to be interred or memorialized in a national cemetery.

*Government headstone* means a standard upright stone, provided by the Veterans Administration, of the same design currently in use in a national cemetery to identify the interred remains.

*Gravesite reservation* means a written agreement executed between a person and the National Park Service to secure a gravesite prior to the death of an eligible person.

*Headstone* means a permanent stone placed vertically on a grave to identify the interred remains.

*Historic enclosure* means a permanent fence, wall, hedge, or other structure that surrounds the burial sections and defines the unique historic boundary of a national cemetery.

*Marker* means a permanent device placed horizontally on a grave to identify the interred remains.

*Memorial headstone* means a private or government headstone placed in a memorial section of a national cemetery with the words ''In Memory Of'' inscribed to honor a deceased eligible person whose remains could not be interred in the national cemetery.

*NPS Policy* means the National Park Service's *Guidelines for National Cemeteries, NPS–61.*

*Private headstone* means an upright stone provided by a person at no expense to the government and in lieu of a government headstone.

*Recreational activity* means any form of athletics, sport or other leisure pursuit or event, whether organized or spontaneous, that is engaged in by one or more persons for the primary purpose of exercise, relaxation or enjoyment, including but not limited to the following: jogging, racing, skating, skateboarding, ball playing, kite flying, model airplane flying, throwing objects through the air, sunbathing, bicycling and picknicking. This term does not include walking, hiking or casual strolling.

*Special event* means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival or similar activity that is not a demonstration, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.

*VA Policy* means the current editions of the Veterans Administration's Manuals that pertain to the administration of the National Cemetery System.

### § 12.4 Special events and demonstrations.

Conducting a special event or demonstration, whether spontaneous or organized, is prohibited except for official commemorative events conducted for Memorial Day, Veterans Day and other dates designated by the superintendent as having special historic and commemorative significance to a particular national cemetery. Committal services are excluded from this restriction.

### § 12.5 Interments.

(a) *Who may be interred.* A person's eligibility for burial in a national cemetery is determined in accordance with the provisions of Federal statutory law. Interments are conducted in accordance with NPS policy and VA Policy.

(b) *Burial permit.* (1) A burial permit is required in accordance with the laws and regulations of the State and local municipality within whose boundaries the cemetery is located.

(2) The remains of a member of the Armed Forces who dies on active duty may be interred prior to receipt of a burial permit.

(3) The superintendent shall process a burial permit in accordance with VA Policy.

(c) *Gravesite assignment.* (1) Gravesite assignment and allotment are made according to VA Policy which specifies that only one gravesite is authorized

for the burial of an eligible member of the Armed Forces and eligible immediate family members. Exceptions to this practice may be approved only by the Director.

(2) The superintendent is responsible for the actual assignment of a gravesite.

(3) The superintendent may not accept a new gravesite reservation. A gravesite reservation granted in writing prior to the adoption of the one-gravesite-per-family-unit restriction shall be honored as long as the person remains eligible.

(d) *Burial sections.* (1) The superintendent of each national cemetery shall develop an interment plan for burial sections in keeping with the historic character of the national cemetery, to be approved by the Regional Director.

(2) The superintendent shall specify gravesite dimensions that conform to the historic design of the national cemetery.

(3) Expansion of a burial section is prohibited without the approval of the Regional Director.

(4) An interment is authorized only within a burial section; the superintendent may not authorize an interment within a memorial section.

(5) Cremated remains may be scattered in a national cemetery in conformance with the provisions of § 2.62 of this chapter and applicable State laws.

(6) Expansion of a national cemetery outside the confines of its historic enclosure is prohibited.

### § 12.6 Disinterments and exhumations.

(a) Interment of an eligible person's remains is considered permanent. Disinterment and removal of remains are allowed only for the most compelling of reasons and may be accomplished only under the supervision of the superintendent.

(b) Except for a directed exhumation conducted pursuant to paragraph (f) of this section, a disinterment is allowed only pursuant to the terms and conditions of a permit issued by the superintendent.

(c) A disinterment shall be accomplished at no cost to the National Park Service. The superintendent shall establish a fee designed to recover the costs associated with supervising and administering a disinterment, including the costs of opening and closing the grave and redressing any disturbed graves or headstones.

(d) The next-of-kin is responsible for making all arrangements and incurring all financial obligations related to a disinterment. These arrangements and obligations include, but are not limited to the following:

(1) Compliance with State and local health laws and regulations;

(2) Engaging a funeral director;

(3) Recasketing the remains;

(4) Rehabilitation of the gravesite according to conditions established by the superintendent;

(5) Providing the superintendent a notorized affidavit by each living close relative of the deceased and by the person who directed the initial interment, if living, and even though the legal relationship of such person to the decedent may have changed, granting permission for the disinterment; and

(6) Providing the superintendent a sworn statement, by a person having first hand knowledge thereof, that those who supplied such affidavits comprise all the living close relatives of the decedent, including the person who directed the initial interment.

(e) The following are prohibited:

(1) Failure to obtain a permit required pursuant to this section;

(2) Violation of a condition established by the superintendent or of a term or condition of a permit issued in accordance with this section; or

(3) Failure to pay a fee prescribed by the superintendent in accordance with this section.

(f) The directed exhumation of an eligible person's remains shall be accomplished upon receipt by the superintendent of an order issued by a State or Federal court of competent jurisdiction. The superintendent shall retain court orders and other pertinent documents in the national cemetery files as a permanent record of the action.

(g) To the extent practicable, a directed exhumation shall be accomplished without expense to the National Park Service and without direct participation by national cemetery employees.

(h) The superintendent shall coordinate a directed exhumation with the ordering court, assure compliance with all State and local laws and supervise disinterment activities on site.

(i) If reinterment of exhumed remains is to be elsewhere, the superintendent may reassign the gravesite for use in connection with another interment.

### § 12.7 Headstones and markers.

(a) Government headstones and markers authorized to be furnished at government expense are provided in accordance with NPS Policy and VA Policy.

(b) The erection of a marker or monument at private expense to mark a grave in lieu of a government headstone or marker is allowed only in certain national cemetery sections in which private headstones and markers were authorized as of January 1, 1947, and only with the prior approval of the Director. The name of the person(s) responsible for the purchase and erection of the private headstone or marker may not appear on the headstone or marker or be identified elsewhere in the cemetery as the donor(s) of the private headstone or marker.

(c) A person who requests authorization to erect a private headstone or marker shall provide the following information:

(1) A list of the names of each person to be inscribed upon the private headstone or marker;

(2) The written approval of the next-of-kin and the person who directed the burial of each person whose name is to be inscribed; and

(3) A scale plan depicting the details of design, materials, finish, carving, lettering and arrangement of the inscription and the foundation of the proposed private headstone or marker.

(d) The Director's approval of a request is conditioned upon the applicant's granting to the National Park Service the substantive right to remove and dispose of the private headstone or marker if, after it is installed, the applicant fails to maintain the private headstone or marker in a condition specified by the Director.

(e) When a private headstone or marker has been erected at a veteran's grave in a national cemetery, and the next-of-kin desires to inscribe thereon the name and appropriate data pertaining to an eligible family member of the deceased whose remains will not be interred, such inscription may be accomplished with the prior approval of the superintendent. Appropriate commemorative data may be inscribed when space permits. The words ''In Memoriam'' or ''In Memory Of'' are mandatory elements of such an inscription.

(f) Except as may be authorized by the Director or by Federal statutory law for making a group burial, the erection of a mausoleum, an overground vault or a headstone or marker determined by the superintendent not to be in keeping with the historic character of the national cemetery is prohibited. An underground vault may be placed at the time of interment at no expense to the National Park Service.

### § 12.8 Memorial headstones and markers.

(a) *Who may be memorialized.* (1) A person's eligibility for memorialization in a national cemetery is determined in accordance with the provisions of Federal statutory law.

(2) The superintendent may authorize the installation of a memorial headstone or marker of an eligible person provided that no more than one individual memorial headstone or marker is authorized for each eligible person. The erection of an individual memorial marker to a person is not allowed in the same national cemetery in which the decedent's name is inscribed on a group burial headstone or marker.

(b) *Application.* (1) The person eligible to submit an application requesting a memorial headstone or marker is the next-of-kin of the decedent to be memorialized. An application received from a close relative will be honored if it is submitted on behalf of the next-of-kin or if the next-of-kin is deceased.

(2) An applicant for a memorial headstone or marker shall submit such a request to the superintendent.

### § 12.9 Commemorative monuments.

(a) *Application.* (1) A person requesting authorization to erect a commemorative monument shall submit such a request to the Director. The Director's

approval should be obtained prior to fabrication of the commemorative marker since approval for installation is conditioned upon compliance with other specifications found in this section and all applicable provisions of this part.

(2) An applicant for authorization to erect a commemorative monument shall include the following information in the application:

(i) A list of the persons to be memorialized and the other data desired to be inscribed on the commemorative monument; and

(ii) A scale plan depicting the details of the design, materials, finish, carving, lettering and the arrangement of the inscription proposed for the commemorative monument.

(b) *Specifications.* (1) The Director may only authorize a commemorative monument that conforms to the type, size, materials, design, and specifications prescribed for the historic design of the individual cemetery section in which it is proposed for installation.

(2) The Director may not approve a commemorative monument that bears an inscription that includes the name of the person(s) responsible for its purchase or installation.

(c) *Expense.* A commemorative monument approved by the Director may be installed only under the conditions that there be no expense or liability incurred by the National Park Service in connection with its purchase, fabrication, transportation, delivery and erection.

(d) Title to a commemorative monument vests in the National Park Service upon its acceptance by an official representative of the Director.

### § 12.10 Floral and commemorative tributes.

The placement on a grave of fresh cut or artificial flowers in or on a metal or other non-breakable rod or container designated by the superintendent is allowed at times designated by the superintendent. The placement of a statue, vigil light, or other commemorative object on a grave, or the securing or attaching of any object to a headstone, marker or commemorative monument is prohibited.

### § 12.11 Recreational activities.

Engaging in a recreational activity is prohibited.

### § 12.12 Information collection.

The information collection requirements contained in §§ 12.6, 12.7, 12.8 and 12.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. The information is being collected to obtain information necessary to issue permits and will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

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AUTHORITY: 16 U.S.C. 1, 3, 462(k), 3101, *et seq.*; Subpart N also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681–259, October 21, 1998; Pub. L. 106–31, 113 Stat. 72, May 21, 1999; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

SOURCE: 71 FR 69333, Nov. 30, 2006, unless otherwise noted.

## Subpart A—Administrative Provisions

### § 13.1 Definitions.

The following definitions shall apply to all regulations contained in this part:

*Aircraft* means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to airplanes, helicopters and gliders.

*Airstrip* means visible, marked, or known aircraft landing areas in park areas. Airstrips may be marked with cones, lights, flagging, or windsocks, or be unmarked but recognizable because they have been cleared of vegetation or other obstructions.

*ANILCA* means the Alaska National Interest Lands Conservation Act (94 Stat. 2371; Pub. L. 96–487 (December 2, 1980)).

*Carry* means to wear, bear or carry on or about the person and additionally, in the case of firearms, within or

upon a device or animal used for transportation.

*Downed aircraft* means an aircraft that as a result of mechanical failure or accident cannot take off.

*Facility* means buildings, structures, park roads as defined by §1.4, parking lots, campgrounds, picnic areas, paved trails, and maintenance support yards.

*Firearm* means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designated to or may readily be converted to expel a projectile by the action of expanded gases, except that it does not include a pistol or rifle powered by compressed gas. The term ''firearm'' also includes irritant gas devices.

*Fish and wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, produce, egg, or offspring thereof, or the dead body or part thereof.

*Fossil* means any remains, impression, or trace of any animal or plant of past geological ages that has been preserved, by natural processes, in the earth's crust.

*Gemstone* means a silica or igneous mineral including, but not limited to:

(1) Geodes;

(2) Petrified wood; and

(3) Jade, agate, opal, garnet, or other mineral that when cut and polished is customarily used as jewelry or other ornament.

*Motorboat* refers to a motorized vessel other than a personal watercraft.

*National Preserve* shall include the following areas of the National Park System: Alagnak National Wild River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley Rivers National Preserve.

*Net* means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a landing net.

*Off-road vehicle* means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland or other natural terrain, except snowmachines or snowmobiles as defined in this chapter.

*Park areas* means lands and waters administered by the National Park Service within the State of Alaska.

*Person* means any individual, firm, corporation, society, association, partnership, or any private or public body.

*Possession* means exercising dominion or control, with or without ownership, over weapons, traps, nets or other property.

*Public lands* means lands situated in Alaska which are federally owned lands, except—

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

*Snowmachine or snowmobile* means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis on contact with the snow.

*Take or taking* as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Temporary* means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

*Trap* means a snare, trap, mesh, or other implement designed to entrap animals other than fish.

*Unload* means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are stored in such a manner as to prevent their ready use; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile into the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

*Weapon* means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, crossbow, blow gun, speargun, hand thrown spear, slingshot, explosive device, or any other implement designed to discharge missiles into the air or under the water.

[71 FR 69333, Nov. 30, 2006, as amended at 73 FR 3185, Jan. 17, 2008]

### § 13.2 Applicability and scope.

(a) The regulations contained in part 13 are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The general regulations contained in this chapter are applicable except as modified by part 13.

(b) Subparts A through F contain regulations applicable to park areas. Such regulations amend in part the general regulations contained in this chapter. The regulations in subparts A through F govern use and management, including subsistence activities, within the park areas, except as modified by special park regulations in subparts H through V.

(c) Subpart F contains regulations applicable to subsistence uses. Such regulations apply on federally owned lands and interests therein within park areas where subsistence is authorized. Subsistence uses are not allowed in Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park. The regulations in subpart F amend in part the general regulations contained in this chapter and the regulations contained in subparts A through C of part 13.

(d) Subparts H through V contain special regulations for specific park areas. Such regulations amend in part the general regulations contained in this chapter and the regulations contained in subparts A through F of part 13.

(e) Subpart E of this part 13 contains regulations applicable to authorized visitor service providers operating within certain park areas. The regulations in subpart E amend in part the general regulations contained in this chapter.

(f) For purposes of this chapter, ''federally owned lands'' does not include those land interests:

(1) Tentatively approved to the State of Alaska; or

(2) Conveyed by an interim conveyance to a Native corporation.

### § 13.4 Information collection.

The information collection requirements contained in subparts C and G, and §§ 13.55, 13.440, 13.450, 13.485, and 13.495 are necessary for park Superintendents to issue concession contracts and special use permits, and have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Information collections associated with the award of concession contracts are covered under OMB control number 1024–0125; the information collections associated with the issuance of special use permits are covered under OMB control number 1024–0026.

## Subpart B—General Provisions

### § 13.20 Obstruction of airstrips.

(a) A person may not place an object on the surface of an airstrip that, because of its nature or location, might cause injury or damage to an aircraft or person riding in the aircraft.

(b) A person may not dig a hole or make any kind of excavation, or drive a sled, tractor, truck, or any kind of vehicle upon an airstrip that might make ruts, or tracks, or add to an accumulation of tracks so as to endanger aircraft using the airstrip or persons riding in the aircraft.

**§ 13.25 Camping.**

(a) Camping is authorized in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section, the provisions of § 13.50, or as set forth for specific park areas in subparts H through V of this part.

(b) *Site time-limits*. Camping is authorized for 14 consecutive days in one location. Camping is prohibited after 14 consecutive days in one location unless the camp is moved at least 2 miles or unless authorized by the Superintendent. A camp and associated equipment must be relocated immediately if determined by the Superintendent to be interfering with public access or other public interests or adversely impacting park resources.

(c) *Designated campgrounds*. Except at designated campgrounds, camping is prohibited on NPS facilities. The Superintendent may establish restrictions, terms, and conditions for camping in designated campgrounds. Violating restrictions, terms, and conditions is prohibited.

**§ 13.26 Picnicking.**

Picnicking is authorized in park areas except where such activity is prohibited or otherwise restricted by the Superintendent. The public will be notified by one or more of the following methods—

(a) Signs posted at conspicuous locations, such as normal points of entry or reasonable intervals along the boundary of the affected park locale;

(b) Maps available in the office of the Superintendent and other places convenient to the public;

(c) Publication in a newspaper of general circulation in the affected area; or

(d) Other appropriate methods, including park Web sites, brochures, maps, and handouts.

**§ 13.30 Weapons, traps and nets.**

(a) Irritant chemical devices, including bear spray, may be carried, possessed, and used in accordance with applicable Federal and non-conflicting State laws, except when prohibited or restricted under § 13.50.

(b) Paragraphs (d) through (g) of this section apply to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(c) Except as provided in this section and § 2.4 of this chapter, the following are prohibited—

(1) Possessing a weapon, trap, or net;

(2) Carrying a weapon, trap, or net;

(3) Using a weapon, trap, or net.

(d) Firearms may be carried, possessed, and used within park areas in accordance with applicable State and Federal laws, except where such carrying, possession, or use is prohibited or otherwise restricted under § 13.50.

(e) Traps, bows and other implements (other than firearms) authorized by applicable State and Federal law for the taking of fish and wildlife may be carried, possessed, and used within park areas only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(f) In addition to the authorities provided in paragraphs (d) and (e) of this section, weapons (other than firearms), traps, and nets may be possessed within park areas provided such weapons, traps, or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(g) Notwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence uses, including the taking of wildlife under § 13.480, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

**§ 13.35 Preservation of natural features.**

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park, and the former Katmai National Monument.

(b) Gathering or collecting natural products is prohibited except as allowed by this section, § 2.1 of this chapter, or part 13, subparts F through V. For purposes of this paragraph, ''natural products'' includes living or dead

fish and wildlife or parts or products thereof, plants or parts or products thereof, live or dead wood, fungi, seashells, rocks, and minerals.

(c) Gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted—

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans; and

(4) Dead wood on the ground for use as fuel for campfires within the park area.

(d) The Superintendent may authorize, with or without conditions, the collection of dead standing wood in all or a portion of a park area. Collecting dead or downed wood in violation of terms and conditions is prohibited.

(e) Surface collection, by hand (including hand-held gold pans) and for personal recreational use only, of rocks and minerals is permitted, with the following exceptions:

(1) Collection of silver, platinum, gemstones and fossils is prohibited; and

(2) Collection methods that may result in disturbance of the ground surface, such as the use of shovels, pickaxes, sluice boxes, and dredges, are prohibited.

(f) The Superintendent may limit the size and quantity of the natural products that may be gathered or possessed.

(1) Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent will prohibit the gathering or otherwise restrict the collecting of natural products.

(2) The Superintendent will notify the public of portions of a park area in which closures or restrictions apply by:

(i) Publishing a notice in at least one newspaper of general circulation in the State and providing a map available for public inspection in the office of the Superintendent; or

(ii) Posting appropriate signs.

(g) *Subsistence*. Nothing in this section shall apply to local rural residents authorized to take renewable resources.

**§ 13.40 Taking of fish and wildlife.**

(a) [Reserved]

(b) *Fishing*. Fishing is permitted in all park areas in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with § 2.3 of this chapter.

(c) *Commercial fishing*. The exercise of valid commercial fishing rights or privileges obtained prior to December 2, 1980, pursuant to existing law in Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of the Wrangell–St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, including the use of these park areas for existing campsites, cabins and other structures, motorized vehicles, and aircraft landings on existing airstrips, may continue provided that all such use is directly incident to the exercise of those rights or privileges.

(1) *Restrictions*. The Superintendent may restrict or revoke the exercise of a valid commercial fishing right or privilege based upon specific findings, following public notice and an opportunity for response, that continuation of such use of a park area constitutes a direct threat to or significant impairment of the values and purposes for which the park area was established.

(2) *Expansion of uses*. (i) A person holding a valid commercial fishing right or privilege may expand his or her level of use of a park area beyond the level of such use in 1979 only pursuant to the terms of a permit issued by the Superintendent.

(ii) The Superintendent may deny a permit or otherwise restrict the expanded use of a park area directly incident to the exercise of such rights or privileges, if the Superintendent determines, after conducting a public hearing in the affected locality, that the expanded use constitutes either:

(A) A significant expansion of the use of a park area beyond the level of such

use during 1979 (taking into consideration the relative levels of use in the general vicinity, as well as the applicant's levels of use); or

(B) A direct threat to, or significant impairment of, the values and purposes for which the park area was established.

(d) *Hunting and trapping.* (1) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulations.

(2) Violating a provision of either Federal or non-conflicting State law or regulation is prohibited.

(3) Engaging in trapping activities as the employee of another person is prohibited.

(4) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine until after 3 a.m. on the day following the day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(5) Persons transporting wildlife through park areas must identify themselves and the location where the wildlife was taken when requested by an NPS employee or other authorized person.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish or wildlife in accordance with the provisions of § 13.50 of this chapter. Except in emergency conditions, such restrictions shall take effect only after the Superintendent has consulted with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

### § 13.45 Unattended or abandoned property.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park, or as further restricted for specific park areas in subparts H through V of this part.

(b) *Personal property.* (1) Leaving personal property longer than 4 months is prohibited. The Superintendent may authorize property to be left in place for more than 4 months.

(2) Identification information is required for all personal property left in park areas. Identification information consists of the owner's name, home address, telephone number, date that the property was left, and the type of fuel if the property contains fuel. This information must be—

(i) Labeled on the property; or

(ii) Provided to the Superintendent.

(3) All property must be stored in such a manner that wildlife is unable to access the contents. Storing property in a manner that wildlife can access contents is prohibited.

(4) Leaving fuel in more than one location in a park area or leaving more than 30 gallons of fuel is prohibited unless authorized by the Superintendent.

(5) Storing fuel within 100 feet of a water source, high water mark of a body of water, or mean high tide is prohibited unless stored in a spill proof overpack container or authorized by the Superintendent. Fuel must be contained in an undamaged and closed fuel container designed for fuel storage. Fueling from containers must occur in such a manner that any spillage would be prevented from coming into contact with water, soil, or vegetation. Failure to properly contain or prevent spillage is prohibited.

(6) Leaving property unattended for longer than 24 hours on facilities is prohibited unless authorized by the Superintendent.

(7) Property left in violation of this section is prohibited and subject to impoundment and, if abandoned, disposal or forfeiture.

(c) The Superintendent may designate areas where personal property may not be left unattended for any time period, establish limits on the amount and type of personal property that may be left unattended, prescribe the manner in which personal property may be left unattended, or establish limits on the length of time personal property may be left unattended. Such designations and restrictions shall be

published in at least one newspaper of general circulation within the State, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated on a map which shall be available for public inspection at the office of the Superintendent, or designated by the posting of appropriate signs, or both.

(d) In the event unattended property interferes with the safe and orderly management of a park area or is causing damage to the resources of the area, it may be impounded by the Superintendent at any time.

**§ 13.50 Closure procedures.**

(a) *Authority*. The Superintendent may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria*. In determining whether to close an area or restrict an activity on an emergency basis, the Superintendent shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the park area was established.

(c) *Emergency Closures*. (1) Emergency closures or restrictions relating to the taking of fish and wildlife shall be accomplished by notice and hearing.

(2) Other emergency closures shall become effective upon notice as prescribed in paragraph (f) of this section; and

(3) No emergency closure or restriction shall extend for a period exceeding 30 days, nor may it be extended.

(d) *Temporary closures or restrictions*. (1) Temporary closures or restrictions relating to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures or restrictions, and other locations as appropriate;

(2) Temporary closures shall be effective upon notice as prescribed in paragraph (f) of this section; and

(3) Temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

(e) *Permanent closures or restrictions*. Permanent closures or restrictions shall be published as rulemaking in the FEDERAL REGISTER with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate.

(f) *Notice*. Emergency, temporary, and permanent closures or restrictions shall be:

(1) Published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Superintendent and other places convenient to the public;

(2) Designated by the posting of appropriate signs; or

(3) Both.

(g) *Openings*. In determining whether to open an area to public use or activity otherwise prohibited, the Superintendent shall provide notice in the FEDERAL REGISTER and shall, upon request, hold a hearing in the affected vicinity and other locations as appropriate prior to making a final determination.

(h) *Facility closures and restrictions*. The Superintendent may close or restrict specific facilities for reasons of public health, safety, and protection of public property for the duration of the circumstance requiring the closure or restriction. Notice of facility closures and restrictions will be available for inspection at the park visitor center. Notice will also be posted near or within the facility, published in a newspaper of general circulation in the affected vicinity, or made available to the public by such other means as

deemed appropriate by the Superintendent. Violating facilities closures or restrictions is prohibited.

(i) Except as otherwise specifically permitted under the provisions of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

### § 13.55 Permits.

(a) *Application*. (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application.

(2) The Superintendent shall grant or deny the application in writing within 45 days. If this deadline cannot be met for good cause, the Superintendent shall so notify the applicant in writing. If the permit application is denied, the Superintendent shall specify in writing the reasons for the denial.

(b) *Denial and appeal procedures*. (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made.

(ii) The basis for the permit applicant's disagreement with the Superintendent's findings and conclusions; and

(iii) Whether or not the permit applicant requests an informal hearing before the Regional Director.

(2) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

## Subpart C—Cabins

ADMINISTRATIVE PROVISIONS

### § 13.100 Purpose and policy.

The policy of the National Park Service is to manage the use, occupancy and disposition of cabins and other structures in park areas in accordance with the language and intent of ANILCA, the National Park Service Organic Act (16 U.S.C. 1 *et seq.*) and other applicable law. Except as Congress has directly and specifically provided to the contrary, the use, occupancy and disposition of cabins and other structures in park areas shall be managed in a manner that is compatible with the values and purposes for which the National Park System and these park areas have been established. In accordance with this policy, this subpart governs the following authorized uses of cabins and other structures in park areas:

(a) Use and/or occupancy pursuant to a valid existing lease or permit;

(b) Use and occupancy of a cabin not under valid existing lease or permit;

(c) Use for authorized commercial fishing activities;

(d) Use of cabins for subsistence purposes;

(e) Public use cabins; and

(f) Use of temporary facilities related to the taking of fish and wildlife.

### § 13.102 Applicability.

Unless otherwise specified, this subpart applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

### § 13.104 Definitions.

The following definitions apply to this subpart:

*Cabin* means a small, usually one-story dwelling of simple construction, completely enclosed, with a roof and

walls which may have windows and door(s).

*Claimant* means a person who has occupied and used a cabin or other structure as a primary, permanent residence for a substantial portion of the time, and who, when absent, has the intention of returning to it as his/her primary, permanent residence. Factors demonstrating a person's primary, permanent residence include, but are not limited to documentary evidence, e.g. the permanent address indicated on licenses issued by the State of Alaska and tax returns and the location where the person is registered to vote.

*Immediate family member* means a claimant's spouse, or a grandparent, parent, brother, sister, child or adopted child of a claimant or of the claimant's spouse.

*Possessory interest* means the partial or total ownership of a cabin or structure.

*Right of occupancy* means a valid claim to use or reside in a cabin or other structure.

*Shelter* means a structure designed to provide temporary relief from the elements and is characterized as a lean-to having one side open.

*Substantial portion of the time* means at least 50 percent of the time since beginning occupancy and at least 4 (four) consecutive months of continuous occupancy in every calendar year after 1986.

*Temporary campsite* means a natural, undeveloped area suitable for the purpose of overnight occupancy without modification.

*Temporary facility* means a structure or other manmade improvement that can be readily and completely dismantled and/or removed from the site when the authorized use terminates. The term does not include a cabin.

*Tent platform* means a structure, usually made of manufactured timber products, constructed to provide a solid, level floor for a tent, with or without partial walls not exceeding three feet in height above the floor, and having only the tent fabric, the ridge pole and its support poles extending higher than three feet above the floor.

GENERAL PROVISIONS

### § 13.108 Permit application procedures.

Except as otherwise specified in this subpart, the procedures set forth in § 13.55(a) govern application for any permit authorized pursuant to this subpart.

### § 13.110 Notice and comment on proposed permit.

Before a permit for the use and occupancy of a cabin or other structure is issued pursuant to this subpart, the Superintendent shall publish notice of the proposed issuance in the local media and provide a public comment period of at least sixty days, subject to the following exceptions: Prior notice and comment are not required for a permit authorizing use and occupancy for 14 days or less of a public use cabin or use and occupancy of a temporary facility for the taking of fish or wildlife for sport or subsistence purposes.

### § 13.112 Permit revocation.

(a) The superintendent may revoke a permit or lease issued pursuant to this subpart when the superintendent determines that the use under the permit or lease is causing or may cause significant detriment to the principal purposes for which the park area was established. *Provided, however*, that if a permittee submits a written request for a hearing concerning the revocation, based on the cause listed above, of a permit or lease issued pursuant to §§ 13.130, 13.136–13.149, or 13.160–168 of this subpart, the matter shall be assigned to an administrative law judge who, after notice and hearing and based on substantial evidence in the administrative record as a whole, shall render a recommended decision for the superintendent's review. The superintendent shall then accept, reject or modify the administrative law judge's recommended decision in whole or in part and issue a final decision in writing.

(b) The superintendent may revoke or modify any permit or lease issued pursuant to this subpart when the permittee violates a term of the permit or lease.

**§ 13.114 Appeal procedures.**

The procedures set forth in § 13.55(b) govern appeals of a permit denial, a denial of a permit renewal, a permit revocation and a superintendent's final decision on a permit revocation issued pursuant to § 13.112(a).

**§ 13.116 Permittee's interest.**

(a) A permittee shall not accrue a compensable interest in a cabin or other structure in a park area unless specifically authorized by Federal statutory law.

(b) A cabin or other structure in a park area may not be sold, bartered, exchanged, assigned or included as a portion of any sale or exchange of other property by a permittee unless specifically authorized by Federal statutory law.

(c) The Superintendent shall determine the extent and nature of a permittee's possessory interest at the time a permit is issued or denied.

**§ 13.118 Cabin site compatibility.**

The Superintendent shall establish permit conditions that require a permittee—

(a) When constructing, maintaining or repairing a cabin or other structure authorized under this subpart, to use materials and methods that blend with and are compatible with the immediate and surrounding landscape; and

(b) When terminating an activity that involves a structure authorized under this subpart, to dismantle and remove the structure and all personal property from the park area within a reasonable period of time and in a manner consistent with the protection of the park area.

**§ 13.120 Access.**

(a) A permittee under this subpart who holds a permit for use and occupancy of a cabin or other structure located on public lands in a park area, not under valid existing lease or permit in effect on December 2, 1980, does not have a ''valid property or occupancy interest'' for purposes of ANILCA section 1110(b) and its implementing regulations.

(b) When issuing a permit under this subpart, the Superintendent shall provide for reasonable access which is appropriate and consistent with the values and purposes for which the park area was established.

(c) All impacts of the access to a cabin or other structure are deemed to be a part of, and shall be considered in any evaluation of, the effects of a use authorized by a permit issued under this subpart.

**§ 13.122 Abandonment.**

(a) An existing cabin or other structure not under valid lease or permit, and its contents, are abandoned:

(1) When no permit application has been received for its use and occupancy before October 20, 1987, one year after the effective date of this subpart; or

(2) One year after a permit application for its use and occupancy has been denied or a permit for its use and occupancy has been revoked, denied or has expired.

(b) A claimant or applicant whose application for a permit has been denied or whose permit has expired may remove all or a portion of a cabin or other structure and its contents from a park area, to the extent of his or her possessory interest and under conditions established by the Superintendent, until the date the cabin or structure is considered abandoned.

(c) The contents of a cabin or other structure are considered abandoned when the cabin or other structure is considered abandoned.

(d) A person whose permit for the use and occupancy of a cabin or other structure is revoked may remove his or her personal property from a park area under conditions established by the Superintendent until one year after the date of the permit's revocation.

(e) The Superintendent shall dispose of abandoned property in accordance with §§ 2.22 and 13.45 of this chapter. No property shall be removed from a cabin until such property has been declared abandoned or determined to constitute a direct threat to the safety of park visitors or area resources.

**§ 13.124 Emergency use.**

During an emergency involving the safety of human life, a person may use

any cabin designated by the Superintendent for official government business, general public use or shared subsistence use. The person shall report such use to the Superintendent as soon as is practicable.

### § 13.126 Authorized cabin use and occupancy.

Use or occupancy of a cabin or structure in a park area is prohibited, except pursuant to the terms of a permit issued by the Superintendent under this subpart or as otherwise authorized by provisions of this chapter.

### § 13.130 New cabins and other structures otherwise authorized.

The Superintendent may issue a permit for the construction, temporary use, occupancy, and maintenance of a cabin or other structure which is authorized by law but not governed by any other section in this subpart.

CABIN USE—LEASES OR PERMITS IN EFFECT ON DECEMBER 2, 1980

### § 13.136 Use and/or occupancy pursuant to a valid existing lease or permit.

A person who holds a valid lease or permit in effect on December 2, 1980, for a cabin, homesite or similar structure not subject to the provisions of §§ 13.146–13.149 of this subpart, on Federal lands in a park area, may continue the use authorized by that lease or permit, subject to the conditions in §§ 13.138–13.142.

### § 13.138 Renewal.

The Superintendent shall renew a valid lease or permit upon its expiration in accordance with the provisions of the original lease or permit, subject to any modifications or new conditions that the Superintendent finds necessary for the protection of the values and purposes of the park area.

### § 13.140 Denial of renewal.

The Superintendent may deny the renewal or continuation of a valid lease or permit only after issuing specific findings, following notice and an opportunity for the leaseholder or permittee to respond, that renewal or continuation constitutes a direct threat to, or a significant impairment of, the purposes for which the park area was established.

### § 13.142 Transfer.

Subject to any prohibitions or restrictions that apply to transfer in the existing lease or permit, the Superintendent may transfer a valid existing lease or permit to another person at the election or death of the original permittee or leaseholder, only if the Superintendent determines that:

(a) The continued use is appropriate and compatible with the values and purposes of the park area;

(b) The continued use is non-recreational in nature;

(c) There is no demonstrated overriding need for public use; and

(d) The continued use and occupancy will not adversely impact soils, vegetation, water or wildlife resources.

CABIN USE—CABIN NOT UNDER VALID LEASE OR PERMIT AS OF DECEMBER 1, 1978

### § 13.144 Use and occupancy of a cabin prior to December 18, 1973.

A cabin or other residential structure in existence and occupied by a claimant, both prior to December 18, 1973, with the claimant's occupancy continuing for a substantial portion of the time, may continue to be used and occupied by the claimant pursuant to a renewable, nontransferable five-year permit. Upon the request of the claimant or a successor who is an immediate family member and residing in the cabin or structure, the Superintendent shall renew this permit every five years until the death of the last immediate family member of the claimant who was residing with the claimant in the structure under permit at the time of issuance of the original permit.

### § 13.146 Use and occupancy of a cabin between December 18, 1973 and December 1, 1978.

A cabin or other residential structure in existence prior to December 1, 1978, with occupancy commenced by a claimant between December 18, 1973 and December 1, 1978, which a claimant has continued to occupy or use for a substantial portion of the time, may

continue to be used and occupied by the claimant pursuant to a non-transferable permit. The Superintendent may issue and extend such permit for a term not to exceed December 1, 1999 for such reasons as are deemed by the Superintendent to be equitable and just. The Superintendent shall review the permit at least every two years and modify the permit as necessary to protect park resources and values.

### § 13.148 Permit application.

In order to obtain, renew or extend a permit, a claimant shall submit a written application. In the case of an application to renew or extend a permit issued pursuant to §§ 13.144 or 13.146, if no circumstance relating to the permittee's occupancy and use of the cabin or structure has changed in the interim, applicable material submitted by the permittee to satisfy the original application requirements is considered sufficient and need not be resubmitted. The following information is required to be included in a permit application:

(a) Reasonable proof of possessory interest or right of occupancy in the cabin or structure, demonstrated by affidavit, bill of sale, or other documentation. In order for a claimant to qualify for a permit described in section 13.144, the claimant's possessory interest or right of occupancy must have been acquired prior to December 18, 1973. In order for a claimant to qualify for a permit described in section 13.146, the claimant's possessory interest or right of occupancy must have been acquired prior to December 1, 1978;

(b) A sketch or photograph that accurately depicts the cabin or structure;

(c) A map that shows the geographic location of the cabin or structure;

(d) The claimant's agreement to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(e) The claimant's acknowledgement that he or she has no legal interest in the real property on which the cabin or structure is located;

(f) Reasonable proof that the claimant has lived in the cabin or structure during a substantial portion of the time and continues to use the cabin or other structure as a primary, permanent residence; and

(g) A list of all immediate family members residing with the claimant within the cabin or structure for which the application is being submitted. Such list need only include those immediate family members who will be eligible to continue to use and occupy the cabin or other structure upon the death or departure of the original claimant.

### § 13.149 Permit application deadline.

The deadline for receipt of a permit application for the occupancy and use of an existing cabin or other structure described in §§ 13.144 or 13.146 is October 20, 1987. The Superintendent may extend this deadline for a reasonable period of time only when a permit applicant demonstrates that extraordinary circumstances prevented timely application.

## CABIN USE FOR COMMERCIAL FISHING ACTIVITIES

### § 13.150 Use for authorized commercial fishing activities.

The use of a campsite, cabin or other structure in conjunction with commercial fishing activities authorized by section 205 of ANILCA in Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell–Saint Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve is authorized pursuant to the provisions of § 13.40(c) of this chapter and the terms of a permit issued by the Superintendent.

## CABIN USE FOR SUBSISTENCE PURPOSES

### § 13.160 Use of cabins for subsistence purposes.

(a) A local rural resident who is an eligible subsistence user may use an existing cabin or other structure or temporary facility or construct a new cabin or other structure, including temporary facilities, in a portion of a park area where subsistence use is allowed, pursuant to the applicable provisions of subparts F through V of this part and the terms of a permit issued by the Superintendent. However, the Superintendent may designate existing cabins or other structures that may be

shared by local rural residents for authorized subsistence uses without a permit.

(b) For purposes of this section, the term ''local rural resident'', with respect to national parks, monuments, and preserve, is defined in § 13.420 of this chapter.

### § 13.161 Permit application.

In order to obtain or renew a permit, a person shall submit an application. In the case of an application to renew a permit issued pursuant to § 13.160, if no circumstance relating to the permittee's occupancy and use of the cabin or structure has changed in the interim, applicable material submitted by the permittee to satisfy the original application requirements is considered sufficient and need not be resubmitted. The following information is required to be included in a permit application:

(a) An explanation of the applicant's need for the cabin or structure;

(b) A description of an applicant's past, present and anticipated future subsistence uses relevant to his or her need for the cabin or structure;

(c) A blueprint, sketch or photograph of the cabin or structure;

(d) A map that shows the geographic location of the cabin or structure; and

(e) A description of the types of occupancy and schedule for use of the cabin or structure. All information may be provided orally except the cabin blueprint, sketch or photograph and the map.

### § 13.162 Permit issuance.

(a) In making a decision on a permit application, the Superintendent shall consider whether the use by local rural residents of a cabin or other structure for subsistence purposes is customary and traditional in that park area and shall determine whether the use and occupancy of a new or existing cabin or structure is ''necessary to reasonably accommodate'' the applicant's subsistence uses. In making this determination, the Superintendent shall examine the applicant's particular circumstances, including but not limited to his or her past patterns of subsistence uses and his or her future subsistence use plans, reasonable subsistence use alternatives, the specific nature of the subsistence uses to be accommodated by the cabin or structure, the impacts of the cabin or structure on other local rural residents who depend on subsistence uses and the impacts of the proposed structure and activities on the values and purposes for which the park area was established.

(b) The Superintendent may permit the construction of a new cabin or other new structure for subsistence purposes only if a tent or other temporary facility would not adequately and reasonably accommodate the applicant's subsistence uses without significant hardship and the use of no other type of cabin or other structure provided for in this subpart can adequately and reasonably accommodate the applicant's subsistence uses with a lesser impact on the values and purposes for which the park area was established.

### § 13.164 Permit terms.

The Superintendent shall, among other conditions, establish terms of a permit that:

(a) Allow for use and occupancy during the harvest or gathering of subsistence resources, at such times as may be reasonably necessary to prepare for a harvest season (*e.g.*, opening or closing a cabin or structure at the beginning or end of a period of use), and at other times reasonably necessary to accommodate the permittee's specified subsistence uses;

(b) Prohibit residential use in conjunction with subsistence activities; and

(c) Limit the term of a permit to a period of five years or less.

### § 13.166 Temporary facilities.

A temporary facility or structure directly and necessarily related to the taking of subsistence resources may be constructed and used by a qualified subsistence user without a permit so long as such use is for less than thirty days and the site is returned to a natural condition. The Superintendent may establish conditions and standards governing the use or construction of these temporary structures and facilities which shall be published annually in accordance with § 1.7 of this chapter.

**§ 13.168 Shared use.**

In any permit authorizing the construction of a cabin or other structure necessary to reasonably accommodate authorized subsistence uses, the Superintendent shall provide for shared use of the facility by the permittee and other local rural residents rather than for exclusive use by the permittee.

PUBLIC USE CABINS

**§ 13.170 General public use cabins.**

The Superintendent may designate a cabin or other structure located outside of designated wilderness areas and not otherwise under permit under this subpart (or under permit for only a portion of the year) as a public use cabin. Such designated public use cabins are intended for short term recreational use and occupancy only.

**§ 13.172 Management of public use cabins.**

The Superintendent may establish conditions and develop an allocation system in order to manage the use of designated public use cabins. The Superintendent shall mark all public use cabins with a sign and shall maintain a map showing their locations.

**§ 13.176 Cabins in wilderness areas.**

The use and occupancy of a cabin or other structure located in a designated wilderness area are subject to the other applicable provisions of this subpart, and the following conditions:

(a) A previously existing public use cabin located within wilderness designated by ANILCA may be allowed to remain and may be maintained or replaced subject to such restrictions as the Superintendent finds necessary to preserve the wilderness character of the area. As used in this section, the term ''previously existing public use cabin'' means a cabin or other structure which, on November 30, 1978, was recognized and managed by a Federal land managing agency as a structure available for general public use.

(b) Within a wilderness area designated by ANILCA, a new public use cabin or shelter may be constructed, maintained and used only if necessary for the protection of the public health and safety.

(c) A cabin or other structure located in a designated wilderness area may not be designated, assigned or used for commercial purposes, except that designated public use cabins may be used in conjunction with commercial guided visitor services, but not to the exclusion of the general public.

USE OF TEMPORARY FACILITIES RELATED TO TAKING FISH AND WILDLIFE

**§ 13.182 Temporary facilities.**

In a national preserve where the taking of fish and wildlife is permitted, the construction, maintenance or use of a temporary campsite, tent platform, shelter or other temporary facility or equipment directly and necessarily related to such activities is prohibited except pursuant to the terms of a permit issued by the Superintendent. This requirement applies only to a temporary facility that will remain in place for a period longer than 14 days.

**§ 13.184 Permit application.**

In order to obtain or renew a permit, a person shall submit an application. In the case of an application to renew a permit issued pursuant to this section and § 13.186, if no circumstance relating to the permittee's occupancy and use of the structure has changed in the interim, applicable material submitted by the permittee to satisfy the original application requirements is considered sufficient and need not be resubmitted. The following information is required to be included in a permit application:

(a) An explanation of the applicant's need for the temporary facility, including a description of the applicant's hunting and fishing activities relevant to his or her need for the facility;

(b) A diagram, sketch or photograph of the temporary facility;

(c) A map that shows the geographic location of the temporary facility; and

(d) A description of both the past use (if any) and the desired use of the temporary facility, including a schedule for its projected use and removal. All information may be provided orally except the diagram, sketch or photograph of the facility and the map.

**§ 13.186 Permit issuance.**

(a) In making a decision on a permit application, the Superintendent shall determine whether a temporary facility is ''directly and necessarily related to'' the applicant's legitimate hunting and fishing activities by examining the applicant's particular circumstances, including, but not limited to his or her reasonable need for a temporary facility and any reasonable alternatives available that are consistent with the applicant's needs. The Superintendent shall also consider whether the proposed use would constitute an expansion of existing facilities or use and would be detrimental to the purposes for which the national preserve was established. If the Superintendent finds that the proposed use would either constitute an expansion above existing levels or be detrimental to the purposes of the preserve, he/she shall deny the permit. The Superintendent may authorize the replacement or relocation within the national preserve of an existing temporary facility or structure.

(b) The Superintendent shall deny an application for a proposed use that would exceed a ceiling or allocation established pursuant to the national preserve's General Management Plan.

**§ 13.188 Permit terms.**

The Superintendent shall allow for use and occupancy of a temporary facility only to the extent that such facility is directly and necessarily related to the permittee's hunting and fishing activities, and shall provide that the temporary facility be used and maintained in a manner consistent with the protection of the values and purposes of the park area in which it is located. The Superintendent may also establish permit terms that:

(a) Limit use to a specified period, not to exceed the applicable hunting or fishing season and such additional brief periods necessary to maintain the facility before and after the season;

(b) Require the permittee to remove a temporary facility and all associated personal property from the park area upon termination of the permittee's hunting and fishing activities and related use of the facility or on a specific date;

(c) Require reasonable seasonal relocation of a temporary facility in order to protect the values and purposes for which the park area was established;

(d) Require that a temporary facility be used on a shared basis and not exclusively by the permittee; and

(e) Limit the overall term of a permit to a reasonable period of time, not to exceed one year.

## Subpart D [Reserved]

## Subpart E—Special Visitor Services

**§ 13.300 Applicability and scope.**

(a) Except as otherwise provided for in this section, the regulations contained in this part apply to visitor services provided within all national park areas in Alaska.

(b) The rights granted by this subpart to historical operators, preferred operators, and Cook Inlet Region, Incorporated are not exclusive. The Director may authorize other persons to provide visitor services on park lands. Nothing in this subpart shall require the Director to issue a visitor services authorization if not otherwise mandated by statute to do so. Nothing in this subpart shall authorize the Director to issue a visitor services authorization to a person who is not capable of carrying out its terms and conditions in a satisfactory manner.

(c) This subpart does not apply to the guiding of sport hunting or sport fishing.

**§ 13.305 Definitions.**

The following definitions apply to this subpart:

*Best offer* means a responsive offer that best meets, as determined by the Director, the selection criteria contained in a competitive solicitation for a visitor services authorization.

*Controlling interest* means, in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.

*Controlling interest* in the case of a partnership, limited partnership, joint

venture, or individual entrepreneurship, means a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, *controlling interest* means any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

*Director* means the Director of the National Park Service or an authorized representative.

*Historical operator*, except as otherwise may be specified by a statute other than ANILCA, means the holder of a valid written authorization from the Director to provide visitor services within a park area that:

(1) On or before January 1, 1979, was lawfully engaged in adequately providing such visitor services in the applicable park area;

(2) Has continued, as further defined in § 13.310, to lawfully provide that visitor service since January 1, 1979, without a change in controlling interest; and

(3) Is otherwise determined by the Director to have a right to continue to provide such services or similar services pursuant to § 13.310.

*Local area* means an area in Alaska within 100 miles of the location within the park area where any of the applicable visitor services is authorized to be provided.

*Local resident* means:

*For individuals*. Those individuals who have lived within the local area for 12 consecutive months before issuance of a solicitation of offers for a visitor services authorization for a park area and who maintain their primary, permanent residence and business within the local area and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns and voter registration.

*For corporations*. A corporation in which the controlling interest is held by an individual or individuals who qualify as *local resident(s)* within the meaning of this subpart. For non-profit corporations a majority of the board members and a majority of the officers must qualify individually as local residents.

*Native Corporation* means the same as defined in section 102(6) of ANILCA.

*Preferred operator* means a Native Corporation that is determined under § 13.325 to be ''most directly affected'' by the establishment or expansion of a park area by ANILCA, or a local resident as defined in this subpart.

*Responsive offer* is one that is timely received and meets the terms and conditions of a solicitation for a visitor services authorization.

*Visitor services authorization* is a written authorization from the Director to provide visitor services in a park area. Such authorization may be in the form of a concession permit, concession contract, or other document issued by the Director under National Park Service policies and procedures.

**§ 13.310 Historical operators.**

(a) A historical operator will have a right to continue to provide visitor services in a park area under appropriate terms and conditions contained in a visitor services authorization issued by the Director as long as such services are determined by the Director to be consistent with the purposes for which the park area was established. A historical operator may not operate without such an authorization. The authorization will be for a fixed term. Failure to comply with the terms and conditions of the authorization will result in cancellation of the authorization and consequent loss of historical operator rights under this subpart.

(b) Nothing in this subpart will prohibit the Director from permitting persons in addition to historical operators to provide visitor services in park areas at the Director's discretion as long as historical operators are permitted to conduct a scope and level of visitor services equal to those provided before January 1, 1979, under terms and conditions consistent with this subpart. A historical operator may be permitted by the Director under separate authority to increase the scope or level of visitor services provided prior to

January 1, 1979, but no historical operating rights will be obtained in such increase.

(c) If a historical operator applies for a visitor services authorization in the form of a joint venture, the application will not be considered as validly made unless the historical operator demonstrates, to the satisfaction of the Director, that it has the controlling interest in the joint venture.

(d) A historical operator may apply to the Director for an authorization or amended authorization to provide visitor services similar to those it provided before January 1, 1979. The Director will grant the request if such visitor services are determined by the Director to be:

(1) Consistent with the protection of park resources and the purposes for which the park area was established;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(e) When a historical operator's visitor services authorization expires, and if the applicable visitor services continue to be consistent with the purposes for which the park area was established as determined by the Director, the Director will offer to renew the authorization for a fixed term under such new terms and conditions as the Director determines are in the public interest.

(f) If the Director determines that authorized visitor services must be curtailed or reduced in scope, level, or season to protect park resources, or for other purposes, the Director will require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Director will establish a proportionate reduction of visitor services among all such historical operators, taking into account historical operating levels and other appropriate factors so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Director will select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(g) Any of the following will result in loss of historical operator status:

(1) Revocation of an authorization for historic types and levels of visitor services for failure to comply with the terms and conditions of the authorization.

(2) A historical operator's declination of a renewal of the authorization made pursuant to paragraph (d) of this section.

(3) A change in the controlling interest of the historical operator through sale, assignment, devise, transfer, or by any other means, direct or indirect. A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals who were personally engaged in the visitor services activities of the historical operator before January 1, 1979, will not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(4) A historical operator's failure to provide the authorized services for more than 24 consecutive months.

(h) The Director may authorize other persons to provide visitor services in a park area in addition to historical operators.

### § 13.315 Preferred operators.

(a) In selecting persons to provide visitor services for a park area, the Director will, if the number of visitor services authorizations is to be limited, give a preference (subject to any rights of historical operators or CIRI under this subpart) to preferred operators determined qualified to provide such visitor services.

(b) In such circumstances, the Director will publicly solicit competitive offers for persons to apply for a visitor services authorization, or the renewal of such an authorization, to provide such visitor services pursuant to 36 CFR part 51 and/or other National Park Service procedures. All offerors, including preferred operators, must submit a responsive offer to the solicitation in order to be considered for the

authorization. If the best offer from a preferred operator is at least substantially equal to the best offer from a non-preferred operator, the preferred operator will receive authorization. If an offer from a person besides a preferred operator is determined to be the best offer (and no preferred operator submits a responsive offer that is substantially equal to it), the preferred operator who submitted the best offer from among the offers submitted by preferred operators will be given the opportunity, by amending its offer, to meet the terms and conditions of the best offer received. If the amended offer of such a preferred operator is considered by the Director as at least substantially equal to the best offer, the preferred operator will receive the visitor service authorization. If a preferred operator does not amend its offer to meet the terms and conditions of the best offer, the Director will issue the authorization to the person who submitted the best offer in response to the solicitation.

(c) The Native Corporation(s) determined to be ''most directly affected''under this subpart and local residents have equal preference. The rights of preferred operators under this section take precedence over the right of preference that may be granted to existing satisfactory National Park Service concessioners pursuant to the Concessions Policy Act (16 U.S.C. 20) and its implementing regulations and procedures, but do not take precedence over the rights of historical operators or CIRI as described in this subpart.

(d) An offer from a preferred operator under this subpart, if the offer is in the form of a joint venture, will not be considered valid unless it documents to the satisfaction of the Director that the preferred operator holds the controlling interest in the joint venture.

(e) Nothing in this subpart will prohibit the Director from authorizing persons besides preferred operators to provide visitor services in park areas as long as the procedures described in this section have been followed. Preferred operators are not entitled by this section to provide all visitor services in a park area.

(f) The preferences described in this section may not be sold, assigned, transferred or devised, directly or indirectly.

### § 13.320 Preference to Cook Inlet Region, Incorporated.

(a) The Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet region when appropriate, will have a right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet region. In order to exercise this right of first refusal, the National Park Service will publicly solicit competitive offers for the visitor services authorization pursuant to 36 CFR part 51 or other applicable National Park Service procedures. CIRI must submit a responsive offer within 90 days of such solicitation. If CIRI makes such an offer and is determined by the Director to be capable of carrying out the terms and conditions of the visitor services authorization, it will receive the authorization. If it does not, the authorization may be awarded to another person pursuant to usual National Park Service policies and procedures if otherwise appropriate.

(b) The CIRI right of first refusal will have precedence over the rights of preferred operators. An offer from CIRI under this section, if the offer is in the form of a joint venture, will not be considered valid unless it demonstrates to the satisfaction of the Director that CIRI has a controlling interest in the joint venture.

(c) The CIRI right of first refusal may not be sold, transferred, devised or assigned, directly or indirectly.

### § 13.325 Most directly affected Native Corporation.

(a) Before the award of the first visitor service authorization in a park area to be made after the effective date of this subpart, the Director will provide an opportunity for any Native Corporation interested in providing visitor services within the applicable park area to submit an application to the superintendent to be determined the Native Corporation most directly affected by the establishment or expansion of the park area by or under the

provisions of ANILCA. An application from an interested Native Corporation will include the following information:

(1) Name, address, and phone number of the Native Corporation; date of incorporation; its articles of incorporation and structure;

(2) Location of the corporation's population center or centers; and

(3) An assessment of the socioeconomic impacts, including historical and traditional use and land-ownership patterns and their effects on the Native Corporation as a result of the expansion or establishment of the applicable park area by ANILCA.

(4) Any additional information the Native Corporation considers relevant or the Director may reasonably require.

(b) Upon receipt of all applications from interested Native Corporations, the Director will determine the ''most directly affected'' Native Corporation considering the following factors:

(1) Distance and accessibility from the corporation's population center and/or business address to the applicable park area; and

(2) Socioeconomic impacts, including historical and traditional use and land-ownership patterns, on Native Corporations and their effects as a result of the expansion or establishment of the applicable park area; and

(3) Information provided by Native Corporations and other information considered relevant by the Director to the particular facts and circumstances of the effects of the establishment or expansion of the applicable park area.

(c) In the event that more than one Native Corporation is determined to be equally affected within the meaning of this section, each such Native Corporation will be considered as a preferred operator under this subpart.

(d) The Director's most directly affected Native Corporation determination applies to the award of all future visitor service authorizations for the applicable park area. However, a Native Corporation that did not apply for this determination in connection with an earlier visitor services authorization may apply for a determination that it is an equally affected Native Corporation for the applicable park area in connection with a later visitor services authorization. Such subsequent applications must contain the information required by paragraph (a) of this section, and must be made in a timely manner as described by the Director in the applicable solicitation document so as not to delay the consideration of offers for the visitor services authorization.

### § 13.330 Appeal procedures.

An appeal of the denial of rights with respect to providing visitor services under this subpart may be made to the next higher level of authority. Such an appeal must be submitted in writing within 30 days of receipt of the denial. Appeals must set forth the facts and circumstances that the appellant believes support the appeal. The appellant may request an informal meeting to discuss the appeal with the National Park Service. After consideration of the materials submitted by the appellant and the National Park Service record of the matter, and meeting with the appellant if so requested, the Director will affirm, reverse, or modify the denial appealed and will set forth in writing the basis of the decision. A copy of the decision will be forwarded to the appellant and will constitute the final administrative decision in the matter. No person will be considered to have exhausted administrative remedies with respect to a denial of rights to provide visitor services under this subpart until a final administrative decision has been made pursuant to this section.

### § 13.335 Information collection.

(a) The information collection requirements contained in this part have received emergency approval from the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, for the basic contracting program under OMB clearance number 1024–0125. The information is being collected as part of the process of reviewing the procedures and programs of State and local governments participating in the national historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.

(b) The public reporting burden for the collection of information is estimated to be 480 hours for large operations and 240 hours for small operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, DC 20013; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of Interior (1024–0125), Washington, DC 20503.

## Subpart F—Subsistence

### § 13.400 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each park area was established, designated, or expanded by ANILCA, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within park areas pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict the taking of a fish or wildlife population within a park area for subsistence uses in order to assure the continued viability of such population or to continue subsistence uses of such population, the population shall be allocated among local rural residents engaged in subsistence uses in accordance with a subsistence priority system based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within park areas to the extent such regulation is consistent with applicable Federal law, including but not limited to ANILCA.

(f) Nothing in this subpart shall be construed as permitting a level of subsistence use of fish and wildlife within park areas to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

### § 13.410 Applicability.

Subsistence uses by local rural residents are allowed pursuant to the regulations of this subpart in the following park areas:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in the applicable special regulations of this part) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

### § 13.420 Definitions.

*Local rural resident.* As used in this part with respect to national parks and monuments, the term ''local rural resident'' shall mean either of the following:

(1) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and

tax returns, and the location of registration to vote.

(2) Any person authorized to engage in subsistence uses in a national park or monument by a subsistence permit issued pursuant to § 13.440.

*Resident zone.* As used in this part, the term ''resident zone'' shall mean the area within, and the communities and areas near, a national park or monument in which persons who have customarily and traditionally engaged in subsistence uses within the national park or monument permanently reside. The communities and areas near a national park or monument included as a part of its resident zone shall be determined pursuant to § 13.430 and listed for each national park or monument in the applicable special regulations of this part.

*Subsistence uses.* As used in this part, the term ''subsistence uses'' shall mean the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this paragraph, the term—

(1) ''Family'' shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) ''Barter'' shall mean the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) ''Customary trade'' shall be limited to the exchange of furs for cash (and such other activities as may be designated for a specific park area in the applicable special regulations of this part).

### § 13.430 Determination of resident zones.

(a) A resident zone shall include—

(1) The area within a national park or monument; and

(2) The communities and areas near a national park or monument which contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within a national park or monument. For purposes of determining ''significant'' concentrations, family members shall also be included.

(b) After notice and comment, including public hearing in the affected local vicinity, a community or area near a national park or monument may be—

(1) Added to a resident zone; or

(2) Deleted from a resident zone, when such community or area does or does not meet the criteria set forth in paragraph (a) of this section, as appropriate.

(c) For purposes of this section, the term ''family'' shall mean all persons living within a rural resident's household on a permanent basis.

### § 13.440 Subsistence permits for persons whose primary, permanent home is outside a resident zone.

(a) Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a national park or monument may apply to the appropriate Superintendent pursuant to the procedures set forth in § 13.495 for a subsistence permit authorizing the permit applicant to engage in subsistence uses within the national park or monument. The Superintendent shall grant the permit if the permit applicant demonstrates that,

(1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument; or

(2) The applicant is a local rural resident within a resident zone for another national park or monument, or meets the requirements of paragraph (a)(1) of this section for another national park

or monument, and there exists a pattern of subsistence uses (without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses) between the national park or monument previously utilized by the permit applicant and the national park or monument for which the permit applicant seeks a subsistence permit.

(b) For purposes of this section, the term ''family'' shall mean all persons living within a rural resident's household on a permanent basis.

[71 FR 69333, Nov. 30, 2006, as amended at 73 FR 3185, Jan. 17, 2008]

### § 13.450 Prohibition of aircraft use.

(a) Notwithstanding the provisions 43 CFR 36.11(f) the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument is prohibited except as provided in this section.

(b) *Exceptions.* (1) In extraordinary cases where no reasonable alternative exists, the Superintendent shall permit, pursuant to specified terms and conditions, a local rural resident of an ''exempted community'' to use aircraft for access to or from lands and water within a national park or monument for purposes of taking fish or wildlife for subsistence uses.

(i) A community shall quality as an ''exempted community'' if, because of the location of the subsistence resources upon which it depends and the extraordinary difficulty of surface access to these subsistence resources, the local rural residents who permanently reside in the community have no reasonable alternative to aircraft use for access to these subsistence resources.

(ii) A community which is determined, after notice and comment (including public hearing in the affected local vicinity), to meet the description of an ''exempted community'' set forth in paragraph (b)(1) of this section shall be included in the appropriate special regulations for each park and monument in this part.

(iii) A community included as an ''exempted community'' in the special regulations of this part may be deleted therefrom upon a determination, after notice and comment (including public hearing in the affected local vicinity), that it does not meet the description of an ''exempted community'' set forth in paragraph (b)(1) of this section.

(2) Any local rural resident aggrieved by the prohibition on aircraft use set forth in this section may apply for an exception to the prohibition pursuant to the procedures set forth in § 13.495. In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access to these resources, or other emergency situation, requires such relief.

(c) Nothing in this section shall prohibit the use of aircraft for access to lands and waters within a national park or monument for purposes of engaging in any activity allowed by law other than the taking of fish and wildlife. Such activities include, but are not limited to, transporting supplies.

### § 13.460 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

(b) The Superintendent may restrict or close a route or area to use of snowmobiles, motorboats, dog teams, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Superintendent determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity and

other locations as appropriate. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefore shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Motorboats, snowmobiles, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated:

(1) In compliance with applicable State and Federal law;

(2) In such a manner as to prevent waste or damage to the park areas; and

(3) In such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams, and other means of surface transportation in accordance with 43 CFR 36.11(c), (d), (e), and (g).

### § 13.470 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable State and Federal law, including the provisions of §§ 2.3 and 13.40 of this chapter: *Provided, however,* That local rural residents in park areas where subsistence uses are allowed may fish with a net, seine, trap, or spear where permitted by State law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

### § 13.480 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable State and Federal law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

### § 13.485 Subsistence use of timber and plant material.

(a) Notwithstanding any other provision of this part, the non-commercial cutting of standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in park areas where subsistence uses are allowed as follows:

(1) For standing timber of diameter greater than three inches at ground height, the Superintendent may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the park area was established; and

(2) For standing timber of diameter less than three inches at ground height, cutting is authorized unless restricted by the Superintendent.

(b) The noncommerical gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommerical gathering of dead or downed timber for firewood, shall be allowed without a permit in park areas where subsistence uses are allowed.

(c) Notwithstanding any other provision of this part, the Superintendent, after notice and public hearing in the affected vicinity and other locations as

appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular plant population. The Superintendent may make a closure under this paragraph only if necessary for reasons of public safety, administration, resource protection, protection of historic or scientific values, conservation of endangered or threatened species, or the purposes for which the park area was established, or to ensure the continued viability of the plant population. For purposes of this section, the term ''temporarily'' shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(1) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(2) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and at least one local newspaper if available, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

[71 FR 69333, Nov. 30, 2006, as amended at 73 FR 3185, Jan. 17, 2008]

**§ 13.490 Closure to subsistence uses of fish and wildlife.**

(a) Notwithstanding any other provision of this part, the Superintendent, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term ''temporarily'' shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(b) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

**§ 13.495 Application procedures for subsistence permits and aircraft exceptions.**

(a) Any person applying for the subsistence permit required by § 13.440(a), or the exception to the prohibition on aircraft use provided by § 13.450(b)(2), shall submit his/her application to the Superintendent of the appropriate national park or monument. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application. Each application must include a statement which acknowledges that providing false information in support of the application is a violation of Section 1001 of Title 18 of the United States Code, and additional statements or documentation which demonstrates that the applicant satisfies the criteria set forth in § 13.440(a) for a subsistence permit or § 13.450(b)(2) for the aircraft exception, as appropriate. Except in extraordinary cases for good cause shown, the Superintendent shall decide whether to grant or deny the application in a timely manner not to exceed forty-five (45) days following the receipt of the completed application. Should the Superintendent deny the application, he/she shall include in the decision a statement of the reasons for the denial and shall promptly forward a copy to the applicant.

(b) An applicant whose application has been denied by the Superintendent has the right to have his/her application reconsidered by the Alaska Regional Director by contacting the Regional Director within 180 days of the issuance of the denial. The Regional Director may extend the 180-day time limit to initiate a reconsideration for good cause shown by the applicant. For purposes of reconsideration, the applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in paragraph (a) of this section;

(2) The basis for the applicant's disagreement with the Superintendent's findings and conclusions; and

(3) Whether or not the applicant requests an informal hearing before the Regional Director.

(c) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

## Subpart G [Reserved]

## Subpart H—Special Regulations—Alagnak Wild River

**§ 13.550 Wildlife distance conditions.**

(a) Approaching a bear or any large mammal within 50 yards is prohibited.

(b) Continuing to occupy a position within 50 yards of a bear that is using a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(c) Continuing to engage in fishing within 50 yards of a bear is prohibited.

(d) The prohibitions in this section do not apply to persons—

(1) Engaged in a legal hunt;

(2) On a designated bear viewing structure;

(3) In compliance with a written protocol approved by the Superintendent; or

(4) Who are otherwise directed by a park employee.

[73 FR 3185, Jan. 17, 2008]

## Subpart I—Special Regulations—Aniakchak National Monument and Preserve

**§ 13.602 Subsistence resident zone.**

The following communities and areas are included within the resident zone for Aniakchak National Monument: Chignik, Chignik Lagoon, Chignik Lake, Meshik, and Port Heiden.

### § 13.604 Wildlife distance conditions.

(a) Approaching a bear or any large mammal within 50 yards is prohibited.

(b) Continuing to occupy a position within 50 yards of a bear that is using a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(c) Continuing to engage in fishing within 50 yards of a bear is prohibited.

(d) The prohibitions do not apply to persons—

(1) Engaged in a legal hunt;

(2) On a designated bear viewing structure;

(3) In compliance with a written protocol approved by the Superintendent; or

(4) Who are otherwise directed by a park employee.

[71 FR 69333, Nov. 30, 2006, as amended at 73 FR 3186, Jan. 17, 2008]

## Subpart J—Special Regulations—Bering Land Bridge National Preserve

### § 13.702 Off-Road Vehicles.

The use of off-road vehicles for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent.

## Subpart K—Special Regulations—Cape Krusenstern National Monument

### § 13.802 Subsistence resident zone.

The following area is included within the resident zone for Cape Krusenstern National Monument: The NANA Region.

## Subpart L—Special Regulations—Denali National Park and Preserve

GENERAL PROVISIONS

### § 13.902 Subsistence resident zone.

The following communities and areas are included within the resident zone for Denali National Park addition: Cantwell (limited to the area within a 3-mile radius of the Cantwell post office as shown on a map available at the park visitor center), Minchumina, Nikolai, and Telida.

[73 FR 67393, Nov. 14, 2008]

### § 13.903 Subsistence use of off-road vehicles.

Operating a motor vehicle off road is prohibited except by authorized residents as defined in this section when engaged in subsistence uses. For purposes of this section, ''authorized residents'' means residents of the Cantwell resident zone community as defined by this subpart or those residents of Alaska Game Management Unit 13E holding a permit issued under § 13.440 of this part. Operating a motor vehicle off road for subsistence purposes outside any trail or area designated by this section is prohibited. A map and GPS coordinates of designated trails and areas are available on the park website and at the park visitor center.

(a) Authorized residents may operate vehicles off road only in the following designated areas and trails:

(1) The Windy Creek Trail;

(2) The Cantwell Airstrip Trail;

(3) The Pyramid Trail;

(4) The Cantwell Creek Floodplain Trail/Corridor; and

(5) A trail or area along the Bull River Floodplain designated by the superintendent under paragraph (b) of this section.

(b) The superintendent may designate a trail or area along the Bull River Floodplain Corridor for motor vehicle use by authorized residents if the superintendent determines that the following conditions are met:

(1) Access across adjacent non-NPS lands has been secured;

(2) An NPS-approved trail has been constructed on NPS lands; and

(3) Off-road vehicle use continues to be necessary for reasonable access to the Bull River for subsistence resources by authorized residents.

(c) All of the following are prohibited:

(1) Motor vehicles greater than 5.5 feet wide;

(2) Motor vehicles exceeding 1,000 pounds curb (unloaded) weight;

(3) Motor vehicles that steer by locking or skidding a wheel or track; and

(4) Operating a motor vehicle in violation of § 13.460(d) of this part.

(d) The superintendent may restrict or prohibit motor vehicle use authorized by this section in accordance with § 13.460(b) of this part. The Superintendent will notify the public of the proposed restriction or closure by issuing a press release, posting at local post offices, posting on the park website, posting signs at designated trails or areas if appropriate, use of electronic media, and via other appropriate means.

[73 FR 67393, Nov. 14, 2008]

### § 13.904 Camping.

Camping without a permit in designated areas in the former Mount McKinley National Park or the Kantishna area is prohibited. A map showing areas where a permit is required for camping is available at the park visitor center and on the park website. Violating terms and conditions of the permit is prohibited.

[73 FR 67393, Nov. 14, 2008]

### § 13.905 Group size.

(a) The following are prohibited:

(1) Group sizes exceeding 12 individuals on the east side of the park outside the Frontcountry Developed Area as defined by this subpart.

(2) Group sizes exceeding 6 individuals on the west side of the park outside the Frontcountry Developed Area as defined by this subpart.

(b) A map showing the east and west boundaries is available at the park visitor center.

(c) The superintendent may authorize larger groups on a case-by-case basis.

[73 FR 67393, Nov. 14, 2008]

### § 13.906 Unattended or abandoned property.

Leaving unattended and abandoned property along the road corridor, at Wonder Lake, and in the areas included in the backcountry management plan, is prohibited.

### § 13.908 Fishing limit of catch and in possession.

The limit of catch per person per day shall be 10 fish but not to exceed 10 pounds and one fish, except that the limit of catch of lake trout (mackinaw) per person per day shall be two fish including those hooked and released. Possession of more than one day's limit of catch by one person at any one time is prohibited.

### § 13.910 Mountain climbing.

(a) Climbing Mount McKinley or Mount Foraker without a permit is prohibited. The superintendent will establish procedures for applying for a permit. The superintendent may authorize a maximum of 1500 climbers on Mount McKinley from April 1 through August 1 each calendar year.

(b) Violating terms and conditions of the permit is prohibited.

[73 FR 67393, Nov. 14, 2008]

### § 13.912 Kantishna area summer season firearm safety zone.

What is prohibited? No one may fire a gun during the summer season in or across the Kantishna area firearm safety zone, unless they are defending life or property.

(a) The summer season begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first.

(b) The Kantishna Area firearm safety zone includes: The Kantishna Airstrip; the State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way, from the former Mt. McKinley National Park boundary at mile 87.9 to the south end of the Kantishna Airstrip.

### § 13.914 Bicycle use.

The use of a bicycle is prohibited—

(a) On the Savage River Loop Trail; the Savage Cabin Trail; the Triple Lakes Trail; the McKinley Bar Trail; and the Eielson Area Trails; and

(b) Within the Frontcountry Developed Area as defined by § 13.970 except on park roads, road shoulders, and in public parking areas, or on trails and areas designated for bicycle use by the Superintendent. A map of the designated trails and areas open to bicycle use is available for inspection at the park visitor center and on the park Web site.

### § 13.916 Use of roller skates, skateboards, roller skis, in-line skates, and similar devices.

The use of roller skates, skateboards, roller skis, in-line skates, and similar devices is prohibited—

(a) On the Savage River Loop Trail; the Savage Cabin Trail; the Triple Lakes Trail; the McKinley Bar Trail; and the Eielson Area Trails; and

(b) Within the Frontcountry Developed Area as defined by § 13.970 except on trails and areas designated by the Superintendent. A map of the designated trails and areas is available for inspection at the park visitor center and on the park Web site.

### § 13.918 Sable Pass Wildlife Viewing Area.

(a) Entry into the Sable Pass Wildlife Viewing Area is prohibited from May 1 to September 30 unless authorized by the Superintendent.

(b) The Sable Pass Wildlife Viewing Area means the area within one mile of the shoulder of the Park Road between Mile 38.2 and Mile 42.8, excluding the Tattler Creek drainage. A map showing the specific boundaries of the closure is available for inspection at the park visitor center.

[73 FR 3186, Jan. 17, 2008]

### § 13.920 Wildlife distance conditions.

(a) *Bears*. The following are prohibited:

(1) Approaching within 300 yards of a bear; or

(2) Engaging in photography within 300 yards of a bear.

(b) *Other wildlife*. The following are prohibited:

(1) Approaching within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site; or

(2) Engaging in photography within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site.

(c) *Prohibitions*. The prohibitions in this section do not apply to persons—

(1) Within a motor vehicle or a hard sided building;

(2) Within 2 yards of their motor vehicle or entrance to a hard sided building that is 25 yards or more from a bear;

(3) Engaged in legal hunting or trapping activities;

(4) In compliance with a written protocol approved by the Superintendent;

(5) Who are otherwise directed by a park employee; or

(6) In accordance with a permit from the Superintendent.

[73 FR 3186, Jan. 17, 2008]

## MOTOR VEHICLE PERMITS

### § 13.930 Do I need a permit to operate a motor vehicle on the Denali Park road west of the Savage River?

Yes, you must obtain a permit from the superintendent to operate a motor vehicle on the restricted section of the Denali Park road. The restricted section begins at the west end of the Savage River Bridge (mile 14.8) and continues to the former Mt. McKinley National Park boundary north of Wonder Lake (mile 87.9).

### § 13.932 How many permits will be issued each summer?

The superintendent is authorized, under this subpart, to issue no more than 10,512 motor vehicle permits each year for access to the restricted section of the road. The superintendent will issue the permits for the period that begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first. Each permit allows one vehicle one entry onto the restricted portion of the Park road.

### § 13.934 How will the superintendent manage the permit program?

(a) The superintendent will apportion motor vehicle permits among authorized users following the procedures in § 13.55. Authorized users are individuals, groups and governmental entities who are allowed by law or policy to use the restricted section of the road.

(b) The superintendent will establish an annual date to evaluate permit requests and publish that date, along with the results of the annual apportionment, in the superintendent's compendium of rules and orders. The superintendent's compendium is available to the public upon request.

(c) The superintendent will reevaluate the access requirements of any business that is sold, ceases to operate or that significantly changes the services currently offered to the public.

### § 13.936 What is prohibited?

(a) No one may operate a motor vehicle on the restricted section of the Park road without a valid permit.

(b) No one may use a motor home, camper or trailer to transport guests to a lodge or other business in Kantishna.

(c) No one may transfer or accept transfer of a Denali Park road permit without the superintendent's approval.

SNOWMACHINE (SNOWMOBILE) OPERATIONS

### § 13.950 What is the definition of a traditional activity for which Section 1110(a) of ANILCA permits snowmachines to be used in the former Mt. McKinley National Park (Old Park) portion of Denali National Park and Preserve?

A *traditional activity* is an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

### § 13.952 May a snowmachine be used in that portion of the park formerly known as Mt. McKinley National Park (Old Park)?

No, based on the application of the definition of traditional activities within the park to the factual history of the Old Park, there are no traditional activities that occurred during periods of adequate snow cover within the Old Park; and, thus, Section 1110(a) of ANILCA does not authorize snowmachine access. Hunting and trapping were not and are not legally permitted activities in the Old Park at any time of the year. Sport fishing has not taken place in the Old Park during periods of adequate snow cover due to weather conditions that are adverse to sport fishing, and the limited fishery resources within the Old Park. During periods of adequate snow cover, berry picking is not feasible, and has not taken place in the Old Park. Under the definition, recreational use of snowmachines is not a traditional activity. There are no villages, homesites or other valid occupancies within the Old Park. Access by snowmachine through the Old Park in transit to homesites, villages and other valid occupancies was not lawful prior to the enactment of ANILCA and is available through routes outside the Old Park that have been historically used for that purpose. Therefore, the use of snowmachines is not authorized by section 1110(a) for such travel. Further, Congress did not authorize subsistence activities in the Old Park. In addition, the National Park Service has determined that the use of even a few snowmachines in the Old Park would be detrimental to the resource values of the area. Therefore, because no usage is authorized in the Old Park by section 1110(a) the Old Park remains closed to all snowmachine use in accordance with 36 CFR 2.18.

### § 13.954 Where can I operate a snowmachine in Denali National Park and Preserve?

You can use a snowmachine outside of the Old Park for traditional activities or travel to and from villages and homesites and other valid occupancies as authorized by 43 CFR 36.11(c), or when lawfully engaged in subsistence activities authorized by § 13.460.

### § 13.956 What types of snowmachines are allowed?

The types of snowmachines allowed are defined in § 13.1 under ''snowmachine or snowmobile''.

### § 13.958 What other regulations apply to snowmachine use?

Snowmachine use is governed by regulations at § 2.18(a) of this chapter,

traffic safety, § 2.18(b) of this chapter, state laws, and § 2.18(d) and (e) of this chapter, prohibited activities; and 43 CFR 36.11(a)(2) adequate snow cover, and 43 CFR 36.11(c) traditional activities.

### § 13.960 Who determines when there is adequate snow cover?

The superintendent will determine when snow cover is adequate for snowmachine use. The superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

### § 13.962 Does the Superintendent have other regulatory authority?

Nothing in this subpart shall limit the authority of the superintendent to restrict or limit uses of an area under other statutory authority.

FRONTCOUNTRY DEVELOPED AREA (FDA)

### § 13.970 Frontcountry Developed Area definition.

For purposes of this subpart, the Frontcountry Developed Area (FDA) means all park areas within the portion of the park formerly known as Mt. McKinley National Park (Old Park) not designated as Wilderness by Congress. A map showing the FDA is available at the park visitor center.

### § 13.972 Camping from April 15 through September 30.

(a) Camping is prohibited in the FDA except in designated campgrounds in accordance with the terms and conditions of a permit. Violation of permit terms and conditions is prohibited.

(b) Camping in designated campgrounds in the FDA for more than a total of 14 days, either in a single period or combined periods, is prohibited.

### § 13.974 Camping from October 1 through April 14.

(a) Camping is prohibited in the FDA except in designated campgrounds and the designated area where the park road is closed to motor vehicle use. A map showing the designated area is available at the park visitor center and on the park Web site.

(b) Camping in the FDA without a permit is prohibited. Violation of permit terms and conditions is prohibited.

(c) Camping in the FDA for more than a total of 30 days, either in a single period or combined periods, is prohibited.

### § 13.976 Fire.

Lighting or maintaining a fire is prohibited in the FDA except—

(a) In established receptacles within designated campgrounds;

(b) From October 1 through April 14 in that portion of the FDA where the park road is closed to motor vehicle use; and

(c) Under conditions that may be established by the Superintendent.

### § 13.978 Pets.

Possessing a pet is prohibited—

(a) In the FDA, except in public parking areas, on or immediately adjacent to park roads, or in designated campgrounds;

(b) Within 150 feet of the park sled dog kennels; and

(c) Within 150 feet of the park water system intake facilities.

### § 13.980 Other FDA closures and restrictions.

The Superintendent may prohibit or otherwise restrict activities in the FDA to protect public health, safety, or park resources. Information on FDA closures and restrictions will be available for inspection at the park visitor center and on the park Web site. Violating FDA closures or restrictions is prohibited.

## Subpart M—Special Regulations—Gates of the Arctic National Park and Preserve

### § 13.1002 Subsistence resident zone.

The following communities and areas are included within the resident zone for Gates of the Arctic National Park: Alatna, Allakaket, Ambler, Anaktuvuk Pass, Bettles/Evansville, Hughes, Kobuk, Nuiqsut, Shungnak, and Wiseman.

### § 13.1004 Aircraft use.

In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in

the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent: Anaktuvuk Pass.

### § 13.1006 Customary trade.

In the Gates of the Arctic National Preserve unit which contains the Kobuk River and its tributaries, ''customary trade'' shall include—in addition to the exchange of furs for cash—the selling of handicraft articles made from plant material taken by local rural residents of the park area.

### § 13.1008 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

[73 FR 3186, Jan. 17, 2008]

## Subpart N—Special Regulations—Glacier Bay National Park and Preserve

ADMINISTRATIVE PROVISIONS

### § 13.1102 Definitions.

As used in this subpart:

*Bartlett Cove Developed Area* means all NPS-administered lands and waters within 1 mile of any Bartlett Cove facility. A map showing the Bartlett Cove Developed Area is available at the park visitor center.

*Charter vessel* means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) engaged in transport of passengers for hire and certified to carry no more than 12 passengers overnight and no more than 49 passengers for daytime use. Charter vessels also include any uninspected motor vessel measuring less than 200 tons gross (U.S. Tonnage ''Simplified Measurement System'') and not more than 24 meters (79 feet) in length engaged in transport of passengers for hire.

*Commercial fishing* means conducting fishing activities under the appropriate commercial fishing permits and licenses as required and defined by the State of Alaska.

*Commercial fishing vessel* means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as authorized under this subpart.

*Cruise ship* means any motor vessel of at least 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) certificated to carry more than 12 passengers for hire.

*Daily vessel quota* means the maximum number of vessels allowed, by vessel category, on any one calendar day.

*Glacier Bay* means all waters inside a line drawn between Point Gustavus at 135°54.927′ W longitude; 58°22.748′ N latitude and Point Carolus at 136°2.535′ W longitude; 58°22.694′ N latitude.

*Motor vessel* means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power, except a skiff or tender under tow or carried on board another vessel.

*Outer waters* means all of the non-wilderness marine waters of the park located outside of Glacier Bay.

*Passenger ferry* means a motor vessel authorized by the Superintendent to engage in the transport of passengers for hire to Bartlett Cove.

*Private vessel* means any motor vessel that is not engaged in business (business includes, but is not limited to, transportation of passengers for hire or commercial fishing).

*Seasonal vessel quota* means the maximum number of vessels allowed, by vessel category, during a specific seasonal period.

*Speed through the water* means the speed at which a vessel moves through the water (which itself may be moving); as distinguished from ''speed over the ground'' (speed measured in relation to a fixed point on the earth).

*Tour vessel* means any motor vessel of less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) engaged in transport of passengers for hire and certificated

to carry more than 12 passengers overnight or more than 49 passengers for daytime use.

*Transit* means to operate a motor vessel under power and continuously so as to accomplish ½ nautical mile of littoral (i.e., along the shore) travel.

*Vessel* includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

*Whale* means any humpback whale (*Megaptera novaeangliae*).

*Whale waters* means any portion of Glacier Bay, designated by the superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

### § 13.1104 Coordinates.

All coordinates referenced in this subpart use horizontal datum World Geodetic System of 1984 (WGS 84).

### § 13.1106 Pets.

Pets are prohibited except—

(a) On the Bartlett Cove Public Use Dock;

(b) On the beach between the Bartlett Cove Public Use Dock and the National Park Service Administrative Dock;

(c) Within 100 feet of Bartlett Cove Developed Area park roads or parking areas unless otherwise posted;

(d) On a vessel on the water; or

(e) Within Glacier Bay National Preserve.

[73 FR 3186, Jan. 17, 2008]

### § 13.1108 Alsek Corridor.

(a) A permit is required to enter the Alsek Corridor. A map showing the boundaries of the Alsek Corridor is available from the park visitor center. Failure to obtain a permit is prohibited.

(b) Group size is limited to 15 persons except that specific concession permit holders are limited to 25 persons.

(c) Camping is prohibited for more than one night each at Walker Glacier, Alsek Spit and Gateway Knob plus one additional night at any one of these three locations. Camping is prohibited for more than four nights total among the three locations.

(d) Except at Glacier Bay National Preserve, campfires must be lighted and maintained inside a fire pan within ½ mile of the Alsek River.

(e) Disposal of solid human body waste within the Alsek Corridor is prohibited. This waste must be carried to and disposed of at the NPS—designated facility.

[73 FR 3186, Jan. 17, 2008]

### § 13.1109 Off-road vehicle use in Glacier Bay National Preserve.

The use of off-road vehicles is authorized only on designated routes and areas in Glacier Bay National Preserve. The use of off-road vehicles in all other areas in Glacier Bay National Preserve is prohibited. A map of designated routes and areas is available at park headquarters.

[73 FR 3186, Jan. 17, 2008]

## General Provisions

### § 13.1110 May I collect or burn interstadial wood?

Collecting or burning interstadial wood (aged wood preserved in glacial deposits) is prohibited.

### § 13.1112 May I collect rocks and minerals?

Collecting rocks and minerals in the former Glacier Bay National Monument is prohibited.

### § 13.1114 May I collect goat hair?

The collection of naturally shed goat hair is authorized in accordance with terms and conditions established by the Superintendent. Violating terms and conditions for collecting goat hair is prohibited.

### § 13.1116 Do I need a camping permit in Glacier Bay?

From May 1 through September 30, camping within Glacier Bay as defined by this subpart up to ¼ nautical mile (1519 feet) above the line of mean high tide without a camping permit is prohibited. The Superintendent may establish permit terms and conditions. Failure to comply with permit terms and conditions is prohibited.

### § 13.1118 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

[73 FR 3186, Jan. 17, 2008]

BARTLETT COVE

### § 13.1120 Bartlett Cove Developed Area closures and restrictions.

The Superintendent may prohibit or otherwise restrict activities in the Bartlett Cove Developed Area to protect public health, safety, or park resources, or to provide for the equitable and orderly use of park facilities. Information on closures and restrictions will be available at the park visitor information center. Violating Bartlett Cove Developed Area closures or restrictions is prohibited.

### § 13.1122 Bartlett Cove Public Use Dock.

(a) Docking, tying down, or securing aircraft is prohibited except at the designated aircraft float at the Bartlett Cove Public Use Dock. Docking, tying down, or securing aircraft to the Bartlett Cove Public Use Dock for longer than 3 hours in a 24-hour period is prohibited. Pilots must remain with the aircraft or provide notice of their location to a park ranger. Failure to remain with the aircraft or provide notice to a park ranger is prohibited.

(b) Vehicles exceeding 30,000 pounds gross vehicle weight are prohibited on the dock, unless authorized by the Superintendent.

(c) Leaving personal property (other than vessels) unattended on, or attached to, the floats or pier without prior permission from the Superintendent is prohibited.

(d) Processing commercially caught fish on the Public Use Dock is prohibited.

(e) The Superintendent may authorize the buying or selling of fish or fish products on or at the Public Use Dock. Buying or selling of fish or fish products is prohibited on or at the Public Use Dock without written permission from the Superintendent.

(f) Utilizing the fuel dock for activities other than fueling and waste pump-out is prohibited. Other uses may be authorized by the Superintendent to protect park resources or public safety.

(g) Leaving a vessel unattended on the fuel dock for any length of time is prohibited.

(h) Using electrical shore power for vessels is prohibited unless otherwise authorized by the Superintendent.

### § 13.1124 Bartlett Cove Campground.

(a) Camping is prohibited in the Bartlett Cove Developed Area except in the Bartlett Cove Campground. From May 1 through September 30, all overnight campers must register to camp in the Bartlett Cove Campground. Failure to register is prohibited.

(b) Cooking, consuming, or preparing food in the Bartlett Cove Campground is prohibited except in designated areas.

(c) *Food storage.* In the Bartlett Cove Developed Area, storing food in any manner except in a sealed motor vehicle, a vessel (excluding kayaks), a building, an approved bear-resistant food container, a bear-resistant trash receptacle, or a designated food cache is prohibited.

### § 13.1126 Bicycles.

Use of a bicycle is prohibited on the Forest Loop, Bartlett River and Bartlett Lake trails.

### § 13.1128 Is a permit required to transport passengers between Bartlett Cove and Gustavus?

Commercial transport of passengers between Bartlett Cove and Gustavus by motor vehicles legally licensed to carry 15 or fewer passengers is allowed without a permit. However, if required to protect public health and safety or park resources, or to provide for the equitable use of park facilities, the Superintendent may establish a permit requirement with appropriate terms and conditions for the transport of passengers. Failure to comply with permit terms and conditions is prohibited.

COMMERCIAL FISHING

### § 13.1130 Is commercial fishing authorized in the marine waters of Glacier Bay National Park?

Yes—Commercial fishing is authorized within the outer waters of the park and within the non-wilderness waters of Glacier Bay, subject to the provisions of this chapter.

(a) Commercial fishing shall be administered pursuant to a cooperatively developed State/federal park fisheries management plan, international conservation and management treaties, and existing federal and non-conflicting State law. The management plan shall provide for the protection of park values and purposes, the prohibition on any new or expanded fisheries, and the opportunity to study marine resources.

(b) Commercial fishing or conducting an associated buying or processing operation in wilderness waters is prohibited.

(c) A new or expanded fishery is prohibited. The Superintendent shall compile a list of the existing fisheries and gear types used in the outer waters and follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(d) Maps and charts showing which marine areas of Glacier Bay are closed to commercial fishing are available from the Superintendent.

### § 13.1132 What types of commercial fishing are authorized in Glacier Bay?

Three types of commercial fishing are authorized in Glacier Bay non-wilderness waters: Longline fishing for halibut; pot and ring fishing for Tanner crab; and trolling for salmon.

(a) All other commercial fishing, or a buying or a processing operation not related to an authorized fishery is prohibited in Glacier Bay.

(b) On October 1, 2000, each fishery will be limited to fishermen who qualify for a non-transferable commercial fishing lifetime access permit (see § 13.1134). Commercial fishing without a permit issued by the superintendent, or other than in accordance with the terms and conditions of the permit, is prohibited.

(c) The Superintendent shall include in a permit the terms and conditions that the superintendent deems necessary to protect park resources. Violating a term or condition of the permit is prohibited.

### § 13.1134 Who is eligible for a Glacier Bay commercial fishing lifetime access permit?

A Glacier Bay commercial fishing lifetime access permit will be issued by the superintendent to fishermen who have submitted documentation to the superintendent, on or before October 1, 2000, which demonstrates to the satisfaction of the superintendent that:

(a) They possess valid State limited entry commercial fishing permits for the district or statistical area encompassing Glacier Bay for each fishery for which a lifetime access permit is being sought; and,

(b) They have participated as a limited entry permit holder or crewmember in the district or statistical area encompassing Glacier Bay for each fishery for which a lifetime access permit is being sought.

(1) For the Glacier Bay commercial halibut fishery, the applicant must have participated as a permit holder or crewmember for at least 2 years during the period 1992–1998.

(2) For the Glacier Bay salmon or Tanner crab commercial fisheries, the applicant must have participated as a permit holder or crewmember for at least 3 years during the period 1989–1998.

### § 13.1136 How can an individual apply for a commercial fishing lifetime access permit?

An applicant for a lifetime access permit must provide information sufficient to establish eligibility as follows:

(a) The applicant's full name, date of birth, mailing address and phone number;

(b) A notarized affidavit (required), sworn by the applicant, attesting to his or her history of participation as a limited entry permit holder or crewmember in Glacier Bay during the qualifying period for each fishery for which a lifetime access permit is being sought;

(c) A copy of the applicant's current State of Alaska limited entry permit or, in the case of halibut, an international Pacific Halibut Commission quota share (required), that is valid for the area that includes Glacier Bay, for each fishery for which a lifetime access permit is sought;

(d) For qualifying years as a limited entry permit holder, available corroborating documentation of the applicant's permit and quota share history for the Glacier Bay fishery during the qualifying period, and/or for qualifying years as a crewmember, other available corroborating documentation of crewmember status. This may include a copy of the applicant's commercial crewmember license for each qualifying year, a notarized affidavit from their employer (generally a limited entry permit holder, or boat owner hired or contracted by a limited entry permit holder) stating the years worked by the applicant in a qualifying fishery in Glacier Bay, copies of tax forms W–2 or 1099, pay stubs, or other documentation; and

(e) For applicants qualifying as a limited entry permit holder, available corroborating documentation of commercial landings for the Glacier Bay fishery during the qualifying periods—i.e., within the statistical unit or area that includes Glacier Bay. For halibut, this includes regulatory sub-area 184. For Tanner crab, this includes statistical areas 114–70 through 114–77. For salmon, the Superintendent may need additional documentation that supports the applicant's declaration of Glacier Bay salmon landings. For halibut and Tanner crab, the Superintendent may consider documented commercial landings from the unit or area immediately adjacent to Glacier Bay (in Icy Strait) if additional documentation supports the applicant's declaration that landings occurred in Glacier Bay.

(f) Any additional corroborating documentation that might assist the superintendent in a timely determination of eligibility for the access permits.

### § 13.1138 Where should the documentation for a lifetime access permit be sent?

Before October 1, 2000, all required information (as listed in § 13.1136) should be sent to: Superintendent, Attn: Access Permit Program, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

### § 13.1140 Who determines eligibility?

The superintendent will make a written determination of an applicant's eligibility for the lifetime access permit based on information provided. A copy of the determination will be mailed to the applicant. If additional information is required to make an eligibility determination, the applicant will be notified in writing of that need and be given an opportunity to provide it.

### § 13.1142 Can I appeal denial of my commercial fishing lifetime access permit application?

Yes—If an applicant's request for a commercial fishing lifetime access permit is denied, the superintendent will provide the applicant with the reasons for the denial in writing within 15 days of the decision. The applicant may appeal to the Regional Director, Alaska Region, within 180 days. The appeal must substantiate the basis of the applicant's disagreement with the Superintendent's determination. The Regional Director (or his representative) will meet with the applicant to discuss the appeal within 30 days of receiving the appeal. Within 15 days of receipt of written materials and the meeting, if requested, the Regional Director will affirm, reverse, or modify the Superintendent's determination and explain the reasons for the decision in writing. A copy of the decision will be forwarded promptly to the applicant and will be the final agency action.

### § 13.1144 How often will commercial fishing lifetime access permit be renewed?

The superintendent will renew lifetime access permit at 5-year intervals for the lifetime of a permittee who continues to hold a valid State limited entry commercial fishing permit, and for halibut an International Pacific Halibut Commission quota share, and

is otherwise eligible to participate in the fishery under Federal and State law.

### § 13.1146 What other closures and restrictions apply to commercial fishermen and commercial fishing vessels?

The following are prohibited:

(a) Commercial fishing in the waters of Geikie, Tarr, Johns Hopkins and Reid Inlets.

(b) Commercial fishing in the waters of the west arm of Glacier Bay north of 58° 50.0′ N latitude, except commercial fishermen who have been authorized by the superintendent to troll for salmon may troll for king salmon during the period October 1 through April 30, in compliance with state commercial fishing regulations.

(c) Commercial fishing in the east arm of Glacier Bay, north of an imaginary line running from Point Caroline through the southern point of Garforth Island and extending to the east side of Muir Inlet, except commercial fishermen who have been authorized by the superintendent to troll for salmon may troll for king salmon south of 58° 50.0′ N latitude during the period October 1 through April 30, in compliance with state commercial fishing regulations.

## VESSEL PERMITS

### § 13.1150 Is a permit required for a vessel in Glacier Bay?

A permit from the superintendent is required for motor vessels in accordance with this subpart and applicable regulations in this part.

### § 13.1152 Private vessel permits and conditions.

In Glacier Bay from June 1 through August 31 an individual must have a permit from the NPS issued for a specific vessel for a specific period of time.

(a) From June 1 through August 31, when the operator of a private vessel enters Glacier Bay for the first time that calendar year, the operator must go directly to the Bartlett Cove Ranger Station for orientation.

(b) From May 1 through September 30, the operator of a private vessel must immediately notify the Bartlett Cove Ranger Station of the vessel's entry to or exit from Glacier Bay.

### § 13.1154 Commercial vessel permits and conditions.

Each commercially operated motor vessel must have a permit to operate in Glacier Bay National Park and Preserve in accordance with § 5.3 of this chapter.

(a) A cruise ship must have a concession contract to operate in Glacier Bay.

(b) A tour vessel, charter vessel, and passenger ferry must have a commercial authorization to operate in Glacier Bay.

(c) The operator of a cruise ship, tour vessel, charter vessel, and passenger ferry must notify the Bartlett Cove Ranger Station of the vessel's entry into Glacier Bay within 48 hours in advance of entering Glacier Bay or immediately upon entry.

(d) Cruise ships and tour vessels are prohibited from operating in the Beardslee Entrance and at the entrance to Adams Inlet, as defined as waters within the Wilderness boundaries in those respective areas.

(e) Off-boat activity from a cruise ship, tour vessel, or charter vessel is prohibited, unless authorized by the superintendent.

(f) Off-boat activity from a passenger ferry is prohibited, except for passenger access at the Bartlett Cove docks.

(g) A passenger ferry must travel a direct course between the mouth of Glacier Bay and Bartlett Cove, except when the vessel is granted safe harbor by the Superintendent as stated in § 13.1156(e).

### § 13.1156 Exceptions from vessel permit requirement.

A vessel permit is not required in Glacier Bay when:

(a) A motor vessel is engaged in official, non-commercial business of the State or Federal Government;

(b) A motor vessel is operating in Bartlett Cove waters east of a line extending from the long axis of the fuel dock to the wilderness boundary of Lester Island;

(c) One motor vessel is launched from a motor vessel that has a permit and only while the authorized motor vessel remains at anchor or operated in accordance with a concession agreement

from a permitted motor vessel while that vessel is not underway;

(d) A commercial fishing vessel authorized under this subpart is actually engaged in commercial fishing; or

(e) A vessel is granted safe harbor by the superintendent.

### § 13.1158 Prohibitions.

(a) Operating a motor vessel in Glacier Bay without a required permit is prohibited.

(b) Violating a term or condition of a permit or an operating condition or restriction issued or imposed pursuant to this chapter is prohibited.

(c) The superintendent may immediately suspend or revoke a permit or deny a future permit request as a result of a violation of a provision of this chapter.

### § 13.1160 Restrictions on vessel entry.

The superintendent will allow vessel entry in accordance with the following table:

| Type of vessel | Daily vessel quotas (DVQ) | Period covered by DVQ | Seasonal vessel quota (SVQ) | Period covered by SVQ |
|---|---|---|---|---|
| Cruise ship | 2 | Year-round | Up to 184 | June 1–August 31. |
| | | | Up to 122 | May and September. |
| Tour vessel | 3 | Year-round | N/A | N/A. |
| Charter vessel | 6 | Jun 1–Aug 31 | N/A | N/A. |
| Private vessel | 25 | Jun 1–Aug 31 | N/A | N/A. |
| Passenger ferry | 1 | Year-round | N/A | N/A. |

NOTE: Cruise ships and tour vessels are limited to the daily vessel quota year-round. Charter and private vessels are not subject to quotas from September through May.

(a) The Director will reduce the vessel quota levels for any or all categories of vessels in this subpart as required to protect the values and purposes of Glacier Bay National Park and Preserve. The director will make these reductions based on the controlling biological opinion issued by the National Oceanic and Atmospheric Administration Fisheries Service under section 7 of the Endangered Species Act, applicable authority, and any other relevant information.

(b) The superintendent will annually determine the cruise ship quota. This determination will be based upon applicable authorities, appropriate public comment and available scientific and other information. The number will be subject to the maximum daily vessel quota of two vessels.

(c) From June 1 through August 31, the superintendent will designate one private vessel permit from the daily quota of 25 as a transit permit. This transit permit may be used only to directly exit Glacier Bay from Bartlett Cove and return directly to Bartlett Cove. The superintendent may establish application procedures and operating conditions. Violating operating conditions is prohibited. This paragraph will cease to have effect on November 30, 2011.

(d) Nothing in this section will be construed to prevent the superintendent from taking any action at any time to protect the values and purposes of Glacier Bay National Park and Preserve.

## VESSEL OPERATING RESTRICTIONS

### § 13.1170 What are the rules for operating vessels?

(a) Operating a vessel within 1/4 nautical mile of a whale is prohibited, except for a commercial fishing vessel authorized under this subpart that is actively trolling, setting, or pulling long lines, or setting or pulling crab pots.

(b) The operator of a vessel inadvertently positioned within 1/4 nautical mile of a whale must immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator must direct or maintain the vessel on as steady a course as possible away from the whale until at least 1/4 nautical mile of separation is established. Failure to take such action is prohibited.

(c) The operator of a vessel or seaplane positioned within 1/2 nautical

mile of a whale is prohibited from altering course or speed in a manner that results in decreasing the distance between the whale and the vessel or seaplane.

**§ 13.1172 When general operating restrictions do not apply.**

Section 13.1170 does not apply to a vessel being used in connection with federally permitted whale research or monitoring; other closures and restrictions in ''Vessel Operating Restrictions,'' §§ 13.1170 through 13.1180, do not apply to authorized persons conducting emergency or law enforcement operations, research or resource management, park administration/supply, or other necessary patrols.

**§ 13.1174 Whale water restrictions.**

(a) May 15 through September 30, the following waters are designated as whale waters.

(1) Waters north of a line drawn from Point Carolus to Point Gustavus; and south of a line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, as described in § 13.1180(a)(4), and following that line south and west to the Bartlett Cove shore (so as to include the Beardslee Entrance and Bartlett Cove); and

(2) Other waters designated by the superintendent as temporary whale waters.

(b) The public will be notified of other waters designated as temporary whale waters in accordance with § 1.7 of this chapter.

(c) Violation of a whale water restriction is prohibited. The following restrictions apply in whale waters unless otherwise provided by the superintendent in the designation:

(1) Operating a motor vessel less than one nautical mile from shore (where the width of the water permits), or in narrower areas navigating outside of mid-channel is prohibited. This restriction does not apply to motor vessels less than 18 feet in length, or vessels actively engaged in fishing activities or operating solely under sail.

(2) Unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.*, by the most direct line to shore) through designated whale waters, but they may not transit along the shore.

(3) Operators must follow motor vessel speed limits in § 13.1176(a).

**§ 13.1176 Speed restrictions.**

(a) From May 15 through September 30, in designated whale waters the following are prohibited:

(1) Operating a motor vessel at more than 20 knots speed through the water; or

(2) Operating a motor vessel at more than 13 knots speed through the water, when the superintendent has designated a maximum speed of 13 knots, or at a maximum speed designated by the superintendent based on NOAA guidelines or new scientific information.

(b) From July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet waters south of 58°54.2′ N latitude (a line running due west from Jaw Point) at more than 10 knots speed through the water is prohibited.

**§ 13.1178 Closed waters, islands and other areas.**

The following are prohibited:

(a) Operating a vessel or otherwise approaching within 100 yards of South Marble Island; or Flapjack Island; or any of the three small unnamed islets approximately one nautical mile southeast of Flapjack Island; or Eider Island; or Boulder Island; or Geikie Rock; or Lone Island; or the northern three-fourths of Leland Island (north of 58°39.1′ N latitude); or any of the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the easternmost point of Russell Island; or Graves Rocks (on the outer coast); or Cormorant Rock, or any adjacent rock, including all of the near-shore rocks located along the outer coast, for a distance of 1½ nautical miles, southeast from the mouth of Lituya Bay; or the surf line along the outer coast, for a distance of 1½ nautical miles northwest of the mouth of the glacial river at Cape Fairweather.

(b) Operating a vessel or otherwise approaching within 100 yards of a

Steller (northern) sea lion (*Eumetopias jubatus*) hauled-out on land or a rock or a nesting seabird colony: *Provided, however*, that vessels may approach within 50 yards of that part of South Marble Island lying south of 58°38.6′ N latitude (approximately the southern one-half of South Marble Island) to view seabirds.

(c) May 1 through August 31, operating a vessel, or otherwise approaching within ¼ nautical mile of, Spider Island or any of the four small islets lying immediately west of Spider Island.

(d) May 1 through August 31, operating a cruise ship on Johns Hopkins Inlet waters south of 58°54.2′ N latitude (an imaginary line running approximately due west from Jaw Point).

(e) May 1 through June 30, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′ N latitude (an imaginary line running approximately due west from Jaw Point).

(f) July 1 through August 31, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′ N latitude (an imaginary line running approximately due west from Jaw Point), within ¼ nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the ¼ nautical mile distance from concentrations of seals.

(g) Restrictions imposed in this section are minimum distances. Park visitors are advised that protection of park wildlife may require that visitors maintain greater distances from wildlife. *See*, 36 CFR 2.2 (Wildlife protection).

### § 13.1180 Closed waters, motor vessels and seaplanes.

(a) May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(1) Adams Inlet, east of 135°59.2′ W longitude (an imaginary line running approximately due north and south through the charted (5) obstruction located approximately 2¼ nautical miles east of Pt. George).

(2) Rendu Inlet, north of the wilderness boundary at the mouth of the inlet.

(3) Hugh Miller complex, including Scidmore Bay and Charpentier Inlet, west of the wilderness boundary at the mouth of the Hugh Miller Inlet.

(4) Waters within the Beardslee Island group (except the Beardslee Entrance), that is defined by an imaginary line running due west from shore to the easternmost point of Lester Island, then along the south shore of Lester Island to its western end, then to the southernmost point of Young Island, then north along the west shore and east along the north shore of Young Island to its northernmost point, then at a bearing of 15 true to an imaginary point located one nautical mile due east of the easternmost point of Strawberry Island, then at a bearing of 345 true to the northernmost point of Flapjack Island, then at a bearing of 81 true to the northernmost point of the unnamed island immediately to the east of Flapjack Island, then southeasterly to the northernmost point of the next unnamed island, then southeasterly along the (Beartrack Cove) shore of that island to its easternmost point, then due east to shore.

(b) June 1 through July 15, operating a motor vessel or a seaplane on the waters of Muir Inlet north of 59°02.7′ N latitude (an imaginary line running approximately due west from the point of land on the east shore approximately 1 nautical mile north of the McBride Glacier) is prohibited.

(c) July 16 through August 31, operating a motor vessel or a seaplane on the waters of Wachusett Inlet west of 136°12.0′ W longitude (an imaginary line running approximately due north from the point of land on the south shore of Wachusett Inlet approximately 2¼ nautical miles west of Rowlee Point) is prohibited.

### § 13.1182 Noise restrictions.

June 1 through August 31, except on vessels in transit or as otherwise authorized by the superintendent, the use of generators or other non-propulsive motors (except a windlass) is prohibited from 10 p.m. until 6 a.m. in Reid Inlet, Blue Mouse Cove and North Sandy Cove.

### § 13.1184 Other restrictions on vessels.

The superintendent will make rules for the safe and equitable use of Bartlett Cove waters and for park docks.

The superintendent will notify the public of these rules by posting of a sign or a copy of them at the dock. Failure to obey a sign or posted rule is prohibited.

### § 13.1186 What are the emission standards for vessels?

(a) The State of Alaska statutes and regulations applicable to marine vessel emission standards are adopted as a part of these regulations.

(b) Violating a State of Alaska statute or regulation applicable to marine vessel visible emission standards is prohibited.

### § 13.1188 Where to get charts depicting closed waters.

Closed waters and islands within Glacier Bay as described in §§ 13.1174–13.1180 of this subpart are described as depicted on NOAA Chart #17318 GLACIER BAY (4th Ed., Mar. 6/93) available to the public at park offices at Bartlett Cove and Juneau, Alaska.

## Subpart O—Special Regulations—Katmai National Park and Preserve

GENERAL PROVISIONS

### § 13.1202 Fishing.

Fishing is allowed in accordance with § 13.40 of this chapter, but only with artificial lures and with the following additional exceptions:

(a) Bait, as defined by State law, may be used only on the Naknek River during times and dates established by the Alaska Department of Fish and Game, and only from markers located just above Trefon's cabin downstream to the park boundary.

(b) Flyfishing only is allowed on the Brooks River between Brooks Lake and the posted signs near Brooks Camp.

(c) No person may retain more than one fish per day caught on Brooks River, on the waters between the posted signs 200 yards from the outlet of Brooks Lake, or on the water between the posted signs 200 yards from the mouth of the Brooks River on Naknek Lake.

### § 13.1204 Traditional red fish fishery.

Local residents who are descendants of Katmai residents who lived in the Naknek Lake and River Drainage will be authorized, in accordance with State fishing regulations or conditions established by the Superintendent, to continue their traditional fishery for red fish (spawned-out sockeye salmon that have no significant commercial value).

### § 13.1206 Wildlife distance conditions.

(a) Approaching a bear or any large mammal within 50 yards is prohibited.

(b) Continuing to occupy a position within 50 yards of a bear that is using a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(c) Continuing to engage in fishing within 50 yards of a bear is prohibited.

(d) The prohibitions in this section do not apply to persons—

(1) Engaged in a legal hunt;

(2) On a designated bear viewing structure;

(3) In compliance with a written protocol approved by the Superintendent; or

(4) Who are otherwise directed by a park employee.

[71 FR 69333, Nov. 30, 2006, as amended at 73 FR 3186, Jan. 17, 2008]

### § 13.1208 Lake Camp.

Leaving a boat, trailer, or vehicle unattended for more than 72 hours at the facilities associated with the Lake Camp launching ramp is prohibited without authorization from the Superintendent. Leaving a boat unattended at the Lake Camp dock is prohibited.

### § 13.1210 Firearms.

The superintendent may designate areas or routes within Katmai National Park where a firearm may be carried.

[73 FR 3186, Jan. 17, 2008]

BROOKS CAMP DEVELOPED AREA

### § 13.1220 Brooks Camp Developed Area definition.

For purposes of this subpart, the Brooks Camp Developed Area (BCDA) means all park areas within a 1.5 mile radius from the Brooks Falls Platform and is depicted on a map available at the park visitor center. Sections

13.1222–13.2240 of this subpart apply from May 1 through October 31 unless stated otherwise.

### § 13.1222 Camping.

(a) Camping is prohibited in all areas of the BCDA except within the Brooks Camp Campground and other designated areas.

(b) Camping in Brooks Camp Campground for more than a total of 7 nights during the month of July is prohibited.

(c) Exceeding a group size limit of 6 persons per site in the Brooks Camp Campground while in operation as a designated fee area is prohibited.

### § 13.1224 Visiting hours.

The Falls and Riffles bear viewing platforms and boardwalks are closed from 10 pm to 7 am from June 15 through August 15. Entering or going upon these platforms and boardwalks during these hours is prohibited.

### § 13.1226 Brooks Falls area.

The area within 50 yards of the ordinary high water marks of the Brooks River from the Riffles Bear Viewing Platform to a point 100 yards above Brooks Falls is closed to entry from June 15 through August 15, unless authorized by the Superintendent. The Superintendent may designate a route to transit through the closed area.

### § 13.1228 Food storage.

In the BCDA, all fish must be stored in designated facilities and in accordance with conditions established by the Superintendent. Storing fish in any other manner is prohibited. Employees may store fish in employee residences.

### § 13.1230 Campfires.

Lighting or maintaining a fire is prohibited except in established receptacles in the BCDA.

### § 13.1232 Sanitation.

Within the BCDA, washing dishes or cooking utensils at locations other than the water spigot near the food cache in the Brooks Campground or other designated areas is prohibited.

### § 13.1234 Pets.

Possessing a pet in the BCDA is prohibited.

### § 13.1236 Bear orientation.

All persons visiting the BCDA must receive an NPS-approved Bear Orientation. Failure to receive an NPS-approved Bear Orientation is prohibited.

### § 13.1238 Picnicking.

Within the BCDA, picnicking in locations other than the Brooks Camp Visitor Center picnic area, Brooks Campground, Brooks Lake Picnic Area, and a site designated in the employee housing area is prohibited. Food consumption or possession while at the Brooks River is prohibited.

### § 13.1240 Unattended property.

Leaving property, other than motorboats and planes, unattended for any length of time within the BCDA is prohibited, except at the Brooks Lodge Porch, Brooks Campground, or designated equipment caches as posted at the Brooks Camp Visitor Center.

### § 13.1242 BCDA closures and restrictions.

The Superintendent may prohibit or otherwise restrict activities in the BCDA to protect public health and safety or park resources. Information on BCDA closures and restrictions will be available for inspection at the park visitor center. Violating BCDA closures or restrictions is prohibited.

## Subpart P—Special Regulations—Kenai Fjords National Park

SOURCE: 73 FR 3186, Jan. 17, 2008, unless otherwise noted.

GENERAL PROVISIONS

### § 13.1302 Subsistence.

Subsistence uses are prohibited in, and the provisions of Subpart F of this part shall not apply to, Kenai Fjords National Park.

**§ 13.1304 Ice fall hazard zones.**

Entering an ice fall hazard zone is prohibited. These zones will be designated with signs, fences, rope barriers, or similar devices.

**§ 13.1306 Public use cabins.**

(a) Camping within 500 feet of the North Arm or Holgate public use cabin is prohibited except by the cabin permit holder on a designated tent site, or as otherwise authorized by the Superintendent.

(b) Camping within the 5-acre NPS-leased parcel surrounding the Aialik public use cabin is prohibited except by the cabin permit holder on a designated tent site, or as otherwise authorized by the Superintendent.

(c) Lighting or maintaining a fire within 500 feet of the North Arm or Holgate public use cabins is prohibited except by the cabin permit holder in NPS established receptacles, or as otherwise authorized by the Superintendent.

**§ 13.1308 Harding Icefield Trail.**

The Harding Icefield Trail from the junction with the main paved trail near Exit Glacier to the emergency hut near the terminus is closed to—

(a) Camping within ⅛ mile of the trail from March 1 through November 1; and

(b) Bicycles or other wheeled devices.

**§ 13.1310 Pets.**

(a) Pets are prohibited—

(1) In the Exit Glacier Developed Area except in the parking lot, on the Exit Glacier road, or other areas designated by the superintendent;

(2) Along the coast within the area extending from the mean high tide line to one quarter mile inland after May 30 and before November 1.

(b) The restrictions in this section do not apply to dogs when sufficient snow exists for skiing or dog sled use and the dogs are restrained as part of a sled dog team or for the purposes of skijoring.

**§ 13.1312 Climbing and walking on Exit Glacier.**

Except for areas designated by the Superintendent, climbing or walking on, in, or under Exit Glacier is prohibited within ½ mile of the glacial terminus from May 1 through October 31, and during other periods as determined by the Superintendent. Restrictions and exceptions will be available for inspection at the park visitor center, on bulletin boards or signs, or by other appropriate means.

**§ 13.1316 Commercial transport of passengers by motor vehicles.**

Commercial transport of passengers by motor vehicles on Exit Glacier Road is allowed without a written permit. However, if required to protect public health and safety or park resources, or to provide for the equitable use of park facilities, the Superintendent may establish a permit requirement with appropriate terms and conditions for the transport of passengers. Failure to comply with permit terms and conditions is prohibited.

EXIT GLACIER DEVELOPED AREA (EGDA)

**§ 13.1318 Location of the EGDA.**

(a) A map showing the boundaries of the EGDA is available at the park visitor center.

(b) For the purpose of this subpart, the EGDA means:

(1) From the park boundary to Exit Glacier Campground Entrance Road, all park areas within 350 meters (383 yards) of the centerline of the Exit Glacier Road;

(2) From Exit Glacier Campground Entrance Road to the end of the main paved trail, all park areas within 500 meters (546 yards) of any paved surface; or

(3) All park areas within 300 meters (328 yards) of the terminus of Exit Glacier.

**§ 13.1320 Camping.**

Within the EGDA, camping is prohibited except in designated sites within the Exit Glacier Campground, or as authorized by the Superintendent.

**§ 13.1322 Food storage.**

Cooking, consuming, storing or preparing food in the Exit Glacier Campground is prohibited except in designated areas.

### § 13.1324 Bicycles.

Within the EGDA, the use of a bicycle is prohibited except on the Exit Glacier Road and parking areas.

### § 13.1326 Snowmachines.

The use of snowmachines is prohibited within the EGDA, except—

(a) On Exit Glacier Road;

(b) In parking areas;

(c) On a designated route through the Exit Glacier Campground to Exit Creek;

(d) Within Exit Creek; and

(e) For NPS administrative activities.

### § 13.1328 EGDA closures and restrictions.

The Superintendent may prohibit or otherwise restrict activities in the EGDA to protect public health, safety, or park resources, or to provide for the equitable and orderly use of park facilities. Information on closures and restrictions will be available at the park visitor information center. Violating closures or restrictions is prohibited.

## Subpart Q—Special Regulations—Klondike Gold Rush National Historical Park

### § 13.1402 Camping.

(a) Camping is permitted only in designated areas.

(b) Camping without a permit is prohibited. The Superintendent may establish permit terms and conditions. Failure to comply with permit terms and conditions is prohibited.

(c) Camping at Dyea campground more than 14 days in a calendar year is prohibited.

### § 13.1404 Preservation of natural, cultural, and archaeological resources.

The Superintendent may allow the gathering of mushrooms in accordance with § 2.1(c) of this chapter.

### § 13.1406 State lands.

The National Park Service administers certain state-owned lands and waters within the boundary of Klondike Gold Rush National Historical Park under a memorandum of understanding with the State of Alaska. The prohibition on carrying, possession, and use of weapons, traps, and nets in this chapter does not apply to the lawful taking of wildlife on these State-owned lands and waters.

## Subpart R—Special Regulations—Kobuk Valley National Park

### § 13.1502 Subsistence resident zone.

The following area is included within the resident zone for Kobuk Valley National Park: The NANA Region.

### § 13.1504 Customary trade.

In addition to the exchange of furs for cash, ''customary trade'' in Kobuk Valley National Park shall include the selling of handicraft articles made from plant material taken by local rural residents of the park area.

## Subpart S—Special Regulations—Lake Clark National Park and Preserve

### § 13.1602 Subsistence resident zone.

The following communities and areas are included within the resident zone for Lake Clark National Park: Iliamna, Lime Village, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.

### § 13.1604 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

(c) A transfer station located wholly on nonfederal lands within Lake Clark National Park and Preserve may be operated without the permit required by §§ 6.4(b) and 6.9(a) only if:

(1) The solid waste is generated within the boundaries of the park area;

(2) The Regional Director determines that the operation will not degrade any of the natural or cultural resources of the park area; and

(3) The transfer station complies with the provisions of part 6 of this chapter.

(d) For purposes of this section, a transfer station means a public use facility for the deposit and temporary storage of solid waste, excluding a facility for the storage of a regulated hazardous waste.

[73 FR 3187, Jan. 17, 2008]

## Subpart T—Special Regulations—Noatak National Preserve [Reserved]

## Subpart U—Special Regulations—Sitka National Historical Park

### § 13.1802 Prohibited activities.

The following activities are prohibited in Sitka National Historical Park—

(a) Camping.

(b) Riding a bicycle, except in the public parking areas and on routes designated by the Superintendent. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the purposes for which the park was established.

(c) The use of roller skates, skateboards, roller skis, in-line skates, and other similar devices.

## Subpart V—Special Regulations—Wrangell-St. Elias National Park and Preserve

### § 13.1902 Subsistence.

(a) *Subsistence resident zone communities*. The following communities and areas are included within the resident zone for Wrangell-St. Elias National Park: Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway/Northway Village/Northway Junction, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and Yakutat.

(b) *Subsistence resident zone boundaries*. Boundaries for communities and areas added to the park resident zone will be determined by the Superintendent after consultation with the affected area or community. If the Superintendent and community are not able to agree on a boundary within two years, the boundary of the area or community added will be the boundary of the Census Designated Place, or other area designation, used by the Alaska Department of Labor for census purposes for that community or area. Copies of the boundary map will be available in the park headquarters office.

(c) *Subsistence aircraft exemption*. In extraordinary cases where no reasonable alternative exists local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent: Yakutat (for access to the Malaspina Forelands Area only).

### § 13.1904 Kennecott Mines National Historic Landmark (KNHL).

A map showing the boundaries of the KNHL is available at the park visitor center. The following activities are prohibited within the KNHL—

(a) Entering closed structures or passing beyond barricades;

(b) Entering mine tunnels and other mine openings;

(c) Camping in or on any historic structure; and

(d) Camping within the mill site of the KNHL. The mill site consists of the collection of buildings clustered around the mill building on both sides of National Creek. For purposes of this subpart, the mill site is the area bounded by Bonanza Creek to the north, the Kennicott Glacier to the west, the 2,200 foot contour line to the east, and Sweet Creek to the south. The mill site is depicted on a map available at the park visitor center; and

(e) Lighting or maintaining a fire within the mill site as defined in paragraph (d) of this section.

### § 13.1906 Headquarters/Visitor Center Developed Area (HVCDA).

For purposes of this subpart, the HVCDA consists of all park areas within a ½ mile radius of the Wrangell-St. Elias National Park and Preserve Headquarters building, other than the Valdez Trail. The following activities are prohibited within the HVCDA:

(a) Lighting or maintaining a fire;

(b) Camping;

(c) Entering the area after visiting hours (visiting hours will be posted at the entrance gate).

### § 13.1908 Slana Developed Area (SDA).

For purposes of this subpart, the Slana Developed Area consists of all park areas within a ¼ mile radius of the Slana Ranger Station.

### § 13.1910 KNHL and developed area closures and restrictions.

The Superintendent may prohibit or otherwise restrict activities in the KNHL, Headquarters/Visitor Center Developed Area, and Slana Developed Area to protect public health and safety or park resources. Information on closures and restrictions will be available at the park visitor center. Violating these closures or restrictions is prohibited. Notwithstanding the provisions of this subpart, the Superintendent may issue a Special Use Permit to authorize uses in the KNHL and either developed area.

### § 13.1912 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

(c) A transfer station located wholly on nonfederal lands within Wrangell-St. Elias National Park and Preserve may be operated without the permit required by §§ 6.4(b) and 6.9(a) only if:

(1) The solid waste is generated within the boundaries of the park area;

(2) The Regional Director determines that the operation will not degrade any of the natural or cultural resources of the park area; and

(3) The transfer station complies with the provisions of part 6 of this chapter.

(d) For purposes of this section, a transfer station means a public use facility for the deposit and temporary storage of solid waste, excluding a facility for the storage of a regulated hazardous waste.

[73 FR 3187, Jan. 17, 2008]

## Subpart W—Special Regulations—Yukon Charley Rivers National Preserve [Reserved]

## PART 14—RIGHTS-OF-WAY

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APPENDIX A TO PART 14

AUTHORITY: 16 U.S.C. 5, 79; 23 U.S.C. 317.

SOURCE: 45 FR 47092, July 11, 1980, unless otherwise noted.

## Subpart A—Rights-of-Way: General

### § 14.1 Applicability.

The regulations contained in this part shall apply to all Federally owned or controlled lands administered by the National Park Service.

### § 14.2 Definitions.

(a) *Secretary* means the Secretary of the Interior.

(b) *Director* means the Director, National Park Service.

(c) *Authorized Officer* means the Superintendent.

(d) *Superintendent* means the person in charge of an area of the National Park System or his or her duly authorized representative.

(e) *Project* means the physical structures in connection with which the right-of-way is approved.

(f) *Construction work* means any and all work, whether of a permanent nature, done in the construction of the project.

(g) *Park* means any federally owned or controlled land within an area of the National Park System.

(h) *Right-of-Way* includes license, permit, or easement, as the case may be, and, where applicable, includes ''site''.

[45 FR 47092, July 11, 1980, as amended at 60 FR 55791, Nov. 3, 1995]

## Subpart B—Nature of Interest

### § 14.5 Nature of interest granted; settlement on right-of-way; rights of ingress and egress.

### § 14.6 In form of easement, license, or permit.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

### § 14.7 Right of ingress and egress to a primary right-of-way.

In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-

way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

### § 14.8 Unauthorized occupancy.

Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

### § 14.9 Terms and conditions.

An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent may specify.

(c) To take such soil and resource conservation and protection measures including weed control, on the land covered by the right-of-way as the superintendent may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way; except that where a right-of-way is granted hereunder to a state or other governmental agency whose power to assume liability by agreement is limited by law, such agency shall indemnify the United States as provided above to the extent that it may legally do so.

(g) To notify promptly the superintendent of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the National Park Service to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original

condition to the entire satisfaction of the superintendent.

(j) That he shall at all times keep the authorized officer informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management and administration by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

### § 14.10 Areas of National Park System.

(a) The Act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without the specific authority of Congress.

(b) Pursuant to any statute, including those listed in this subpart, applicable to lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

## Subpart C—Procedures

### § 14.20 Application.

### § 14.21 Form.

*Application.* The application shall be prepared and submitted in accordance with the requirements of this section. It should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purposes for which the right-of-way is to be used. Applications shall be filed with the superintendent. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

### § 14.22 Reimbursement of costs.

(a)(1) An applicant for a right-of-way or a permit incident to a right-of-way shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act (42 U.S.C. 4321–4347), before the right-of-way or permit will be issued under the regulations of this part.

(2) The regulations contained in this section do not apply to: (i) State or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and the lands and resources will continue to serve the general public; (ii) road use agreements or reciprocal road agreements; or (iii) Federal government agencies.

(3) An applicant must submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way for crossing National Park System lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

| Length | Payments |
|---|---|
| Less than 5 miles ..... | $50 per mile or fraction thereof. |
| 5 to 20 miles ..... | $500. |
| 20 miles and over .... | $500 for each 20 miles or fraction thereof. |

(ii) Each right-of-way or permit incident to a right-of-way, not included in paragraph (a)(3)(i) of this section (e.g., for communication sites, reservoir sites, plant sites, and other non-linear facilities)—$250 for each 40 acres or fraction thereof.

(iii) If a project has the features of paragraphs (a)(3) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (a)(3) (i) and (ii) of this section.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the paragraph (a)(3) of this section, payment by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of any authorization for a right-of-way or permit incident to a right-of-way, the applicant will be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a) (3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a) (3) and (4) of this section shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(7) An applicant who withdraws its application before a decision is reached on it is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section exceeds actual costs to the United States, a refund may be made by the authorized officer from applicable funds, under authority of 43 U.S.C. 1374, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall on request give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When two or more applications for rights-of-way are filed which the authorized officer determines to be in competition with each other, each shall reimburse the United States according to paragraphs (a) (3) through (7) of this section except that costs which are not readily identifiable with one of the applications, such as costs for an environmental impact statement on all the proposals, shall be paid by each of the applicants in equal shares.

(11) The authorized officer may require an applicant to furnish security, in an amount acceptable to the authorized officer, by bond, guaranty, cash,

certificate of deposit, or other means acceptable to the authorized officer, for costs under § 14.22. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(12) When an applicant for a right-of-way is a partnership, corporation, association, or other entity, and is owned or controlled, directly or indirectly, by one or more other entities, one or more of the owning or controlling entity or entities shall furnish security in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit or other means acceptable to the authorized officer, for costs under § 14.22. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(13) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way, each such applicant shall be jointly and severally liable for costs under § 14.22.

(14) When two or more noncompeting applications for rights-of-way are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 14.22 for the entire system; subject, however, to the provisions of paragraphs (a) (11) through (13) of this section.

(15) The regulations contained in § 14.22 are applicable to all applications for rights-of-way or permits incident for rights-of-way over the public lands pending on June 1, 1975.

(b)(1) After issuance of a right-of-way or permit incident to a right-of-way, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way or permit incident to a right-of-way must submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way, for crossing National Park System lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

| Length | Payment |
|---|---|
| Less than 5 miles ..... | $20 per mile or fraction thereof. |
| 5 to 20 miles ..... | $200. |
| 20 miles and over .... | $200 for each 20 miles or fraction thereof. |

(ii) Each right-of-way or permit incident to a right-of-way, not included in paragraph (b)(2)(i) of this section (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of paragraphs (b)(2) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (b)(2) (i) and (ii) of this section.

(3) When a right-of-way or permit incident to a right-of-way is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the paragraph (b)(2) payment by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way or permit incident to a right-of-way, the former holder will be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

### § 14.23 Showing as to organizations required of corporations.

(a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper

State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or bylaws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the National Park Service the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

### § 14.24 Showing as to citizenship required.

(a) *Individuals.* An individual applicant applying for a right-of-way under any right-of-way act, except the Act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 *et seq.*), and the Act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) *Association of Individuals.* An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

### § 14.25 Documents which must accompany application.

(a) *Maps.* Each application, other than an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kV. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent

monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the land to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. The total distance of the right-of-way on the Federal lands shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix A) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(8) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

### § 14.26 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided,* That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any

permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in Subpart D.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way, or easement. After default has occurred, structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

### § 14.27 Application and use procedure.

### § 14.28 Incomplete application and reports.

Where an application is incomplete or not in conformity with the law or regulations the authorized officer may, in his discretion, (1) notify the applicant of the deficiencies and provide the applicant with an opportunity to correct the deficiencies; or (2) the authorized officer may reject the application.

### § 14.29 Timely construction.

(a) Unless otherwise provided by law, a period of up to five years from the date a right-of-way is granted is allowed for completion of construction. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

(b) The time for filing proof of construction may be extended by the authorized officer, unless prohibited by law, upon a satisfactory showing of the need therefor and the filing of a progress report, demonstrating that due diligence toward completion of the project is being exercised, for reasonable lengths of time not to exceed a total of ten years from the date of issuance of the right-of-way.

### § 14.30 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

### § 14.31 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the authorized officer. The authorized officer may require the filing of an amended application in accordance with § 14.20 wherein the authorized officer's judgment the deviation is substantial.

### § 14.32 Revocation or cancellation.

### § 14.33 Order of cancellation.

All rights-of-way approved pursuant to this part, shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be cancelled except on the issuance of a specific order of cancellation.

### § 14.34 Change in jurisdiction over lands.

A change in jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will however,

change the administrative jurisdiction over the right-of-way.

### § 14.35 Transfer of right-of-way.

### § 14.36 Method of filing.

Any proposed transfer in whole or in part of any right, title or interest in a right-of-way, or permit incident to a right-of-way acquired under any law, except the Act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in accordance with § 14.20 for approval, must be accompanied by the same showing of qualifications of the transferee as is required of the applicant, and must be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way. No transfer will be recognized unless and until it is first approved in writing by the authorized officer.

### § 14.37 Reimbursement of costs.

All filings for transfer approval made pursuant to this section, except as to rights-of-way or permits incident to rights-of-way excepted by § 14.22(a)(4), must be accompanied by a nonrefundable payment of $25.

### § 14.38 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all monies due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

## Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System)

### § 14.50 Authority.

(a) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, Secretary of Transportation may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Transportation in this connection.

(b) Title 23, United States Code, section 317, provides that:

(1) If the Secretary of Transportation determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Transportation shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(2) If within a period of 4 months after such filing the Secretary of such department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department or its nominee, for such purposes and subject to the conditions so specified.

### § 14.51 Extent of grant.

By decision of the Secretary, Nevada Department of Highways, A.24151, September 1945, it was held that the law

imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

### § 14.52 Termination of right-of-way no longer needed.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Transportation and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

### § 14.53 Application.

### § 14.54 General.

Applications for rights-of-way and material sites under title 23, U.S.C., for lands under the jurisdiction of the National Park Service, together with four copies of a durable and legible map shall be filed by the appropriate State highway department with the Director, National Park Service, Department of Interior, Washington, D.C. 20240. Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the requirements of § 14.25(a).

### § 14.55 Consultation with local bureau officials, program values.

An applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the National Park Service to ascertain whether or not the use or appropriation of the lands for right-of-way purposes is consistent with the Service's management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

### § 14.56 Concurrence by Federal Highway Administration.

The appropriate State highway department will forward a copy of each application and map filed with the National Park Service to the authorized officer of the Federal Highway Administration for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

### § 14.57 Approval.

After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, U.S.C., the authorized officer of the National Park Service will notify the applicant and the authorized officer of the Federal Highway Administration either (a) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (b) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

### § 14.58 Terms and conditions of allowance.

Grants of rights-of-way under Title 23, U.S.C., by the authorized officer of the National Park Service will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (a) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, U.S.C., and (b) any conditions which he deems necessary. Grants of highway

right-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the National Park Service deems appropriate.

**§ 14.59 Additional rights-of-way within highway rights-of-way.**

A right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway rights-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the authorized officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way.

**§ 14.60 General.**

No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (a) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (b) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation, or (c) where the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 14.9, in connection with the construction and maintenance of such facilities.

**§ 14.61 Terms of grant.**

Except as modified by § 14.60 of this subpart, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23 U.S.C., and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

## Subpart E—Power Transmission Lines, General

**§ 14.70 Statutory authority.**

(a) The Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

(b) The Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay

and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

### § 14.71 Lands subject to grant.

Permission may be given under the Act of February 15, 1901, and the Act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

## Subpart F—Principles and Procedures, Power Transmission Lines

### § 14.75 Nature of interest.

### § 14.76 Terms and conditions.

(a) By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 14.9.

(1) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(2) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine the relationship of the proposed facility to the power marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided however*, That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more must, in addition to the requirements of Subpart C, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy and surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as ''holder'') for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(A) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(B) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(C) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(D) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(E) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(F) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(G) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(H) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy the payment to be an amount in dollars representing

the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(I) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(J) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(K) As used in this section, the term ''transmission facility'' includes (*1*) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (*2*) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(L) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(b) Unless otherwise specified in a right-of-way granted under the Act of March 4, 1911, and unless sooner cancelled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with §14.20, a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

### § 14.77 Procedures. [Reserved]

### § 14.78 Applications.

(a) *Applications filed.* Application under the Act of February 15, 1901, or the Act of March 4, 1911, for permission to use the desired right-of-way through National Park Service areas must be filed and approved before any rights can be claimed thereunder.

(b) *Required showings.* (1) A description of the plant or connecting generating plants which generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(2) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

(3) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(4) If the line is to have a nominal voltage of 66 kilovolts or more, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(5) Any application under the Act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(6)(i) A detailed description of the environmental impact of the project shall be included with the application. It shall provide, among other things, information about the impact of the project on airspace, air and water quality, scenic and esthetic features, historical and archeological features, and wildlife, fish, and marine life.

(ii) The proposed site, design, and construction of the project shall be consistent with the ''Environmental Criteria for Electric Transmission Lines,'' prescribed jointly by the Secretary of Agriculture, as well as such other environmental criteria and guidelines as the National Park Service shall from time to time prescribe. ''Environmental Criteria for Electric Transmission Systems'' is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(iii) If all other requirements are met, the application may be approved if it is determined that the beneficial purposes and effects of the project will not be outweighed by an adverse environmental impact. If the authorized officer determines that the application cannot be approved as proposed, he will, whenever possible, suggest alternative routes or methods of construction, or other modifications which if adopted by the applicant would make the application acceptable.

## Subpart G—Radio and Television Sites

### § 14.90 Authority.

The Act of March 4, 1911, (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

### § 14.91 Procedures.

(a) Any application under the Act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a

structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(b) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the Act of March 4, 1911. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

## Subpart H—Telephone and Telegraph Lines

### § 14.95 Authority.

(a) The Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipelines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

(b) The Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed 400 feet by 400 feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the Act.

### § 14.96 Procedures.

Any application under the Act of March 4, 1911, for line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

APPENDIX A TO PART 14

Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act involved, and to the nature of the project.

FORM

References should be made to the appropriate section of the regulations to determine when each of the forms is required.

Form No. 2 may be signed by any officer or employee of the company who is authorized to sign it. However, if it is executed by a person other than the President, it must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See § 14.25(a)(7).

ENGINEER'S STATEMENT

(FORM 1)

_____(Name of engineer) states he is by occupation a _____(Type of engineer) employed by the _____(Company) to make the survey of the _____(Kind of works) as described and shown on this map; that the survey of said works made by him (or under his supervision) and under authority, commencing on the _____ day of _____ 19___ and ending on the _____ day of _____, 19___; and that such survey is accurately represented upon this map.

_____
Engineer

APPLICANT'S CERTIFICATE

(FORM 2)

This is to certify that _____ (Engineer), who subscribed the statement hereon, is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown, and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of _____(Cite statute); and I further certify that the right-of-way herein described is desired for
(state purpose) _____
(Seal)

_____
Signature of Applicant

_____
Title

_____
Company
Attest:

# PART 17—CONVEYANCE OF FREEHOLD AND LEASEHOLD INTERESTS ON LANDS OF THE NATIONAL PARK SYSTEM

Sec.
17.1 Authority.
17.2 Definitions.
17.3 Lands subject to disposition.
17.4 Notice.
17.5 Bids.
17.6 Action at close of bidding.
17.7 Preference rights.
17.8 Conveyance.

AUTHORITY: Sec. 5(a), of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601–22(a).

SOURCE: 42 FR 46302, Sept. 15, 1977, unless otherwise noted.

## § 17.1 Authority.

Section 5(a) of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 4601–22(a), authorizes the Secretary of the Interior, under specified conditions, to convey a leasehold or freehold interest on federally owned real property acquired by the Secretary from non-Federal sources within any unit of the National Park System except national parks and those national monuments of scientific significance. This legislation is referred to as ''the act'' in regulations in this part.

## § 17.2 Definitions.

As used in the regulations in this part:

(a) *Authorized officer* shall mean an officer or employee of the National Park Service designated to conduct the sale or lease and delegated authority to execute all necessary documents, including deeds and leases.

(b) The term *unit* of the National Park System means any area of land or water administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

(c) The term *national park* means any unit of the National Park System the organic act of which declares it to be a ''national park.''

(d) The term *national monument of scientific significance* means a unit of the National Park System designated as a national monument by statute or proclamation for the purpose of preserving landmarks, structures, or objects of scientific interest.

(e) The term *person* includes but is not necessarily limited to an individual partnership, corporation, or association.

(f) The term *freehold interest* means an estate in real property of permanent or of indefinite duration.

(g) The term *leasehold interest* means an estate in real property for a fixed term of years or an estate from month-to-month or from year-to-year.

(h) The term *fair market value* means the appraised value as set forth in an approved appraisal made for the Secretary for the interest to be sold or leased.

[42 FR 46302, Sept. 15, 1977, as amended at 62 FR 30234, June 3, 1997]

### § 17.3 Lands subject to disposition.

The Act is applicable to any Federally owned real property acquired by the Secretary from non-Federal sources within any unit of the National Park System other than national parks and those national monuments of scientific significance. No leasehold or freehold conveyance shall be made except as to lands which the General Management Plan for the particular unit of the National Park System has designated as a Special Use Zone for the uses that are permitted by the freehold or leasehold conveyance. No leasehold or freehold conveyance shall be made unless the lands have been surveyed for natural, historical, and cultural values and a determination made by the Secretary that such leasehold or freehold conveyance will not be inconsistent with any natural, historical, or cultural values found on the land. Any conveyances affecting properties listed or eligible for listing on the National Register of Historic Places must be reviewed by the Advisory Council on Historic Preservation. Procedures for obtaining the Council's comments appear at 36 CFR part 800, ''Procedures for the Protection of Historic and Cultural Resources.''

[42 FR 46302, Sept. 15, 1977, as amended at 43 FR 3360, Jan. 25, 1978]

### § 17.4 Notice.

(a) When the Secretary has determined in accordance with these regulations that a freehold or leasehold interest will be offered, he will have a notice published in the FEDERAL REGISTER and, subsequently, once weekly for five consecutive weeks in a newspaper of general circulation in the vicinity of the property. Publication of the notice shall be completed not less than 30 nor more than 120 days of the date for bid opening. The notice shall contain, at a minimum: (1) A legal description of the land by public lands subdivisions, metes-and-bounds, or other suitable method, (2) a statement of the interest to be conveyed, including restrictions to be placed on the use of the property, (3) a statement of the fair market value of the interest as determined by the Secretary below which the interest will not be conveyed, together with information as to where the Government's appraisal may be inspected, (4) information as to any preference rights of former owners to acquire the interest upon matching the highest bid, (5) an outline of bid procedure and a designation of the time and place for submitting bids, and (6) an outline of conveyance procedures, requirements, and time schedule.

(b) If the property has been in Federal ownership for less than two years, the last owner or owners of record shall be sent a notice by certified mail to their present or last known address providing the information in the published notice and advising them of their right under section 5(a) of the act to acquire the interest upon payment or agreement to pay an amount equal to the highest bid price.

### § 17.5 Bids.

Bids may be made by the principal or his agent, either personally or by mail. Bids will be considered only if received at the place and prior to the hour fixed in the notice. No particular form is specified for bids. However, a bid must be in writing, clearly identify the bidder, be signed by the bidder or his designated agent, state the amount of the bid, and refer to the notice. Bids conditioned in ways not provided for by the notice will not be considered. Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for 2 percent of the amount of the fair market value or $2,500, whichever is greater, in the case of a freehold interest or for the amount of the first year's rent in the case of a leasehold interest. This payment will be refunded to unsuccessful bidders. A separate nonrefundable payment of $100 to cover

costs of publication and of processing of bids will also be included with the bid. The bid and payments must be enclosed in a sealed envelope upon which the prospective bidder shall write: (a) Bid on interest in land of the National Park System, and (b) the scheduled date the bids are to be opened. In the event two or more valid bids are received in the same amount, the determination of which is the highest will be by drawing. Bids will be opened at the time and place specified in the notice. Bidders, their agents or representatives, and any other persons may attend the bid opening. No bid in an amount less than the fair market value, as herein defined, shall be considered.

[42 FR 46302, Sept. 15, 1977, as amended at 61 FR 28508, June 5, 1996]

### § 17.6 Action at close of bidding.

The person who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to complete the purchase in accordance therewith unless his bid is rejected or he is released therefrom by the authorized officer. The declared high bid on property for which a preference right exists will be conditionally accepted subject to the exercise of the preference as described below. In the case of a freehold interest, the high bidder must submit the balance of the bid within 45 days of the bid award in the form of a certified check, post office money order, bank draft, or cashier's check, made payable to the United States of America. Failure to submit the full balance within 45 days will result in the forfeiture of $1,000 of bid deposit, unless the bidder has been released from the bid or an extension has been granted by the authorized officer, and the property will be awarded to the next highest bidder upon fulfillment of the requirements of this section.

[42 FR 46302, Sept. 15, 1977, as amended at 61 FR 28508, June 5, 1996]

### § 17.7 Preference rights.

On any property which has been in Federal ownership less than two years, the Secretary, in addition to the notice specified in § 17.4, shall inform the last owner or owners of record by certified mail at their present or last known address of the highest bid on the interest and advise them of their right to acquire the interest for an amount equal to the highest bid if within 30 days they notify the Secretary of their desire to do so and make payment or agree to make payment of an amount equal to that specified in § 17.5.

If within 30 days of mailing of such notification, the former owner or owners do not indicate a desire to acquire the interest and make payment or agree to make payment for such interest in an amount equal to the declared high bid, or, if they do indicate such a desire but fail to consummate the transaction within the time period established for the conveyance, then the bid of the declared high bidder will be accepted. In the event that a former owner who indicates a desire to repurchase pursuant to this procedure fails to consummate the transaction within the established time period the declared high bidder shall be permitted, but not required, to consummate the transaction. If the declared high bidder does not choose to consummate the transaction in this circumstance, the entire transaction will be cancelled, and, if appropriate, a new bidding procedure instituted.

### § 17.8 Conveyance.

Conveyance of a leasehold or freehold interest shall be by lease or deed, as appropriate, at the highest bid price, but not less than fair market value. All conveyance of leasehold or freehold interests shall contain such terms and conditions as the Secretary deems necessary to assure use of the property in a manner consistent with the purpose for which the area was authorized by Congress. The conveyancing or leasing document shall contain such provisions and restrictions as may be determined by the Secretary to be necessary to protect the natural, historic, cultural or other values present on the lands. All conveyances shall be without warranty.

# PART 18—LEASING OF PROPERTIES IN PARK AREAS

Sec.
18.1 What is the authority and purpose for this part?
18.2 What definitions do you need to know to understand this part?
18.3 What property may be leased?
18.4 What determinations must the Director make before leasing property?
18.5 May property be leased without receiving fair market value rent?
18.6 Are there limitations on the use of property leased under this part?
18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?
18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?
18.9 When may the Director lease property without issuing a request for bids or a request for proposals?
18.10 How long can the term of a lease be?
18.11 What general provisions must a lease contain?
18.12 What specific provisions must a lease contain?

AUTHORITY: 16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k), and, 16 U.S.C. 470h–3.

SOURCE: 66 FR 66759, Dec. 27, 2001, unless otherwise noted.

## § 18.1 What is the authority and purpose for this part?

16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k), and, 16 U.S.C. 470h–3 are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part, except that, proposed leases that were solicited pursuant to this part prior to January 28, 2002, may be executed in accordance with the terms of the solicitation.

## § 18.2 What definitions do you need to know to understand this part?

In addition to the definitions contained in 36 CFR Part 1, the following definitions apply to this part:

(a) *Associated property* means land and/or structures (e.g., parking lots, retaining walls, walkways, infrastructure facilities, farm fields) related to a building or buildings and their functional use and occupancy.

(b) *Building* means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.

(c) *Commercial use authorization* means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105–391 and implementing regulations.

(d) *Concession contract* has the meaning stated in 36 CFR part 51.

(e) *Fair market value rent* means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased, under the terms and conditions of the lease, should rent for its highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are to be made taking into account the considerations stated in § 18.5.

(f) *Historic building* means a building or buildings located within the boundaries of a park area if the building is part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(g) *Historic land* means land located within the boundaries of an historic property.

(h) *Historic property* means building(s) and land located within the boundaries of a park area if the building(s) and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(i) *Land* means unimproved real property.

(j) *Lease* means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(k) *Non-historic building* is a building (or buildings) and its associated property located within the boundaries of a park area but not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(l) *Non-historic land* means land located within the boundaries of a park area that is not associated property and is not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(m) *Non-historic property* means building(s) and/or land that are located within the boundaries of a park area but are not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(n) *Park area* means a unit of the national park system.

(o) *Property* means both historic and non-historic property that is located within the boundaries of a park area and is federally owned or administered.

(p) *Request* for bids refers to the lease bid process described in § 18.7.

(q) *Request for proposals* refers to the lease proposal process described in § 18.8.

(r) *Responsive bid or proposal* means a timely submitted bid or proposal that meets the material requirements of a request for bids or a request for proposals.

### § 18.3 What property may be leased?

(a) *In general.* The Director may lease any property (except non-historic land) under this part if the Director makes the determinations required by § 18.4.

(b) *Non-historic land.* Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

### § 18.4 What determinations must the Director make before leasing property?

Before leasing property in a park area under this part, the Director must determine that:

(a) The lease will not result in degradation of the purposes and values of the park area;

(b) The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;

(c) The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;

(d) The lease is compatible with the programs of the National Park Service;

(e) The lease is for rent at least equal to the fair market value rent of the leased property as described in § 18.5;

(f) The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and

(g) If the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

### § 18.5 May property be leased without receiving fair market value rent?

Property may be leased under this part only if the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The determination of fair market value rent shall take into account:

(a) Any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and

(b) Any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.

### § 18.6 Are there limitations on the use of property leased under this part?

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by § 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under

a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

### § 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may specify a minimum rent and/or require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: ''Bid on lease of property of the National Park Service'' and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease (subject to a determination of financial capability by the Director). A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d) When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

### § 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?

(a) When the award of a lease is to be based on selection criteria in addition to or other than the amount of the rent, the Director must, subject to § 18.9, solicit proposals for the lease through issuance of a public Request for Proposals (RFP).

(b) An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a ''short list'' of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only persons determined as qualified by the Director

under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c) The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d) The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted responsive proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e) (1) The criteria to be used in selection of the best proposal are:

(i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;

(ii) The financial capability of the offeror to carry out the terms of the lease;

(iii) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;

(iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and

(v) Any other criteria the RFP may specify.

(2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, the amount of rent offered also shall be an additional selection criterion.

(f) The Director will evaluate all responsive proposals received. The responsive proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as substantially equal after amendment, the Director will select for negotiation of the lease from among these proposals the proposal that the Director determines on an overall basis will be most beneficial to effective management of the park area.

(g) The Director will provide the offeror that submitted the best overall responsive proposal as determined by the Director a specified period of time to negotiate the final terms of the lease (and may enter into a letter of intent to negotiate in this connection). The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best responsive proposal, or, cancel the solicitation.

(h) RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.

(i) The Director may execute a lease that includes historic property only after complying with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation).

### § 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?

The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with § 18.7 or § 18.8. The Director under this part may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with §§ 18.7 or 18.8 if the Director determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with §§ 18.7 or 18.8 if the Director determines that to do so is in the best interests of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.

### § 18.10 How long can the term of a lease be?

All leases entered into under this part shall have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. No lease shall have a term of more than 60 years. Leases entered under the authority of this part may not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if the Director determines that an extension is necessary because of circumstances beyond the Director's control.

### § 18.11 What general provisions must a lease contain?

All leases entered into under this part must contain terms and conditions that are determined necessary by the Director to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property.

### § 18.12 What specific provisions must a lease contain?

All leases entered into under this part must contain:

(a) A termination for cause or default provision;

(b) Appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease;

(c) Appropriate provisions stating that subletting of a portion of the leased property and assignment of a lease, if permissible under the terms of the lease, must be subject to the Director's written approval. Such subleases and assignments shall be approved only of the Director determines, among

other relevant matters, that the proposed sub-lessee or assignee is financially and managerially capable of carrying out the terms of the lease. Assignment of a lease for the purpose of effectuating an encumbrance to the lease or the leased property is subject to approval pursuant to the requirements of paragraph (l) of this section;

(d) Appropriate provisions requiring the lessee to secure and maintain from responsible companies liability insurance sufficient to cover losses connected with or occasioned by the use and activities authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the Director;

(e) Appropriate provisions, unless the Director determines otherwise in the circumstances of a particular lease, requiring the lessee to obtain from responsible companies casualty insurance (including flood insurance if applicable) in an amount sufficient to protect the interests of the lessee and the government. In the event of casualty, the lessee shall be required to repair or replace damaged or destroyed property unless otherwise determined by the Director;

(f) Appropriate provisions requiring the lessee to save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, or judgments and expenses resulting from personal injury, death or property damage of any nature arising out of the lessee's activities under the lease, and/or the activities of the lessee's employees, subcontractors, sub-lessees, or agents. No lease entered into this part may contain provisions intended to provide indemnification or other assurances to the lessee regarding the conduct or activities of the Director concerning the lease or the administration of the applicable park area. Leases may contain appropriate provisions that commit the Director to accept responsibility for tortious actions of government officials to the extent authorized by the Federal Torts Claim Act or as otherwise expressly authorized by law;

(g) Appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee and to pay all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities;

(h) Appropriate provisions stating that the lessee has no rights of renewal of the lease or to the award of a new lease upon lease termination or expiration and that the lease is subject to cancellation by the Director in the exercise of the sovereign authority of the United States to the extent provided by applicable law;

(i) Appropriate provisions stating that the lessee may not construct new buildings or structures on leased property, provided that, a lease may contain appropriate provisions that authorize the lessee to construct, subject to the prior written approval of the Director, minor additions, buildings and/or structures determined by the Director to be necessary for support of the authorized activities of the lessee and otherwise to be consistent with the protection and purposes of the park area. Approval by the Director of new construction may only be granted if the Director makes the determinations required by § 18.4;

(j) Appropriate provisions requiring that:

(1) Any improvements to or demolition of leased property to be made by the lessee may be undertaken only with written approval from the Director;

(2) That any improvements to or demolition of historic property may only be approved if the Director determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR part 68); and

(3) Any improvements made by a lessee shall be the property of the United States;

(k) Appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property. The types of activities described in a lease may be modified from time to time with the approval of the Director through an amendment to the lease. The Director may approve modified activities only if the determinations required by § 18.4

remain valid under the proposed modified activities and the proposed activities are otherwise determined appropriate by the Director;

(l) Appropriate provisions, unless the Director determines not to permit pledges or encumbrances in the circumstances of a particular lease, authorizing the lessee to pledge or encumber the lease as security, provided that any pledge or encumbrance of the lease and the proposed holder of the pledge or encumbrance must be approved in writing in advance by the Director and that a pledge or encumbrance may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the lessee under the lease or to select a new lessee subject to the approval of the Director. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of the lease;

(m) Appropriate provisions stating that fulfillment of any obligations of the government under the lease is subject to the availability of appropriated funds. No lease issued under authority of this part shall entitle the lessee to claim benefits under the Uniform Relocation Assistance Act of 1970 (Public Law 91–646) and all leases entered into under the authority of this part shall require the lessee to waive any such benefits; and

(n) Appropriate provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.

## PART 20—ISLE ROYALE NATIONAL PARK; COMMERCIAL FISHING

Sec.
20.1 Definitions.
20.2 Permits; conditions.
20.3 Maximum number of permittees.
20.4 Revocation of permits; appeal.

AUTHORITY: Secs. 1–3, 39 Stat. 535, as amended, sec. 3, 56 Stat. 133, secs. 1, 2, 67 Stat. 495, 496; 16 U.S.C. 1, 1b, 1c, 2, 3, 408k.

SOURCE: 24 FR 11055, Dec. 30, 1959, unless otherwise noted.

### § 20.1 Definitions.

As used in this part:

(a) *Park* means Isle Royale National Park.

(b) *Permittee* includes all persons engaged in commercial fishing from bases in the Park, except those life lessees who were engaged in such occupation at the date of the issuance of their leases.

[24 FR 11055, Dec. 30, 1959, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30235, June 3, 1997]

### § 20.2 Permits; conditions.

Annual, revocable special use permits authorizing the use of Government-owned structures and facilities in the Park as bases for commercial fishing in the waters contiguous to the Park may be granted by the Director of the National Park Service, or the Regional Director if authorized by the Director, to bona fide commercial fishermen, where such structures and facilities were used for this purpose during the period from April 1, 1937, to December 31, 1939, inclusive, subject to the following conditions.

(a) Permittees will be required to pay an annual fee as set forth in part 6 of this chapter.

(b) Permittees shall personally reside at their Park bases during the fishing season.

(c) Permittees shall secure and possess at all times such commercial fishing license as may be required by the State of Michigan.

(d) Permittees shall comply with all Michigan laws, and related regulations prescribed by the Michigan Department of Conservation, governing commercial fishing in the waters contiguous to the Park.

(e) Permittees shall use the bases covered by the permit for commercial fishing only. No permittee shall furnish boat or guide service to the public unless expressly authorized to do so by the Secretary or the Director.

(f) Permittees shall maintain at their own expense, in accordance with reasonable standards of repair, safety, and sanitation, all Government-owned structures and facilities embraced in the permits.

(g) The size, type and location of nets and gear and the number of men engaged in the operation of the fishing

base of the permittee shall be prescribed in the permit. Only nets and gear approved by the Michigan Department of Conservation shall be used.

### § 20.3 Maximum number of permittees.

Commercial fishermen to whom the annual revocable permits may be granted shall not exceed the maximum number of persons conducting commercial fishing operations from bases in the area comprising the Park at any one time during the period from April 1, 1937 to December 31, 1939, inclusive.

### § 20.4 Revocation of permits; appeal.

The Director of the National Park Service may, by notification in writing, revoke the permit of any permittee found by him to have violated any Federal statute or the provisions of these or any other regulations of the Secretary, relating to the Park. A permittee, however, shall have the right to appeal to the Director, Office of Hearings and Appeals, from a decision of the Director of the National Park Service revoking his permit. Any such appeal shall comply with the general rules set forth in Department Hearings and Appeals Procedures, 43 CFR part 4, subpart B, and the special procedural rules in subpart G of 43 CFR part 4, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

[36 FR 7184, Apr. 15, 1971]

## PART 21—HOT SPRINGS NATIONAL PARK; BATHHOUSE REGULATIONS

Sec.
21.1 Definitions.
21.2 Penalties.
21.3 Use of thermal water.
21.4 Registration of physicians.
21.5 Therapeutic bathing requirements.
21.6 Use of therapeutic pools.
21.7 Health examinations.
21.8 Employee certification.
21.9 Solicitation by employees.
21.10 Losses.
21.11 Redemption of bath tickets.
21.12 Loss of bath tickets.

AUTHORITY: Sec. 3, Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); sec. 3, Act of March 3, 1891, 26 Stat. 842, as amended (16 U.S.C. 363).

SOURCE: 44 FR 2577, Jan. 12, 1979, unless otherwise noted.

### § 21.1 Definitions.

When used in the regulations in this part:

(a) The term *physician* means doctor of medicine or osteopathy who is licensed to practice by a State or territory of the United States.

(b) The term *registered physician* means a physician registered at the office of the Superintendent as authorized to prescribe the waters of Hot Springs National Park.

(c) The term *employee* means any person licensed or certified by a State or territory of the United States in his or her specialty, or who is certified by the Superintendent to perform or render special services in a bathhouse.

(d) The term *bathhouse* means any facility which is operated by an individual, trustee, partnership, corporation, or business entity and which receives thermal water from Hot Springs National Park.

[44 FR 2577, Jan. 12, 1979, as amended at 62 FR 30235, June 3, 1997]

### § 21.2 Penalties.

Any person convicted of violating any provision of the regulations contained in this part, or as the same may be amended or supplemented, shall be punished by a fine not exceeding $100 and shall be adjudged to pay all costs of the proceedings.

### § 21.3 Use of thermal water.

(a) The use of the thermal waters of Hot Springs National Park, for purposes other than those authorized by the Superintendent, is prohibited.

(b) The heating, reheating, or otherwise increasing the temperature of the thermal waters of Hot Springs National Park is prohibited.

(c) The introduction of any substance, chemical, or other material or solution into the thermal waters of Hot Springs National Park, except as may be prescribed by a physician for a bather or as may be directed by the Superintendent, is prohibited.

### § 21.4 Registration of physicians.

Physicians desiring to prescribe the thermal waters of Hot Springs National Park must first be registered at the office of the Superintendent. Any physician may make application for registration to the Superintendent. To maintain registered status, reapplication is required triannually.

### § 21.5 Therapeutic bathing requirements.

Baths shall be administered to persons having a prescription from a registered physician with prescription instructions therein. Baths shall be administered to person who do not have prescriptions from registered physicians only if the bath is administered in accordance with the bath directions prescribed by the Superintendent, the violation of which is not subject to the penalty provisions of § 21.2.

### § 21.6 Use of therapeutic pools.

Persons undergoing medical treatment may use the therapeutic pools only upon presenting a prescription describing the treatment from a registered physician. Persons with acute or infectious diseases or discharges of the body, or who lack complete control of their bodily functions, are prohibited from using the therapeutic pools.

### § 21.7 Health examinations.

No employee who comes in direct personal contact with bathers or pool users will be permitted to enter duty without first undergoing a health examination, or remain in such employment without undergoing periodic health examinations, as required by the Superintendent, and being found free from any infectious or communicable disease.

CROSS REFERENCE: For a list of communicable diseases included in the regulations of the United States Public Health Service, see 21 CFR 1240.54.

### § 21.8 Employee certification.

(a) Employees engaged as physical therapists must be licensed or certified by a State or territory of the United States to practice

(b) Employees engaged as physical therapy aids or physical therapy technicians will be certified by the Superintendent upon completion of an examination.

(c) Employees engaged as masseurs or masseuses must be licensed or certified by a State or territory of the United States, or be certified by the Superintendent upon the completion of an examination.

(d) Employees engaged as bath attendants will be certified by the Superintendent upon completion of an apprenticeship and an examination.

### § 21.9 Solicitation by employees.

Soliciting by employees for any purpose, including soliciting for gratuities, commonly called ''tips,'' is prohibited in all bathhouses.

### § 21.10 Losses.

A bathhouse receiving deposits of jewelry, money, or other valuables from patrons shall provide means for the safekeeping thereof, satisfactory to the Superintendent. It is understood, however, that the Government assumes no responsibility for such valuables kept on the premises. All losses must be reported promptly to the Superintendent by the bathhouse manager.

### § 21.11 Redemption of bath tickets.

Unused tickets may be redeemed by the purchaser within one year from the date of purchase, according to the redemption scale approved by the Superintendent.

### § 21.12 Lost bath tickets.

A patron who loses his ticket may continue to receive service, without additional charge, for the number of units remaining in the ticket. Records of lost tickets, and of service given thereunder, shall be maintained as required by the Superintendent. Lost tickets shall have no redemption value.

## PART 25—NATIONAL MILITARY PARKS; LICENSED GUIDE SERVICE REGULATIONS

Sec.
25.1 Scope.
25.2 License.
25.3 Supervision; suspensions.
25.4 Schedule of rates.
25.5 Badges and uniforms.

AUTHORITY: Secs. 1–3, 39 Stat. 535, as amended, sec. 1, 47 Stat. 1420, secs. 1, 2, 67 Stat. 495, 496; 16 U.S.C. 1, 1b, 1c, 2, 3, 9a E.O. 6166, June 10, 1933.

SOURCE: 24 FR 11060, Dec. 30, 1959, unless otherwise noted.

### § 25.1 Scope.

The regulations in this part are made prescribed and published for the regulation and maintenance of licensed guide service at all national military parks where such service has been established or hereafter may be authorized in the discretion of the Secretary of the Interior upon the recommendation of the Director of the National Park Service.

### § 25.2 License.

(a) No person shall be permitted to offer his services or to act as a guide unless licensed for that purpose by the superintendent. Any person desiring to become a licensed guide shall make application to the superintendent in writing for authority to take the examination for a license as guide.

(b) Guides shall be of good character, in good physical condition, honest, intelligent, tactful, and of good repute. They must be thoroughly familiar with the history of the events which the park commemorates and with the location of all memorials. It is their duty to escort visitors to the various parts of the park and point out different historical features. The story of the guides shall be limited to the historical outlines approved by the superintendent and shall be free from praise or censure.

(c) Examinations will be held at parks where a licensed guide service is authorized, at times to be designated by the Director of the National Park Service, for the purpose of securing a list of eligibles for such service. The examination will consist of an investigation of the character, reputation, intelligence, and ability of the applicants, and of questions designed to test their knowledge of the history of the battle, or features of historical interest, the markings of the park, the rules and regulations promulgated for the government of the park, and the regulations governing the guide service. Examination questions will be prepared under the direction of the Director of the National Park Service, who will likewise supervise the marking of examination papers and the rating of applicants.

(d) The names of applicants who successfully pass the examination will be placed on a list of eligibles and selected in accordance with their relative standing.

(e) Each person licensed to act as a full-time guide will be issued a license in the following form:

_____
(Place)

_____
(Date)

_____, having successfully passed the examination prescribed for license, is hereby licensed to offer his service as a guide to visitors. This license is issued subject to the condition that the licensee shall comply with all the rules and regulations prescribed for guide service by the Secretary of the Interior and with the prescribed schedule of rates, copies of all of which have been furnished to him.

This license will be renewed at the expiration of one year from the date of issue, provided the rules above-mentioned have been fully complied with and services rendered satisfactorily.

Failure to act as a guide for any period exceeding 30 days between June 1 and August 31 automatically suspends this license. Renewal under these conditions will only be made following proper application to and approval by the park superintendent. During other times of heavy visitation, and especially on week ends and holidays, any and all guides are subject to call for duty unless excused by the park superintendent or his representative.

_____
*Superintendent,*

_____
*National Military Park.*

(f) Each person licensed to act as a temporary or part-time guide, during periods of heavy visitation, will be issued a license in the following form:

_____
(Place)

_____
(Date)

_____, having successfully passed the examination prescribed for license, is hereby licensed to offer service as a guide to visitors. This license is issued subject to the condition that the licensee shall comply with all the rules and regulations prescribed for guide service by the Secretary of the Interior, copies of which have been furnished to him.

This license shall continue in effect for a period of _____ days beginning _____ unless revoked prior to the expiration of such period for failure to comply with the condition set out herein.

_____
*Superintendent,*

_____
*National Military Park.*

(g) Before being issued a license to act as a guide, each applicant will be required to subscribe to the following agreement:

_____
(Place)

_____
(Date)

*To Superintendent,* _____ *National Military Park.*

For and in consideration of the issuance to me a license to act as guide, I hereby accept and agree to observe fully the following conditions:

1. To abide by and observe the laws and all rules and regulations promulgated for the government of the park and for the regulation of guide service.

2. In case of difference of opinion as to the interpretation of any law, rule, or regulation, to accept the decision of the superintendent.

3. To accord proper respect to the park rangers in their enforcement of the rules and regulations.

4. To require drivers of all vehicles, while under my conduct, to observe the park rules and regulations.

5. To be watchful to prevent damage to, or destruction of, park property or acts of vandalism affecting monuments, buildings, fences, or natural features of the park, to report any such damage, destruction, or vandalism which I may observe to the nearest available ranger without delay, and to furnish him with all information in my possession tending to identify the offenders and assist in their apprehension and punishment.

6. To demand of visitors not more than the authorized fees for guide service and, when employed, to render service to the best of my ability.

7. To advise visitors who employ me, in advance, the length of time needed for a trip and its cost and, if visitors desire a shortened tour, to arrange for such service as may suit their convenience.

8. (a) Not to operate for hire any passenger vehicle or other vehicle of any kind, while pursuing the vocation of guide or wearing a guide's badge or uniform.

(b) Not to operate a visitor's motor vehicle unless I hold a valid motor vehicle operator's license issued by the State in which the national military park is located.

(c) Not to charge an extra fee for operating a visitor's motor vehicle.

9. In the event my license should be suspended or revoked by the superintendent, to refrain from offering my services or pursuing the vocation of guide, pending appeal to and decision of the Director of the National Park Service.

10. To return the license and official badge without delay to the superintendent should my license be revoked or suspended for more than 5 days or upon abandoning the occupation of guide.

11. While wearing the badge of a guide or any uniform or part of a uniform indicating me to be a guide, I will not act as agent, solicitor, representative, or runner for any business or enterprise whatever (except in offering my services as a guide to visitors), nor solicit nor accept from any person, firm, association, or corporation any fee, commission, or gratuity for recommending their goods, wares, or services.

(Signed) _____

(80 Stat. 383; 5 U.S.C. 553)

[24 FR 11060, Dec. 30, 1959, as amended at 30 FR 8222, June 26, 1965]

### § 25.3 Supervision; suspensions.

(a) The guide service will operate under the direction of the superintendent or his designated representative. Records will be kept of the efficiency of the guides and of all matters pertaining to the service.

(b) Superintendents are authorized to suspend any guide for violation of the regulations or for conduct prejudicial to the interests of the Government. A full report of the facts attending each suspension will be made to the Director of the National Park Service. The license of a guide who has been suspended indefinitely will not be renewed without the approval of the Director of the National Park Service.

### § 25.4 Schedule of rates.

As the conditions of each park differ with respect to the proper charge for the service rendered to the public, the schedule of rates for observance by the licensed guides at each separate park will be submitted to the Director of the National Park Service for approval. The superintendent will prepare itineraries arranged so as best to observe the different features of the battlefield and submit them with recommendations as to schedule of rates

to the Director of the National Park Service for approval.

### § 25.5 Badges and uniforms.

Licensed guides will be furnished with official badges as evidence of their authority, which shall remain the property of the Government and be returned to the superintendent upon relinquishment or revocation of the license as a guide. Where conditions warrant it and its purchase would not prove a hardship on the guides, they may be required to adopt a standard uniform, to be procured at their own expense.

## PART 27—CAPE COD NATIONAL SEASHORE; ZONING STANDARDS

Sec.
27.1 General objectives.
27.2 Commercial and industrial activities.
27.3 Seashore District.
27.4 Variances and exceptions.

AUTHORITY: Secs. 1, 5, 75 Stat. 284, 290; 16 U.S.C. 459b, 459b–4.

SOURCE: 27 FR 6714, July 14, 1962, unless otherwise noted.

### § 27.1 General objectives.

(a) Consistent with the objectives set out in section 5 of the Act of August 7, 1961 (75 Stat. 284), development and management of the Cape Cod National Seashore will be conducted in a manner which will assure the widest possible public use, understanding and enjoyment of its natural, cultural and scientific features. The regulations in this part are designed and promulgated to establish minimum standards which local zoning bylaws must meet in furtherance of those purposes.

(b) The standards hereby established for approval of zoning bylaws or amendments of zoning bylaws—are intended: (1) To contribute to the effect of prohibiting the commercial and industrial use, other than existing commercial or industrial use not inconsistent with the purposes of the Act of August 7, 1961 (75 Stat. 284, 291), of all property within the boundaries of the Cape Cod National Seashore and situated in the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham; and (2) to promote preservation and development, in accordance with the purposes of the said Act, of the area comprising the seashore, by means of acreage, frontage and setback requirements and other provisions which may be required to be included in zoning bylaws consistent with the laws of Massachusetts. Zoning bylaws or amendments of zoning bylaws applicable to the area within Cape Cod National Seashore, in order that they may be approved, shall conform to the standards herein set forth relating to preservation and development of the seashore in accordance with the purposes of the said Act. The Secretary shall be given notice of any amendments to approved zoning bylaws that affect the Seashore District. Nothing in these standards or in the zoning bylaws adopted pursuant thereto for the area within Cape Cod National Seashore shall preclude the Secretary of the Interior from fulfilling the responsibilities vested in him by the Act of August 7, 1961, or by the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented.

(c) Wherever the term ''improved property'' is used in this part it shall mean a detached, one-family dwelling, the land on which it is situated, and accessory structures, and as further defined in section 4(d) of the Act of August 7, 1961 (75 Stat. 284).

### § 27.2 Commercial and industrial activities.

No commercial or industrial districts may be established within the Cape Cod National Seashore.

### § 27.3 Seashore District.

(a) *Description*. The Seashore District shall include all those portions of the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham lying within the exterior boundaries of the Cape Cod National Seashore.

(b) Zoning bylaws for the Seashore District shall be consistent with the objectives and purposes of the Act of August 7, 1961, so that—to the extent possible under Massachusetts law—the scenic, scientific and cultural values of the area will be protected, undeveloped areas will be preserved in a natural condition, and the distinctive Cape Cod

character of existing residential structures will be maintained.

(c)(1) No moving, alteration, or enlargement of existing one-family residential dwellings or structures accessory thereto situated within this District shall be permitted if such would afford less than a 50-foot setback from all streets measured at a right angle with the street line, and a 25-foot distance from the abutters' property lines (or less than such lesser setback or distance requirements already in existence for such dwellings or accessory structures).

(2) If through natural phenomena or causes a lot or lots are so diminished in size that an owner would be unable to comply with the setback or sideline requirements herein prescribed, such owner or the zoning authorities may, as provided in § 27.4(b), request the Secretary of the Interior to determine whether a proposed move, reconstruction, alteration of enlargement of an existing residential dwelling or accessory structure would subject the property to acquisition by condemnation.

(d) Zoning bylaws adopted pursuant to this regulation shall contain provisions designed to preserve the seashore character of the area by appropriate restrictions or prohibitions upon the burning of cover, cutting of timber, filling of land, removal of soil, loam, sand or gravel and dumping, storage, or piling of refuse and other unsightly objects or other uses which would detract from the natural or traditional seashore scene.

(e) Zoning bylaws for the Seashore District may permit residential uses of ''improved property'' and other uses of such dwellings and their accessory structures: *Provided,* Such other uses are traditional to these seashore communities, are customarily incidental to the principal residential use and do not alter the essential character of the dwelling and premises as a private residence. Subject to those conditions such uses may include, but are not limited to: (1) Partial use of dwellings by residents for a professional office (as for the practice of theology, law or medicine), as an artists' studio, for appropriate small scale home occupations as the making and selling of traditional Cape Cod products produced on the premises, and for the rental of rooms and serving of meals by residents of the premises to overnight guests; (2) the existence of structures, such as a garage, barn or boathouse accessory to the dwelling; (3) display of a sign which may be indirectly but not directly illuminated and not to exceed two square feet in area, referring to the occupancy, sale, or rental of the premises; (4) traditional agricultural uses of cleared land, but not including such objectionable uses as a piggery or the raising of livestock, poultry or furbearing animals for commercial purposes; and (5) the opening of shellfish, the storage and use of fishing equipment, and other traditional fishing activities. No commercial or industrial ventures (other than of the types described above), may be established within the Seashore District.

### § 27.4 Variances and exceptions.

(a) Zoning bylaws may provide for variances and exceptions.

(b) Bylaws adopted pursuant to these standards shall contain provisions which constitute notice to applicants for variances and exceptions that, under section 5(d) of the Act of August 7, 1961, the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, ''improved property'' that is made the subject of a variance or exception which, in his opinion, fails to conform or is in any manner opposed to or inconsistent with preservation and development of the seashore as contemplated in the said Act. The Secretary may be consulted at any time by zoning authorities or by the owner of ''improved property'' regarding the effect of a proposed variance or exception upon the status of the affected property with regard to the suspension of the Secretary's authority to condemn. The Secretary, within 60 days of the receipt of a request for such determination, or as soon thereafter as is reasonably possible, shall advise the owner or zoning authorities whether or not the intended use will subject the property to acquisition by condemnation.

(c) The Secretary shall be promptly notified of the granting of any variance or exception.

# PART 28—FIRE ISLAND NATIONAL SEASHORE: ZONING STANDARDS

### Subpart A—General Provisions

Sec.
28.1 Purpose.
28.2 Definitions.
28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.
28.4 Severability.

### Subpart B—Federal Standards and Approval of Local Ordinances

28.10 Permitted and prohibited uses.
28.11 Nonconforming uses.
28.12 Development standards.
28.13 Variance, commercial and industrial application procedures.
28.14 Emergency action.
28.15 Approval of local zoning ordinances.

### Subpart C—Federal Review and Condemnation

28.20 Review by the Superintendent.
28.21 Suspension of condemnation authority in the communities.
28.22 Condemnation authority of the Secretary.
28.23 Certificates of suspension of authority for acquisition by condemnation.
28.24 Information collection.

AUTHORITY: 16 U.S.C. 1,3,459e–2.

SOURCE: 56 FR 42790, Aug. 29, 1991, unless otherwise noted.

## Subpart A—General Provisions

### § 28.1 Purpose.

(a) The enabling legislation for Fire Island National Seashore (the Seashore) mandated the Secretary of the Interior (the Secretary) to issue regulations which provide standards for local zoning in order to protect and conserve Fire Island. The regulations in this part set forth Federal standards to which local ordinances for Fire Island must conform to enable certain private property within the Seashore to be exempt from Federal condemnation. The standards also apply to use and development of public property. From time to time these standards may be reviewed and revised. These standards are intended:

(1) To promote the protection and development of the land within the Seashore, for the purposes of the Fire Island National Seashore Act (the Act), by means of size, location, or use limitations or restrictions on commercial, residential, or other structures with the objective of controlling population density and protecting the island's natural resources;

(2) To limit development and use of land to single-family homes, to prohibit development and use of multiple family homes, and to prohibit the conversion of structures to multiple family homes;

(3) To prohibit commercial or industrial uses initiated after September 11, 1964 or the expansion of existing commercial or industrial uses on any property within the Seashore which is inconsistent with the Federal standards and approved local ordinances or the purposes of the Act, is likely to cause a significant harm to the resources of the Seashore or will not provide a service to Fire Island;

(4) To recognize that the zoning authorities have the primary responsibility for zoning enforcement within the Seashore;

(5) To provide that private property within the Community Development District may be retained by its owner as long as it is maintained in accordance with approved local ordinances and the Federal standards;

(6) To provide that, within the Seashore District, private ''improved property'' may be retained by its owner as long as it is maintained in accordance with approved local ordinances, and the Federal standards;

(7) To provide that, in the Dune District, private undeveloped property, if otherwise subject to condemnation, may be retained by its owner as long as it is maintained in its natural state; and

(8) To provide a mechanism for the Superintendent to inform landowners and the zoning authority if a use or development will be inconsistent with the Federal standards or the purposes of the Act and may subject the property to condemnation, subject to available funds.

(b) The Secretary may utilize any other statutory authority available to the Secretary for the conservation and development of natural resources to the extent the Secretary finds that

such authority will further the purpose of the Act.

**§ 28.2 Definitions.**

(a) *Accessory structure* means any development which is located on the same lot as the principal building or use and is customarily incidental and subordinate to the principal building or use. Accessory structure may include a storage shed, dock, deck, patio, swimming pool, or tennis court but does not include a garbage or bicycle rack and the single primary access walk. Accessory structure includes a guest house without cooking facilities used for overnight habitation.

(b) *Act* means the Fire Island National Seashore Act of September 11, 1964, (16 U.S.C. 459e), as amended.

(c) *Building* means an enclosed structure having a roof supported by columns, walls, or cantilevers. (If a structure is separated by a party wall without openings, it is considered two separate ''buildings.'')

(d) *Developed property* means any property which has been altered from its natural state by the construction or erection of materials located in, upon, or attached to something located in or upon the ground. Such alterations may include a building, deck, swimming pool, storage shed, patio, dock, tennis court, septic system or leaching field, walkway, groin, fence or sign (except dune protection fences and signs), road, retaining wall, grading, artificial fill, or other structure or material excluding live vegetation.

(e) *Development* means any activity, action, alteration, structure or use which changes undeveloped property into developed property.

(f) *Exception to a zoning ordinance* means any development or change in use of developed property which is not authorized by the zoning ordinance or the variance procedures of the zoning authority or, if authorized by the zoning authority, fails to conform to the ordinance approved by the Secretary or to the Federal standards.

(g) *Guest house* means an accessory structure on the same lot as the principal building that does not contain cooking facilities and is used for the temporary accommodation of guests of a resident living in the principal building.

(h) *Improved property* is developed property defined by the Act to mean any building, the construction of which was begun prior to July 1, 1963, together with such amount of land on which said building is situated as the Secretary considers reasonably necessary to the use of said building not, however, to exceed 2 acres in the case of a residence and 10 acres in the case of a commercial use. The Secretary may exclude from such ''improved property'' any beach or waters, as well as land adjoining such beach or waters, which the Secretary deems necessary for public access thereto.

(i) *Local ordinance* means a State, town, or village law applicable to the development or use of real property.

(j) *Lot* means a parcel of land which meets the minimum acreage and frontage requirements of the zoning authority and is occupied or capable of being legally occupied by one (1) principal building or main building, and the accessory structures or uses including such open spaces as are required by these standards, but in no case does a lot include lands below the toe of the natural foredune line.

(k) *Non-conforming use* means any use or development that, if commenced after the effective date of these standards, fails to conform to these standards; or, if commenced prior to October 17, 1984, failed to conform to Federal standards in effect at the time of construction or fails to conform to these standards, whether or not the use or development was first commenced in compliance with the local ordinance.

(l) *Single-family home* means a building which contains no more than one kitchen or cooking facility. An exterior barbecue does not constitute a cooking facility for the purposes of this regulation.

(m) *Undeveloped property* means property which has not been altered from its natural state with the exception of dune protection measures such as snow fencing, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stabilization methods.

(n) *Zoning authority* means the Town of Brookhaven, the Town of Islip, the

Village of Saltaire, the Village of Ocean Beach and/or any other legally incorporated village or political subdivision hereafter created and the officials authorized by local ordinance to make rulings and determinations on zoning in said towns and villages.

[56 FR 42790, Aug. 29, 1991, as amended at 62 FR 30235, June 3, 1997]

### § 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.

(a) *Generally*. The boundaries of the Seashore are described in the Act, as amended, and are delineated on the official boundary maps OGP-OOO2, dated June 1964, and amended by OGP-OOO4, dated May 1978. The maps are available for inspection at the Seashore headquarters. There are three districts: The Community Development District, the Seashore District, and the Dune District.

(b) *The Community Development District*. (1) The seventeen communities which comprise the Community Development District are set out below with their respective west/east boundaries.

(i) Lighthouse Shores—Kismet Park

West Boundary: 100 feet west of the west line of West Lighthouse Walk.
East Boundary: 80 feet east of the east line of Pine Street.

(ii) Seabay Beach

West Boundary: Approximately 94 feet west of the west line of Seabay Walk.
East Boundary: Approximately 94 feet east of the east line of Seabay Walk.

(iii) Saltaire

West Boundary: 185 feet west of the west line of West Walk.
East Boundary: 85 feet east of the east line of East Walk.

(iv) Fair Harbor

West Boundary: 333 feet west of the west line of Cedar Walk.
East Boundary: The east line of Spruce Walk.

(v) Dunewood

West Boundary: The east line of Spruce Walk.
East Boundary: 85 feet east of the east line of East Walk.

(vi) Lonelyville

West Boundary: 85 feet east of the east line of East Walk.
East Boundary: 100 feet east of the east line of Raven Walk.

(vii) Atlantique

West Boundary: 80 feet west of the west line of Sea Breeze Walk.
East Boundary: 80 feet east of the east line of East End Walk.

(viii) Robbins Rest

West Boundary: The west line of Compass Walk.
East Boundary: 113 feet east of the east line of Sextant Walk.

(ix) Fire Island Summer Club—Corneille Estates

West Boundary: 100 feet west of west line of Schooner Walk.
East Boundary: 100 feet east of east line of Frigate Roadway.

(x) Ocean Beach

West Boundary: 7 feet west of the west line of Surf Road.
East Boundary: 2 feet east of the east line of Surf View Walk.

(xi) Seaview

West Boundary: East line of Surf View Walk.
East Boundary: 200 feet east of Laurel Avenue.

(xii) Ocean Bay Park

West Boundary: 90 feet west of the west line of Superior Street.
East Boundary: 100 feet East of the east line of Cayuga Street.

(xiii) Point O'Woods

West Boundary: 100 feet east of the east line of Cayuga Street.
East Boundary: Western boundary of Sunken Forest Preserve.

(xiv) Cherry Grove

West Boundary: The west line of West Walk.
East Boundary: Approximately 100 feet east of the east line of Ivy Walk.

(xv) Fire Island Pines

West Boundary: Approximately 150 feet west of the west line of Sandy Walk.
East Boundary: Approximately 120 feet east of Sail Walk.

(xvi) Water Island

West Boundary: The west line of Charach Walk.
East Boundary: Approximately 100 feet east of the east line of East Walk.

(xvii) Davis Park

West Boundary: 90 feet west of the west line of Eider Duck Walk.
East Boundary: 90 feet east of east line of Whalebone Walk.

(2) The northern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of the Great South Bay.

(3) The southern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of Fire Island.

(c) *The Seashore District.* The Seashore District is comprised of all portions of the lands and waters within the boundary of the Seashore which are not included in the Community Development District with the exception of the headquarters facilities at Patchogue and the William Floyd Estate at Mastic.

(d) *The Dune District.* The Dune District extends from the mean high water line to 40 feet landward of the primary natural high dune crest, as defined on Fire Island National Seashore Map #OGP–0004 and on Suffolk County Property Maps, section numbers 491–498 (Islip), 002 (Ocean Beach), 002–004 (Saltaire), and 985.70–987 (Brookhaven), as mapped in November 1976 or as subsequently remapped. Map overlays of the Dune District are available for inspection in the Office of the Superintendent of the Seashore. The Dune District overlaps portions of the Community Development District and the Seashore District.

### § 28.4 Severability.

The invalidation of any provision of this part 28 by any court of competent jurisdiction shall not invalidate any other provision thereof.

## Subpart B—Federal Standards and Approval of Local Ordinances

### § 28.10 Permitted and prohibited uses.

(a) *The Community Development District*—(1) *Permitted uses.* (i) The construction, alteration, expansion, movement, reconstruction, and maintenance of a detached building which is used principally as a single-family home, church, school, or community facility; as an accessory structure; or as an office for a professional occupation, as defined in approved local ordinances is permitted. Reconstruction of non-conforming uses is permitted in accordance with § 28.11. A professional office may be maintained only incidental to a residential use and shall be utilized by a person residing on the premises.

(ii) A commercial or industrial use in continuous and unchanged operation since September 11, 1964 is permitted. Any change in use of a commercial or industrial use since September 11, 1964 including construction, expansion, or conversion of an existing structure or a change in type, mode or manner of operation constitutes a new commercial or industrial use and may be permitted subject to the approval of the local zoning authority and review by the Superintendent.

(iii) A commercial or industrial use initiated after September 11, 1964 constitutes a new commercial or industrial use and may be permitted with the approval of the local zoning authority and review by the Superintendent. Any change in use of a commercial or industrial use approved by a local zoning authority after September 11, 1964, including construction, expansion, or conversion of an existing structure, or a change in type, location, mode or manner of operation, shall constitute a new commercial or industrial use and may be permitted with approval of the local zoning authority and review by the Superintendent.

(2) *Prohibited uses.* (i) The construction or expansion of an apartment building or other building with multiple dwelling units or conversion of an existing building into a multiple family home is prohibited.

(ii) The construction or expansion of a guest house with cooking facilities, or conversion of an existing structure to a guest house with cooking facilities is prohibited.

(iii) The subdivision of land into lots which are less than 4000 feet, or that do not meet the requirements of the applicable approved zoning ordinance is prohibited.

(iv) The rezoning of an area zoned residential to commercial or industrial without review by the Secretary is prohibited.

(b) *The Seashore District*—(1) *Permitted uses.* (i) The alteration, expansion, movement, and maintenance of privately-held ''improved property'' used as a single-family home or as an accessory structure is permitted. Reconstruction is permitted in accordance with § 28.11.

(ii) Any use consistent with the purposes of this Act, which is not likely to cause significant harm to the natural resources of the Seashore, on any lands, whether publicly or privately-held, which lie below mean high water in either the Atlantic Ocean or the Great South Bay is allowable.

(2) *Prohibited uses.* Construction, development or expansion of any property other than ''improved property'' is prohibited. The provisions of paragraph (a)(2) of this section apply to all privately-held property in the Seashore District.

(c) *The Dune District*—(1) *Permitted uses.* (i) A community vehicular and private or community pedestrian dune crossing approved by the zoning authority and reviewed by the Superintendent as necessary for access to areas behind the dune. Such dune protection measures as snow fencing, poles, beach nourishment, dune grass planting, or other scientifically sanctioned biological or ecological sand enhancing or stabilization methods are allowable.

(ii) Residential use and maintenance of an existing structure or reconstruction in accordance with § 28.11 is allowable.

(2) *Prohibited uses.* (i) Any development subsequent to November 10, 1978 including construction of a new structure or expansion of an existing structure, such as a building, bulkhead, pile, septic system, revetment, deck, swimming pool, or other structure or man-made dune stabilization device except as allowed under paragraph (c)(i) of this section.

(ii) Any use of the dune, other than those outlined in paragraph (c)(1)(i) of this section, including recreational use.

(3) *Conflict with other provisions.* If a development or lot lies partially within the Dune District and partially in the Community Development District, or partially within the Dune District and partially within the Seashore District, and the standards applicable to the development, lot, or use are in conflict, the standards for the Dune District prevail for the portion of the development, lot, or use which lies within the Dune District. (d) General recreation, environmental and historic preservation and education, and natural resource protection uses and facilities consistent with the uses and facilities appropriate for each zone as set forth in the General Management Plan and Final Environmental Impact Statement are permitted on publicly-held property.

### § 28.11 Nonconforming uses.

(a) Any use or structure lawfully existing under local law as of October 17, 1984 and rendered nonconforming by adoption of the federal standards may continue, subject to the provisions of this section, and will not lose its exemption from condemnation, if otherwise eligible.

(b) *Change in nonconforming uses.* (1) No nonconforming development or use may be altered, intensified, enlarged, extended, or moved except to bring the use or structure into conformity with the approved local zoning ordinance.

(2) A nonconforming use which has been abandoned for more than one (1) year may not be resumed or replaced by another nonconforming use or structure.

(3) A nonconforming use in the Dune District may be moved to bring it into conformity with the approved local zoning ordinance.

(c) *Reconstruction of nonconforming uses.* If a nonconforming use or structure is severely damaged (as determined by fair professional insurance

practices), destroyed or rendered a hazard, whether by fire, natural disaster, abandonment or neglect, no alteration, intensification, enlargement, reconstruction, extension, or movement is allowable without compliance with the following conditions:

(1) No use or structure within the Seashore built in violation of a local ordinance when constructed may be reconstructed except in compliance with the approved local zoning ordinance.

(2) Local building permit applications for reconstruction shall be filed with the appropriate zoning authority within one (1) year of the damage, destruction, or abandonment.

(3) A commercial or industrial use may not be reconstructed without the approval of the local zoning authority and review by the Superintendent.

(4) A nonconforming use in the Community Development District or in the Seashore District (i.e. ''improved property'') may be reconstructed to previous dimensions. It may not be altered, enlarged, intensified, extended, or moved except to bring the use or structure into conformity with the approved local zoning ordinance.

(5) A nonconforming use in the Dune District may be reconstructed if it can conform to the approved local zoning ordinance and lie north of the crest of the dune at the time of reconstruction.

**§ 28.12 Development standards.**

No use allowable under § 28.10 may be developed, constructed, altered, or conducted unless it complies with the following:

(a) A single-family home is the only type of development permitted in a residential district defined by a local zoning authority.

(b) Commercial or industrial development is limited to commercial or business districts defined by a zoning authority within the Community Development District. Such development must provide a service to Fire Island and will not be likely to cause significant harm to the natural resources of the Seashore.

(c) Minimum lot size is 4,000 square feet. A subdivision must comply with the subdivision requirements of the applicable zoning authority and may not result in development of any lot which is less than 4,000 feet.

(d) Maximum lot occupancy for all development may not exceed 35 percent of the lot. Lot occupancy is calculated to include all buildings and accessory structures on the property and any extension of the upper floors beyond the developed area on the ground level.

(e) Lot occupancy of all privately-held improved property in the Seashore District is limited to 35 percent of the square footage of a lot that is less than 7,500 square feet, and to 2,625 square feet for a lot 7,500 square feet or greater. Lot occupancy is calculated to include all buildings and accessory structures on the property and any extension of the upper floors beyond the developed area of the ground.

(f) No building or accessory structure may be erected to a height in excess of 28 feet as measured from the average existing ground elevation or the minimum elevation necessary to meet the prerequisites for Federal flood insurance as determined by the National Flood Insurance Program/FEMA shown on Flood Insurance Rate Maps for Fire Island communities.

(g) A swimming pool is an allowable accessory structure and is calculated in measuring lot occupancy.

(h) No sign may be self-illuminated.

(i) A zoning authority shall have in effect limitations, requirements, or restrictions on the burning of cover and trash, excavation, displacement or removal of sand or vegetation, and the dumping, storing, or piling of refuse materials, equipment or other unsightly objects which would pose safety hazards and/or detract from the natural or cultural scene.

(j) A zoning authority shall have in place ordinances to lessen the potential for flood and related erosion and property losses consistent with the Federal Insurance Administration's National Flood Insurance Program criteria for ''Land Management and Use,'' as set forth in 24 CFR part 1910, subpart A, as it may from time to time be amended.

### § 28.13 Variance, commercial and industrial application procedures.

(a) The zoning authority shall send the Superintendent a copy of all applications for variances, exceptions, special permits, and permits for commercial and industrial uses submitted to the zoning authority within five calendar days of their submission of the completed application by the applicant.

(b) The zoning authority shall send the Superintendent a copy of the written notice of the dates and times of any public hearing to be held concerning an application no less than 10 days prior to the date of the hearing.

(c) The zoning authority shall send the Superintendent a copy of the written notice within fifteen calendar days of the approval or disapproval of any application for a variance, exception, special permit, or permit and copies of any variance, exception, special permit, or certificate which has been granted.

(d) The zoning authority shall send copies of all correspondence referred to in this section to:

The Superintendent, Special Attention: Zoning, Fire Island National Seashore, 120 Laurel St., Patchogue, New York 11772.

### § 28.14 Emergency action.

If allowable by local law and if immediate action is essential to avoid or eliminate an immediate threat to the public health or safety or a serious and immediate threat to private property or natural resources, an agency or person may commence a temporary use without a permit from the zoning authority. In all cases, the agency or person shall inform the Superintendent and send an application for a permit to the zoning authority within 10 days after the commencement of the use and the applicant shall proceed in full compliance with the provisions of the approved local zoning ordinance. When the reasons for undertaking the emergency action no longer exist, the agency or person shall cease an emergency action taken under this section.

### § 28.15 Approval of local zoning ordinances.

(a) The Secretary shall approve local ordinances or amendments to approved ordinances which conform to these regulations. The Secretary may not, however, approve an ordinance or amendment thereto which:

(1) Contains a provision that the Secretary considers adverse to the protection and development of the Seashore;

(2) Does not comply with the federal standards set out in §§ 28.10, 28.11, and 28.12; or

(3) Fails to provide for the variance procedures of § 28.13.

(b) A zoning authority from time to time may amend its ordinance. At such time the Secretary may revoke the approval of any ordinance or portion of an ordinance which fails to conform to these regulations. Upon resubmission by the zoning authority of an amended ordinance, the Secretary shall approve the ordinance, if it conforms with the requirements of paragraph (a) of this section.

(c) Secretarial approval of a local ordinance will be withdrawn if the Secretary finds that a zoning authority is not enforcing its ordinance.

## Subpart C—Federal Review and Condemnation

### § 28.20 Review by the Superintendent.

(a) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception, permits for commercial or industrial use, or special permit submitted to the zoning authority for any development, use or change in use shall provide the applicant/landowner and the appropriate zoning authority written comments on the application. The purpose of the Superintendent's review is to determine if the proposed use or development does not conform to the federal standards and the purposes of the Act or is likely to cause significant harm to the natural resources of the Seashore. If the Superintendent's review determines the proposal does not conform, the Superintendent shall inform the applicant/landowner and appropriate zoning authority that should the proposed use or development proceed, the National Park Service may seek to enjoin the development and acquire the property by condemnation.

(b) The Superintendent may also appeal the decision of the zoning authority pursuant to procedures of local law.

### § 28.21 Suspension of condemnation authority in the communities.

The Secretary has the authority to acquire land by condemnation. Upon Secretarial approval of local ordinances, Secretarial authority to acquire by condemnation private property within the communities and ''improved property'' in the Seashore District that conforms to the federal standards and the provisions of the Act or is not likely to cause significant harm to the natural resources of the Seashore is suspended, except as provided for in § 28.22.

### § 28.22 Condemnation authority of the Secretary.

(a) The Secretary has the authority to exercise powers of condemnation with respect to:

(1) Private property within the 8-mile area between the eastern boundary of Davis Park and the western boundary of the Smith Point County Park;

(2) Any beach or water and such adjoining land as the Secretary determines is necessary for access to the beach or water;

(3) Any property for which the Certificate of Suspension of Authority for Acquisition by Condemnation has been revoked;

(4) Any property, if the approval of the ordinance of the zoning authority has been revoked; partially revoked, or an exception was made to the Secretarial approval and such property fails to conform to these standards, or any property where the appropriate local zoning authority does not have an ordinance approved by the Secretary;

(5) Any property built or altered after October 17, 1984 that does not conform to the regulations in this part 28;

(6) Any property which becomes an exception to or has been granted a variance, exception, or special use permit after October 17, 1984 that fails or will fail to conform to the regulations in this part 28;

(7) Any new commercial or industrial use that the Superintendent has determined does not conform with § 28.20(a). A new commercial or industrial use is defined as any commercial or industrial use commenced after September 11, 1964. Any change in use of a commercial or industrial use including construction, expansion, or conversion of an existing structure, or change in type, location, mode, or manner of operation, constitutes a new commercial or industrial use;

(8) Any property with respect to which the Secretary's authority to condemn was not suspended and the property failed to conform to the federal standards existing at the time of construction, modification, or commencement of a use, unless such construction, modification or use conforms to the current federal standards; and

(9) Any property in violation of a local ordinance required by § 28.12 (i) and (j).

(b) Undeveloped property which is otherwise subject to condemnation under the Act is not subject to condemnation if it is located in the Dune District and is maintained in its natural state.

(c) The Secretarial authority to condemn any property in the Seashore is suspended for any structure or use constructed, modified, or commenced prior to October 17, 1984 if:

(1) It was built or conducted in conformity with local zoning ordinances and procedures in effect at the time of such construction or commencement or had been issued a variance under local law;

(2) It was built or conducted in conformity to the federal standards existing at the time of such construction or commencement or to these standards; and

(3) The local zoning ordinance is approved by the Secretary without exceptions, or if approved by the Secretary with exceptions, such exceptions are not pertinent or applicable to the property.

(d) The above provisions shall not be interpreted to otherwise limit or circumscribe the authority of the Secretary to condemn property as provided by the Act, or other provisions of law.

### § 28.23 Certificates of suspension of authority for acquisition by condemnation.

Upon approval of a local zoning ordinance, a private property owner may apply to the Superintendent for a Certificate of Suspension of Authority for Acquisition by Condemnation. Procedures for obtaining a certificate are as follows:

(a) A property owner shall submit an application for a certificate to:

Superintendent,
Fire Island National Seashore,
120 Laurel Street,
Patchogue, New York 11772.

(b) An application for a certificate shall contain:

(1) A current survey of the lot showing the dimension of all buildings, accessory structures, garbage and bicycle racks, all access walks, and any extensions of the upper floors beyond the developed area on the ground level;

(2) On the survey, the line of mean high water, the toe of the dune, and the crest of the dune shall be identified if they traverse the lot;

(3) A floor plan of each floor of each building showing the configuration of all rooms and cooking facilities;

(4) A vertical drawing of the structure showing actual ground level and building height; and

(5) Copies of the original and all subsequent building permit applications and permits, certificates of occupancy, certified-as-completed surveys, variances, special use permits, certificates of pre-existing use, or other documents relating to local authorization to develop or use the property. The burden rests on the applicant to show that the structure conformed to local law at the time of construction and at the time of each subsequent alteration and that the structure conforms to current federal standards.

(6) For commercial or industrial uses, the owner of the property shall submit further information describing the type, mode, and manner of operation. All local, county, state, or federal licenses and permits required for construction, occupancy, operation of the commercial activity shall be submitted. Any change in use as described in § 28.10(a)(1)(iii) will require application for a new certificate.

(c) Upon receipt of the application, the Superintendent shall conduct a site inspection of both the interior and exterior of the property.

(d) After review of the materials submitted by the applicant and other pertinent information, and completion of the site inspection, the Superintendent shall determine whether the Secretary's authority to acquire by condemnation is suspended, and if so, shall furnish to any eligible party in interest a Certificate of Suspension of Authority for Acquisition by Condemnation.

(e) A Certificate of Suspension of Authority for Acquisition by Condemnation may be revoked at any time that the Secretary's authority to condemn is reinstated or that it becomes evident to the Superintendent that the Certificate was initially issued by mistake or on misinformation.

### § 28.24 Information collection.

The collection of information contained in §§ 28.13, and 28.23 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0050. The information will be used to determine if private property conforms to the federal regulations. Response is required to obtain a benefit in accordance with 16 U.S.C. Section 459e *et seq.*

## PART 30—WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA: ZONING STANDARDS FOR WHISKEYTOWN UNIT

Sec.
30.1 Introduction.
30.2 General provisions.
30.3 Recreation District I.
30.4 Recreation District II.
30.5 Variances, exceptions, and use permits.

AUTHORITY: Subsection 2(e), 79 Stat. 1295, 1297; sec. 3, 39 Stat. 535; 16 U.S.C. 460q–1(e); 16 U.S.C. 3.

SOURCE: 32 FR 13189, Sept. 16, 1967, unless otherwise noted.

### § 30.1 Introduction.

(a) Administration of the Whiskeytown Unit is required to be coordinated with the other purposes of the Central Valley project and with the purposes of the recreation area as a whole so as to provide for: (1) Public

outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization and disposal of renewable natural resources as in the judgment of the Secretary of the Interior will promote or is compatible with, and does not significantly impair, public recreation and conservation of scenic, scientific, historic, or other values contributing to public enjoyment.

(b) The Secretary may not acquire without consent of the owner any privately owned ''improved property'' or interests therein within the boundaries of the unit, so long as the appropriate local zoning agency (Shasta County), shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is approved by the Secretary. This suspension of the Secretary's authority to acquire ''improved property'' without the owner's consent would automatically cease: (1) If the property is made the subject to a variance or exception to any applicable zoning ordinance that does not conform to the applicable standards contained in the regulations in this part; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) ''Improved property'' as used in this section, means any building or group of related buildings, the actual construction of which was begun before February 7, 1963, together with not more than 3 acres of land in the same ownership on which the building or group of buildings is situated, but the Secretary may exclude from such ''improved property'' any shore or waters, together with so much of the land adjoining such shore or waters, as he deems necessary for public access thereto.

(d) The regulations in this part specify the standards with which local zoning ordinances for the Whiskeytown Unit must conform if the ''improved property'' within the boundaries of that unit is to be exempt from acquisition by condemnation. The objectives of the regulations in this part are to: (1) Prohibit new commercial or industrial uses other than those which the Secretary considers to be consistent with the purposes of the act establishing the national recreation area; (2) promote the protection and development of properties in keeping with the purposes of that act by means of use, acreage, frontage, setback, density, height, or other requirements; and (3) provide that the Secretary receive notice of any variance granted under, or any exception made to, the application of the zoning ordinance approved by him.

(e) Following promulgation of the regulations in this part in final form, the Secretary is required to approve any zoning ordinance or any amendment to an approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in this part in effect at the time of adoption of the ordinance or amendment. Within 60 days following submission, the county will be notified of the Secretary's approval or disapproval of the zoning ordinances or amendments thereto. If more than 60 days is required the county will be notified of the expected delay and of the additional time deemed necessary to reach a decision. The Secretary's approval shall remain effective so long as the zoning ordinances or amendments thereto remain in effect as approved.

(f) Nothing contained in the regulations in this part or in the zoning ordinances or amendments adopted for the Whiskeytown Unit to implement the regulations in this part shall preclude the Secretary from exercising his power of condemnation at any time with respect to property other than ''improved property'' as defined herein. Nor shall the regulations in this part preclude the Secretary from otherwise fulfilling the responsibilities vested in him by the act authorizing establishment of the Whiskeytown-Shasta-Trinity National Recreation Area, by the Act of August 25, 1916 (39 Stat. 535, 16 U.S.C. 3), as amended and supplemented, and such other statutory authorities relating to the National Park System.

### § 30.2 General provisions.

(a) Following issuance of the regulations in this part, Shasta County shall submit to the Secretary for his approval, all zoning ordinances and

amendments thereto duly adopted by the county which are in force and applicable to property within the Whiskeytown Unit and which demonstrate conformity with the standards contained in the regulations in this part. This shall include any ordinances and amendments in effect prior to the issuance of the regulations in this part which demonstrate such conformity and any that have been adopted specifically to implement the regulations in this part.

(b) Any new uses, and the location, design and scope of any new developments, permitted under the regulations in this part shall be harmonized with adjacent uses, developments and the natural features and shall be consistent with the current Master Plan proposed or adopted by the National Park Service for the Whiskeytown Unit, so as to minimize disruption of the natural scene and to further the public recreational purposes of the aforesaid establishment act for this unit.

(c) Zoning ordinances for the districts hereinafter prescribed shall conform to the general and specific standards contained in the regulations in this part to assure that use and development of the lands within the Whiskeytown Unit are consistent with the objectives of the Congress to protect and preserve the values of the lands in such unit for public use and enjoyment, as set out in the Act of November 8, 1965 (79 Stat. 1295). Except as otherwise provided herein, no additional or increased commercial or industrial uses are permitted within these districts. Any existing nonconforming commercial or industrial uses shall be discontinued within 10 years from the date of this section: *Provided, however,* That with the approval of the Secretary such 10-year period may be extended by the county for an additional period of time sufficient to allow the owner a reasonable opportunity to amortize investments made in the property before November 8, 1965.

### § 30.3 Recreation District I.

(a) Definition. This district shall comprise all those portions of the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area delineated as ''Recreation District I'' on a map bearing the identification NRA-WHI1000, and dated August 1966.

(b) The following uses are permitted in Recreation District I provided the Shasta County Planning Commission has issued a use permit in each case:

(1) Single-family dwellings, not including tents and trailers, but including servants' quarters in the same structure or in an accessory dwelling, and one noncommercial guest house. Such residential uses shall meet the following requirements:

(i) Minimum building site area—3 acres; but a lesser acreage may be utilized for this purpose if, on or before February 7, 1963, the site was in separate ownership and within a recorded subdivision.

(ii) Maximum building height—35 feet.

(iii) Minimum frontage—150 feet.

(iv) Minimum front yard setback—75 feet.

(v) Minimum side yard setback—50 feet.

(vi) Minimum rear yard setback—25 feet.

(vii) Maximum percentage of lot coverage permitted—10 percent.

(2) Moving, alteration, or improvement of existing residences or accessory structures provided there is compliance with the acreage, frontage, setback, density, height, and other requirements prescribed for residential uses under paragraph (b)(1) of this section, *And provided, further,* That such moving alteration, or improvement does not alter the residential character of the premises. Any moving, alteration or improvement of such structures that would result in a deviation from these prescribed limitations and requirements would subject the property to acquisition without consent of the owner, unless the Secretary has waived such limitations or requirements.

(3) Tree farming under a timber management plan that conforms to the California Forest Practices Act.

(4) Riding stables.

(5) Campgrounds, organizational camps and picnic areas.

(6) Limited agricultural uses such as truck gardening, provided these uses do

not require the extensive cutting or clearing of wooded areas and are not otherwise destructive of natural or recreational values.

(7) Clearing and removal of trees, shrubbery, and other vegetation to the extent necessary in order to permit the exercise of a use otherwise allowed within this district.

(8) Recreational pursuits such as horseshoe pitching, archery, croquet, tennis, softball, volley ball, and similar outdoor game-type activities compatible with the recreational purposes of the area.

(9) Religious and educational uses.

(10) Removal of gravel, sand, and rock or other alteration of the landscape to the minimum extent necessary for the construction of an access road to the property on which a use is permitted. In all other circumstances, such removal or alteration shall be permitted only to the minimum extent necessary to make possible the exercise of a use otherwise permitted in this district.

(11) Signs that are appurtenant to any permitted use and which (i) do not exceed 1 square foot in area for any residential use; (ii) do not exceed 4 square feet in area for any other use, including advertisement of the sale or rental of property; and (iii) which are not illuminated by any neon or flashing device. Such signs may be placed only on the property on which the advertised use occurs, or on the property which is advertised for sale or rental. Signs shall be subdued in appearance, harmonizing in design and color with the surroundings and shall not be attached to any tree or shrub. Nonconforming signs may continue such nonconformity until they are destroyed, moved, structurally altered or redesigned, but the period of such nonconformity may not exceed 2 years from the date a zoning ordinance containing this limitation is adopted by Shasta County.

(12) Accessory uses and temporary removable structures appurtenant to any permitted use.

(c) Any use not included above as a permitted use shall be deemed a prohibited use. Moreover, all land within the boundaries of the Whiskeytown Unit, except certain ''improved property'' as defined herein, will be acquired by the United States as rapidly as appropriated funds are made available therefor and before any development occurs thereon. Any property that is developed before such acquisition takes place will be subject to acquisition by the Secretary without consent of the owner.

### § 30.4 Recreation District II.

(a) Definition: This district shall comprise all those portions of the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area delineated as ''Recreation District II'' on a map bearing the identification NRA-WHI–1000 and dated August 1966.

(b) The following uses are permitted in Recreation District II:

(1) All uses permitted in Recreation District I, subject to all the limitations, conditions and requirements prescribed for such uses in that district.

(2) The following additional uses are permitted in Recreation District II, provided the Shasta County Planning Commission has issued a use permit in each case:

(i) Agricultural pursuits such as crop farming, grazing, animal husbandry, nurseries, and greenhouses.

(ii) Stands for retail sales of products produced on the premises.

(iii) Measures to promote conservation of soil, water, and vegetation, including reforestation and tree stand improvement, and measures to reduce fire hazards.

(iv) Public or privately operated parks and playgrounds.

(v) Trailer campgrounds.

(vi) Golf courses.

(vii) Heliports, provided they are located and screened so their operations will cause a minimum of interference with public recreational use and enjoyment of the area.

(viii) Accessory structures, facilities, and utilities as necessary to make possible the exercise of any use otherwise permitted.

(c) Structures developed for the exercise of the additional uses listed under paragraph (b)(2) of this section shall not exceed two stories in height (35 feet), shall have a minimum principal use area of 5 acres, and shall have a front yard setback of not less than 100

feet from the nearest right-of-way line of a road or street. However, a lesser area than 5 acres may be utilized for such purposes if the property in question was in separate ownership on February 7, 1963.

(d) Any use not included above as a permitted use shall be deemed a prohibited use. Moreover, all land within the boundaries of the Whiskeytown Unit, except certain ''improved property'' as defined herein, will be acquired by the United States as rapidly as appropriated funds are made available therefor and before any development occurs thereon. Any property that is developed before such acquisition takes place will be subject to acquisition by the Secretary without consent of the owner.

### § 30.5 Variances, exceptions, and use permits.

(a) Zoning ordinances or amendments thereto, for the zoning districts comprising the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area may provide for the granting of variances and exceptions.

(b) Zoning ordinances or amendments thereto for each of the districts established by the regulations in this part shall contain provisions advising applicants for variances and exceptions that, under section 2(f) of the Act of November 8, 1965, the authority of the Secretary to acquire ''improved property'' without the owner's consent would be reinstated (1) if such property is made the subject of a variance or exception to any applicable zoning ordinance that does not conform to any applicable standard contained in the regulations in this part; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) The Shasta County Planning Commission, or private owners of ''improved property'' may consult the Secretary as to whether the grant of any proposed variance or exception would terminate the suspension of his authority to acquire the affected property without consent of the owner, and may request the approval of a variance or exception by the Secretary: *Provided,* The Secretary is notified in writing at least 30 days in advance of the hearing on the application for the variance or exception. The Secretary within 30 days after the receipt of a request for approval of a variance or exception, shall advise the owner or the Commission whether or not the intended use will subject the property to acquisition by condemnation. If more than 30 days is required by the Secretary for such determination, he shall so notify the owner or Commission, stating the additional time required and the reasons therefor.

(d) The Secretary shall be given written notice of any variance granted under, or exception made to the application of, a zoning ordinance or amendment thereof approved by him. The Secretary shall be provided a copy of every use permit granted by the Shasta County Planning Commission authorizing any use or development of lands within the boundaries of the Whiskeytown Unit of the recreation area.

## PART 34—EL PORTAL ADMINISTRATIVE SITE REGULATIONS

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34.2 Applicability and scope.
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34.5 Applicable regulations.
34.6 Fires.
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34.10 Saddle and pack animals.
34.11 Boating operations.
34.12 Information collection.

AUTHORITY: 16 U.S.C. 1, 3, 47–1, 4601–6a(e).

SOURCE: 51 FR 29103, Aug. 14, 1986, unless otherwise noted.

### § 34.1 Purpose.

These regulations provide for the protection of persons, property and natural and cultural resources within the El Portal Administrative Site.

### § 34.2 Applicability and scope.

(a) The regulations in this part apply to all persons entering, using, visiting, residing on or otherwise within the boundaries of the El Portal Administrative Site. All regulations apply

throughout the site, with certain specific exceptions provided for leased lands.

(b) The regulations in this part may be enforced only by persons authorized to enforce the other provisions of this chapter.

### § 34.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in this part shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(b) Notwithstanding the provision of paragraph (a) of this section, a person convicted of violating §34.5(b)(15) of this chapter shall be punished by a fine of not more than $100.

### § 34.4 Definitions.

When used in regulations in this part:

*Administrative site* means all of the federally owned or controlled lands and waters administered by the National Park Service pursuant to 16 U.S.C. 47–1 (72 Stat. 1772), in the vicinity of El Portal, California.

*Leased lands* means all lands within the administrative site in which there is a lawful possessory interest in addition to that of the National Park Service, which have been leased, permitted or otherwise assigned by the Superintendent. All other lands within the administrative site are nonleased lands.

### § 34.5 Applicable regulations.

The following sections and paragraphs of this chapter, as amended from time to time, apply to the administrative site and are hereby incorporated and made a part of this part except as modified by the regulations in this part:

(a) *General provisions.* (1) 1.2(d) Applicability and scope; exception for administrative activities.

(2) 1.4 Definitions.

(3) 1.5 Closures and public use limits.

(4) 1.6 Permits.

(5) 1.7 Public notice.

(b) *Resource Protection, Public Use and Recreation.* (1) 2.1 Preservation of natural, cultural and archeological resources.

(2) 2.2 Wildlife protection.

(3) 2.3 (a), (c) and (f) Fishing.

(4) 2.4 Weapons, traps and nets.

(5) 2.5 Research specimens.

(6) 2.10 Camping and food storage.

(7) 2.11 Picnicking.

(8) 2.12 Audio disturbances.

(9) 2.13 Fires.

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(13) 2.21 Smoking.

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(15) 2.23 Recreation fees.

(16) 2.30 Misappropriation of property and services.

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(21) 2.35 Alcoholic beverages and controlled substances.

(22) 2.36 (a) Gambling.

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(3) 5.3 Business operations.

(4) 5.5 Commercial photography.

(5) 5.7 Construction of buildings or other facilities.

(6) 5.8 Discrimination in employment practices.

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(8) 5.13 Nuisances.

(9) 5.14 Prospecting, mining, and mineral leasing.

[51 FR 29103, Aug. 14, 1986, as amended at 52 FR 10686, Apr. 2, 1987]

### § 34.6 Fires.

(a) All wildland, vehicular or structural fires shall be reported to the Superintendent immediately.

(b) Nonconflicting provisions of the California State Forest and Fire Laws and Regulations are adopted as a part of this part. Violation of any of these regulations is prohibited.

(c) The kindling of any open fire, including the burning of debris, is prohibited without a permit from the Superintendent.

(d) On undeveloped, untended or otherwise open land, operating any equipment powered by an internal combustion engine without a spark arrestor maintained in effective working order is prohibited. Such spark arrestor shall also meet either the USDA Forest Service Standard 5100–1*a* or the Society of Automotive Engineers Recommended Practice J335 or J350.

(e) The Superintendent may, during periods of high fire danger or diminished water supply, temporarily limit use and consumption of domestic water. These limitations shall be published. Violation of a limitation established by the Superintendent is prohibited.

(f) An owner or operator of a commercial establishment located within the administrative site shall comply with applicable standards prescribed by the National Fire Codes, Federal OSHA, CAL OSHA and other applicable laws, regulations and standards.

### § 34.7 Cultivation of controlled substances.

In addition to the provisions of § 2.35 of this chapter, the planting, cultivating, harvesting, drying or processing of a controlled substance, or any part thereof, is prohibited.

### § 34.8 Preservation of natural, cultural and archeological resources.

In addition to the provisions of § 2.1 of this chapter, the following are in effect:

(a) Upon nonleased lands, the cutting or removal of any tree, plant, or shrub or part thereof is prohibited without a permit from the Superintendent.

(b) Upon leased lands, the cutting or removal of any tree, plant, shrub or part thereof that is six inches or less in diameter, for the purpose of maintaining its proper health and appearance or for reasons of public safety, is allowed. Cutting or removing any vegetation exceeding six inches in diameter without a permit from the Superintendent is prohibited.

(c) Upon leased lands, the planting of personal gardens or domestic trees is allowed subject to all applicable Federal, State, and County agricultural regulations. *Provided, however:* the Superintendent may temporarily suspend this general privilege in the event of a water shortage or agricultural pest or disease emergency.

(d) Wood gathering is prohibited except in accordance with conditions and within areas designated by the Superintendent. Violation of such conditions or gathering wood outside of designated areas is prohibited.

### § 34.9 Protective custody.

(a) An authorized person, with reasonable cause to believe that a juvenile found within the administrative site has been unlawfully abused or neglected by any person living in the juvenile's place of residence, may take such juvenile into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the appropriate State or local authorities.

(b) An authorized person, with reasonable cause to believe that a person found within the administrative site is

either temporarily or permanently psychologically or mentally impaired to a degree that the person is gravely disabled or that presents a clear danger to that person or another, may take such person into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the person to the care of the Mariposa County Mental Health Authorities for an initial 72-hour evaluation in accordance with applicable provisions of the California Welfare and Institutions Code.

(c) An authorized person may take into protective custody any juvenile found within the administrative site who is deemed to be a runaway according to applicable provisions of the California Welfare and Institutions Code. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the Mariposa County Sheriff's Office.

### § 34.10 Saddle and pack animals.

The use of saddle and pack animals is prohibited without a permit from the Superintendent.

### § 34.11 Boating operations.

The launching or operation of a motor boat is prohibited.

### § 34.12 Information collection.

The information collection requirements contained in §§ 34.6, 34.8 and 34.10 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

## PART 51—CONCESSION CONTRACTS

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AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

SOURCE: 65 FR 20668, Apr. 17, 2000, unless otherwise noted.

## Subpart A—Authority and Purpose

### §51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.* and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105–391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) relating to revenue-producing visitor services.

### §51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

## Subpart B—General Definitions

### §51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The *1965 Act* means Public Law 89–249, commonly known as the National Park Service Concession Policies Act of 1965.

A *1965 Act concession contract* is a concession contract or permit entered into under the authority of the 1965 Act.

The *1998 Act* means Title IV of Public Law 105–391.

The *award* of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

*A concession contract (or contract)* means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the

meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A *concessioner* is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

*Director* means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A *franchise fee* is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

*Offeror* means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

*Possessory interest* means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A *possessory interest concession contract* means a 1965 Act concession contract that provides the concessioner a possessory interest.

A *preferred offeror* is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A *qualified concession contract* is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A *qualified person* is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A *responsive proposal* means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A *right of preference* is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

*Visitor services* means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee

or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (*e.g.*, when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

## Subpart C—Solicitation, Selection and Award Procedures

### §51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under §51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing concession contract.

### §51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

(1) The minimum acceptable franchise fee or other forms of consideration to the Government;

(2) The minimum visitor services that the concessioner is to be authorized to provide;

(3) The minimum capital investment, if any, that the concessioner must make;

(4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and

(5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession

contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

### § 51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

### § 51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

### § 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

### § 51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

### § 51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

### § 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

### § 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than $100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

### §51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

### §51.14 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

### §51.15 May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

### §51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in §51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in §51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

### §51.17 What are the selection factors?

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

(2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(4) The financial capability of the offeror to carry out its proposal; and

(5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

(1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than $100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

### § 51.18 When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

### § 51.19 Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

### § 51.20 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

### § 51.21 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

### § 51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of $5,000,000 or of more

than 10 years in duration, or, pursuant to §51.24(b), the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

## Subpart D—Non-Competitive Award of Concession Contracts

### §51.23 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, *e.g.*, the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the FEDERAL REGISTER of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

### §51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate, *e.g.*, the Director may award one temporary contract with a three year term, two consecutive temporary contracts, one with a two year term and one with a one year term, or three consecutive temporary contracts with a term of one year each, to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the FEDERAL REGISTER of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been

considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the FEDERAL REGISTER at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

### § 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the FEDERAL REGISTER at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

## Subpart E—Right of Preference to a New Concession Contract

### § 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

### § 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

### § 51.28 When will the Director determine whether a concessioner is a preferred offeror?

Subject to §§ 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

### § 51.29 How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

### § 51.30 What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

### § 51.31 What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

### § 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

### § 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

### § 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

### § 51.35 What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

## Subpart F—Determining a Preferred Offeror

### § 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

(a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;

(b) The applicable new contract is a qualified concession contract as determined under this part; and

(c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

### § 51.37 How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

(a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than $500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

### § 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

### § 51.39 What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

### § 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas where search and rescue support is not readily available; and

(d) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

[65 FR 20668, Apr. 17, 2000; 65 FR 54155, Sept. 7, 2000]

### § 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

### § 51.42 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

### § 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

### § 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

### § 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

### § 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance

evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period), the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

[65 FR 20668, Apr. 17, 2000; 65 FR 54155, Sept. 7, 2000]

### § 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

### § 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

### § 51.49 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of

preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

### §51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

## Subpart G—Leasehold Surrender Interest

### §51.51 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

*Arbitration* means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

*A capital improvement* is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

*Construction cost* of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term ''construct'' or ''construction'' as used in this part also means ''install'' or ''installation'' of fixtures where applicable.

*Consumer Price Index* means the national ''Consumer Price Index—All Urban Consumers'' published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

*Depreciation* means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

*Eligible direct costs* means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs

of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

*Eligible indirect costs* means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

*Fixtures and non-removable equipment* are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term ''fixture'' as used in this part includes the term ''non-removable equipment.''

*Leasehold surrender interest solely* means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

*Leasehold surrender interest concession contract* means a concession contract that provides for leasehold surrender interest in capital improvements.

*Leasehold surrender interest value* means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

(1) The initial construction cost of the related capital improvement;

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (*e.g.*, where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

*Major rehabilitation* means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

*Pre-rehabilitation value* of an existing structure means the replacement cost of the structure less depreciation.

*Real property improvements* means real property other than land, including, but not limited to, capital improvements.

*Related capital improvement* or *related fixture* means a capital improvement in which a concessioner has a leasehold surrender interest.

*Replacement cost* means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

*Structure* means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (*e.g.*, water, power and sewer lines) and constructed site improvements (*e.g.*, paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

*Substantial completion of a capital improvement* means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

### §51.52 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

### §51.53 When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

### §51.54 What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to

any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

### § 51.55 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

### § 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time review a construction cost determination (subject to arbitration under § 51.57) if the Director has reason to believe that it was based on false, misleading or incomplete information.

[66 FR 35083, July 3, 2001]

### § 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under § 51.56. The arbitration procedures are described in § 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

[66 FR 35083, July 3, 2001]

### § 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

(a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;

(b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and

(c) May relinquish or waive a leasehold surrender interest.

### § 51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest

within the meaning of this part and for all other purposes.

### §51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

### §51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

### §51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for the Director to make a final determination of leasehold surrender interest value unless binding arbitration as to the value is requested by the concessioner. The arbitration procedures are described in §51.51. A

prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

[66 FR 35083, July 3, 2001]

### § 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under § 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

### § 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (*e.g.*, a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

### § 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

### § 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (*e.g.*, a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

### § 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

## Subpart H—Possessory Interest

### § 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

### § 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

### § 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

### § 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.

### § 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

## Subpart I—Concession Contract Provisions

### § 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

### § 51.74 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

### § 51.75 May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than $500,000.

### §51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a ''preferential right to new or additional services'' means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

### §51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

### §51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

### §51.79 May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

### § 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

### § 51.81 May the Director include "special account" provisions in concession contracts?

(a) The Director may not include in concession contracts ''special account'' provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and, government personal property, assigned to the concessioner by a concession contract.

### § 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

### § 51.83 Sale of Native Handicrafts.

(a) Where authorized by an applicable concession contract, concessioners are encouraged to sell authentic native handicrafts appropriately labeled or denoted as authentic that reflect the cultural, historical, and geographic

characteristics of the related park area. To further this objective, concession contracts will contain a provision that exempts the revenue of a concessioner derived from the sale of appropriately labeled or denoted authentic native handicrafts from the concession contract's franchise fee.

(b) The sale of products as authentic native handicrafts is further regulated under the Indian Arts and Crafts Act, Public Law 101–644, as amended.

(c) *Definitions*. (1) *Alaska Native* means any citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metalakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any person so defined either or both of whose adoptive parents are not Alaska Natives. It also includes, in the absence of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Alaska native village or native groups of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaska Native by any village or group.

(2) *Arts and crafts objects* means art works and crafts that are in a traditional or non-traditional style or medium.

(3) *Authentic native handicrafts* means arts and crafts objects created by a United States Indian, Alaska Native, Native Samoan or Native Hawaiian that are made with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual object.

(4) *Native Hawaiian* means any individual who is a descendant of the aboriginal people that, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(5) *United States Indian* means any individual that is a member of an Indian tribe as defined in 18 U.S.C. 1159(c)(3).

[72 FR 32190, June 12, 2007]

## Subpart J—Assignment or Encumbrance of Concession Contracts

### §51.84 What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A *controlling interest in a concession contract* means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A *controlling interest in a concessioner* means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A ''controlling interest'' in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner. The term ''controlling interest'' in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

*Rights to operate and/or manage* under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

*Subconcessioner* means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession

contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

### § 51.85 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as ''assignments'' for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;

(c) Any controlling interest in a concessioner or concession contract; or

(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

### § 51.86 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as ''encumbrances'' for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;

(c) Any controlling interest in a concessioner or concession contract; or

(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

### § 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

### § 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

### § 51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

### § 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

### § 51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

(a) All instruments proposed to implement the transaction;

(b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A detailed description of all financial aspects of the proposed transaction;

(g) Prospective financial statements (proformas);

(h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and

(i) Such other information as the Director may require to make the determinations required by this subpart.

### § 51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A ''standard proforma'' is one that:

(a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

### § 51.93 If the transaction includes more that one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

### § 51.94 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

### § 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

### § 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

### § 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

## Subpart K—Information and Access to Information

### § 51.98 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents

and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

### § 51.99 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

### § 51.100 When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

## Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

### § 51.101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

### § 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a ''renewal preference'' in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal

preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

### § 51.103 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

## Subpart M—Information Collection

### § 51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The information collection for submission of proposals in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024–0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a FEDERAL REGISTER notice when OMB has approved these requirements.

# PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

Sec.
59.1 Applicability.
59.2 Information collection.
59.3 Conversion requirements.
59.4 Residency requirements.
59.5–59.6 [Reserved]

AUTHORITY: Sec. 6, L&WCF Act of 1965 as amended; Pub. L. 88–578; 78 Stat. 897; 16 U.S.C. 4601–4 *et seq.*

SOURCE: 51 FR 34184, Sept. 25, 1986, unless otherwise noted.

### § 59.1 Applicability.

These post-completion responsibilities apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area

or facility and consistent with the contractural agreement between NPS and the State. Responsibility for compliance and enforcement of these provisions rests with the State for both State and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this mutually agreed to area exceeds that actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under L&WCF, compliance with post-completion requirements of the grant ceases following lease expiration unless the grant agreement calls for some other arrangement.

### § 59.2 Information collection.

The information collection requirements contained in § 59.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0047. The information is being collected to determine whether to approve a project sponsor's request to convert an assisted site or facility to other than public outdoor recreation uses. The information will be used to assure that the requirements of section 6(f)(3) of the L&WCF Act would be met should the proposed conversion be implemented. Response is required in order to obtain the benefit of Department of the Interior approval.

### § 59.3 Conversion requirements.

(a) *Background and legal requirements.* Section 6(f)(3) of the L&WCF Act is the cornerstone of Federal compliance efforts to ensure that the Federal investments in L&WCF assistance are being maintained in public outdoor recreation use. This section of the Act assures that once an area has been funded with L&WCF assistance, it is continually maintained in public recreation use unless NPS approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.

(b) *Prerequisites for conversion approval.* Requests from the project sponsor for permission to convert L&WCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to the appropriate NPS Regional Director in writing. NPS will consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreation purpose.

(3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and at the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property. Wetland areas and interests therein

which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

(ii) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area in another location within the jurisdiction. Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these regulations and the substitution of replacement property.

(iii) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition. The replacement property must constitute or be part of a viable recreation area. Unless *each* of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of an L&WCF project:

(i) The land was not acquired by the sponsor or selling agency for recreation.

(ii) The land has not been dedicated or managed for recreational purposes while in public ownership.

(iii) No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance.

(iv) Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself, public land which has not been dedicated or managed for recreation/conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

(5) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(6) All necessary coordination with other Federal agencies has been satisfactorily accomplished including, for example, compliance with section 4(f) of the Department of Transportation Act of 1966.

(7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action. In cases where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the NPS Regional office is assured that all environmental review requirements related to that other action have been met.

(8) State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project.

(9) The proposed conversion and substitution are in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreation plans.

(c) *Amendments for conversion.* All conversions require amendments to the original project agreements. Therefore, amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out

with NPS. Section 6(f)(3) project boundary maps shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the State's request for a conversion. In such cases, an express commitment to satisfy section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the State. This commitment will be in the form of an amendment to the grant agreement.

(d) *Obsolete facilities.* Recipients are not required to continue operation of a particular facility beyond its useful life. However, when a facility is declared obsolete, the site must nonetheless be maintained for public outdoor recreation following discontinuance of the assisted facility. Failure to so maintain is considered to be a conversion. Requests regarding changes from a L&WCF funded facility to another otherwise eligible facility at the same site that significantly contravene the original plans for the area must be made in writing to the Regional Director. NPS approval must be obtained prior to the occurrence of the change. NPS approval is not necessarily required, however, for each and every facility use change. Rather, a project area should be viewed in the context of overall use and should be monitored in this context. A change from a baseball field to a football field, for example, would not require NPS approval. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, however, require NPS review and approval. To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the State of *all* proposed changes in advance of their occurrence. A primary NPS consideration in the review of requests for changes in use will be the consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan and/or equivalent recreation plans. Changes to other than public outdoor recreation use require NPS approval and the substitution of replacement land in accordance with section 6(f)(3) of the L&WCF Act and paragraphs (a) through (c) of this section.

[51 FR 34184, Sept. 25, 1986, as amended at 52 FR 22747, June 15, 1987]

### §59.4 Residency requirements.

(a) *Background.* Section 6(f)(8) of the L&WCF Act prohibits discrimination on the basis of residence, including preferential reservation or membership systems, except to the extent that reasonable differences in admission and other fees may be maintained on such basis. This prohibition applies to both regularly scheduled and special events. The general provisions regarding nondiscrimination at sites assisted under Interior programs and, thereby, all other recreation facilities managed by a project sponsor, are covered in 43 CFR part 17 which implements the provisions of Title VI of the Civil Rights Act of 1964 for the Department.

(b) *Policy.* There shall be no discrimination for L&WCF assisted programs and services on the basis of residence, except in reasonable fee differentials. Post-completion compliance responsibilities of the recipient should continue to ensure that discrimination on the basis of residency is not occurring.

(c) *Fees.* Fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable State or local public facilities. Reservation, membership, or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents. Recipients are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only. These provisions apply only to the approved 6(f)(3) areas applicable to the recipient. Nonresident

fishing and hunting license fees are excluded from these requirements.

**§§ 59.5–59.6 [Reserved]**

# PART 60—NATIONAL REGISTER OF HISTORIC PLACES

Sec.
60.1 Authorization and expansion of the National Register.
60.2 Effects of listing under Federal law.
60.3 Definitions.
60.4 Criteria for evaluation.
60.5 Nomination forms and information collection.
60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation programs.
60.7–60.8 [Reserved]
60.9 Nominations by Federal agencies.
60.10 Concurrent State and Federal nominations.
60.11 Requests for nominations.
60.12 Nomination appeals.
60.13 Publication in the FEDERAL REGISTER and other NPS notification.
60.14 Changes and revisions to properties listed in the National Register.
60.15 Removing properties from the National Register.

AUTHORITY: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, and E.O. 11593.

SOURCE: 46 FR 56187, Nov. 16, 1981, unless otherwise noted.

## § 60.1 Authorization and expansion of the National Register.

(a) The National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470 *et seq.*, as amended, authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering and culture. The regulations herein set forth the procedural requirements for listing properties on the National Register.

(b) Properties are added to the National Register through the following processes.

(1) Those Acts of Congress and Executive orders which create historic areas of the National Park System administered by the National Park Service, all or portions of which may be determined to be of historic significance consistent with the intent of Congress;

(2) Properties declared by the Secretary of the Interior to be of national significance and designated as National Historic Landmarks;

(3) Nominations prepared under approved State Historic Preservation Programs, submitted by the State Historic Preservation Officer and approved by the NPS;

(4) Nominations from any person or local government (only if such property is located in a State with no approved State Historic Preservation Program) approved by the NPS and;

(5) Nominations of Federal properties prepared by Federal agencies, submitted by the Federal Preservation Officer and approved by NPS.

## § 60.2 Effects of listing under Federal law.

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decisionmaking process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

### § 60.3 Definitions.

(a) *Building*. A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

*Examples*

Molly Brown House (Denver, CO)
Meek Mansion and Carriage House (Hayward, CA)
Huron County Courthouse and Jail (Norwalk, OH)
Fairntosh Plantation (Durham vicinity, NC)

(b) *Chief elected local official*. Chief elected local official means the mayor, county judge, county executive or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

(c) *Determination of eligibility*. A determination of eligibility is a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite.

(d) *District*. A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

*Examples*

Georgetown Historic District (Washington, DC)
Martin Luther King Historic District (Atlanta, GA)
Durango-Silverton Narrow-Gauge Railroad (right-of-way between Durango and Silverton, CO)

(e) *Federal Preservation Officer*. The Federal Preservation Officer is the official designated by the head of each Federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act of 1966, as amended, and Executive Order 11593 including nominating properties under that agency's ownership or control to the National Register.

(f) *Keeper of the National Register of Historic Places*. The Keeper is the individual who has been delegated the authority by NPS to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

(g) *Multiple Resource Format submission*. A Multiple Resource Format submission for nominating properties to the National Register is one which includes all or a defined portion of the cultural resources identified in a specified geographical area.

(h) *National Park Service (NPS)*. The National Park Service is the bureau of the Department of Interior to which the Secretary of Interior has delegated the authority and responsibility for administering the National Register program.

(i) *National Register Nomination Form*. National Register Nomination Form means (1) National Register Nomination Form NPS 10–900, with accompanying continuation sheets (where necessary) Form NPS 10–900a, maps and photographs or (2) for Federal nominations, Form No. 10–306, with continuation sheets (where necessary) Form No. 10–300A, maps and photographs. Such nomination forms must be ''adequately documented'' and ''technically and professionally correct and sufficient.'' To meet these requirements the forms and accompanying maps and photographs must be completed in accord with requirements and guidance in the NPS publication, ''How to Complete National Register Forms'' and other NPS technical publications on this subject. Descriptions and statements of significance must be prepared in accord with standards generally accepted by academic historians, architectural historians and archeologists. The nomination form is a legal document and reference for historical, architectural, and archeological data upon which the protections for listed and eligible properties are founded. The nominating authority certifies that the nomination is adequately documented and technically and professionally correct and sufficient upon nomination.

(j) *Object*. An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

*Examples*

Delta Queen Steamboat (Cincinnati, OH)
Adams Memorial (Rock Creek Cemetery, Washington, DC)
Sumpter Valley Gold Dredge (Sumpter, OR)

(k) *Owner or owners*. The term owner or owners means those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

(l) *Site*. A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

*Examples*

Cabin Creek Battlefield (Pensacola vicinity, OK)
Mound Cemetery Mound (Chester vicinity, OH)
Mud Springs Pony Express Station Site (Dalton vicinity, NE)

(m) *State Historic Preservation Officer*. The State Historic Preservation Officer is the person who has been designated by the Governor or chief executive or by State statute in each State to administer the State Historic Preservation Program, including identifying and nominating eligible properties to the National Register and otherwise administering applications for listing historic properties in the National Register.

(n) *State Historic Preservation Program*. The State Historic Preservation Program is the program established by each State and approved by the Secretary of Interior for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations. Such program shall be approved by the Secretary before the State may nominate properties to the National Register. Any State Historic

Preservation Program in effect under prior authority of law before December 12, 1980, shall be treated as an approved program until the Secretary approves a program submitted by the State for purposes of the Amendments or December 12, 1983, unless the Secretary chooses to rescind such approval because of program deficiencies.

(o) *State Review Board.* The State Review Board is a body whose members represent the professional fields of American history, architectural history, historic architecture, prehistoric and historic archeology, and other professional disciplines and may include citizen members. In States with approved State historic preservation programs the State Review Board reviews and approves National Register nominations concerning whether or not they meet the criteria for evaluation prior to their submittal to the NPS.

(p) *Structure.* A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

*Examples*

Swanton Covered Railroad Bridge (Swanton vicinity, VT)
Old Point Loma Lighthouse (San Diego, CA)
North Point Water Tower (Milwaukee, WI)
Reber Radio Telescope (Green Bay vicinity, WI)

(q) *Thematic Group Format submission.* A Thematic Group Format submission for nominating properties to the National Register is one which includes a finite group of resources related to one another in a clearly distinguishable way. They may be related to a single historic person, event, or developmental force; of one building type or use, or designed by a single architect; of a single archeological site form, or related to a particular set of archeological research problems.

(r) *To nominate.* To nominate is to propose that a district, site, building, structure, or object be listed in the National Register of Historic Places by preparing a nomination form, with accompanying maps and photographs which adequately document the property and are technically and professionally correct and sufficient.

## § 60.4 Criteria for evaluation.

The criteria applied to evaluate properties (other than areas of the National Park System and National Historic Landmarks) for the National Register are listed below. These criteria are worded in a manner to provide for a wide diversity of resources. The following criteria shall be used in evaluating properties for nomination to the National Register, by NPS in reviewing nominations, and for evaluating National Register eligibility of properties. Guidance in applying the criteria is further discussed in the ''How To'' publications, Standards & Guidelines sheets and Keeper's opinions of the National Register. Such materials are available upon request.

*National Register criteria for evaluation.* The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

*Criteria considerations.* Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories:

(a) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is

the surviving structure most importantly associated with a historic person or event; or

(c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(g) A property achieving significance within the past 50 years if it is of exceptional importance.

This exception is described further in NPS ''How To'' #2, entitled ''How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years'' which is available from the National Register of Historic Places Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

### § 60.5 Nomination forms and information collection.

(a) All nominations to the National Register are to be made on standard National Register forms. These forms are provided upon request to the State Historic Preservation Officer, participating Federal agencies and others by the NPS. For archival reasons, no other forms, photocopied or otherwise, will be accepted.

(b) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number *1024–0018*. The information is being collected as part of the nomination of properties to the National Register. This information will be used to evaluate the eligibility of properties for inclusion in the National Register under established criteria. The obligation to respond is required to obtain a benefit.

### § 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation programs.

(a) The State Historic Preservation Officer is responsible for identifying and nominating eligible properties to the National Register. Nomination forms are prepared under the supervision of the State Historic Preservation Officer. The State Historic Preservation Officer establishes statewide priorities for preparation and submittal of nominations for all properties meeting National Register criteria for evaluation within the State. All nominations from the State shall be submitted in accord with the State priorities, which shall be consistent with an approved State historic preservation plan.

(b) The State shall consult with local authorities in the nomination process. The State provides notice of the intent to nominate a property and solicits written comments especially on the significance of the property and whether or not it meets the National Register criteria for evaluation. The State notice also gives owners of private property an opportunity to concur in or object to listing. The notice is carried out as specified in the subsections below.

(c) As part of the nomination process, each State is required to notify in writing the property owner(s), except as specified in paragraph (d) of this section, of the State's intent to bring the nomination before the State Review Board. The list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of intent to nominate. If in any State the land recordation or tax records is not the most appropriate list from which to obtain owners that State shall notify the Keeper in writing and request approval that an alternative source of owners may be used.

The State is responsible for notifying only those owners whose names appear on the list consulted. Where there is more than one owner on the list, each separate owner shall be notified. The State shall send the written notification at least 30 but not more than 75

days before the State Review Board meeting. Required notices may vary in some details of wording as the States prefer, but the content of notices must be approved by the National Register. The notice shall give the owner(s) at least 30 but not more than 75 days to submit written comments and concur in or object in writing to the nomination of such property. At least 30 but not more than 75 days before the State Review Board meeting, the States are also required to notify by the above mentioned National Register approved notice the applicable chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located. The National Register nomination shall be on file with the State Historic Preservation Program during the comment period and a copy made available by mail when requested by the public, or made available at a location of reasonable access to all affected property owners, such as a local library courthouse, or other public place, prior to the State Review Board meeting so that written comments regarding the nomination can be prepared.

(d) For a nomination with more than 50 property owners, each State is required to notify in writing at least 30 but not more than 75 days in advance of the State Review Board meeting the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property or district is located. The State shall provide general notice to property owners concerning the State's intent to nominate. The general notice shall be published at least 30 days but not more than 75 days before the State Review Board meeting and provide an opportunity for the submission of written comments and provide the owners of private property or a majority of such owners for districts an opportunity to concur in or object in writing to the nomination. Such general notice must be published in one or more local newspapers of general circulation in the area of the nomination. The content of the notices shall be approved by the National Register. If such general notice is used to notify the property owners for a nomination containing more than 50 owners, it is suggested that a public information meeting be held in the immediate area prior to the State Review Board meeting. If the State wishes to individually notify all property owners, it may do so, pursuant to procedures specified in subsection 60.6(c), in which case, the State need not publish a general notice.

(e) For Multiple Resource and Thematic Group Format submission, each district, site, building, structure and object included in the submission is treated as a separate nomination for the purpose of notification and to provide owners of private property the opportunity to concur in or object in writing to the nomination in accord with this section.

(f) The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver.

(g) Upon notification, any owner or owners of a private property who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing. In nominations with multiple ownership of a single private property or of districts, the property will not be listed if a majority of the owners object to listing. Upon receipt of notarized objections respecting a district or single private property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners of private property have objected. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by the State Historic Preservation Officer in determining whether a majority of owners has objected. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

(h) If a property has been submitted to and approved by the State Review Board for inclusion in the National Register prior to the effective date of this section, the State Historic Preservation Officer need not resubmit the property to the State Review Board; but before submitting the nomination to the NPS shall afford owners of private property the opportunity to concur in or object to the property's inclusion in the Register pursuant to applicable notification procedures described above.

(i) [Reserved]

(j) Completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register are submitted to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission on the nomination forms and any comments concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination.

(k) Nominations approved by the State Review Board and comments received are then reviewed by the State Historic Preservation Officer and if he or she finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the nominations are submitted to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. All comments received by a State and notarized statements of objection to listing are submitted with a nomination.

(l) If the State Historic Preservation Officer and the State Review Board disagree on whether a property meets the National Register criteria for evaluation, the State Historic Preservation Officer, if he or she chooses, may submit the nomination with his or her opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The opinion of the State Review Board may be the minutes of the Review Board meeting. The State Historic Preservation Officer shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the local, county or municipal political subdivision in which the property is located but need not otherwise do so. Such nominations will be substantively reviewed by the Keeper.

(m) The State Historic Preservation Officer shall also submit to the Keeper nominations if so requested under the appeals process in § 60.12.

(n) If the owner of a private property or the majority of such owners for a district or single property with multiple owners have objected to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to subsection (s) of this section.

(o) The State Historic Preservation Officer signs block 12 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The State Historic Preservation Officer's signature in block 12 certifies that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient;

(4) In the opinion of the State Historic Preservation Officer, the property meets the National Register criteria for evaluation.

(p) When a State Historic Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register

criteria for evaluation, the State Historic Preservation Officer signs a continuation sheet Form NPS 10–900a explaining his/her opinions on the eligibility of the property and certifying that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient.

(q) Notice will be provided in the FEDERAL REGISTER that the nominated property is being considered for listing in the National Register of Historic Places as specified in §60.13.

(r) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves a nomination, an appeal is filed, or the owner of private property (or the majority of such owners for a district or single property with multiple owners) objects by notarized statements received by the Keeper prior to listing. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(s) If the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected to the nomination by notarized statement prior to listing, the Keeper shall review the nomination and make a determination of eligibility within 45 days of receipt, unless an appeal is filed. The Keeper shall list such properties determined eligible in the National Register upon receipt of notarized statements from the owner(s) of private property that the owner(s) no longer object to listing.

(t) Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petitions received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owners object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

(u) State Historic Preservation Officers are required to inform the property owners and the chief elected local official when properties are listed in the National Register. In the case of a nomination where there are more than 50 property owners, they may be notified of the entry in the National Register by the same general notice stated in §60.6(d). States which notify all property owners individually of entries in the National Register need not publish a general notice.

(v) In the case of nominations where the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, the State Historic Preservation Officer shall notify the appropriate chief elected local official and the owner(s) of such property of this determination. The general notice may be used for properties with more than 50 owners as described in §60.6(d) or the State Historic Preservation Officer may notify the owners individually.

(w) If subsequent to nomination a State makes major revisions to a nomination or renominates a property rejected by the Keeper, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the revisions or renomination in the same manner as the original notification for the nomination, but need not resubmit the nomination to the State Review Board. Comments received and notarized statements of objection must be forwarded to the Keeper along with the revisions or renomination. The State Historic Preservation Officer also certifies by the resubmittal that the affected property owner(s) and the chief elected local official have been renotified. ''Major revisions'' as used herein

means revisions of boundaries or important substantive revisions to the nomination which could be expected to change the ultimate outcome as to whether or not the property is listed in the National Register by the Keeper.

(x) Notwithstanding any provision hereof to the contrary, the State Historic Preservation Officer in the nomination notification process or otherwise need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission for certified local governments) specific information relating to the location of properties proposed to be nominated to, or listed in, the National Register if he or she determines that the disclosure of specific information would create a risk of destruction or harm to such properties.

(y) With regard to property under Federal ownership or control, completed nomination forms shall be submitted to the Federal Preservation Officer for review and comment. The Federal Preservation Officer, may approve the nomination and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

[46 FR 56187, Nov. 16, 1981, as amended at 48 FR 46308, Oct. 12, 1983]

### §§ 60.7–60.8 [Reserved]

### § 60.9 Nominations by Federal agencies.

(a) The National Historic Preservation Act of 1966, as amended, requires that, with the advice of the Secretary and in cooperation with the State Historic Preservation Officer of the State involved, each Federal agency shall establish a program to locate, inventory and nominate to the Secretary all properties under the agency's ownership or control that appear to qualify for inclusion on the National Register. Section 2(a) of Executive Order 11593 provides that Federal agencies shall locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places. Additional responsibilities of Federal agencies are detailed in the National Historic Preservation Act of 1966, as amended, Executive Order 11593, the National Environmental Policy Act of 1969, the Archeological and Historic Preservation Act of 1974, and procedures developed pursuant to these authorities, and other related legislation.

(b) Nomination forms are prepared under the supervision of the Federal Preservation Officer designated by the head of a Federal agency to fulfill agency responsibilities under the National Historic Preservation Act of 1966, as amended.

(c) Completed nominations are submitted to the appropriate State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register. The chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified and given 45 days in which to comment. The State Historic Preservation Officer signs block 12 of the nomination form with his/her recommendation.

(d) After receiving the comments of the State Historic Preservation Officer, and chief elected local official, or if there has been no response within 45 days, the Federal Preservation Officer may approve the nomination and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. The Federal Preservation Officer signs block 12 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The Federal Preservation Officer's signature in block 12 certifies that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient;

(4) In the opinion of the Federal Preservation Officer, the property meets the National Register criteria for evaluation.

(e) When a Federal Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the Federal Preservation Officer signs a continuation sheet Form NPS 10–900a explaining his/her opinions on the eligibility of the property and certifying that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient.

(f) The comments of the State Historic Preservation Officer and chief local official are appended to the nomination, or, if there are no comments from the State Historic Preservation Officer an explanation is attached. Concurrent nominations (see § 60.10) cannot be submitted, however, until the nomination has been considered by the State in accord with Sec. 60.6, supra. Comments received by the State concerning concurrent nominations and notarized statements of objection must be submitted with the nomination.

(g) Notice will be provided in the FEDERAL REGISTER that the nominated property is being considered for listing in the National Register of Historic Places in accord with § 60.13.

(h) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves such nomination or an appeal is filed. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(i) Any person or organization which supports or opposes the nomination of a property by a Federal Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petition received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owner(s) object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

### § 60.10 Concurrent State and Federal nominations.

(a) State Historic Preservation Officers and Federal Preservation Officers are encouraged to cooperate in locating, inventorying, evaluating, and nominating all properties possessing historical, architectural, archeological, or cultural value. Federal agencies may nominate properties where a portion of the property is not under Federal ownership or control.

(b) When a portion of the area included in a Federal nomination is not located on land under the ownership or control of the Federal agency, but is an integral part of the cultural resource, the completed nomination form shall be sent to the State Historic Preservation Officer for notification to property owners, to give owners of private property an opportunity to concur in or object to the nomination, to solicit written comments and for submission to the State Review Board pursuant to the procedures in § 60.6.

(c) If the State Historic Preservation Officer and the State Review Board agree that the nomination meets the National Register criteria for evaluation, the nomination is signed by the State Historic Preservation Officer and returned to the Federal agency initiating the nomination. If the State Historic Preservation Officer and the State Review Board disagree, the nomination shall be returned to the Federal agency with the opinions of the State Historic Preservation Officer and the State Review Board concerning the adequacy of the nomination and whether or not the property meets the criteria for evaluation. The opinion of the State Review Board may be the minutes of the State Review Board meeting. The State Historic Preservation

Officer's signed opinion and comments shall confirm to the Federal agency that the State nomination procedures have been fulfilled including notification requirements. Any comments received by the State shall be included with the letter as shall any notarized statements objecting to the listing of private property.

(d) If the owner of any privately owned property, (or a majority of the owners of such properties within a district or single property with multiple owners) objects to such inclusion by notarized statement(s) the Federal Historic Preservation Officer shall submit the nomination to the Keeper for review and a determination of eligibility. Comments, opinions, and notarized statements of objection shall be submitted with the nomination.

(e) The State Historic Preservation Officer shall notify the non-Federal owners when a concurrent nomination is listed or determined eligible for the National Register as required in § 60.6.

**§ 60.11 Requests for nominations.**

(a) The State Historic Preservation Officer or Federal Preservation Officer as appropriate shall respond in writing within 60 days to any person or organization submitting a completed National Register nomination form or requesting consideration for any previously prepared nomination form on record with the State or Federal agency. The response shall provide a technical opinion concerning whether or not the property is adequately documented and appears to meet the National Register criteria for evaluation in § 60.4. If the nomination form is determined to be inadequately documented, the nominating authority shall provide the applicant with an explanation of the reasons for that determination.

(b) If the nomination form does not appear to be adequately documented, upon receiving notification, it shall be the responsibility of the applicant to provide necessary additional documentation.

(c) If the nomination form appears to be adequately documented and if the property appears to meet the National Register criteria for evaluation, the State Historic Preservation Officer shall comply with the notification requirements in § 60.6 and schedule the property for presentation at the earliest possible State Review Board meeting. Scheduling shall be consistent with the State's established priorities for processing nominations. If the nomination form is adequately documented, but the property does not appear to meet National Register criteria for evaluation, the State Historic Preservation Officer need not process the nomination, unless so requested by the Keeper pursuant to § 60.12.

(d) The State Historic Preservation Officer's response shall advise the applicant of the property's position in accord with the State's priorities for processing nominations and of the approximate date the applicant can expect its consideration by the State Review Board. The State Historic Preservation Officer shall also provide notice to the applicant of the time and place of the Review Board meeting at least 30 but not more than 75 days before the meeting, as well as complying with the notification requirements in § 60.6.

(e) Upon action on a nomination by the State Review Board, the State Historic Preservation Officer shall, within 90 days, submit the nomination to the National Park Service, or, if the State Historic Preservation Officer does not consider the property eligible for the National Register, so advise the applicant within 45 days.

(f) If the applicant substantially revises a nomination form as a result of comments by the State or Federal agency, it may be treated by the State Historic Preservation Officer or Federal Preservation Officer as a new submittal and reprocessed in accord with the requirements in this section.

(g) The Federal Preservation Officer shall request the comments of the State Historic Preservation Officer and notify the applicant in writing within 90 days of receipt of an adequately documented nomination form as to whether the Federal agency will nominate the property. The Federal Preservation Officer shall submit an adequately documented nomination to the National Park Service unless in his or her opinion the property is not eligible for the National Register.

[48 FR 46308, Oct. 12, 1983]

**§ 60.12 Nomination appeals.**

(a) Any person or local government may appeal to the Keeper the failure or refusal of a nominating authority to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a nominating authority to not nominate a property for any reason when requested pursuant to § 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board. (This action differs from the procedure for appeals during the review of a nomination by the National Park Service where an individual or organization may ''petition the Keeper during the nomination process,'' as specified in §§ 60.6(t) and 60.9(i). Upon receipt of such petition the normal 45-day review period will be extended for 30 days beyond the date of the petition to allow the petitioner to provide additional documentation for review.)

(b) Such appeal shall include a copy of the nomination form and documentation previously submitted to the State Historic Preservation Officer or Federal Preservation Officer, an explanation of why the applicant is submitting the appeal in accord with this section and shall include pertinent correspondence from the State Historic Preservation Officer or Federal Preservation Officer.

(c) The Keeper will respond to the appellant and the State Historic Preservation Officer or Federal Preservation Officer with a written explanation either denying or sustaining the appeal within 45 days of receipt. If the appeal is sustained, the Keeper will:

(1) Request the State Historic Preservation Officer or Federal Preservation Officer to submit the nomination to the Keeper within 15 days if the nomination has completed the procedural requirements for nomination as described in §§ 60.6 or 60.9 except that concurrence of the State Review Board, State Historic Preservation Officer or Federal Preservation Officer is not required; or

(2) If the nomination has not completed these procedural requirements, request the State Historic Preservation Officer or Federal Preservation Officer to promptly process the nomination pursuant to §§ 60.6 or 60.9 and submit the nomination to the Keeper without delay.

(d) State Historic Preservation Officers and Federal Preservation Officers shall process and submit such nominations if so requested by the Keeper pursuant to this section. The Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his own motion when necessary to assist in the preservation of historic resources and after notifying the owner and appropriate parties and allowing for a 30-day comment period.

(e) No person shall be considered to have exhausted administrative remedies with respect to failure to nominate a property to the National Register until he or she has complied with procedures set forth in this section. The decision of the Keeper is the final administrative action on such appeals.

[48 FR 46308, Oct. 12, 1983]

**§ 60.13 Publication in the Federal Register and other NPS notification.**

(a) When a nomination is received, NPS will publish notice in the FEDERAL REGISTER that the property is being considered for listing in the National Register. A 15-day commenting period from date of publication will be provided. When necessary to assist in the preservation of historic properties this 15-day period may be shortened or waived.

(b) NPS shall notify the appropriate State Historic Preservation Officer, Federal Preservation Officer, person or local government when there is no approved State program of the listing of the property in the National Register and will publish notice of the listing in the FEDERAL REGISTER.

(c) In nominations where the owner of any privately owned property (or a majority of the owners of such properties within a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, NPS shall notify the State Historic Preservation Officer, the Federal Preservation Officer (for Federal or concurrent nominations), the person or local government where there is no approved State Historic

Preservation Program and the Advisory Council on Historic Preservation. NPS will publish notice of the determination of eligibility in the FEDERAL REGISTER.

### § 60.14 Changes and revisions to properties listed in the National Register.

(a) *Boundary changes.* (1) A boundary alteration shall be considered as a new property nomination. All forms, criteria and procedures used in nominating a property to the National Register must be used. In the case of boundary enlargements only those owners in the newly nominated as yet unlisted area need be notified and will be counted in determining whether a majority of private owners object to listing. In the case of a diminution of a boundary, owners shall be notified as specified in § 60.15 concerning removing properties from the National Register. A professionally justified recommendation by the State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program shall be presented to NPS. During this process, the property is not taken off the National Register. If the Keeper or his or her designee finds the recommendation in accordance with the National Register criteria for evaluation, the change will be accepted. If the boundary change is not accepted, the old boundaries will remain. Boundary revisions may be appealed as provided for in §§ 60.12 and 60.15.

(2) Four justifications exist for altering a boundary: Professional error in the initial nomination, loss of historic integrity, recognition of additional significance, additional research documenting that a larger or smaller area should be listed. No enlargement of a boundary should be recommended unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. No diminution of a boundary should be recommended unless the properties being removed do not meet the National Register criteria for evaluation. Any proposal to alter a boundary has to be documented in detail including photographing the historic resources falling between the existing boundary and the other proposed boundary.

(b) *Relocating properties listed in the National Register.* (1) Properties listed in the National Register should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(2) If it is proposed that a property listed in the National Register be moved and the State Historic Preservation Officer, Federal agency for a property under Federal ownership or control, or person or local government where there is no approved State Historic Preservation Program, wishes the property to remain in the National Register during and after the move, the State Historic Preservation Officer or Federal Preservation Officer having ownership or control or person or local government where there is no approved State Historic Preservation Program, shall submit documentation to NPS prior to the move. The documentation shall discuss:

(i) The reasons for the move;

(ii) The effect on the property's historical integrity;

(iii) The new setting and general environment of the proposed site, including evidence that the proposed site does not possess historical or archeological significance that would be adversely affected by the intrusion of the property; and

(iv) Photographs showing the proposed location.

(3) Any such proposal with respect to the new location shall follow the required notification procedures, shall be approved by the State Review Board if it is a State nomination and shall continue to follow normal review procedures. The Keeper shall also follow the required notification procedures for nominations. The Keeper shall respond to a properly documented request within 45 days of receipt from the State Historic Preservation Officer or Federal Preservation Officer, or within 90 days of receipt from a person or local government where there is no approved State Historic Preservation Program, concerning whether or not the move is

approved. Once the property is moved, the State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program shall submit to the Keeper for review:

(i) A letter notifying him or her of the date the property was moved;

(ii) Photographs of the property on its new site; and

(iii) Revised maps, including a U.S.G.S. map,

(iv) Acreage, and

(v) Verbal boundary description.

The Keeper shall respond to a properly documented submittal within 45 days of receipt with the final decision on whether the property will remain in the National Register. If the Keeper approves the move, the property will remain in the National Register during and after the move unless the integrity of the property is in some unforeseen manner destroyed. If the Keeper does not approve the move, the property will be automatically deleted from the National Register when moved. In cases of properties removed from the National Register, if the State, Federal agency, or person or local government where there is no approved State Historic Preservation Program has neglected to obtain prior approval for the move or has evidence that previously unrecognized significance exists, or has accrued, the State, Federal agency, person or local government may resubmit a nomination for the property.

(4) In the event that a property is moved, deletion from the National Register will be automatic unless the above procedures are followed prior to the move. If the property has already been moved, it is the responsibility of the State, Federal agency or person or local government which nominated the property to notify the National Park Service. Assuming that the State, Federal agency or person or local government wishes to have the structure reentered in the National Register, it must be nominated again on new forms which should discuss:

(i) The reasons for the move;

(ii) The effect on the property's historical integrity, and

(iii) The new setting and general environment, including evidence that the new site does not possess historical or archeological significance that would be adversely affected by intrusion of the property.

In addition, new photographs, acreage, verbal boundary description and a U.S.G.S. map showing the structure at its new location must be sent along with the revised nomination. Any such nomination submitted by a State must be approved by the State Review Board.

(5) Properties moved in a manner consistent with the comments of the Advisory Council on Historic Preservation, in accord with its procedures (36 CFR part 800), are granted as exception to § 60.12(b). Moving of properties in accord with the Advisory Council's procedures should be dealt with individually in each memorandum of agreement. In such cases, the State Historic Preservation Officer or the Federal Preservation Officer, for properties under Federal ownership or control, shall notify the Keeper of the new location after the move including new documentation as described above.

### § 60.15 Removing properties from the National Register.

(a) Grounds for removing properties from the National Register are as follows:

(1) The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

(2) Additional information shows that the property does not meet the National Register criteria for evaluation;

(3) Error in professional judgment as to whether the property meets the criteria for evaluation; or

(4) Prejudicial procedural error in the nomination or listing process. Properties removed from the National Register for procedural error shall be reconsidered for listing by the Keeper after correction of the error or errors by the State Historic Preservation Officer, Federal Preservation Officer, person or local government which originally nominated the property, or by

the Keeper, as appropriate. The procedures set forth for nominations shall be followed in such reconsiderations. Any property or district removed from the National Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the National Register without further action and will be published as such in the FEDERAL REGISTER.

(b) Properties listed in the National Register prior to December 13, 1980, may only be removed from the National Register on the grounds established in paragraph (a)(1) of this section.

(c) Any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in paragraph (a) of this section. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures. Petitions for removal are submitted to the Keeper by the State Historic Preservation Officer for State nominations, the Federal Preservation Officer for Federal nominations, and directly to the Keeper from persons or local governments where there is no approved State Historic Preservation Program.

(d) Petitions submitted by persons or local governments where there is no approved State Historic Preservation Program shall include a list of the owner(s). In such cases the Keeper shall notify the affected owner(s) and the chief elected local official and give them an opportunity to comment. For approved State programs, the State Historic Preservation Officer shall notify the affected owner(s) and chief elected local official and give them an opportunity to comment prior to submitting a petition for removal. The Federal Preservation Officer shall notify and obtain the comments of the appropriate State Historic Preservation Officer prior to forwarding an appeal to NPS. All comments and opinions shall be submitted with the petition.

(e) The State Historic Preservation Officer or Federal Preservation Officer shall respond in writing within 45 days of receipt to petitions for removal of property from the National Register. The response shall advise the petitioner of the State Historic Preservation Officer's or Federal Preservation Officer's views on the petition.

(f) A petitioner desiring to pursue his removal request must notify the State Historic Preservation Officer or the Federal Preservation Officer in writing within 45 days of receipt of the written views on the petition.

(g) The State Historic Preservation Officer may elect to have a property considered for removal according to the State's nomination procedures unless the petition is on procedural grounds and shall schedule it for consideration by the State Review Board as quickly as all notification requirements can be completed following procedures outlined in § 60.6, or the State Historic Preservation Officer may elect to forward the petition for removal to the Keeper with his or her comments without State Review Board consideration.

(h) Within 15 days after receipt of the petitioner's notification of intent to pursue his removal request, the State Historic Preservation Officer shall notify the petitioner in writing either that the State Review Board will consider the petition on a specified date or that the petition will be forwarded to the Keeper after notification requirements have been completed. The State Historic Preservation Officer shall forward the petitions to the Keeper for review within 15 days after notification requirements or Review Board consideration, if applicable, have been completed.

(i) Within 15 days after receipt of the petitioner notification of intent to pursue his petition, the Federal Preservation Officer shall forward the petition with his or her comments and those of the State Historic Preservation Officer to the Keeper.

(j) The Keeper shall respond to a petition for removal within 45 days of receipt, except where the Keeper must notify the owners and the chief elected local official. In such cases the Keeper shall respond within 90 days of receipt.

The Keeper shall notify the petitioner and the applicable State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program, of his decision. The State Historic Preservation Officer or Federal Preservation Officer transmitting the petition shall notify the petitioner, the owner(s), and the chief elected local official in writing of the decision. The Keeper will provide such notice for petitions from persons or local governments where there is no approved State Historic Preservation Program. The general notice may be used for properties with more than 50 owners. If the general notice is used it shall be published in one or more newspapers with general circulation in the area of the nomination.

(k) The Keeper may remove a property from the National Register on his own motion on the grounds established in paragraph (a) of this section, except for those properties listed in the National Register prior to December 13, 1980, which may only be removed from the National Register on the grounds established in paragraph (a)(1) of this section. In such cases, the Keeper will notify the nominating authority, the affected owner(s) and the applicable chief elected local official and provide them an opportunity to comment. Upon removal, the Keeper will notify the nominating authority of the basis for the removal. The State Historic Preservation Officer, Federal Preservation Officer, or person or local government which nominated the property shall notify the owner(s) and the chief elected local official of the removal.

(l) No person shall be considered to have exhausted administrative remedies with respect to removal of a property from the National Register until the Keeper has denied a petition for removal pursuant to this section.

# PART 61—PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Sec.

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AUTHORITY: 16 U.S.C. 470 *et seq.*

SOURCE: 64 FR 11742, Mar. 9, 1999, unless otherwise noted.

## §61.1 Authorization.

The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*):

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

(1) Approving and overseeing State historic preservation programs;

(2) Certifying local governments to carry out the purposes of the Act;

(3) Ensuring that applicable State Historic Preservation Officers (SHPOs) allocate to certified local governments (CLGs) a share of grants that the SHPOs receive under the Act; and

(4) Assisting Indian tribes in preserving their particular ''historic properties'' (as defined by the Act);

(b) Directs the Secretary to administer a program of grants-in-aid to States and Indian tribes for historic preservation projects and programs that the Secretary has approved; and

(c) Requires the Secretary to make available information concerning professional standards, methods, and techniques for the preservation of ''historic properties'' (as defined by the Act) and the administration of historic preservation programs.

## §61.2 Definitions.

As used in this part:

(a) All terms that the National Historic Preservation Act of 1966, as amended, defines have the same meaning in the regulations in this part that the statute provides; see especially sections 101(a)(1)(A), 101(b), 101(c)(4), 108, and 301.

(b) *Act* means the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*).

(c) *Chief elected local official* means the elected head of a local government.

(d) *The Secretary's Standards* means only the ''Standards'' portions and not the ''Guidelines'' portions of ''the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.'' The Secretary's Standards provide broad national principles of archeological and historic preservation practices and methods. ''The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' also contains ''the Secretary's Guidelines'' which provide broad national guidance on how to apply ''the Secretary's Standards.''

(e) *State historic preservation program* or *State program* means a State government organization or program meeting the requirements that section 101(b) of the Act specifies.

### § 61.3 Implementation of this part.

(a) *National Park Service policy of management by exception.* The National Park Service (NPS) will administer the regulations in this part in such a way (and where feasible) as to:

(1) Limit the use of direct Federal management review procedures to high risk situations, to new programs, or to activities that are appropriate for the Federal Government to oversee;

(2) Presume that State, tribal, and local government historic preservation officials manage their programs in an accountable way unless situations indicate the contrary; and

(3) Rely to the maximum extent feasible on State, tribal, and local government systems of financial and program management that meet Federal standards. At the discretion of the Secretary, each State, tribal, and local government may substitute its own fiscal audit and management systems for the Secretary's comparable fiscal audit and management requirements, so long as the State, tribal, or local government system establishes and maintains accounting standards substantially similar to Federal standards and provides for independent peer review.

(b) *The Secretary's Standards.* NPS will use the Secretary's Standards as technical performance standards for matters covered by this part. NPS may also use as technical performance standards (for matters covered by this part) additional guidance that NPS identifies and provides from time to time after appropriate consultation and notice.

(c) Each State historic preservation program staff member, State Historic Preservation Review Board (Review Board) member, and certified local government (CLG) historic preservation review commission (Commission) member whom the Secretary has approved as meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' will retain that status, regardless of subsequent revisions to those Standards, until such time as that individual no longer works in that program, or serves on that Review Board, or serves on that Commission with which that individual was affiliated as of the date of that individual's approval.

(d) You may obtain publications and other information mentioned in this part by contacting: Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street NW (NC Suite 200), Washington, D.C. 20240 or via the National Park Service Home Page for cultural programs at *http://www.cr.nps.gov*.

### § 61.4 State programs.

(a) For a State to participate in the program that this part describes, the Governor must appoint and designate a State Historic Preservation Officer (SHPO) to administer the State historic preservation program.

(b) It is the responsibility of the SHPO to carry out the duties and activities that section 101 (b)(3) of the Act describes. In performing those duties and activities:

(1) The SHPO must carry out a historic preservation planning process that includes the development and implementation of a comprehensive statewide historic preservation plan that provides guidance for effective decision making about historic property preservation throughout the State.

(2) The SHPO, in addition to surveying and maintaining inventories of historic properties, may also obtain:

(i) Comparative data valuable in determining the National Register eligibility of properties;

(ii) Information on properties that may become eligible for the National Register of Historic Places with the passage of time; and/or

(iii) Information on the absence of historic properties for use in planning for public and private development projects.

(3) The SHPO must provide for adequate public participation in the State historic preservation program as a whole.

(i) As part of the process of recommending a property to the National Register, the SHPO must comply with the consultation and notification procedures contained in 36 CFR part 60.

(ii) The SHPO may authorize other persons or entities to fulfill the notice requirements in 36 CFR part 60 pursuant to the Secretary's written guidance.

(iii) The SHPO also may authorize the historic preservation review commission (Commission) of a certified local government (CLG) to act in place of the State Historic Preservation Review Board (Review Board) for the purpose of considering National Register nominations within its jurisdiction, provided that the Commission both meets the professional qualifications required for the Review Board when considering such nominations and otherwise follows the Secretary's written guidance.

(iv) In accordance with the Secretary's written guidance and with the consent of both the property owners in a nomination and the chief elected local official, the Review Board (or the Commission acting in its place) may consider the nomination without a face-to-face meeting.

(4) The SHPO may carry out all or any part of his or her responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution, or otherwise pursuant to State law. However, the SHPO may not delegate the responsibility for compliance with the Act or with grant assistance terms and conditions.

(c) The Secretary will consider individual SHPO proposals for programs that, for a specified period, include fewer duties than those section 101(b)(3) of the Act specifies, if a different approach would better serve an appropriate balance of historic property, customer or constituent, and historic preservation needs.

(d) *Procedures for review and approval of State historic preservation programs.* (1) In accordance with the Act, the Secretary will evaluate each State program for consistency with the Act periodically, but not less often than every four years. If the Secretary determines that it meets the program requirements of paragraphs (a), (b), (e) and (f) of this section, he or she will approve the State program as set forth in this section.

(2) The Secretary may use on-site and/or off-site inquiries to perform such evaluation. The Secretary will provide the SHPO with a timely report containing written findings and analyses that highlight the strengths and weaknesses of the State program.

(3) *Approval method.* (i) If the Secretary determines that a State program is consistent with the Act, the report will include notice that the State program's approved status continues.

(ii) If the Secretary determines that a State program has major aspects not consistent with the Act, the report will include notice of deficiencies along with required actions for correcting them. Unless circumstances warrant immediate action, the Secretary will provide a specified period to allow the SHPO either to correct the deficiencies or to present for Secretarial approval a justifiable plan and timetable for correcting the deficiencies. During this period, the SHPO has the opportunity to request that the Secretary reconsider any findings and required actions.

(iii) The Secretary will provide timely notice of continued approved State program status to a SHPO successfully resolving deficiencies. Once the Secretary renews a State program's approved status, he or she generally will not review the program until the next regular evaluation period. However, if the Secretary deems it necessary, he or she may conduct a review more often.

(iv) The Secretary will provide timely notice of the revocation of a program's approved status to any SHPO whose program has deficiencies that warrant immediate action or that remain uncorrected after the expiration

of the period specified pursuant to paragraph (d)(3)(ii) of this section. The Secretary will then initiate financial suspension and other actions in accordance with the Act, applicable regulatory requirements, and related guidance that the National Park Service issues.

(e) The SHPO must appoint or employ a professionally qualified staff.

(1) Except as approved pursuant to paragraph (e)(2) of this section, the staff must include at a minimum, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for history, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for historic or prehistoric archeology, and one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for architectural history. ''The Secretary's (Historic Preservation) Professional Qualifications Standards'' and related guidance are part of the larger ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.'' The SHPO may determine that additional professional staff members representing the required or other disciplines are necessary to administer the State program in accordance with the Act.

(2) The Secretary will consider proposals from a SHPO for a minimum required staff composition that differs from the requirement that paragraph (e)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a staff position that paragraph (e)(1) of this section requires becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that appropriately qualified individuals address technical matters. A vacancy in a required position that persists for more than six months is cause for review, comment, and appropriate action by the Secretary.

(f) Unless State law provides for a different method of appointment, the SHPO must appoint an adequate and qualified State historic preservation Review Board (Review Board).

(1) All Review Board members must have demonstrated competence, interest, or knowledge in historic preservation. A majority of Review Board members must meet ''the Secretary of the Interior's (Historic Preservation) Professional Qualifications Standards'' which are part of the larger ''Secretary's Standards and Guidelines for Archeology and Historic Preservation.'' The members meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' must include at a minimum, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for history, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for prehistoric archeology or historic archeology, and one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for architectural history. One person may meet the Standards for more than one required discipline. The other Review Board members, if any, who comprise the majority that meets ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' may represent, subject to the SHPO's selection, any of the disciplines that those ''Standards'' describe.

(2) The Secretary will consider proposals from a SHPO for a minimum required Review Board composition that differs from the requirement that paragraph (f)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a required Review Board position becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that the Review Board has access to advice from appropriately qualified individuals. A lapse of more than one year in filling the vacancy is cause for review, comment, and appropriate action by the Secretary.

(4) The Review Board must meet as often as is necessary to complete its work in a timely fashion but no less often than once a year.

(5) The Review Board must adopt written procedures governing its operations consistent with the provisions of this section and related guidance that the National Park Service issues.

(6) Review Board responsibilities include, but are not limited to, the following:

(i) Providing advice to the SHPO on the full range of Historic Preservation Fund-supported activities, that section 101 (b)(3) of the Act describes;

(ii) Reviewing and making recommendations on National Register nomination proposals;

(iii) Participating in the review of appeals to National Register nominations; and

(iv) Performing such other duties as may be appropriate.

### §61.5 Grants to State programs.

(a) Each State with an approved State program is eligible for grants-in-aid from the Historic Preservation Fund (HPF).

(b) The National Park Service (NPS) will administer HPF matching grants-in-aid in accordance with the Act, OMB Circular A–133 and 43 CFR part 12, and related guidance that NPS issues. Failure by a State program to meet these requirements is cause for comment and appropriate action by the Secretary.

### §61.6 Certified local government programs.

(a) Each approved State program must provide a mechanism for certification (by the State Historic Preservation Officer and the Secretary) of local governments to carry out the purposes of the Act.

(b) Each State Historic Preservation Officer (SHPO) must follow procedures that the Secretary approves for the certification of local governments. Each SHPO also must follow procedures for removal of certified local government (CLG) status for cause. A SHPO must submit any proposed amendment to its procedures to the Secretary for approval. The Secretary will act on each proposal in a timely fashion generally within 45 days of receipt.

(c) When a SHPO approves a local government certification request in accordance with the State program's National Park Service (NPS)-approved certification process, the SHPO must prepare a written certification agreement between the SHPO and the local government. The certification agreement must list the specific responsibilities of the local government when certified. The SHPO must submit to the Secretary the written certification agreement and any additional information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not disapprove the proposed certification within 15 working days of receipt, the Secretary has certified the local government.

(d) Beyond the minimum responsibilities set out in the Act for all CLGs, the SHPO may make additional delegations of responsibility to individual CLGs. However, these delegations may not include the SHPO's overall responsibility derived from the Act or where law or regulation specifies.

(e) The SHPO must ensure that each local government satisfies the following minimum requirements as conditions for certification. Each CLG must:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State procedures must define what constitutes appropriate legislation, as long as:

(i) Designation provisions in such legislation include the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of the local government;

(ii) Protection provisions in such legislation include a local review process under State or local law for proposed demolitions of, changes to, or other action that may affect historic properties as paragraph (e)(1)(i) of this section describes; and

(iii) The legislation otherwise is consistent with the Act.

(2) Establish by State or local law and maintain an adequate and qualified historic preservation review commission (Commission). All Commission members must have a demonstrated interest, competence, or knowledge in

historic preservation. Unless State or local legislation provides for a different method of appointment, the chief elected local official must appoint all Commission members.

(i) The State procedures must encourage certified local governments to include individuals who meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' among the membership of the Commission, to the extent that such individuals are available in the community.

(ii) The State procedures may specify the minimum number of Commission members who must meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards.'' The State procedures may also specify which, if any, disciplines the Commission's membership must include from among those disciplines that the Standards describe. Membership requirements set by the State procedures for Commissions must be cognizant of the needs and functions of Commissions in the State and subject to the availability of such professionals in the community concerned.

(iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, the SHPO may certify a local government without the minimum number or types of disciplines established in State procedures, if the local government can demonstrate that it has made a reasonable effort to fill those positions, or that an alternative composition of the Commission best meets the needs of the Commission and of the local government.

(iv) The SHPO must make available to each Commission orientation materials and training designed to provide a working knowledge of the roles and operations of Federal, State, and local historic preservation programs, and historic preservation in general.

(3) Maintain a system for the survey and inventory of historic properties. The SHPO must ensure that such systems and the data that they produce are capable of integration into and are compatible with statewide inventories and (when and as appropriate) with State and local planning processes.

(4) Provide for adequate public participation in the local historic preservation program as a whole. The SHPO must provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program including the process for evaluating properties for nomination to the National Register of Historic Places.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. The SHPO must monitor and evaluate the performance of each CLG according to written standards and procedures that the SHPO establishes. If a SHPO's evaluation of a CLG's performance indicates that such performance is inadequate, the SHPO must suggest in writing ways to improve performance. If, after a period of time that the SHPO stipulates, the SHPO determines that the CLG has not improved its performance sufficiently, the SHPO may recommend that the Secretary decertify the local government. If the Secretary does not object within 30 working days of receipt, the Secretary has approved the decertification.

(f) Effects of certification include:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The SHPO may delegate to a CLG any of the responsibilities of the SHPO and the Review Board in processing National Register nominations as specified in 36 CFR part 60 (see also § 61.4(b)(3)), except for the authority to nominate properties directly to the National Register. A CLG may make nominations directly to NPS only when the State does not have an approved program pursuant to § 61.4.

(2) Eligibility to apply for a portion of the State's annual Historic Preservation Fund (HPF) grant award. Each State must transfer at least 10 percent of its annual HPF grant award to CLGs for historic preservation projects and programs in accordance with the Act and as § 61.7 specifies.

(g) The District of Columbia is exempt from the requirements of this section because there are no subordinated local governments in the District. If any other jurisdiction that section 301(2) of the Act defines as a State believes that its political subdivisions lack authorities similar to those of

local governments in other States, and hence cannot satisfy the requirements for local government certification, it may apply to the Secretary for exemption from the requirements of this section.

(h) *Procedures for direct certification by the Secretary where there is no approved State program pursuant to §61.4.* To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved State program.

(1) Where there is no approved State program, a local government wishing to become certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (e) of this section.

(3) The Secretary will review certification applications under this paragraph (h) and take action in a timely fashion generally within 90 days of receipt.

### §61.7 Subgrants to certified local governments.

(a) Each SHPO must transfer at least 10 percent of its annual Historic Preservation Fund (HPF) grant award to CLGs as subgrants for historic preservation projects and programs in accordance with the Act. In any year that the annual HPF State grant appropriation exceeds $65,000,000, SHPOs must transfer one half of the amount over $65,000,000 to CLGs according to procedures that the Secretary will establish.

(b) Each CLG is eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. However, the SHPO need not award funds to all CLGs.

(c) Each SHPO must maintain and follow a procedure that the Secretary approves for the use and distribution of funds from the State's annual HPF grant award to CLGs to ensure that no CLG receives a disproportionate share of the allocation. The procedure will provide a clear basis for the funding decisions. The SHPO must submit any proposed amendment to its procedure to the Secretary for approval. The Secretary will respond to such a proposal in a timely fashion generally within 45 days of receipt.

(d) Each SHPO must notify annually each CLG of its opportunity to apply for HPF funding as well as what is entailed in the application and project selection process.

(e) Each CLG receiving an HPF grant award from the CLG share is a subgrantee of the State. The SHPO must ensure that each CLG adheres to all applicable grant conditions and government-wide and program specific requirements that the National Park Service issues. The SHPO may require specific uses of funds subgranted to CLGs. CLGs may not apply subgranted HPF monies as matching share for any other Federal grant.

(f) Where there is no approved State program pursuant to §61.4, the Secretary will determine the method for allocating funds to CLGs in that State in accordance with the procedures set forth for the State in this section. To the extent feasible, the Secretary will ensure consistency and continuity in the funding allocation policy of the CLG program for a State that does not have an approved historic preservation program.

### §61.8 Tribal programs. [Reserved]

### §61.9 Grants to tribal programs. [Reserved]

### §61.10 Waiver.

The Secretary may waive any of the requirements of the rules in this part that are not mandated by statute or by other applicable regulations if the Secretary finds, in writing, that the historic preservation program would benefit from such waiver and the waiver would not compromise the purposes, conditions, and requirements of the National Historic Preservation Act of 1966, as amended.

### §61.11 Information collection.

(a) The Office of Management and Budget (OMB) under 44 U.S.C. 3507 *et seq.*, has approved the collection of information contained in this part. OMB has assigned clearance number 1024–0038 to this collection of information. The National Park Service (NPS) collects this information as part of the process for reviewing the procedures

and programs of State and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. NPS will use the information to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. The obligation to respond is required to obtain a benefit under these programs. Note that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. NPS provides no assurance of confidentiality to respondents with the exception of locational information concerning some properties that government historic preservation property inventories include. Pursuant to section 304 of the National Historic Preservation Act of 1966, as amended, NPS tightly controls release of information when such release could have the potential of damaging those qualities which make a property historic.

(b) We estimate the public reporting burden for the collection of this information to average 14.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW, Washington, D.C. 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024–0038), Washington, D.C. 20503.

# PART 62—NATIONAL NATURAL LANDMARKS PROGRAM

Sec.

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AUTHORITY: 16 U.S.C. 1a–5, 461 *et seq.*, 463, 1908.

SOURCE: 64 FR 25717, May 12, 1999, unless otherwise noted.

## § 62.1 Purpose

The procedures in this part set forth the processes and criteria for the identification, evaluation, designation and monitoring of national natural landmarks.

(a) The National Natural Landmarks Program focuses attention on areas of exceptional natural value to the nation as a whole rather than to one particular State or locality. The program recognizes areas preserved by Federal, State and local agencies as well as private organizations and individuals and encourages the owners of national natural landmarks to voluntarily observe preservation precepts.

(b) The National Natural Landmarks Program identifies and preserves natural areas that best illustrate the biological and geological character of the United States, enhances the scientific and educational values of preserved areas, strengthens public appreciation of natural history, and fosters a greater concern for the conservation of the nation's natural heritage.

## § 62.2 Definitions.

The following definitions apply to this part:

*National Natural Landmark* is an area designated by the Secretary of the Interior as being of national significance to the United States because it is an outstanding example(s) of major biological and geological features found within the boundaries of the United States or its Territories or on the Outer Continental Shelf.

*National Registry of Natural Landmarks* is the official listing of all designated national natural landmarks.

*National significance* describes an area that is one of the best examples of a biological community or geological feature within a natural region of the

United States, including terrestrial communities, landforms, geological features and processes, habitats of native plant and animal species, or fossil evidence of the development of life.

*Natural region* is a distinct physiographic province having similar geologic history, structures, and landforms. The basic physiographic characteristics of a natural region influence its vegetation, climate, soils, and animal life. Examples include the Atlantic Coastal Plain, Great Basin, and Brooks Range natural regions.

*Owner* means the individual(s), corporation(s), or partnership(s) holding fee simple title to property, or the head of the public agency or subordinate employee of the public agency to whom such authority was delegated and who is responsible for administering publicly owned land. Owner does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests (including leaseholds) of any form. A Native American tribe that is the beneficial fee simple owner of lands, with the United States as trustee, will be considered as owner of private property for the purposes of this part. Similarly, individual member(s) of a Native American tribe who are beneficial owner(s) of property, allottee(s) held in trust by the United States, will be considered as owner(s) of private property for the purposes of this part.

*Potential national natural landmark* means an area that, based on recommendation or initial comparison with other areas in the same natural region, seems to merit further study of its merits for possible national natural landmark designation.

*Prejudicial procedural error* is one that reasonably may be considered to have affected the outcome of the designation process.

*Representative* refers to any public or private individual, agency, or organization that is performing actions related to the identification, evaluation, designation or monitoring of national natural landmarks on behalf of or in cooperation with the National Park Service (NPS), either under a contractual agreement or as a volunteer.

*Scientist* refers to an individual whose combination of academic training and professional field experience in the natural region qualifies him/her to identify and comparatively evaluate natural areas at the regional or national level.

### § 62.3 Effects of designation.

(a) Designation of an area by the Secretary as a national natural landmark is not a land withdrawal, does not change the ownership of an area, and does not dictate activity. However, Federal agencies consider the unique properties of designated national natural landmarks and of areas that meet the criteria for national significance in their planning and impact analysis (see § 62.6(f)), and there may be State or local planning or land use implications. Designation as a national natural landmark does not require or mandate under Federal law any further State or local planning, zoning or other land-use action or decision. Owners who agree to have their lands designated as a national natural landmark do not give up under Federal law any legal rights and privileges of ownership or use of the area. The Department does not gain any property interests in these lands.

(b) Benefits of national natural landmark designation include the positive recognition and appreciation of nationally significant resources and the ability of public agencies and private individuals and organizations to make more informed development and planning decisions early in regional planning processes. In addition, some private owners of commercially operated national natural landmarks that are open to public visitation may choose to recognize and emphasize the national significance of the areas by providing descriptive information to the public. Under section 170(h) of the United States Internal Revenue Code, some owners of national natural landmarks may be eligible to claim a charitable contribution deduction on their Federal income tax for qualified interests in their natural landmark property donated for a qualified conservation purpose to a qualified conservation organization.

(c) The Secretary will provide an annual report to the Congress on damaged or threatened designated national

natural landmarks (see § 62.6(b)). The Secretary will also report to the Advisory Council on Historic Preservation any designated national natural landmarks that may be irreparably lost or destroyed by surface mining activity (see § 62.6(e)).

### § 62.4 Natural landmark designation and recognition process.

(a) *Identification.* Potential national natural landmarks are identified in the following manner.

(1) *Natural region studies.* The NPS conducts inventories of the characteristic biological and geological features in each natural region to provide a scientific basis for identifying potential national natural landmarks. The NPS is responsible for the completion of these studies, which are generally done by qualified scientists under contract. A study provides a classification and description of biological and geological features in that natural region and an annotated list of areas that illustrate those features. During a study, the NPS or any representative of the NPS may enter onto land only after receiving written permission from the owner(s) of that land, except when the land is publicly owned land and otherwise open to the public.

(2) *Other entities.* (i) Any public or private entity may suggest an area for study and possible national natural landmark designation. The entities include:

(A) Federal agency programs that conduct inventories in order to identify areas of special interest, for example, essential wildlife habitat, research natural areas, and areas of critical environmental concern; and

(B) State natural area programs that systematically and comprehensively classify, identify, locate and assess the protective status of the biological and geological features located in a State.

(ii) If an individual, agency or organization that suggests an area for national natural landmark consideration is not the owner of the area, written permission of the owner(s) is required to enter onto the PNNL to gather information, except when the land is publicly owned and otherwise open to the public.

(3) After receiving the suggestions from a natural region study and suggestions from other sources, the NPS determines which PNNL merit further study for possible national natural landmark designation. This determination is based on comparison with existing national natural landmarks in the natural region, the national natural landmark criteria (see § 62.5) and other information.

(b) *First Notification.* (1) Before a potential national natural landmark is evaluated by scientists as described in paragraph (c) of this section, the NPS notifies the owner(s) in writing, except as specified in paragraph (b)(2) of this section.

(i) This notice advises the owner(s) that the PNNL is being considered for study for possible national natural landmark designation and provides information on the National Natural Landmarks Program, including an explanation of the effects of national natural landmark designation as described in § 62.3.

(ii) The notice also provides the owner with available information on the area and its tentatively identified significance, solicits the owner's comments on the area, including any information on current or anticipated land use or activities that may affect the area's natural values, integrity, or other matters of concern, and informs the owner of the source of the suggestion for consideration.

(iii) The notice also requests owner permission to enter the property, unless the area is otherwise open to the public, so the NPS or its representative can conduct an on-site evaluation of the PNNL as described under paragraph (c) of this section, and advises the owner of the procedures the NPS will follow in considering the PNNL for possible designation.

(2) Before a potential national natural landmark having 50 or more owners is evaluated by scientists as described in paragraph (c) of this section, the NPS provides general notice to property owners. This general notice is published in one or more local newspapers of general circulation in the area in which the potential national natural landmark is located. The notice provides the same information

listed under paragraph (b)(1) of this section.

(3) During an on-site evaluation as described in paragraph (c) of this section, the NPS or any representative of the NPS will not enter onto land without permission from the owner(s), except when the land is publicly owned and otherwise open to the public. The NPS may complete evaluations of PNNL by using other information, including information that was previously gathered by other Federal or State agencies or gained from other scientific studies. The NPS notifies owners if areas are evaluated from existing information not requiring land entry.

(4) The described procedures for providing written notification to owners and receiving responses from owners about the first notification are the responsibility of the NPS and cannot be delegated to any representative of the NPS.

(c) *Evaluation*. (1) The NPS uses the national natural landmark criteria in § 62.5 to evaluate the potential natural landmark. Potential national natural landmarks are evaluated on a natural region basis; i.e., similar areas that represent a particular type of feature located in the same natural region are compared to identify examples that are most illustrative and have the most intact, undisturbed integrity.

(2) Evaluations are done by qualified scientists who are familiar with the natural region and its types of biological and geological features. Evaluators make a detailed description of the area, including a proposed boundary map, and assess its regional standing using the national natural landmark criteria (see § 62.5) and any additional information provided by the NPS. Evaluation reports must have been completed or updated within the previous 2 years in order to be considered by the NPS.

(3) Completed evaluation reports are reviewed by no fewer than three peer reviewers, who are scientists familiar with the biological or geological features of the area or natural region. These reviewers provide the NPS with information on the scientific merit and strength of supportive documentation in the evaluation report. On the basis of evaluation report(s) and the findings of the peer reviewers, the NPS makes a determination that:

(i) The PNNL does or does not appear to qualify for national natural landmark designation; or

(ii) Additional information is required before a decision can be made about the status of the PNNL.

(4) When a PNNL does not seem to qualify for national natural landmark designation, the NPS notifies the owner(s) as prescribed in paragraphs (b)(1) and (2) of this section.

(d) *Second Notification*. (1) When the Director determines that an area meets the criteria for national significance, the NPS notifies the owner(s) in writing, except as specified in paragraph (d)(2) of this section.

(i) The notice references the rules in this part, advises the owners of the procedures the NPS follows and of the effects of national natural landmark designation as described in § 62.3, provides the owner(s) with a copy of the evaluation report, and provides the owner(s) with the opportunity to comment. The list of owners must be obtained from official land or tax records, whichever is most appropriate, within 90 days before issuing the second notification.

(ii) If in any State the land or tax records are not helpful, the NPS can seek alternative sources to identify the owners.

(iii) The NPS is responsible for notifying only owners whose names appear on the list.

(2) If an area has more than 50 owners, the NPS provides a general notice to the property owners. NPS will publish a general notice in one or more local newspapers of general circulation in the region in which the area is located. A copy of the evaluation report is made available on request. In addition, the NPS may conduct a public information meeting, if widespread local public interest warrants it or if requested by the executive of the local governmental jurisdiction in which the area is located.

(3) In addition, NPS notifies appropriate authorities, organizations and individuals. The notices reference these rules and advise the recipient of the proposed action, of the procedures

the NPS follows, and of the effects of national natural landmark designation as described in § 62.3. Notice of the proposed action is published also in the FEDERAL REGISTER. NPS will notify:

(i) The executive of the local governmental jurisdiction in which the area (PNNL) is located;

(ii) The governor of the State;

(iii) Other appropriate State officials;

(iv) Senators and members of Congress who represent the district in which the area is located;

(v) Native American tribal governments and native villages and corporations in the region; and

(vi) Other interested authorities, organizations and individuals as deemed appropriate.

(4) All notified entities, including non-owners, have 60 days to provide comments before NPS decides whether the area meets the criteria for national significance. To assist in the evaluation of an area, comments should, among other factors, discuss the area's features and integrity. Information is also welcome on current or anticipated land use or threats that could effect the area. Any party may request a reasonable extension of the comment period when additional time is required to study and comment on a landmark proposal. The Director may grant these requests if he or she determines they are in the public interest. All comments received are considered in the national natural landmark designation process.

(5) Upon individual or general notification, any owner of private property within a PNNL who wishes to object to national natural landmark designation must submit a notarized statement to the Director to certify that he or she is the sole or partial owner of record and he or she objects to the designation. These statements will be submitted during the 60-day comment period. Upon receipt of objections to the designation of a PNNL consisting of multiple parcels of land, the NPS must determine how much of it consists of owners who object to designation. If an owner whose name is not on the ownership list developed by the NPS certifies in a notarized statement that he or she is the sole or partial owner of the area, NPS will take into account his or her views about designation. In circumstances where a single parcel of land within a PNNL has more than one fee simple owner, an objection to designation of that property must be submitted by a majority of the owners.

(6) All described procedures for the notification of owners and receiving responses from owners in the second notification process are the responsibility of the NPS and cannot be delegated to any representative of the NPS.

(e) *Significance determination.* (1) NPS will review all documentation including, but not limited to, evaluation reports, peer reviews, and received comments. If NPS determines that a PNNL does not meet the criteria for national significance (see § 62.5), the NPS will notify the owner(s) in writing that their land is no longer under consideration for national natural landmark designation. If PNNL are owned by 50 or more parties, the NPS will publish a general notice as described in paragraph (d)(2) of this section. In addition, the NPS will notify in writing officials, individuals and organizations notified under paragraph (d)(3) of this section.

(2) When the NPS determines that a PNNL meets the criteria for national significance, the NPS determines whether any private property owners submitted valid written objection to designation.

(f) *Areas meeting criteria.* When the Director of NPS determines by all available information that a PNNL meets the criteria for national significance, but some private property owners submitted written objections to the proposed national natural landmark designation, the NPS maintains all this information about the area and which shall be available as part of the environmental analysis for any major federal action for purposes of NEPA which impacts the NNL or these other lands. Notice of this action is provided by the NPS to the owners as specified in paragraphs (d)(1) and (2) of this section and to officials, individuals and organizations notified under paragraph (d)(3) of this section. If some but not all of the property owners within a PNNL object to designation, the NPS will exclude the objecting properties and proceed with the process only if enough area remains of non-objecting properties to

allow sufficient representation of the significant natural features.

(g) *National Park System Advisory Board.* (1) The Director of the NPS reviews the documentation of each area that meets the criteria for national significance. When the Director determines that the requirements of this part were met and that enough non-objecting valid private property owners exist to encompass an adequate portion of the nationally significant features, the Director submits the information on the area (PNNL) to the National Park System Advisory Board. The board reviews the information and recommends whether or not the land with consenting owners qualifies for national natural landmark designation.

(2) Notice of Advisory Board meetings to review national natural landmark nominations and meeting agendas are provided at least 60 days in advance of the meeting by publication in the FEDERAL REGISTER. The NPS also mails copies of the notice directly to consenting owners of areas that are to be considered at each meeting. Interested parties are encouraged to submit written comments and recommendations that will be presented to the board. Interested parties may also attend the board meeting and upon request may address the board concerning an area's national significance.

(h) *Submission to the Secretary.* The Director submits the recommendation of the Advisory Board and materials that the Director developed to the Secretary for consideration of the nominated area for national natural landmark designation.

(i) *Designation.* The Secretary reviews the materials that the Director submitted and any other documentation and makes a decision on national natural landmark designation. Areas that the Secretary designates as national natural landmarks are added to the National Registry of Natural Landmarks.

(j) *Third notification.* When the Secretary designates an area as a national natural landmark, the Secretary notifies in writing the landmark owner(s) of areas with fewer than 50 owners. A general notice of designated areas with 50 or more owners is published in one or more local newspapers of general circulation in the area. The Secretary also notifies the executive of the local governmental jurisdiction in which the landmark is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, the congressional members who represent the district and State in which the landmark is located, and other interested authorities, organizations and individuals as deemed appropriate. The NPS prepares the notifications and is responsible for their distribution. Notices of new designations are also published in the FEDERAL REGISTER.

(k) *Presentation of plaque and certificate.* (1) After the Secretary designates an area as a national natural landmark, the NPS may provide each owner who so requests with a certificate signed by the Secretary of the Interior and the Director of the NPS at no cost to the owner(s). This certificate recognizes the owner's interest in protecting and managing the area in a manner that prevents the loss or deterioration of the natural values on which landmark designation is based.

(2) If appropriate, NPS may also provide without charge a bronze plaque for display in or near the national natural landmark. Upon request, and to the extent NPS resources permit, the NPS may help arrange and participate in a presentation ceremony. In accepting a plaque or certificate, owners give up none of the rights and privileges of ownership or use of the landmark and the Department of the Interior does not acquire any interest in the designated property. After a presentation, the plaque remains the property of NPS. If the landmark designation is removed in accordance with the procedures in § 62.8, NPS may reclaim the plaque.

### § 62.5 Natural landmark criteria.

(a) *Introduction.* (1) *National significance* describes an area that is one of the best examples of a biological or geological feature known to be characteristic of a given natural region. Such features include terrestrial and aquatic ecosystems; geologic structures, exposures and landforms that record active geologic processes or portions of earth history; and fossil evidence of biological evolution. Because

the general character of natural diversity is regionally distinct and correlated with broad patterns of physiography, many types of natural features are entirely inside one of the 33 physiographic provinces of the nation, as defined by Fenneman (Physiographic Divisions of the United States, 1928) and modified as needed by the NPS.

(2) Because no uniform, nationally applicable classification scheme for biological communities or geological features is accepted and used by the majority of organizations involved in natural-area inventories, a classification system for each inventory of a natural region was developed to identify the types of regionally characteristic natural features sought for representation on the National Registry of Natural Landmarks. Most types represent the scale of distinct biological communities or individual geological, paleontological, or physiographic features, most of which can be mapped at the Earth's surface at 1:24,000 scale or are traceable in the subsurface. In some cases, the NPS may further evaluate only a significant segment of a given natural feature, where the segment is biologically or geologically representative and where the entire feature is so large as to be impracticable for natural landmark consideration (e.g., a mountain range). Almost two-thirds of all national natural landmarks range from about 10 to 5,000 acres, but some are larger or smaller because of the wide variety of natural features recognized by the National Natural Landmarks Program.

(b) *Criteria*. NPS uses the following criteria to evaluate the relative quality of areas as examples of regionally characteristic natural features:

(1) *Primary criteria*. Primary criteria for a specific type of natural feature are the main basis for selection and are described in the following table:

| Criterion | Description | Example |
|---|---|---|
| Illustrative character | Area exhibits a combination of well-developed components that are recognized in the appropriate scientific literature as characteristic of a particular type of natural feature. Should be unusually illustrative, rather than merely statistically representative. | Alpine glacier with classic shape, unusual number of glaciological structures like crevasses, and well-developed bordering moraine sequences. |
| Present condition ..... | Area has been less disturbed by humans than other areas ... | Large beech maple forest, only a small portion of which has been logged. |

(2) *Secondary criteria*. Secondary criteria are provided for additional consideration, if two or more similar area cannot be ranked using the primary criteria. Secondary criteria are described in the following table:

| Criterion | Description | Example |
|---|---|---|
| Diversity ..... | In addition to its primary natural feature, area contains high quality examples of other biological and/or geological features or processes. | Composite volcano that also illustrates geothermal phenomena. |
| Rarity ..... | In addition to its primary natural feature, area contains rare geological or paleontological feature or biological community or provides high quality habitat for one or more rare, threatened, or endangered species. | Badlands, including strata that contain rare fossils. |
| Value for Science and Education. | Area contains known or potential information as a result of its association with significant scientific discovery, concept, or exceptionally extensive and long term record of on-site research and therefore offers unusual opportunities for public interpretation of the natural history of the United States. | Dunes landscape where process of ecological succession was noted for first time. |

## § 62.6 Natural landmark monitoring.

(a) *Owner contact*. The Field Offices of the NPS maintain periodic contacts with the owners of designated national natural landmarks to determine whether the landmarks retain the values that qualified them for landmark designation and to update administrative records on the areas.

(b) *Section* 8 *Report*. (1) The Secretary, through the NPS, prepares an annual

report to the Congress on all designated national natural landmarks with known or anticipated damage or threats to one or more of the resources that made them nationally significant. This report is mandated by Section 8 of the National Park System General Authorities Act of 1970, as amended, (16 U.S.C. 1a–5).

(2) A landmark is included in this report if it has lost or is in imminent danger of losing all or part of its natural character to such a degree that one or more of the values that made it nationally significant are or will be irreversibly damaged or destroyed. In assessing the status of a landmark, NPS considers the condition of the landmark at the time of designation, including any changes that have occurred and any threats that could impact it in the future.

(3) Section 8 also requires the Secretary to make recommendations to the Congress on qualified areas for consideration as additions to the National Park System. No legal mandate requires that the Congress take further action about national natural landmarks listed as damaged or threatened or about areas that are recommended for possible future additions to the National Park System.

(4) NPS Regional Offices are responsible for monitoring the condition of, and for completing status reports on, all designated national natural landmarks in their regions. In some cases, the NPS may arrange with outside individuals, agencies or organizations to monitor the status of selected national natural landmarks. NPS or its representative usually monitors national natural landmark condition and status during a visit.

(c) *Monitoring.* (1) The NPS or its representative notifies the owner(s) of a national natural landmark of his or her pending visit to the area to determine its status and condition, and informs the owner(s) of the purposes of monitoring and its relation to the Secretary's annual report on threatened or damaged landmarks.

(2) While monitoring conditions of designated national natural landmarks, neither NPS nor its representative will enter onto private property or onto public lands that are not otherwise open to the public without first obtaining permission from the owner(s) or administrator(s). The NPS may monitor landmark condition without entering onto lands where required permission has not been granted by using other existing information, including telephone conversations with the owner(s) or manager(s) of the area, written materials provided by the owner or manager, or information previously developed by other Federal or State agencies or other scientific studies. The NPS provides owners with copies of monitoring reports on their property, which will include the name and affiliation of the individual(s) who completed the report.

(d) *Section 8 report preparation.* (1) After completion of landmark monitoring, the NPS Regional Offices forward their findings and recommendations to the NPS Washington Office. The NPS Washington Office reviews the Regional Office findings and recommendations and prepares a draft report listing only the national natural landmarks with significant known or anticipated damage or threats to the integrity of one or more of the resources that made the area nationally significant.

(2) Pertinent portions of this draft report, including any executive summary, are provided to the owner(s) or administrator(s) of national natural landmarks listed as is feasible, as well as to other interested authorities, organizations and individuals. All individuals have 30 days to provide written comments to the NPS on the draft report. Comments may include additional information on the condition of landmarks or on the nature or imminence of reported damage or threats to these landmarks. Owners are also asked to indicate whether they would like to receive a copy of the final report, as described in paragraph (d)(3) of this section.

(3) The NPS reviews all comments on the draft report and prepares a final report, which the Director transmits to the Secretary for submission to the Congress. Upon release of the final report, the NPS will provide a copy of the report to the owner(s) of landmarks who are listed in the report and have

requested copies and to other interested authorities, organizations and individuals.

(e) *Mining in the Parks Act.* If the NPS determines that an entire or partial national natural landmark may be irreparably lost or destroyed by surface mining activity, including exploration for or removal or production of minerals or materials, NPS notifies the person that is conducting the activity and prepares a report that identifies the basis for the finding that the activity may cause irreparable loss or destruction. The NPS also notifies the owner(s) of the national natural landmark in writing of its finding. The NPS submits to the Advisory Council on Historic Preservation the report and a request for advice about alternative measures that may be taken by the United States to mitigate or abate the activity. The authority for this action is contained in Section 9 of the Mining in the Parks Act of 1976 (16 U.S.C. 1908).

(f) *National Environmental Policy Act.* Federal agencies should consider the existence and location of designated national natural landmarks, and of areas found to meet the criteria for national significance, in assessing the effects of their activities on the environment under section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4321). The NPS is responsible for providing requested information about the National Natural Landmarks Program for these assessments.

### § 62.7 Natural landmark modifications.

(a) *Determination of need for modifications.* After designation, the modification of the boundaries of a natural landmark, and/or revision of information about it, may be appropriate. For example, because of new information or changes in the condition of an NNL, the boundary may have to be reduced or expanded or information about the NNL may have to be revised. Additional study may reveal that the area has nationally significant values that had not been previously documented. The NPS determines that landmark modifications are necessary through administration of the program. In addition, the NPS may receive suggestions for landmark modifications from other Federal agencies, State natural area programs, and other public and private organizations or individuals. The NPS determines the validity of these suggestions by applying the natural landmark criteria or by conducting additional study.

(b) *Boundary expansion.* (1) Three justifications exist for enlarging the boundary of a national natural landmark: better documentation of the extent of nationally significant features, professional error in the original designation, or additional landowners with nationally significant features on their property desiring the designation.

(2) If the NPS determines that an expansion of the boundary of the national natural landmark is appropriate, it will use the designation process outlined in § 62.4(b) through (j). If a boundary is expanded, only the owners in the newly considered but as yet not designated portion of the area are notified and asked if they object to designation.

(c) *Boundary reduction.* Two justifications exist for reducing the boundary of a national natural landmark: Loss of integrity of the natural features or professional error in the original designation. If the NPS determines that a reduction in the national natural landmark boundary is indicated, the designation removal process outlined in § 62.8 is used.

(d) *Change in description of values.* If the NPS determines that a change in the description of the national natural landmark's nationally significant values is warranted, the NPS prepares the recommended changes and the Director submits the changes and all supportive documentation to the National Park System Advisory Board. The Advisory Board reviews the information submitted by the Director and makes recommendations to the Secretary. The Secretary reviews the supportive documentation and the recommendations of the board, and may approve changes in the description of a landmark's nationally significant values.

(e) *Minor technical corrections.* Minor technical corrections to a national natural landmark boundary and other administrative changes in landmark documentation not covered under paragraphs (a) through (d) of this section may be approved by the Director without a review by the Advisory Board or

the approval by the Secretary. Minor technical boundary corrections are defined as those that involve a change in less than five percent of the total area of the national natural landmark. The NPS notifies owners of proposed minor technical boundary corrections or other administrative changes in documentation, as described in this paragraph (e). Based upon owner response to this notification, the NPS determines whether the proposed change is a minor technical correction to landmark documentation that can be made administratively or whether the procedures outlined in § 62.4(d) through (j) must be followed.

**§ 62.8 Natural landmark designation removal.**

(a) *Criteria for removal.* (1) Except as provided in paragraph (f) of this section, national natural landmark designation is removed from an area:

(i) When it can be shown that an error in professional judgment was made such that the site did not meet the criteria for national significance at the time of designation;

(ii) When the values which originally qualified it for designation have been lost or destroyed; or

(iii) When applicable designation procedures were not followed because of prejudicial failure.

(2) Any affected owner of a designated national natural landmark may initiate the removal by submitting to the Director a request for removal of designation, stating the grounds for this removal and specifying the error in professional judgment, loss of natural values or prejudicial procedural error. A prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

(3) Within 60 days of receiving a removal request, the NPS notifies the party submitting the request of whether the NPS considers the documentation sufficient to consider removal of the natural landmark designation.

(b) *Review of removal information.* The NPS reviews the information outlining the grounds for removal. When necessary, an on-site evaluation of the area may be made, as outlined in § 62.4(c). Based on all available information, the NPS determines whether the area no longer merits designation as a national natural landmark.

(c) *Notifications.* When NPS has determined that area no longer merits designation as a national natural landmark, the NPS notifies the owner(s) and other interested parties as specified in § 62.4(d)(1)–(3). Notice of the proposed removal is also published in the FEDERAL REGISTER. The notified individuals may comment within 60 days of the date of the notice before a recommendation for removal is submitted to the Secretary. All comments received will be considered in the review and in the decision to remove the national natural landmark designation.

(d) *Removal from the registry.* (1) The Director reviews the information about a recommended removal from the Registry and determines whether the procedural requirements in this section have been met. If the Director confirms the findings, he or she submits a recommendation for removal to the National Park System Advisory Board. The Advisory Board reviews the submitted information and recommends the removal from or retention of the area in the registry.

(2) The recommendations of the Advisory Board and the Director are submitted by the Director to the Secretary for his or her consideration. If the Secretary concurs, he or she directs the removal of the landmark from the National Registry of Natural Landmarks. Any area from which designation is withdrawn solely because of procedural error as described in paragraph (a)(1)(iii) of this section continues to meet the criteria for national significance.

(e) *Notification of removal from the registry.* When the Secretary removes a landmark from the National Registry of Natural Landmarks, the Secretary will notify the national natural landmark owner(s), the executive of the local government jurisdiction in which the area is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, Congressional members who represent the Congressional District and State in which the area is located, and other interested authorities, organizations, and individuals, as

outlined in § 62.4(d)(1), (2) and (3). The NPS is responsible for preparing and distributing the written notices. The NPS periodically publishes notice(s) of removal in the FEDERAL REGISTER. The NPS may reclaim the natural landmark plaque when a landmark is removed from the National Registry of Natural Landmarks.

(f) *Previously designated landmarks.* (1) NPS will notify owners of national natural landmarks designated before the effective date of these regulations to give them an opportunity within 90 days of the notice to request the removal of a national natural landmark designation from their property by writing to the Director. If owners do not respond within 90 days of the notification, the national natural landmark designations of their properties will be retained.

(2) When only some owners of a national natural landmark in multiple ownership request the removal of a national natural landmark designation from their portions, the NPS determines whether, after removal of these portions, a sufficient acreage of the national natural landmark remains to demonstrate the original nationally significant features without undue compromise. If so, the boundaries of the national natural landmark are adjusted to remove the properties of owners who object to the designation. If not, the entire national natural landmark designation is removed and the area is removed from the National Registry of Natural Landmarks.

(3) Any removals of existing national natural landmark designations and related recommended boundary adjustments, must be presented by the Director to the National Park System Advisory Board for review before being presented to the Secretary who formally removes a national natural landmark from the national registry or approves changes in the national natural landmark boundary. Areas from which the designation has been removed may be reconsidered for designation under these regulations if ownership or other circumstances change.

### § 62.9 General provisions.

(a) *Agreements.* The NPS may enter into contracts, memoranda of agreement, cooperative agreements, or other types of agreements with other Federal agencies, States, counties, local communities, private organizations, owners, Native American tribal governments, or other interested individuals or groups to assist in administering the National Natural Landmarks Program. The agreements may include but are not limited to provisions about identification, evaluation, monitoring or protecting national natural landmarks.

(b) *Information dissemination.* The NPS may conduct educational and scientific activities to disseminate information on national natural landmarks, the National Natural Landmarks Program, and the benefits derived from systematic surveys of significant natural features to the general public and to interested local, State and Federal agencies and private groups. Dissemination of information on ecologically or geologically fragile or sensitive areas may be restricted when release of the information may endanger or harm the sensitive resources.

(c) *Procedural requirements.* Any individual, agency, or organization acting as a representative of the NPS in the identification, evaluation, monitoring or protection of national natural landmarks is required to follow this part.

(d) *Additional program information.* Further guidance on the operation of the National Natural Landmarks Program, as based on this part, may be found in other program documents that are available from the NPS.

(e) *Administrative recourse.* Any person has the right to insist that NPS take into account all the provisions in this part for national natural landmark designation or removal.

## PART 63—DETERMINATIONS OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER OF HISTORIC PLACES

Sec.

63.1 Purpose and authorities.
63.2 Determination of eligibility process.
63.3 Procedures to be applied when the agency and the State Historic Preservation Officer agree a property is eligible.
63.4 Other properties on which determinations of eligibility may be made by the Secretary of the Interior.

63.5 FEDERAL REGISTER publication of properties determined eligible.
63.6 Review and nomination of properties determined eligible.

AUTHORITY: Sec. 2(k), Historic Sites Act of 1935, 16 U.S.C. 462(K) (1970 ed); sec. 101(a)(1), National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(a)(1) (1970 ed); secs. 3(b) and 4(f), E.O. 11593; sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

SOURCE: 42 FR 47661, Sept. 21, 1977, unless otherwise noted. Redesignated at 45 FR 28716, Apr. 30, 1980, and further redesignated at 46 FR 34329, July 1, 1981.

### § 63.1 Purpose and authorities.

(a) These regulations have been developed to assist Federal agencies in identifying and evaluating the eligibility of properties for inclusion in the National Register. The regulations explain how to request determinations of eligibility under section 2(b) of Executive Order 11593 and the regulations of the Advisory Council on Historic Preservation (36 CFR part 800) for implementation of sections 1(3) and 2(b) of Executive Order 11593 and the National Historic Preservation Act of 1966, as amended Federal agencies request determinations of eligibility in considering historic properties on lands under their jurisdiction or control or on lands to be affected by proposed actions.

### § 63.2 Determination of eligibility process.

The Department of the Interior will respond within 45 days of receipt of a documented request for a determination of eligibility from a Federal agency when it is submitted in accordance with the following regulations and is accompanied by documentation that clearly portrays the nature and significance of the property.

(a) The agency shall consult the State Historic Preservation Officer as the first step in identifying historic properties for information concerning:

(1) Properties listed in the National Register.

(2) Properties in the process of nomination to the National Register.

(3) Properties determined eligible by the Secretary of the Interior for listing in the National Register.

(4) Any other available information that would assist in identifying properties in the area affected by the proposed action.

(b) If the State Historic Preservation Officer has inadequate information to document the presence or absence of historic properties in the project area, the Federal agency should refer to the Department of the Interior's criteria for the identification of historic properties and the guidelines for level of documentation to accompany requests for determinations of eligibility for inclusion in the National Register published as a notice in the FEDERAL REGISTER.

(c) The agency shall, in consultation with the State Historic Preservation Officer, apply the National Register Criteria for Evaluation contained in 36 CFR 60.6 to all potentially eligible properties that may be affected by the proposed action. If a property appears to meet the Criteria and the State Historic Preservation Officer agrees, the agency should follow the procedures in § 63.3. If there is a question whether the Criteria are met, the agency shall complete the procedures in § 63.3(d). A question on whether a property meets the Criteria exists when the agency and the State Historic Preservation Officer disagree or when the agency determines that a question exists. The Department of the Interior will provide general and specific advice concerning the identification of historic properties and will bring to the attention of a Federal agency any information received from the public regarding potential historic properties in the area affected by its plans or projects.

(d) The agency shall submit a letter of request for a determination of eligibility with a description, statement of significance, photographs, and a map, or a statement in accord with § 63.3 below, if applicable, directly to the Keeper of the National Register, National Park Service, Department of the Interior, Washington, D.C. 20240. If available, the opinion of the State Historic Preservation Officer on the eligibility of the property should also be forwarded with the request.

(e) The Keeper, National Register, will respond in writing to the agency's request within 45 days of receipt of a documented request submitted in accord with § 63.2(d) of these procedures.

If the opinion of the State Historic Preservation Officer is not included with the request, the Keeper of the National Register will provide to the State Historic Preservation Officer a copy of the request and will ask for his opinion on the property. If the Keeper does not receive the State Historic Preservation Officer's response within three weeks of the State Historic Preservation Officer's receipt of a letter from the Keeper requesting an opinion, the Keeper will proceed with the determination and will inform the agency that the State Historic Preservation Officer did not give an opinion. If the Keeper of the National Register determines that documentation submitted with the request is not sufficient to make a professional evaluation of the significance of the property, he will advise the agency in writing of the additional information needed. The Keeper of the National Register will respond to the agency's request within 45 days of receipt of documentation on the property requested by the Keeper.

### § 63.3 Procedures to be applied when the Agency and the State Historic Preservation Officer agree a property is eligible.

If during the consultation described in § 63.2(c), both the agency and the State Historic Preservation Officer agree that a property meets the Criteria, the Federal agency or the State Historic Preservation Officer shall forward to the Keeper of the National Register (a) a letter signed by the agency stating that the agency and the State Historic Preservation Officer agree that the property is eligible for inclusion in the National Register, and (b) a statement signed by the State Historic Preservation Officer that in his opinion the property is eligible for the National Register. Either the letter or the statement must contain substantive information on the property, including a description, specific boundaries, its significance under National Register Criteria, and an explanation of why the property is eligible for listing in the National Register. The Keeper of the National Register shall give written notice of his determination to both the agency and the State Historic Preservation Officer within 10 working days of receipt. If the property has not been accurately identified and evaluated, the Keeper will inform the agency and the State Historic Preservation Officer within 10 working days and will recommend that the agency follow the process set forth at § 63.2. Notwithstanding such recommendation, the Federal agency or the Keeper of the National Register may consider the property eligible for the purpose of obtaining the Advisory Council on Historic Preservation's comments. Documentation concerning properties determined eligible for the National Register shall be kept on file by the agency and the State Historic Preservation Officer.

### § 63.4 Other properties on which determinations of eligibility may be made by the Secretary of the Interior.

(a) The Keeper of the National Register will make determinations of eligibility on properties nominated by Federal agencies under section 2(a) of Executive Order 11593 prior to returning the nominations for such properties to the agency for technical or professional revision or because of procedural requirements. Such determinations of eligibility will be made only if sufficient information exists to establish the significance of the property and its eligibility for the National Register

(b) Any property or district removed from the National Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the National Register without further action and will be published as such in the FEDERAL REGISTER.

(c) If necessary to assist in the protection of historic resources, the Keeper, upon consultation with the appropriate State Historic Preservation Officer and concerned Federal agency, if any, may determine properties to be eligible for listing in the National Register under the Criteria established by 36 CFR part 60 and shall publish such determinations in the FEDERAL REGISTER. Such determinations may be made without a specific request from the Federal agency or, in effect, may reverse findings on eligibility made by a Federal agency and State Historic

Preservation Officer. Such determinations will be made after an investigation and an onsite inspection of the property in question.

### § 63.5 Federal Register publication of properties determined eligible.

In addition to written notice to the Federal agency and the State Historic Preservation Officer, public notice of properties determined eligible for the National Register will be published in the FEDERAL REGISTER at regular intervals and in a cumulative annual edition usually issued in February. Determinations in accord with § 63.3 will be identified with an asterisk.

### § 63.6 Review and nomination of properties determined eligible.

The Keeper of the National Register will conduct an annual review of the condition of properties determined eligible for the National Register. The Keeper of the National Register will obtain from the Advisory Council on Historic Preservation information on decisions made concerning eligible properties in accord with memorandum of agreement under the Council's ''Procedures for the Protection of Historic and Cultural Properties'' (36 CFR part 800). If there is no memorandum of agreement or if no provision has been made in a memorandum of agreement for nomination of an eligible property and if the property retains the characteristics that made it eligible for the National Register, the Keeper of the National Register will take the following steps:

(a) For a property owned by a Federal agency, or under the jurisdiction or control of the agency to the extent that the agency substantially exercises the attributes of ownership, the Keeper of the National Register will request the Federal agency to nominate the property to the National Register within six months.

(b) If the property is not under Federal jurisdiction or control, the Keeper of the National Register will request that the State Historic Preservation Office nominate the property to the National Register within six months.

(c) If the Keeper of the National Register determines that a property has lost the characteristics that made it eligible for the National Register, he will inform the State Historic Preservation Officer and the Federal agency and remove the property from the list of eligible properties.

## PART 64—GRANTS AND ALLOCATIONS FOR RECREATION AND CONSERVATION USE OF ABANDONED RAILROAD RIGHTS-OF-WAY

Sec.

64.1 Purpose.
64.2 Definitions.
64.3 Applicability and authority.
64.4 Scope.
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64.6 Application procedures.
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64.10 Matching share.
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64.13 Performance reports.
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AUTHORITY: Sec. 809(B)(2) and (3), 90 Stat. 145, Pub. L. 94–210; Sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

SOURCE: 42 FR 54806, Oct. 11, 1977, unless otherwise noted. Redesignated at 45 FR 780, Jan. 3, 1980, and further redesignated at 46 FR 34329, July 1, 1981.

### § 64.1 Purpose.

The purpose of these guidelines is to prescribe policies and procedures for administering the funding of projects involving the conversion of abandoned railroad rights-of-way to recreation and conservation uses. Because of the limited funding available, it is the Bureau of Outdoor Recreation's intent to select a few projects which effectively demonstrate the conversion of abandoned railroad rights-of-way for recreation and conservation purposes in a timely manner.

### § 64.2 Definitions.

(a) *Abandoned Railroad Rights-of-Way.* An abandoned railroad right-of-way is the real property used for or formerly used for the operation of railroad trains by a common carrier railroad, upon which the railroad company has, or will cease operations and sell, or otherwise dispose of the company's interest in the real property.

(b) *Project Applicant.* Federal, State, or local governmental agencies.

### § 64.3 Applicability and authority.

The policies and procedures contained herein are applicable to the making of grants to State and local governments and to the making of allocations to Federal agencies under the provisions of title VIII, section 809(b)(2) and (3) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210) (90 Stat. 145). The Secretary of the Interior in consultation with the Secretary of Transportation is responsible for providing financial assistance in accordance with section 809(b) (2) and (3). The Secretary of the Interior's responsibility has been delegated to the Bureau of Outdoor Recreation.

### § 64.4 Scope.

(a) Funding assistance authorized by section 809(b)(2) shall be provided to State and local government entities to enable them to acquire and develop abandoned railroad rights-of-way for recreation and conservation purposes and to plan for such acquisition and development. As provided for by law, grants shall be made for not more than 90 percent of the cost of the particular project for which funds are sought.

(b) Allocations authorized by section 809(b)(3) shall be made to Federal agencies to enable them to acquire abandoned railroad rights-of-way. Such allocations shall be made for an amount up to the price paid to the owner of the real property proposed for acquisition plus expenses incidental to acquisition such as title work, surveys, appraisals and relocation.

### § 64.5 Eligible projects.

(a) Abandoned railroad projects will be for recreation and/or conservation purposes including the acquisition of the rights-of-way involved and will be sponsored by a project applicant who has authority to carry out public recreation or conservation programs. Eligible project elements for State and local governmental entities may include:

(1) The acquisition of fee or less than fee interests including long term leases of not less than 25 years and easements which will secure for the project applicant the right to develop use the property for public recreation and/or conservation purposes.

(2) The development of facilities which are necessary for making rights-of-way usable for public recreation and conservation purposes.

(b) Allocations made to Federal agencies will be made for the acquisition of lands or interests in lands, including incidental acquisition expenses, located in existing areas where such acquisition is authorized by law and the land is usable for public recreation and conservation purposes.

(c) Abandoned railroad rights-of-way projects proposed by State and local governmental entities and Federal agencies shall be in accordance with the State comprehensive outdoor recreation plan for the State in which the project is located.

### § 64.6 Application procedures.

State and local units of government applying for grants under this program will comply with the regulations, policies, guidelines, and requirements of OMB Circular No. A–95 (Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects), Federal Management Circulars 74–4 (Cost Principles Applicable to Grants and Contracts with State and Local Governments) and OMB Circular No. A–102 (Uniform Administrative Requirements for Grants-in-Aid to State and local governments).

(a) *Preapplications.* A preapplication will be used to initially screen and select those projects for which a final application may be submitted for assistance. The preapplication will include:

(1) A Standard Form 424 (may be obtained from applicable Regional Offices of the Bureau of Outdoor Recreation).

(2) A map showing the location of the property to be acquired and/or developed and its relation to surrounding land uses including other recreation/conservation resources.

(3) A program narrative statement.

(i) Where acquisition is involved the number of acres and real property interest to be acquired. Attach a copy of the abandonment notice.

(ii) The type of recreational/conservation use planned for the project site including the type of development to be included in the project (if a site plan is available it should be submitted).

(iii) A statement indicating separately the estimated acquisition and development costs.

(iv) A time schedule for completing the acquisition and development.

(v) A brief discussion of how the project embodies the selection criteria outlined in § 64.8.

(4) Indicate any known problems that will occur in obtaining clear title to the right-of-way.

(5) Because of the limited funds available applicants are encouraged to provide an alternative plan indicating a viable segment of the overall project which could possibly be funded at a lower amount in lieu of the complete project.

(b) *Applications*. For those State and local projects selected the applicant shall submit the standard application provided for in Attachment M of OMB Circular A–102. An application package developed for this program will be available from the Bureau of Outdoor Recreation Regional Offices. The following application requirements will apply (information submitted with the preapplication will not be required again):

(1) *A–95 Clearinghouse Review*. The applicant will obtain and include in the application, State and areawide clearinghouse comments in accordance with OMB Circular A–95.

(2) *National Environmental Policy Act of 1969 (Pub. L. 91–190)*. The Bureau of Outdoor Recreation will review the environmental information developed by the Interstate Commerce Commission relative to the abandonment to determine if additional information is required to adequately assess the environmental impact of the project and determine the need for an environmental impact statement. Where necessary the applicant will provide additional information from which the Bureau can assess the environmental impact. The format for such information will be provided by the Bureau.

(3) *National Historic Preservation Act of 1969 and Executive Order 11593*. The applicant shall provide the State's Historic Preservation Officer with a copy of the project proposal and allow him 30 days in which to comment on the effect of the proposed project. Such comments will indicate whether the project will have any effect on a site in, or eligible for nomination to the National Register of Historic Places. The comments of the SHPO will be included with the application.

(4) *Flood Disaster Protection Act of 1973 (Pub. L. 93–234)*. Applicants will be required to purchase flood insurance for acquisition or development of insurable improvements located in a flood plain area identified by the Secretary of Housing and Urban Development as an area which has special flood hazards.

(5) *Corps of Engineers Permits Requirements*. For development projects requiring a Corps of Engineers permit under section 10 of the Rivers and Harbors Act of 1899 and/or section 404 of the Federal Water Pollution Control Act of 1972, applicants will include evidence in the application that action has been initiated to obtain such permit.

(6) *Section 7 of the Endangered Species Act of 1973*. The applicant, through the submission of environmental information, and in consultation with the Bureau of Outdoor Recreation Regional Office will indicate any known project conflict with section 7 of the Endangered Species Act of 1973.

(7) *Plans and Maps*. Each application will include copies of State, county, or city maps showing the geographic location of the project and its relation to surrounding land uses including other recreation/conservation resources. Where development is included in the project, a site plan of the proposed improvements will be provided along with a breakdown of the estimated development costs. For the acquisition, the application will include a schedule listing

the parcels to be acquired, estimated linear mileage and acreage of each, the estimated value of each parcel and the estimated date of acquisition.

(8) In addition to the narrative required by part IV of the standard application, the following information will be provided:

(i) The type of recreation/conservation activity intended for the project site.

(ii) The time schedule for completing the project and plans for operation and maintenance; and

(iii) A brief discussion of how the project embodies the selection criteria outlined in § 64.8.

(c) *Content of the Proposal by Federal Agencies.* Each proposal should include the following minimum information (preapplication not required):

(1) Identification and description of the property proposed for acquisition.

(2) A statement indicating the recreational and/or conservation use planned for the acquired rights-of-way and the relationship of such use to land now administered by the Federal agency proposing acquisition.

(3) A map showing the location of the property in relation to land now administered by the Federal agency proposing acquisition.

(4) The real property interest proposed for acquisition.

(5) An environmental assessment of the acquisition and subsequent development, if proposed.

(6) A citation of the statutory or other authority under which the land would be acquired and a discussion of how the proposed acquisition is in accord with the authority for acquisition.

(7) The funds being requested for the project including a summary of the estimated cost of the land and costs incidental to acquisition.

(8) A discussion of how acquisition of the rights-of-way and subsequent development embodies the selection criteria outlined in § 64.8.

(d) *Preapplication.* (1) Projects sponsored by State, local, or Federal applicants shall be submitted to the appropriate Bureau of Outdoor Recreation Regional Office.

(2) Projects will be considered for funding on a quarterly basis until available funds have been obligated to approved projects. The first project submission quarter will begin with the first of the fiscal year. Funds not utilized in one quarter will be available for the next. Once all funds have been obligated, projects will not be accepted until additional appropriations become available.

### § 64.7 Project selection and funding procedures.

(a) The Bureau of Outdoor Recreation Regional Office will review all preapplications and Federal proposals to insure application completeness and eligibility. A copy of eligible preapplications or Federal proposals and supporting information and data will be submitted to the Washington Office of BOR for final review and selection. An information copy of each project preapplication and proposal will be submitted to the State Liaison Officer designated to coordinate Land and Water Conservation Fund activities.

(b) The Washington Office of the Bureau of Outdoor Recreation will evaluate all projects submitted by the Regional Offices. Final selection of projects to be funded shall be by the Director of the Bureau of Outdoor Recreation.

(c) State and local projects selected for funding will be approved and funds obligated by the appropriate Regional Director. Funds will not be obligated until the Bureau has met with the applicant to discuss the terms, conditions, and procedures required by the grant.

(d) Federal agency sponsored projects will be funded by transfer of funds from the Bureau of Outdoor Recreation to the sponsoring agency up to the amount of the project cost as shown in the agency's approved application.

[42 FR 54806, Oct. 11, 1977. Redesignated at 45 FR 780, Jan. 3, 1980, and 46 FR 34329, July 1, 1981, as amended at 60 FR 55791, Nov. 3, 1995]

### § 64.8 Project selection criteria.

Those projects which best meet the following criteria will be selected to receive assistance:

(a) Projects which have cleared abandonment procedures and for which sufficient control and tenure of land can be assured, in order that the project

can be accomplished shortly after project approval.

(b) Projects which are located or originate in Standard Metropolitan Statistical Areas.

(c) The degree to which the project results in a facility which demonstrates maximum beneficial public use of the property acquired. (For example, the diversity of recreation/conservation opportunities provided.)

(d) The ease of accessibility to large numbers of potential users.

(e) The effectiveness of the project in enhancing existing Federal, State, or local recreation/conservation resources. (For example, the ability of the project to tie together existing recreation/conservation resources.)

(f) Whether use of the right-of-way for recreation/conservation purposes has been identified in existing State, Federal, or local plans.

(g) The degree to which the project advances new ideas in recreation/conservation use and promotes nonmotorized forms of transportation such as commuting by bicycle.

(h) The recreation/conservation potential of the environment traversed by the right-of-way.

(i) The energy conservation potential of using the right-of-way for recreation and/or commuting.

(j) The urgency of the acquisition as reflected by the plans of the owner of record to sell the property to persons other than the project sponsor.

(k) The degree to which Federal, State or local land use controls will protect the recreation and conservation values of the right-of-way from encroachment by conflicting uses of surrounding land.

(l) State and local projects involving the development of abandoned railroad rights-of-way which do not include the acquisition of the rights-of-way will be given lower funding priority than projects involving both acquisition and development.

### § 64.9 Project costs (State and local projects).

To be eligible, acquisition and development costs must be incurred after the date of project approval and during the project period. The project period will be indicated in the project application. Waivers will be granted to proceed with the acquisition prior to project approval if the applicant can show there is a need for immediate action. Development costs are first incurred at the start of actual physical work on the project site. Acquisition costs are incurred on the date when the applicant makes full payment or accepts the deed or other appropriate conveyance. Project-related planning costs outlined in § 64.9(a)(3), may be incurred prior to project approval. The date from which they were incurred must be indicated in the project application.

(a) The types of project costs that are eligible for funding under this program are:

(1) Acquisition costs will be assisted on the basis of the price paid or the appraised fair market value, whichever is less. Costs incurred pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, appraisal costs and other reasonable incidental costs associated with the acquisition.

(2) Construction costs associated with developing the right-of-way for recreation use.

(3) Project-related planning required for the acquisition, development and use of the abandoned rights-of-way including master planning, the preparation of development plans and specifications and surveys.

(4) Legal costs, audit costs, inspection fees, and project administration costs.

(b) Cost overruns will not be eligible for reimbursement. This means that no additional funding will be extended once a project is approved. Any cost overrun incurred on a project must be funded by the grantee.

(c) Principles and standards for determining costs applicable to State and local grants are found in Federal Management Circular 74–4 and part 670 of the Bureau of Outdoor Recreation Manual.

### § 64.10 Matching share.

The State or local applicant's matching share may consist of cash, or in-kind contributions consistent with guidelines set forth in Attachment F of OMB Circular A–102.

**§ 64.11 Project performance.**

The State or local applicant shall be responsible for insuring the project is carried through to stages of completion acceptable to the Bureau of Outdoor Recreation with reasonable promptness. Financial assistance may be terminated upon determination by the Bureau of Outdoor Recreation that satisfactory progress has not been maintained.

(a) *Acquisition Procedures.* All acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, as set forth in the Bureau of Outdoor recreation Manual, part 645. Real property must be appraised before the initiation of negotiations, and the property owner given a statement of just compensation for his property. In no event can the amount established as just compensation be less than the fair market value established by the approved appraisal.

(1) *Appraisals.* The State or local applicant should secure at least one appraisal of the appropriate type by a qualified professional appraiser for each parcel to be acquired. Standards for appraisals shall be consistent with the current Uniform Appraisal Standards for Federal Land Acquisition, published by the Land Acquisition Conference and as set forth in Bureau of Outdoor Recreation Manual, paragraph 675.2.5.

(2) *Appraisal Review.* The appraisal will be reviewed and approved by a qualified staff or fee appraiser prior to the initiation of negotiations. The Bureau reserves the right to review all appraisal documentation prior to or after the acquisition.

(3) *Record Retention.* All documentation supporting the acquisition of land and improvements, or interests therein, must be kept available for examination by duly authorized representatives of the Bureau, the Department of the Interior and the General Accounting Office. All such records shall be retained and be available for inspection for a period of three years after final payment by the Federal Government.

(b) *Development Procedures.* Development work may be accomplished by contract or by force account. Allowable construction costs cover all necessary construction activities, from site preparation to completion of the facility.

(1) *Construction by Force Account.* Labor costs charged to a project for force account work will be based on payrolls documented and approved in accordance with generally accepted accounting practices of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employee chargeable to more than one cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. Costs for equipment owned by the participant may be charged against the project based on an equipment use rate developed by the participant in accordance with guidelines provided by the Bureau of Outdoor Recreation. Other costs such as material costs will be charged to a project as outlined in OMB Circular A–102 and the Bureau of Outdoor Recreation Manual, part 670.

(2) *Construction by Contract*—(i) *Bids and Awards.* Competitive open bidding shall be required for contracts in excess of $10,000 in accordance with Attachment O of OMB Circular A–102.

(ii) *Equal Employment Opportunity.* All construction contracts awarded by recipients and their contractors, or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order No. 11246, entitled ''Equal Employment Opportunity'' as supplemented in Department of Labor Regulations (41 CFR part 60). Equal employment contract compliance requirements for ''Hometown'' or ''Imposed '' Plan areas will be followed.

(iii) The State or local applicant will comply with all other procurement standards set forth in Attachment O of OMB Circular A–102.

(3) *Construction Planning Services.* The applicant is responsible for:

(i) Providing all engineering services necessary for all design and construction of Fund-assisted projects.

(ii) Providing an internal technical review of all construction plans and specifications.

(iii) Insuring that construction plans and specifications meet applicable

health and safety standards of the State.

(iv) The Bureau reserves the right to require the submission of plans and specifications for any development project prior to project approval.

(v) All construction plans, specifications, contracts, and change orders shall be retained by the participant for a period of three years after final payment on a project is made by the Bureau, or for a longer period of time if so requested by the Bureau.

(4) All facilities developed will be designed to comply with the ''American Standard Specifications for Making Buildings and Facilities Accessible to, and usable by the Physically Handicapped'' Number A117.1–1961, as modified (41 CFR 101–17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

[42 FR 54806, Oct. 11, 1977; 42 FR 57462, Nov. 3, 1977. Redesignated at 45 FR 780, Jan. 3, 1980, and 46 FR 34329, July 1, 1981]

### § 64.12 Standards for grantee financial management systems.

The grantees' Financial Management Systems shall meet the minimum standards set forth in OMB Circular A–102, Attachment G.

### § 64.13 Performance reports.

Performance reports shall be submitted quarterly for all active projects. The performance reports shall briefly present the following:

(a) The status of the work required under the project scope.

(b) Other pertinent information including, when appropriate, time schedule delays and other similar problems encountered and their expected impact on the project, etc.

### § 64.14 Project inspections.

All State and local projects will receive a final inspection by the Bureau. Final inspections will be conducted prior to final payment of Federal funds. Progress inspections will be conducted as deemed necessary by the Bureau. Preapproval inspections will also be conducted prior to project selection at the discretion of the appropriate Bureau Regional Office.

### § 64.15 Financial reporting requirements and reimbursements.

Payments to applicants will either be by reimbursement by Treasury check or advance by Treasury check.

(a) *Reimbursement by Treasury Check.* The Outlay Report and Request for Reimbursement (OMB Circular A–102, Attachment H) is the standard form to be used for requesting reimbursement for acquisition and development. Requests for reimbursement shall be submitted by ''the grantee'' not more frequently than monthly. The requests for reimbursement shall be submitted by the grantee in an original and three copies to the appropriate Regional Office. The Regions will forward to the Division of Budget and Finance in Washington, DC, the original and two copies.

(b) *Advance by Treasury Check.* The Request for Advance or Reimbursement (OMB Circular A–102, Attachment H) is the standard form for all requests for advance. An advance by Treasury check is a payment made by Treasury check to a grantee upon its request, or through the use of a predetermined payment schedule. Advances shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements of the grantee in carrying out the purpose of the approved project. Advances shall be limited to one month's cash requirements. The request for advance shall be submitted by the grantee in an original and three copies to the appropriate Regional Office. The Region will forward to the Division of Budget and Finance in Washington, D.C., the original and two copies.

Grantees must submit an ''Outlay Report and Request for Reimbursement for Construction Programs'' monthly showing expenditures made the previous month from the funds advanced.

Upon Bureau acceptance of the expenditures involved, these reports shall be used as the basis for liquidating obligations, reducing the advance account, and making charges to the appropriate cost account.

(c) *Report of Federal Cash Transactions (OMB Circular A–102, Attachment H).* When funds are advanced with Treasury checks, the grantee shall submit a report to monitor the cash advance. Grantees shall submit the original and

three copies no later than 15 working days following the end of each quarter.

### § 64.16 Retention and custodial requirements for records.

(a) Financial records, supporting documents, statistical records, and other records pertinent to a grant program shall be retained for a period of three years after final payment. The records shall be retained beyond the three-year period if audit findings have not been resolved.

(b) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examinations, excerpts, and transcripts.

### § 64.17 Project termination and settlement procedures.

Project Termination and Settlement Procedures will be in accord with Bureau of Outdoor Recreation Manual, chapter 675.8.

### § 64.18 Retention and use.

Property acquired or developed by State and local governments with section 809(b) assistance will be available to the general public and retained for recreation/conservation use. The acquiring agency will cause to have placed in the legal title to the property a restriction which precludes its conversion to other than public recreation/conservation use without the consent of the Secretary of the Interior. The Secretary shall not permit conversion to any use that would preclude future reactivation of rail transportation on such right-of-way.

## PART 65—NATIONAL HISTORIC LANDMARKS PROGRAM

Sec.

65.1 Purpose and authority.
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65.9 Withdrawal of National Historic Landmark designation.
65.10 Appeals for designation.

AUTHORITY: 16 U.S.C. 461 et seq.; 16 U.S.C. 470 et seq.

SOURCE: 48 FR 4655, Feb. 2, 1983, unless otherwise noted.

### § 65.1 Purpose and authority.

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. These regulations set forth the criteria for establishing national significance and the procedures used by the Department of the Interior for conducting the National Historic Landmarks Program.

(a) In the Historic Sites Act of 1935 (45 Stat. 666, 16 U.S.C. 461 *et seq.*) the Congress declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States and

(b) To implement the policy, the Act authorizes the Secretary of the Interior to perform the following duties and functions, among others:

(1) To make a survey of historic and archeological sites, buildings and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States;

(2) To make necessary investigations and researches in the United States relating to particular sites, buildings or objects to obtain true and accurate historical and archeological facts and information concerning the same; and

(3) To erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archeological significance.

(c) The National Park Service (NPS) administers the National Historic Landmarks Program on behalf of the Secretary.

**§ 65.2 Effects of designation.**

(a) The purpose of the National Historic Landmarks Program is to focus attention on properties of exceptional value to the nation as a whole rather than to a particular State or locality. The program recognizes and promotes the preservation efforts of Federal, State and local agencies, as well as of private organizations and individuals and encourages the owners of landmark properties to observe preservation precepts.

(b) Properties designated as National Historic Landmarks are listed in the National Register of Historic Places upon designation as National Historic Landmarks. Listing of private property on the National Register does not prohibit under Federal law or regulations any actions which may otherwise be taken by the property owner with respect to the property.

(c) Specific effects of designation are:

(1) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Advisory Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR part 800.

(2) Section 110(f) of the National Historic Preservation Act of 1966, as amended, requires that before approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council a reasonable opportunity to comment on the undertaking.

(3) Listing in the National Register makes property owners eligible to be considered for Federal grants-in-aid and loan guarantees (when implemented) for historic preservation.

(4) If a property is listed in the National Register, certain special Federal income tax provisions may apply to the owners of the property pursuant to section 2124 of the Tax Reform Act of 1976, the Economic Recovery Tax Act of 1981 and the Tax Treatment Extension Act of 1980.

(5) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in determining issuance of a surface coal mining permit.

(6) Section 8 of the National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1–5), directs the Secretary to prepare an annual report to Congress which identifies all National Historic Landmarks that exhibit known or anticipated damage or threats to the integrity of their resources. In addition, National Historic Landmarks may be studied by NPS for possible recommendation to Congress for inclusion in the National Park System.

(7) Section 9 of the Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980) directs the Secretary of the Interior to submit to the Advisory Council a report on any surface mining activity which the Secretary has determined may destroy a National Historic Landmark in whole or in part, and to request the advisory Council's advice on alternative measures to mitigate or abate such activity.

**§ 65.3 Definitions.**

As used in this rule:

(a) *Advisory Council* means the Advisory Council on Historic Preservation, established by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.)*. Address: Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW, Washington, DC 20005.

(b) *Chief elected local official* means the mayor, county judge or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

(c) *Advisory Board* means the National Park System Advisory Board which is a body of authorities in several fields of knowledge appointed by the Secretary under authority of the Historic Sites Act of 1935, as amended.

(d) *District* means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(e) *Endangered property* means a historic property which is or is about to be subjected to a major impact that will destroy or seriously damage the resources which make it eligible for National Historic Landmark designation.

(f) *Federal Preservation Officer* means the official designated by the head of each Federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act of 1966, as amended, including nominating properties under that agency's ownership or control to the National Register.

(g) *Keeper* means the Keeper of the National Register of Historic Places.

(h) *Landmark* means National Historic Landmark and is a district, site, building, structure or object, in public or private ownership, judged by the Secretary to possess national significance in American history, archeology, architecture, engineering and culture, and so designated by him.

(i) *National Register* means the National Register of Historic Places, which is a register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture, maintained by the Secretary. (Section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act of 1966 (80 Stat. 915; 16 U.S.C. 470), as amended.) (Address: Chief, Interagency Resource Management Division, 440 G Street NW, Washington, DC 20243.)

(j) *National Historic Landmarks Program* means the program which identifies, designates, recognizes, lists, and monitors National Historic Landmarks conducted by the Secretary through the National Park Service. (Address: Chief, History Division, National Park Service, Washington, DC 20240; addresses of other participating divisions found throughout these regulations.)

(k) *Object* means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

(l) *Owner* or *owners* means those individuals, partnerships, corporations or public agencies holding fee simple title to property. ''Owner'' or ''owners'' does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

(m) *Property* means a site, building, object, structure or a collection of the above which form a district.

(n) *Site* means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

(o) *State official* means the person who has been designated in each State to administer the State Historic Preservation Program.

(p) *Structure* means a work made by human beings and composed of interdependent and interrelated parts in a definite pattern of organization.

[48 FR 4655, Feb. 2, 1983, as amended at 62 FR 30235, June 3, 1997]

### § 65.4 National Historic Landmark criteria.

The criteria applied to evaluate properties for possible designation as National Historic Landmarks or possible determination of eligibility for National Historic Landmark designation are listed below. These criteria shall be used by NPS in the preparation, review and evaluation of National Historic Landmark studies. They shall be used by the Advisory Board in reviewing National Historic Landmark studies and preparing recommendations to the Secretary. Properties shall be designated National Historic Landmarks only if they are nationally significant. Although assessments of national significance should reflect both public perceptions and professional judgments, the evaluations of properties being considered for landmark designation are

undertaken by professionals, including historians, architectural historians, archeologists and anthropologists familiar with the broad range of the nation's resources and historical themes. The criteria applied by these specialists to potential landmarks do not define significance nor set a rigid standard for quality. Rather, the criteria establish the qualitative framework in which a comparative professional analysis of national significance can occur. The final decision on whether a property possesses national significance is made by the Secretary on the basis of documentation including the comments and recommendations of the public who participate in the designation process.

(a) Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

(b) Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(2) A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

(3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

(4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(5) A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when

no other buildings or structures with the same association have survived; or

(7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

### § 65.5 Designation of National Historic Landmarks.

Potential National Historic Landmarks are identified primarily by means of theme studies and in some instances by special studies. Nominations and recommendations made by the appropriate State officials, Federal Preservation Officers and other interested parties will be considered in scheduling and conducting studies.

(a) *Theme studies.* NPS defines and systematically conducts organized theme studies which encompass the major aspects of American history. The theme studies provide a contextual framework to evaluate the relative significance of historic properties and determine which properties meet National Historic Landmark criteria. Theme studies will be announced in advance through direct notice to appropriate State officials, Federal Preservation Officers and other interested parties and by notice in the FEDERAL REGISTER. Within the established thematic framework, NPS will schedule and conduct National Historic Landmark theme studies according to the following priorities. Themes which meet more of these priorities ordinarily will be studied before those which meet fewer of the priorities:

(1) Theme studies not yet begun as identified in ''History and Prehistory in the National Park System,'' 1982.

(2) Theme studies in serious need of revision.

(3) Theme studies which relate to a significant number of properties listed in the National Register bearing opinions of State Historic Preservation Officers and Federal Preservation Officers that such properties are of potential national significance. (Only those recommendations which NPS determines are likely to meet the landmarks criteria will be enumerated in determining whether a significant number exists in a theme study.)

(4) Themes which reflect the broad planning needs of NPS and other Federal agencies and for which the funds to conduct the study are made available from sources other than the regularly programmed funds of the National Historic Landmarks Program.

(b) *Special Studies.* NPS will conduct special studies for historic properties outside of active theme studies according to the following priorities:

(1) Studies authorized by Congress or mandated by Executive Order will receive the highest priority.

(2) Properties which NPS determines are endangered and potentially meet the National Historic Landmarks criteria, whether or not the theme in which they are significant has been studied.

(3) Properties listed in the National Register bearing State or Federal agency recommendations of potential national significance where NPS concurs in the evaluation and the property is significant in a theme already studied.

(c)(1) When a property is selected for study to determine its potential for designation as a National Historic Landmark, NPS will notify in writing, except as provided below, (i) the owner(s), (ii) the chief elected local official, (iii) the appropriate State official, (iv) the Members of Congress who represent the district and State in which the property is located, and, (v) if the property is on an Indian reservation, the chief executive officer of the Indian tribe, that it will be studied to determine its potential for designation as a National Historic Landmark. This notice will provide information on the National Historic Landmarks Program, the designation process and the effects of designation.

(2) When the property has more than 50 owners, NPS will notify in writing (i) the chief elected local official, (ii) the appropriate State official, (iii) the Members of Congress who represent the district and State in which the property is located, and, (iv) if the property is on an Indian reservation, the chief executive officer of the Indian tribe, and (v) provide general notice to the property owners. This general notice

will be published in one or more local newspapers of general circulation in the area in which the potential National Historic Landmark is located and will provide information on the National Historic Landmarks Program, the designation process and the effects of designation. The researcher will visit each property selected for study unless it is determined that an onsite investigation is not necessary. In the case of districts with more than 50 owners NPS may conduct a public information meeting if widespread public interest so warrants or on request by the chief elected local official.

(3) Properties for which a study was conducted before the effective date of these regulations are not subject to the requirements of paragraphs (c) (1) and (2) of this section.

(4) The results of each study will be incorporated into a report which will contain at least

(i) A precise description of the property studied; and

(ii) An analysis of the significance of the property and its relationship to the National Historic Landmark criteria.

(d)(1) Properties appearing to qualify for designation as National Historic Landmarks will be presented to the Advisory Board for evaluation except as specified in paragraph (h) of this section.

(2) Before the Advisory Board's review of a property, NPS will provide written notice of this review, except as provided below, and a copy of the study report to (i) the owner(s) of record; (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the property is located; and, (v) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe. The list of owners shall be obtained from official land or tax record, whichever is most appropriate, within 90 days prior to the notification of intent to submit to the Advisory Board. If in any State the land or tax record is not the appropriate list an alternative source of owners may be used. NPS is responsible for notifying only those owners whose names appear on the list. Where there is more than one owner on the list each separate owner shall be notified.

(3) In the case of a property with more than 50 owners, NPS will notify, in writing, (i) the appropriate State official; (ii) the chief elected local official; (iii) the Members of Congress who represent the district and State in which the property is located; (iv) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe; and, (v) will provide general notice to the property owners. The general notice will be published in one or more local newspapers of general circulation in the area in which the property is located. A copy of the study report will be made available on request. Notice of Advisory Board review will also be published in the FEDERAL REGISTER.

(4) Notice of Advisory Board review will be given at least 60 days in advance of the Advisory Board meeting. The notice will state date, time and location of the meeting; solicit written comments and recommendations on the study report; provide information on the National Historic Landmarks Program, the designation process and the effects of designation and provide the owners of private property not more than 60 days in which to concur in or object in writing to the designation. Notice of Advisory Board meetings and the agenda will also be published in the FEDERAL REGISTER. Interested parties are encouraged to submit written comments and recommendations which will be presented to the Advisory Board. Interested parties may also attend the Advisory Board meeting and upon request will be given an opportunity to address the Board concerning a property's significance, integrity and proposed boundaries.

(5) Upon notification, any owner of private property who wishes to object shall submit to the Chief, History Division, a notarized statement that the party is the sole or partial owner of record of the property, as appropriate, and objects to the designations. Such notice shall be submitted during the 60-day commenting period. Upon receipt of notarized objections respecting a district or an individual property with multiple ownership it is the responsibility of NPS to ascertain whether a

majority of owners have so objected. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by NPS in determining whether a majority of owners has objected. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

(6) The commenting period following notification can be waived only when all property owners and the chief elected local official have agreed in writing to the waiver.

(e)(1) The Advisory Board evaluates such factors as a property's significance, integrity, proposed boundaries and the professional adequacy of the study. If the Board finds that these conditions are met, it may recommend to the Secretary that a property be designated or declared eligible for designation as a National Historic Landmark. If one or more of the conditions are not met, the Board may recommend that the property not be designated a landmark or that consideration of it be deferred for further study, as appropriate. In making its recommendation, the Board shall state, if possible, whether or not it finds that the criteria of the landmarks program have been met. A simple majority is required to make a recommendation of designation. The Board's recommendations are advisory.

(2) Studies submitted to the Advisory Board (or the Consulting Committee previously under the Heritage Conservation and Recreation Service) before the effective date of these regulations need not be resubmitted to the Advisory Board. In such instances, if a property appears to qualify for designation, NPS will provide notice and a copy of the study report to the parties as specified in paragraphs (d)(2) and (3) of this section and will provide at least 30 days in which to submit written comments and to provide an opportunity for owners to concur in or object to the designation.

(3) The Director reviews the study report and the Advisory Board recommendations, certifies that the procedural requirements set forth in this section have been met and transmits the study reports, the recommendations of the Advisory Board, his recommendations and any other recommendations and comments received pertaining to the properties to the Secretary.

(f) The Secretary reviews the nominations, recommendations and any comments and, based on the criteria set forth herein, makes a decision on National Historic Landmark designation. Properties that are designated National Historic Landmarks are entered in the National Register of Historic Places, if not already so listed.

(1) If the private owner or, with respect to districts or individual properties with multiple ownership, the majority of such owners have objected to the designation by notarized statements, the Secretary shall not make a National Historic Landmark designation but shall review the nomination and make a determination of its eligibility for National Historic Landmark designation.

(2) The Secretary may thereafter designate such properties as National Historic Landmarks only upon receipt of notarized statements from the private owner (or majority of private owners in the event of a district or a single property with multiple ownership) that they do not object to the designation.

(3) The Keeper may list in the National Register properties considered for National Historic Landmark designation which do not meet the National Historic Landmark criteria but which do meet the National Register criteria for evaluation in 36 CFR part 60 or determine such properties eligible for the National Register if the private owners or majority of such owners in the case of districts object to designation. A property determined eligible for National Historic Landmark designation is determined eligible for the National Register.

(g) Notice of National Historic Landmark designation, National Register listing, or a determination of eligibility will be sent in the same manner as specified in paragraphs (d)(2) and (3) of this section. For properties which are determined eligible the Advisory

Council will also be notified. Notice will be published in the FEDERAL REGISTER.

(h)(1) The Secretary may designate a National Historic Landmark without Advisory Board review through accelerated procedures described in this section when necessary to assist in the preservation of a nationally significant property endangered by a threat of imminent damage or destruction.

(2) NPS will conduct the study and prepare a study report as described in paragraph (c)(4) of this section.

(3) If a property appears to qualify for designation, the National Park Service will provide notice and a copy of the study report to the parties specified in paragraphs (d)(2) and (3) and will allow at least 30 days for the submittal of written comments and to provide owners of private property an opportunity to concur in or object to designation as provided in paragraph (d)(5) of this section except that the commenting period may be less than 60 days.

(4) The Director will review the study report and any comments, will certify that procedural requirements have been met, and will transmit the study report, his and any other recommendations and comments pertaining to the property to the Secretary.

(5) The Secretary will review the nomination and recommendations and any comments and, based on the criteria set forth herein, make a decision on National Historic Landmark designation or a determination of eligibility for designation if the private owners or a majority of such owners of historic districts object.

(6) Notice of National Historic Landmark designation or a determination of eligibility will be sent to the same parties specified in paragraphs (d)(2) and (3) of this section.

### § 65.6 Recognition of National Historic Landmarks.

(a) Following designation of a property by the Secretary as a National Historic Landmark, the owner(s) will receive a certificate of designation. In the case of a district, the certificate will be delivered to the chief elected local official or other local official, or to the chief officer of a private organization involved with the preservation of the district, or the chief officer of an organization representing the owners of the district, as appropriate.

(b) NPS will invite the owner of each designated National Historic Landmark to accept, free of charge, a landmark plaque. In the case of a district, the chief elected local official or other local official, or the chief officer of an organization involved in the preservation of the district, or chief officer of an organization representing the owners of the district, as appropriate, may accept the plaque on behalf of the owners. A plaque will be presented to properties where the appropriate recipient(s) (from those listed above) agrees to display it publicly and appropriately.

(c) The appropriate recipient(s) may accept the plaque at any time after designation of the National Historic Landmark. In so doing owners give up none of the rights and privileges of ownership or use of the landmark property nor does the Department of the Interior acquire any interest in property so designated.

(d) NPS will provide one standard certificate and plaque for each designated National Historic Landmark. The certificate and plaque remain the property of NPS. Should the National Historic Landmark designation at any time be withdrawn, in accordance with the procedures specified in § 65.9 of these rules, or should the certificate and plaque not be publicly or appropriately displayed, the certificate and the plaque, if issued, will be reclaimed by NPS.

(e) Upon request, and if feasible, NPS will help arrange and participate in a presentation ceremony.

### § 65.7 Monitoring National Historic Landmarks.

(a) NPS maintains a continuing relationship with the owners of National Historic Landmarks. Periodic visits, contacts with State Historic Preservation Officers, and other appropriate means will be used to determine whether landmarks retain their integrity, to advise owners concerning accepted preservation standards and techniques and to update administrative records on the properties.

(b) Reports of monitoring activities form the basis for the annual report submitted to Congress by the Secretary of the Interior, as mandated by section 8, National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1a–5). The Secretary's annual report will identify those National Historic Landmarks which exhibit known or anticipated damage or threats to their integrity. In evaluating National Historic Landmarks for listing in the report, the seriousness and imminence of the damage or threat are considered, as well as the integrity of the landmark at the time of designation taking into account the criteria in § 65.4.

(c) As mandated in section 9, Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980), whenever the Secretary of the Interior finds that a National Historic Landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for, removal or production of minerals or materials, the Secretary shall (1) notify the person conducting such activity of that finding;

(2) Submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a National Historic Landmark, to the Advisory Council; and

(3) Request from the Council advice as to alternative measures that may be taken by the United States to mitigate or abate such activity.

(d) Monitoring activities described in this section, including the preparation of the mandated reports to Congress and the Advisory Council are carried out by NPS regional offices under the direction of the Preservation Assistance Division, NPS [Address: Chief, Resource Assistance Division, National Park Service, 440 G Street NW, Washington, DC 20243] in consultation with the History Division, NPS.

### § 65.8 Alteration of National Historic Landmark boundaries.

(a) *Two justifications exist for enlarging the boundary of a National Historic Landmark:* Documentation of previously unrecognized significance or professional error in the original designation. Enlargement of a boundary will be approved only when the area proposed for addition to the National Historic Landmark possesses or contributes directly to the characteristics for which the landmark was designated.

(b) *Two justifications exist for reducing the boundary of a National Historic Landmark:* Loss of integrity or professional error in the original designation. Reduction of a boundary will be approved only when the area to be deleted from the National Historic Landmark does not possess or has lost the characteristics for which the landmark was designated.

(c) A proposal for enlargement or reduction of a National Historic Landmark boundary may be submitted to or can originate with the History Division, NPS. NPS may restudy the National Historic Landmark and subsequently make a proposal, if appropriate, in the same manner as specified in § 65.5 (c) through (h). In the case of boundary enlargements only those owners in the newly nominated but as yet undesignated area will be notified and will be counted in determining whether a majority of private owners object to listing.

(d)(1) When a boundary is proposed for a National Historic Landmark for which no specific boundary was identified at the time of designation, NPS shall provide notice, in writing, of the proposed boundary to (i) the owner(s); (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the landmark is located, and (v) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe, and shall allow not less than 30 nor more than 60 days for submitting written comments on the proposal. In the case of a landmark with more than 50 owners, the general notice specified in § 65.5(d)(3) will be used. In the case of National Historic Landmark districts for which no boundaries have been established, proposed boundaries shall be published in the FEDERAL REGISTER for comment and be submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and

Insular Affairs of the United States House of Representatives and not less than 30 nor more than 60 days shall be provided for the submittal of written comments on the proposed boundaries.

(2) The proposed boundary and any comments received thereon shall be submitted to the Associated Director for National Register Programs, NPS, who may approve the boundary without reference to the Advisory Board or the Secretary.

(3) NPS will provide written notice of the approved boundary to the same parties specified in paragraph (d)(1) of this section and by publication in the FEDERAL REGISTER.

(4) Management of the activities described in paragraphs (d)(1), (2), and (3) of this section is handled by the National Register of Historic Places, NPS, [Address: National Register of Historic Places, National Park Service, Department of the Interior, Washington, DC 20240].

(e) A technical correction to a boundary may be approved by the Chief, History Division, without Advisory Board review or Secretarial approval. NPS will provide notice, in writing, of any technical correction in a boundary to the same parties specified in (d)(1).

### § 65.9 Withdrawal of National Historic Landmark designation.

(a) National Historic Landmarks will be considered for withdrawal of designation only at the request of the owner or upon the initiative of the Secretary.

(b) Four justifications exist for the withdrawal of National Historic Landmark designation:

(1) The property has ceased to meet the criteria for designation because the qualities which caused it to be originally designated have been lost or destroyed, or such qualities were lost subsequent to nomination, but before designation;

(2) Additional information shows conclusively that the property does not possess sufficient significance to meet the National Historic Landmark criteria;

(3) Professional error in the designation; and

(4) Prejudicial procedural error in the designation process.

(c) Properties designated as National Historic Landmarks before December 13, 1980, can be dedesignated only on the grounds established in paragraph (a)(1) of this section.

(d) The owner may appeal to have a property dedesignated by submitting a request for dedesignation and stating the grounds for the appeal as established in subsection (a) to the Chief, History Division, National Park Service, Department of the Interior, Washington, DC 20240. An appellant will receive a response within 60 days as to whether NPS considers the documentation sufficient to initiate a restudy of the landmark.

(e) The Secretary may initiate a restudy of a National Historic Landmark and subsequently a proposal for withdrawal of the landmark designation as appropriate in the same manner as a new designation as specified in § 65.5 (c) through (h). Proposals will not be submitted to the Advisory Board if the grounds for removal are procedural, although the Board will be informed of such proposals.

(f)(1) The property will remain listed in the National Register if the Keeper determines that it meets the National Register criteria for evalution in 36 CFR 60.4, except if the property is redesignated on procedural grounds.

(2) Any property from which designation is withdrawn because of a procedural error in the designation process shall automatically be considered eligible for inclusion in the National Register as a National Historic Landmark without further action and will be published as such in the FEDERAL REGISTER.

(g)(1) The National Park Service will provide written notice of the withdrawal of a National Historic Landmark designation and the status of the National Register listing, and a copy of the report on which those actions are based to (i) the owner(s); (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the landmark is located; and (v) if the landmark is located on an Indian reservation, the chief executive officer of the Indian tribe. In the case of a landmark with

more than 50 owners, the general notice specified in § 65.5(d)(3) will be used.

(2) Notice of withdrawal of designation and related National Register listing and determinations of eligibility will be published periodically in the FEDERAL REGISTER.

(h) Upon withdrawal of a National Historic Landmark designation, NPS will reclaim the certificate and plaque, if any, issued for that landmark.

(i) An owner shall not be considered as having exhausted administrative remedies with respect to dedesignation of a National Historic Landmark until after submitting an appeal and receiving a response from NPS in accord with these procedures.

### § 65.10 Appeals for designation.

(a) Any applicant seeking to have a property designated a National Historic Landmark may appeal, stating the grounds for appeal, directly to the Director, National Park Service, Department of the Interior, Washington, DC 20240, under the following circumstances:

Where the applicant—

(1) Disagrees with the initial decision of NPS that the property is not likely to meet the criteria of the National Historic Landmarks Program and will not be submitted to the Advisory Board; or

(2) Disagrees with the decision of the Secretary that the property does not meet the criteria of the National Historic Landmarks Program.

(b) The Director will respond to the appellant within 60 days. After reviewing the appeal the Director may:

(1) Deny the appeal;

(2) Direct that a National Historic Landmark nomination be prepared and processed according to the regulations if this has not yet occurred; or

(3) Resubmit the nomination to the Secretary for reconsideration and final decision.

(c) Any person or organization which supports or opposes the consideration of a property for National Historic Landmark designation may submit an appeal to the Director, NPS, during the designation process either supporting or opposing the designation. Such appeals received by the Director before the study of the property or before its submission to the National Park System Advisory Board will be considered by the Director, the Advisory Board and the Secretary, as appropriate, in the designation process.

(d) No person shall be considered to have exhausted administrative remedies with respect to failure to designate a property a National Historic Landmark until he or she has complied with the procedures set forth in this section.

## PART 67—HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO SEC. 48(g) AND SEC. 170(h) OF THE INTERNAL REVENUE CODE OF 1986

Sec.

67.1 Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986.
67.2 Definitions.
67.3 Introduction to certifications of significance and rehabilitation and information collection.
67.4 Certifications of historic significance.
67.5 Standards for Evaluating Significance within Registered Historic Districts.
67.6 Certifications of rehabilitation.
67.7 Standards for Rehabilitation.
67.8 Certifications of statutes.
67.9 Certifications of State or local historic districts.
67.10 Appeals.
67.11 Fees for processing rehabilitation certification requests.

AUTHORITY: Sec. 101(a)(1) of the National Historic Preservation Act of 1966, 16 U.S.C. 470a–1(a)(170 ed.), as amended; Sec. 48(g) of the Internal Revenue Code of 1986 (90 Stat. 1519, as amended by 100 Stat. 2085) 26 U.S.C. 48(g); and Sec. 170(h) of the Internal Revenue Code of 1986 (94 Stat. 3204) 26 U.S.C. 170(h).

SOURCE: 54 FR 6771, Feb. 26, 1990, unless otherwise noted.

### § 67.1 Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986.

(a) Sec. 48(g) of the Internal Revenue Code of 1986, 90 Stat. 1519, as amended by 100 Stat. 2085, and Sec. 170(h) of the Internal Revenue Code of 1986, 94 Stat. 3204, require the Secretary to make certifications of historic district statutes and of State and local districts,

certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service (NPS); the following five regional offices issue certifications for the States listed below them.

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503:

Alaska

Mid-Atlantic Regional Office, National Park Service, U.S. Customs House, Second Floor, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106:

Connecticut
Delaware
District of Columbia
Indiana
Maine
Maryland
Massachusetts
Michigan
New Hampshire
New Jersey
New York
Ohio
Pennsylvania
Rhode Island
Vermont
Virginia
West Virginia

Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225:

Colorado
Illinois
Iowa
Kansas
Minnesota
Missouri
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
South Dakota
Texas
Utah
Wisconsin
Wyoming

Southeast Regional Office, National Park Service, 75 Spring Street SW, Atlanta, Georgia 30303:

Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Puerto Rico
South Carolina
Tennessee
Virgin Islands

Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102:

Arizona
California
Hawaii
Idaho
Nevada
Oregon
Washington

(b) The Washington office of the NPS establishes program direction and considers appeals of certification denials. The procedures for obtaining certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to the Secretary to make certification decisions. These procedures, upon their effective date, are applicable to future and pending certification requests, except as otherwise provided herein.

(c) States receiving Historic Preservation Fund grants from the Department participate in the review of requests for certification, through recommendations to the Secretary by the State Historic Preservation Officer (SHPO). The SHPO acts on behalf of the State in this capacity and, therefore, the NPS is not responsible for any actions, errors or omissions of the SHPO.

(1) Requests for certifications and approvals of proposed rehabilitation work are sent by an owner first to the appropriate SHPO for review. State comments are recorded on National Park Service Review Sheets (NPS Forms 10–168 (d) and (e)) and are carefully considered by the Secretary before a certification decision is made. Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary, based upon professional review of the application and related information. The decision of the Secretary may differ from the recommendation of the SHPO.

(2) A State may choose not to participate in the review of certification

requests. States not wishing to participate in the comment process should notify the Secretary in writing of this fact. Owners from such nonparticipating States may request certifications by sending their applications directly to the appropriate NPS regional office listed above. In all other situations, certification requests are sent first to the appropriate SHPO.

(d) The Internal Revenue Service is responsible for all procedures, legal determinations, and rules and regulations concerning the tax consequences of the historic preservation provisions described in this part. Any certification made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to tax consequences under the Internal Revenue Code. For example, certifications made by the Secretary do not constitute determinations that a structure is of the type subject to the allowance for depreciation under section 167 of the Code.

### § 67.2 Definitions.

As used in these regulations:

*Certified Historic Structure* means a building (and its structural components) which is of a character subject to the allowance for depreciation provided in section 167 of the Internal Revenue Code of 1986 which is either:

(a) Individually listed in the National Register; or

(b) Located in a registered historic district and certified by the Secretary as being of historic significance to the district.

Portions of larger buildings, such as single condominium apartment units, are no independently considered certified historic structures. Rowhouses, even with abutting or party walls, are considered as separate buildings. For purposes of the certification decisions set forth in this part, a certified historic structure encompasses the historic building and its site, landscape features, and environment, generally referred to herein as a ''property'' as defined below. The NPS decision on listing a property in the National Register of Historic Places, including boundary determinations, does not limit the scope of review of the rehabilitation project for tax certification purposes. Such review will include the entire historic property as it existed prior to rehabilitation and any related new construction. For purposes of the charitable contribution provisions only, a certified historic structure need not be depreciable to qualify; may be a structure other than a building; and may also be a remnant of a building such as a facade, if that is all that remains. For purposes of the other rehabilitation tax credits under section 48(g) of the Internal Revenue Code, any property located in a registered historic district is considered a certified historic structure so that other rehabilitation tax credits are not available; exemption from this provision can generally occur only if the Secretary has determined, prior to the rehabilitation of the property, that it is not of historic significance to the district.

*Certified Rehabilitation* means any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, where applicable, with the district in which such structure is located.

*Duly Authorized Representative* means a State or locality's Chief Elected Official or his or her representative who is authorized to apply for certification of State/local statutes and historic districts.

*Historic District* means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically during the period of significance but linked by association or function.

*Inspection* means a visit by an authorized representative of the Secretary or a SHPO to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

*National Register of Historic Places* means the National Register of districts, sites, buildings, structures, and

objects significant in American history, architecture, archeology, engineering, and culture that the Secretary is authorized to expand and maintain pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended. The procedures of the National Register appear in 36 CFR part 60 *et seq*.

*Owner* means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits.

*Property* means a building and its site and landscape features.

*Registered Historic District* means any district listed in the National Register or any district which is:

(a) Designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district, and

(b) Certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

*Rehabilitation* means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the Secretary.

*Standards for Rehabilitation* means the Secretary's Standards for Rehabilitation set forth in section 67.7 hereof.

*State Historic Preservation Officer* means the official within each State designated by the Governor or a State statute to act as liaison for purposes of administering historic preservation programs within that State.

*State or Local Statute* means a law of a State or local government designating, or providing a method for the designation of, a historic district or districts.

[54 FR 6771, Feb. 26, 1990, as amended at 62 FR 30235, June 3, 1997]

**§ 67.3 Introduction to certifications of significance and rehabilitation and information collection.**

(a) Who may apply:

(1) Ordinarily, only the fee simple owner of the property in question may apply for the certifications described in §§ 67.4 and 67.6 hereof. If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(2) Upon request of a SHPO the Secretary may determine whether or not a particular property located within a registered historic district qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the fee simple owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30-day time period to submit written comments to the Secretary prior to decision. Such time period for comment may be waived by the fee simple owner.

(3) The Secretary may undertake the certifications described in §§ 67.4 and 67.6 on his own initiative after notifying the fee simple owner and the SHPO and allowing a comment period as specified in § 67.3(a)(2).

(4) Owners of properties which appear to meet National Register criteria but are yet listed in the National Register or which are located within potential historic districts may request preliminary determinations from the Secretary as to whether such properties may qualify as certified historic structures when and if the properties or the potential historic districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for properties outside the period or area of significance of registered historic districts as specified in § 67.5(c). Procedures for obtaining these determinations shall be the same as those described in § 67.4. Such determinations

are preliminary only and are not binding on the Secretary. Preliminary determinations of significance will become final as of the date of the listing of the individual property or district in the National Register. For properties outside the period or area of significance of a registered historic district, preliminary determinations of significance will become final, except as provided below, when the district documentation on file with the NPS is formally amended. If during review of a request for certification of rehabilitation, it is determined that the property does not contribute to the significance of the district because of changes which occurred after the preliminary determination of significance was made, certified historic structure designation will be denied.

(5) Owners of properties not yet designated certified historic structures may obtain determinations from the Secretary on whether or not rehabilitation proposals meet the Secretary's Standards for Rehabilitation. Such determinations will be made only when the owner has requested a preliminary determination of the significance of the property as described in paragraph (a)(4) of this section and such request for determination has been acted upon by the NPS. Final certifications of rehabilitation will be issued only to owners of certified historic structures. Procedures for obtaining these determinations shall be the same as those described in sec. 67.6.

(b) How to apply:

(1) Requests for certifications of historic significance and of rehabilitation shall be made on Historic Preservation Certification Applications (NPS Form No. 10–168). Normally, two copies of the application are required; one to be retained by the SHPO and the other to be forwarded to the NPS. The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0009. Part 1 of the application shall be used in requesting a certification of historic significance or nonsignificance and preliminary determinations, while part 2 of the application shall be used in requesting an evaluation of a proposed rehabilitation project or, in conjunction with a Request for Certification of Completed Work, a certification of a completed rehabilitation project. Information contained in the application is required to obtain a benefit. Public reporting burden for this form is estimated to average 2.5 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form may be made to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 and to the Office of Management and Budget, Paperwork Reduction Project Number 1024–0009, Washington, DC 20503.

(2) Application forms are available from NPS regional offices or the SHPOs.

(3) Requests for certifications, preliminary determinations, and approvals of proposed rehabilitation projects shall be sent to the SHPO in participating States. Requests in nonparticipating States shall be sent directly to the appropriate NPS regional office.

(4) Generally reviews of certification requests are concluded within 60 days of receipt of a complete, adequately documented application, as defined § 67.4 and § 67.6 (30 days at the State level and 30 days at the Federal level). Where a State has chosen not to participate in the review process, review by the NPS generally is concluded within 60 days of receipt of a complete, adequately documented application. Where adequate documentation is not provided, the owner will be notified of the additional information needed to undertake or complete review. The time periods in this part are based on the receipt of a complete application; they will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(5) Approval of applications and amendments to applications is conveyed only in writing by duly authorized officials of the NPS acting on behalf of the Secretary. Decisions with

respect to certifications are made on the basis of the descriptions contained in the application form and other available information. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application form shall take precedence. Falsification of factual representations in the application is subject to criminal sanctions of up to $10,000 in fines or imprisonment for up to five years pursuant to 18 U.S.C. 1001.

(6) It is the owner's responsibility to notify the Secretary if application reviews are not completed within the time periods specified above. The Secretary in turn will consult with the appropriate office to ensure that the review is completed in as timely manner as possible in the circumstances.

(7) Although certifications of significance and rehabilitation are discussed separately below, owners must submit part 1 of the Historic Preservation Certification Application prior to, or with, part 2. Part 2 of the application will not be processed until an adequately documented part 1 is on file and acted upon unless the property is already a certified historic structure. Reviews of rehabilitation projects will also not be undertaken if the owner has objected to the listing of the property in the National Register.

### §67.4 Certifications of historic significance.

(a) Requests for certifications of historic significance should be made by the owner to determine—

(1) That a property located within a registered historic district is of historic significance to such district; or

(2) That a property located within a registered historic district is not of historic significance to such district; or

(3) That a property not yet on the National Register appears to meet National Register criteria; or

(4) That a property located within a potential historic district appears to contribute to the significance of such district.

(b) To determine whether or not a property is individually listed or is part of a district in the National Register, the owner may consult the listing of National Register properties in the FEDERAL REGISTER (found in most large libraries), or contact the appropriate SHPO for current information.

(c) If a property is located within the boundaries of a registered historic district and the owner wishes the Secretary to certify whether the property contributes or does not contribute to the historic significance of the district or if the owner is requesting a preliminary determination of significance in accordance with §67.3(a)(4), the owner must complete part 1 of the Historic Preservation Certification Application according to instructions accompanying the application. Such documentation includes but is not limited to:

(1) Name and mailing address of owner;

(2) Name and address of property;

(3) Name of historic district;

(4) Current photographs of property; photographs of the building and its site and landscape features prior to alteration if rehabilitation has been completed; photograph(s) showing the property along with adjacent properties and structures on the street; and photographs of interior features and spaces adequate to document significance;

(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(6) Brief statement of significance summarizing how the property does or does not reflect the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself (i.e., unusual building techniques, important event that took place there, etc.).

(7) Sketch map clearly delineating property's location within the district; and

(8) Signature of fee simple owner requesting or concurring in a request for evaluation.

(d) If a property is individually listed in the National Register, it is generally

considered a certified historic structure and no further certification is required. More specific considerations in this regard are as follows:

(1) If the property is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should refer to the delisting procedures outlined in 36 CFR part 60.

(2) Some properties individually listed in the National Register include more than one building. In such cases, the owner must submit a single part 1 application, as described in paragraph (c) of this section, which includes descriptions of all the buildings within the listing. The Secretary will utilize the Standards for Evaluating Significance within Registered Historic Districts (§ 67.5) for the purpose of determining which of the buildings included within the listing are of historic significance to the property. The requirements of this paragraph are applicable to certification requests received by the SHPOs (and the NPS regional offices in the case of nonparticipating States only) upon the effective date of these regulations.

(e) Properties containing more than one building where the buildings are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the National Register or is located within a registered historic district, when rehabilitated as part of an overall project. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance. In the case of a property within a registered historic district which contains more than one building where the buildings are judged to be functionally related historically, an evaluation will be made to determine whether the component buildings contribute to the historic significance of the property and whether the property contributes to the significance of the historic district as in § 67.4(i). For questions concerning demolition of separate structures as part of an overall rehabilitation project, see § 67.6.

(f) Applications for preliminary determinations for individual listing must show how the property individually meets the National Register Criteria for Evaluation. An application for a property located in a potential historic district must document how the district meets the criteria and how the property contributes to the significance of that district. An application for a preliminary determination for a property in a registered historic district which is outside the period or area of significance in the district documentation on file with the NPS must document and justify the expanded significance of the district and how the property contributes to the significance of the district or document the individual significance of the property. Applications must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR part 60 and National Register Bulletin 16, ''Guidelines for Completing National Register of Historic Places Forms'' (available from SHPOs and NPS regional offices). Applications must also include written assurance from the SHPO that the district nomination is being revised to expand its significance or, for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand its significance, or that the SHPO is planning to nominate the property or the district. Owners should understand that confirmation of intent to nominate by a SHPO does not constitute listing in the National Register, nor does it constitute a certification of significance as required by law for Federal tax incentives. Owners should further understand that they are proceeding at their own risk. If the property or district is not listed in the National Register for procedural, substantive or other reasons; if the district documentation is not formally amended; or if the significance of the property has been lost as a result of alterations or damage, these preliminary determinations of significance will not become final. The SHPO must nominate the property or the district or the SHPO for National Register districts

and the duly authorized representative in the case of certified districts must submit documentation and have it approved by the NPS to amend the National Register nomination or certified district or the property or district must be listed before the preliminary certification of significance can become final.

(g) For purposes of the other rehabilitation tax credits under sec. 48(g) of the Internal Revenue Code, properties within registered historic districts are presumed to contribute to the significance of such districts unless certified as nonsignificant by the Secretary. Owners of nonhistoric properties within registered historic districts, therefore, must obtain a certification of nonsignificance in order to qualify for those investment tax credits. If an owner begins or completes a substantial alteration (within the meaning of sec. 167(n) of the Internal Revenue Code) of a property in a registered historic district without knowledge of requirements for certification of nonsignificance, he or she may request certification that the property was not of historic significance to the district prior to substantial alteration in the same manner as stated in sec. 67.4(c). The owner should be aware, however, of the requirements under sec. 48(g) of the Internal Revenue Code that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such substantial alteration, he or she in good faith was not aware of the certification requirement by the Secretary of the Interior.

(h) The Secretary discourages the moving of historic buildings from their original sites. However, if a building is to be moved as part of a rehabilitation for which certification is sought, the owner must follow different procedures depending on whether the building is individually listed in the National Register or is within a registered historic district. When a building is moved, every effort should be made to re-establish its historic orientation, immediate setting, and general environment. Moving a building may result in removal of the property from the National Register or, for buildings within a registered historic district, denial or revocation of a certification of significance; consequently, a moved building may, in certain circumstances, be ineligible for rehabilitation certification.

(1) Documentation must be submitted that demonstrates:

(i) The effect of the move on the building's integrity and appearance (any proposed demolition, proposed changes in foundations, etc.);

(ii) Photographs of the site and general environment of the proposed site;

(iii) Evidence that the proposed site does not possess historical significance that would be adversely affected by the moved building;

(iv) The effect of the move on the distinctive historical and visual character of the district, where applicable; and

(v) The method to be used for moving the building.

(2) For buildings individually listed in the National Register, the procedures contained in 36 CFR part 60 must be followed prior to the move, or the building will be removed from the National Register, will not be considered a certified historic structure, and will have to be renominated for listing. The owner may submit a part 1 application in order to receive a preliminary determination from the NPS of whether a move will cause the property to be removed from the National Register. However, preliminary approval of such a part 1 application does not satisfy the requirements of 36 CFR part 60. The SHPO must follow the remaining procedures in that regulation so that the NPS can determine that the moved building will remain listed in the National Register and retain its status as a certified historic structure.

(3) If an owner moves (or proposes to move) a building into a registered historic district or moves (or proposes to move) a building elsewhere within a registered historic district, a part 1 application containing the required information described in paragraph (h)(1) of this section must be submitted. The building to be moved will be evaluated to determine if it contributes to the historic significance of the district both before and after the move as in §67.4(i).

(i) Properties within registered historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the Secretary's Standards for Evaluating Significance within Registered Historic Districts as set forth in § 67.5.

(j) Once the significance of a property located within a registered historic district or a potential historic district has been determined by the Secretary, written notification will be sent to the owner and the SHPO in the form of a certification of significance or nonsignificance.

(k) Owners shall report to the Secretary through the SHPO any substantial damage, alteration or changes to a property that occurs after issuance of a certification of significance and prior to a final certification of rehabilitation. The Secretary may withdraw a certification of significance, upon thirty days notice to the owner, if a property has been damaged, altered or changed effective as of the date of the occurrence. The property may also be removed from the National Register, in accordance with the procedures in 36 CFR part 60. A revocation of certification of significance pursuant to this part may be appealed under § 67.10. For damage, alteration or changes caused by unacceptable rehabilitation work, see § 67.6(f).

### § 67.5 Standards for Evaluating Significance within Registered Historic Districts.

(a) Properties located within registered historic districts are reviewed by the Secretary to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within Registered Historic Districts.

(1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(b) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of nonsignificance for loss of integrity. In certain cases it may be necessary for the owner to submit a structural engineer's report to help substantiate physical deterioration and/or structural damage. Guidance on preparing a structural engineer's report is available from the appropriate SHPO or NPS regional office.

(c) Some properties listed in the National Register, primarily districts, are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Accordingly, this type of National Register documentation is not conclusive for the purposes of this part and must be supplemented with information on the significance of the specific property. Certifications of significance and nonsignificance will be made on the basis of the application documentation, existing National Register documentation, and other available information as needed. The Keeper may amend the National Register documentation by issuing a supplementary record if the application material warrants such an amendment. If a certification request is received for a property which is not yet listed on the National Register or which is outside a district's established period or area of significance, a preliminary determination of significance will be issued only if the request includes adequate documentation and if

there is written assurance from the SHPO that the SHPO plans to nominate the property or district or that the district nomination in question is being revised to expand its significance or for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand the significance. Certifications will become final when the property or district is listed or when the district documentation is officially amended unless the significance of the property has been lost as a result of alteration or damage. For procedures on amending listings to the National Register and additional information on the use of National Register documentation and the supplementary record which is contained in National Register Bulletin 19, ''Policies and Procedures for Processing National Register Nominations,'' consult the appropriate SHPO or NPS regional office.

(d) Where rehabilitation credits are sought, certifications of significance will be made on the appearance and condition of the property before rehabilitation was begun.

(e) If a nonhistoric surface material obscures a facade, it may be necessary for the owner to remove a portion of the surface material prior to requesting certification so that a determination of significance or nonsignificance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the historic district, it will be determined to be a certified historic structure. However, if the obscuring material remains when a determination of nonsignificance is requested under §67.4(a)(2), the property will be presumed to contribute to the historic significance of the district, if otherwise qualified, and, therefore, not eligible for the other tax credits under section 48(g) of the Internal Revenue Code.

(f) Additional guidance on certifications of historic significance is available from SHPOs and NPS regional offices.

### §67.6 Certifications of rehabilitation.

(a) Owners who want rehabilitation projects for certified historic structures to be certified by the Secretary as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as a certified rehabilitation, shall comply with the procedures listed below. A fee, as described in §67.11, for reviewing all proposed, ongoing, or completed rehabilitation work is charged by the Secretary. No certification decisions will be issued on any application until the appropriate remittance is received.

(1) To initiate review of a rehabilitation project for certification purposes, an owner must complete part 2 of the Historic Preservation Certification Application according to instructions accompanying the application. These instructions explain in detail the documentation required for certification of a rehabilitation project. The application may describe a proposed rehabilitation project, a project in progress, or a completed project. In all cases, documentation, including photographs adequate to document the appearance of the structure(s), both on the exterior and on the interior, and its site and environment prior to rehabilitation must accompany the application. The social security or taxpayer identification number(s) of all owners must be provided in the application. Other documentation, such as window surveys or cleaning specifications, may be required by reviewing officials to evaluate certain rehabilitation projects. Plans for any attached, adjacent, or related new construction must also accompany the application. Where necessary documentation is not provided, review and evaluation may not be completed and a denial of certification will be issued on the basis of lack of information. Owners are strongly encouraged to submit part 2 of the application prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at their own risk. Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not

be relied on by owners as applicable to other projects.

(2) A project does not become a certified rehabilitation until it is completed and so designated by the NPS. A determination that the completed rehabilitation of a property not yet designated a certified historic structure meets the Secretary's Standards for Rehabilitation does not constitute a certification of rehabilitation. When requesting certification of a completed rehabilitation project, the owner shall submit a Request for Certification of Completed Work (NPS Form 10–168c) and provide the project completion date and a signed statement that the completed rehabilitation project meets the Secretary's Standards for Rehabilitation and is consistent with the work described in part 2 of the Historic Preservation Certification Application. Also required in requesting certification of a completed rehabilitation project are costs attributed to the rehabilitation, photographs adequate to document the completed rehabilitation, and the social security or taxpayer identification number(s) of all owners.

(b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment, as determined by the Secretary, as well as related demolition, new construction or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure(s). More specific considerations in this regard are as follows:

(1) All elements of the rehabilitation project must meet the Secretary's ten Standards for Rehabilitation (§ 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted. In general, an owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or rehabilitation work that was undertaken by previous owners or third parties.

(2) However, if the Secretary considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project subject to review hereunder, the Secretary may choose to deny a rehabilitation certification or to withhold a decision on such a certification until such time as the Internal Revenue Service, through a private letter ruling, has determined, pursuant to these regulations and applicable provisions of the Internal Revenue Code and income tax regulations, the proper scope of the rehabilitation project to be reviewed by the Secretary. Factors to be taken into account by the Secretary and the Internal Revenue Service in this regard include, but are not limited to, the facts and circumstance of each application and (i) whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and (ii) whether property conveyances, reconfigurations, ostensible ownership transfers or other transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the Secretary without substantially altering beneficial ownership or control of the property. The fact that a property may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction or demolition work does not preclude the Secretary or the Internal Revenue Service from determining that such inappropriate work is part of the rehabilitation project to be reviewed by the Secretary.

(3) Conformance to the Standards will be determined on the basis of the application documentation and other available information by evaluating the property as it existed prior to the commencement of the rehabilitation project, regardless of when the property becomes or became a certified historic structure.

(4) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation certification will be issued on the merits of the overall project rather than for each structure

or individual component. For rehabilitation projects where there is no historic functional relationship among the structures, the certification decision will be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes.

(5) Demolition of a building as part of a rehabilitation project involving multiple buildings may result in denial of certification of the rehabilitation. In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction which physically expands one certified historic structure undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure will generally result in denial of certification of the rehabilitation unless a determination has been made that the building to be demolished is not a certified historic structure as in §67.4(a). In rehabilitation projects where the structures have been determined to be functionally related historically, demolition of a component may be approved, in limited circumstances, when:

(i) The component is outside the period of significance of the property, or

(ii) The component is so deteriorated or altered that its integrity has been irretrievably lost; or

(iii) The component is a secondary one that generally lacks historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is present to show that retention of the component is not technically or economically feasible.

(6) In situations involving rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and make a certification decision accordingly.

(7) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion, but there is or was a larger related rehabilitation project(s) occurring with respect to the certified historic structure, the Secretary's decision on the requested certification will be based on review of the overall rehabilitation project(s) for the certified historic structure.

(8) For rehabilitation projects which are to be completed in phases over the alternate 60-month period allowed in section 48(g) of the Internal Revenue Code, the initial part 2 application and supporting architectural plans and specifications should identify the project as a 60-month phased project and describe the number and order of the phases and the general scope of the overall rehabilitation project. If the initial part 2 application clearly identifies the project as a phased rehabilitation, the NPS will consider the project in all its phases as a single rehabilitation. If complete information on the rehabilitation work of the later phases is not described in the initial part 2 application, it may be submitted at a later date but must be clearly identified as a later phase of a 60-month phased project that was previously submitted for review. Owners are cautioned that work undertaken in a later phase of a 60-month phased project that does not meet the Standards for Rehabilitation, whether or not submitted for review, will result in a denial of certification of the entire rehabilitation with the tax consequences of such a denial to be determined by the Secretary of the Treasury. Separate certifications for portions of phased rehabilitation projects will not be issued. Rather the owner will be directed to comply with Internal Revenue Service regulations governing late certifications contained in 26 CFR 1.48–12.

(c) Upon receipt of the complete application describing the rehabilitation project, the Secretary shall determine if the project is consistent with the Standards for Rehabilitation. If the project does not meet the Standards for Rehabilitation, the owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such Standards. For additional procedures regarding rehabilitation projects determined not to meet the Standards for Rehabilitation, see §67.6(f).

(d) Once a proposed or ongoing project has been approved, substantive changes in the work as described in the

application must be brought promptly to the attention of the Secretary by written statement through the SHPO to ensure continued conformance to the Standards; such changes should be made using a Historic Preservation Certification Application Continuation/Amendment Sheet (NPS Form 10–168b). The Secretary will notify the owner and the SHPO in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by an authorized representative of the Secretary to determine if the work meets the Standards for Rehabilitation. The Secretary reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook further unapproved project work inconsistent with the Secretary's Standards for Rehabilitation. The tax consequences of a revocation of certification will be determined by the Secretary of the Treasury.

(f) If a proposed, ongoing, or completed rehabilitation project does not meet the Standards for Rehabilitation, an explanatory letter will be sent to the owner with a copy to the SHPO. A rehabilitated property not in conformance with the Standards for Rehabilitation and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the National Register in accord with Department of the Interior regulations 36 CFR part 60. Similarly, if a property has lost those qualities which caused it to be designated a certified historic structure, it will be certified as noncontributing (see § 67.4 and § 67.5). In either case, the delisting or certification of nonsignificance is considered effective as of the date of issue and is not considered to be retroactive. In these situations, the Internal Revenue Service will be notified of the substantial alterations. The tax consequences of a denial of certification will be determined by the Secretary of the Treasury.

### § 67.7 Standards for Rehabilitation.

(a) The following Standards for Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

(b) The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. (The application of these Standards to rehabilitation projects is to be the same as under the previous version so that a project previously acceptable would continue to be acceptable under these Standards.)

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) The quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repointing techniques; improper exterior masonry cleaning methods; or improper introduction of insulation where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in denial of certification. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial of certification. For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. ''Preservation Briefs'' and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the SHPOs and NPS regional offices. Owners are responsible for procuring this material as part of property planning for a certified rehabilitation.

(d) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme intervention as part of a certified rehabilitation if:

(1) The necessity for dismantling is justified in supporting documentation;

(2) Significant architectural features and overall design are retained; and

(3) Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

Section 48(g) of the Internal Revenue Code of 1986 exempts certified historic structures from meeting the physical test for retention of external walls and internal structural framework specified therein for other rehabilitated buildings. Nevertheless, owners are cautioned that the Standards for Rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, *i.e.*, external walls that

detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the Standards for Rehabilitation.

(e) Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.

(f) The qualities of a property and its environment which qualify it as a certified historic structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; such determinations are not limited to information contained in National Register or related documentation.

### § 67.8 Certifications of statutes.

(a) State or local statutes which will be certified by the Secretary. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any by-laws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating properties of historic significance to the district. To be certified by the Secretary, the statute generally must provide for a duly designated review body, such as a review board or commission, with power to review proposed alterations to structures of historic significance within the boundaries of the district or districts designated under the statute except those owned by governmental entities which, by law, are not under the jurisdiction of the review body.

(b) When the certification of State statutes will have an impact on districts in specific localities, the Secretary encourages State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute.

(c) State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purposes of the State law. Adequate State statutes which designate specific historic districts and do not require specific implementing local statutes will be certified. If the State enabling legislation contains provisions which do not meet the intent of the law, local statutes designated under the authority of the enabling legislation will not be certified. When State enabling legislation exists, it must be certified before any local statutes enacted under its authority can be certified.

(d) Who may apply. Requests for certification of State or local statutes may be made only by the Chief Elected Official of the government which enacted the statute or his or her authorized representative. The applicant shall certify in writing that he or she is authorized by the appropriate State or local governing body to apply for certification.

(e) Statute certification process. Requests for certification of State or local statutes shall be made as follows:

(1) The request shall be made in writing from the duly authorized representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification of significance in a district unless another responsible person is indicated including his or her address and telephone number. The request shall also include a copy of the

statute(s) for which certification is requested, including any by-laws or ordinances that contain information necessary for the certification of the statute. Local governments shall also submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(2) Requests shall be sent to the SHPO in participating States and directly to appropriate NPS regional offices in nonparticipating States.

(3) The Secretary shall review the statute(s) and assess whether the statute(s) and any by-laws or ordinances that contain information necessary for the certification of the statute contain criteria which will substantially achieve the purposes of preserving and rehabilitating properties of historic significance to the district(s) based upon the standards set out above in §67.8(a). The SHPO shall be given a 30-day opportunity to comment upon the request. Comments received from the SHPO within this time period will be considered by the Secretary in the review process. If the statute(s) contain such provisions and if this and other provisions in the statute will substantially achieve the purpose of preserving and rehabilitating properties of historic significance to the district, the Secretary will certify the statute(s).

(4) The Secretary generally provides written notification within 30 days of receipt by the NPS to the duly authorized representative and to the SHPO when certification of the statute is given or denied. If certification is denied, the notification will provide an explanation of the reason(s) for such denial.

(f) Amendment or repeal of statute(s). State or local governments, as appropriate, must notify the Secretary in the event that certified statutes are repealed, whereupon the certification of the statute (and any districts designated thereunder) will be withdrawn by the Secretary. If a certified statute is amended, the duly authorized representative shall submit the amendment(s) to the Secretary, with a copy to the SHPO, for review in accordance with the procedures outlined above. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative and the SHPO within 60 days of receipt.

(g) The Secretary may withdraw certification of a statute (and any districts designated thereunder) on his own initiative if it is repeal or amended to be inconsistent with certification requirements after providing the duly authorized representative and the SHPO 30 days in which to comment prior to the withdrawal of certification.

### §67.9 Certifications of State or local historic districts.

(a) The particular State or local historic district must also be certified by the Secretary as substantially meeting National Register criteria, thereby qualifying it as a registered historic district, before the Secretary will process requests for certification of individual properties within a district or districts established under a certified statute.

(b) The provision described herein will not apply to properties within a State or local district until the district has been certified, even if the statute creating the district has been certified by the Secretary.

(c) The Secretary considers the duly authorized representative requesting certification of a statute to be the official responsible for submitting district documentation for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address, and telephone number. The Secretary considers the authorizing statement of the duly authorized representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated.

(d) Requests shall be sent to the SHPO in participating States and directly to the appropriate NPS regional office in nonparticipating States. The SHPO shall be given a 30-day opportunity to comment upon an adequately documented request. Comments received from the SHPO within this time

period will be considered by the Secretary in the review process. The guidelines in National Register Bulletin 16, ''Guidelines for Completing National Register of Historic Places Forms,'' provide information on how to document historic districts for the National Register. Each request should include the following documentation:

(1) A description of the general physical or historical qualities which make this a district; and explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of buildings in the district.

(2) A concise statement of why the district has significance, including an explanation of the areas and periods of significance, and why it meets National Register criteria for listing (see 36 CFR part 60); the relevant criteria should be identified (A, B, C, and D).

(3) A definition of what types of properties contribute and do not contribute to the significance of the district as well as an estimate of the percentage of properties within the district that do not contribute to its significance.

(4) A map showing all district properties with, if possible, identification of contributing and noncontributing properties; the map should clearly show the district's boundaries.

(5) Photographs of typical areas in the district as well as major types of contributing and noncontributing properties; all photographs should be keyed to the map.

(e) Districts designated by certified State or local statutes shall be evaluated using the National Register criteria (36 CFR part 60) within 30 days of the receipt of the required documentation by the Secretary. Written notification of the Secretary's decision will be sent to the duly authorized representative or to the person designated as responsible for the district documentation.

(f) Certification of statutes and districts does not constitute certification of significance of individual properties within the district or of rehabilitation projects by the Secretary.

(g) Districts certified by the Secretary as substantially meeting the requirements for listing will be determined eligible for listing in the National Register at the time of certification and will be published as such in the FEDERAL REGISTER.

(h) Documentation on additional districts designated under a State or local statute the has been certified by the Secretary should be submitted to the Secretary for certification following the same procedures and including the same information outlined in the section above.

(i) State or local governments, as appropriate, shall notify the Secretary if a certified district designation is amended (including boundary changes) or repealed. If a certified district designation is amended, the duly authorized representative shall submit documentation describing the change(s) and, if the district has been increased in size, information on the new areas as outlined in § 67.9. A revised statement of significance for the district as a whole shall also be included to reflect any changes in overall significance as a result of the addition or deletion of areas. Review procedures shall follow those outlined in § 67.9 (d) and (e). The Secretary will withdraw certification of repealed or inappropriately amended certified district designations, thereby disqualifying them as registered historic districts.

(j) The Secretary may withdraw certification of a district on his own initiative if it ceases to meet the National Register Criteria for Evaluation after providing the duly authorized representative and the SHPO 30 days in which to comment prior to withdrawal of certification.

(k) The Secretary urges State and local review boards of commissions to become familiar with the Standards used by the Secretary of the Interior for certifying the rehabilitation of historic properties and to consider their adoption for local design review.

### § 67.10 Appeals.

(a) An appeal by the owner, or duly authorized representative as appropriate, may be made from any of the certifications or denials of certification made pursuant to this part or any decisions made pursuant to § 67.6(f). Such appeals must be in writing and received by the Chief Appeals Officer, Cultural Resources, National

Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal but all information the owner wishes the Chief Appeals Officer to consider must be submitted in writing. The SHPO will be notified that an appeal is pending. The Chief Appeals Officer will consider the record of the decision in question, any further written submissions by the owner, and other available information and shall provide the appellant a written decision as promptly as circumstances permit. Such appeals constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) The denial of a preliminary determination of significance for an individual property may not be appealed by the owner because the denial itself does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR part 60). Similarly, the denial of preliminary certification for a rehabilitation for a rehabilitation project for a property that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. Administrative reviews in these circumstances may be performed at the discretion of the Chief Appeals Officer. The decision to undertaken an administrative review will be made on a case-by-case basis, depending on particular facts and circumstances and the Chief Appeals Officer's schedule, the expected date for nomination, and the nature of the rehabilitation project (proposed, ongoing, or completed). Administrative reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the property in the National Register.

(c) In considering such appeals or administrative reviews, the Chief Appeals Officer shall take in account alleged errors in professional judgment or alleged prejudicial procedural errors by NPS officials. The Chief Appeals Officer's decision may:

(1) Reverse the appealed decision;

(2) Affirm the appealed decision;

(3) Resubmit the matter to the appropriate Regional Director for further consideration; or

(4) Where appropriate, withhold a decision until issuance of a ruling from the Internal Revenue Service pursuant to §67.6(b)(2).

The Chief Appeals Officer may base his decision in whole or part on matters or factors not discussed in the decision appealed from. The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the Standards set forth herein or he considers that prejudicial procedural error by a Federal official legally compels issuance of the requested certification.

(d) The decision of the Chief Appeals Officer shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Chief Appeals Officer has issued a final administrative decision pursuant to this section.

### §67.11 Fees for processing rehabilitation certification requests.

(a) Fees are charged for reviewing rehabilitation certification requests in accordance with the schedule below.

(b) Payment shall not be made until requested by the NPS regional office according to instructions accompanying the Historic Preservation Certification Application. All checks shall be made payable to: *National Park Services*. A certification decision will not be issued on an application until the appropriate remittance is received. Fees are nonrefundable.

(c) The fee for review of proposed or ongoing rehabilitation projects for projects over $20,000 is $250. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the

owner in the Historic Preservation Certification Application, Request for Certification of Completed Work (NPS Form 10–168c), as follows:

| Fee | Size of rehabilitation |
|---|---|
| $500 | $20,000 to $99,999 |
| $800 | $100,000 to $499,999 |
| $1,500 | $500,000 to $999,999 |
| $2,500 | $1,000,000 or more |

If review of a proposed or ongoing rehabilitation project had been undertaken by the Secretary prior to submission of Request for Certification of Completed Work, the initial fee of $250 will be deducted from these fees. No fee will be charged for rehabilitations under $20,000.

(d) In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

(1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, the fee for preliminary review is $250 and the fee for final review is computed on the basis of the total rehabilitation costs.

(2) In the case of multiple building projects where there is no historic functional relationship among the structures and which are under the same ownership; are located in the same historic district; are adjacent or contiguous; are of the same architectural type (*e.g.*, rowhouses, loft buildings, commercial buildings); and are submitted by the owner for review at the same time, the fee for preliminary review is $250 per structure to a maximum of $2,500 and the fee for final review is computed on the basis of the total rehabilitation costs of the entire multiple building project to a maximum of $2,500. If the $2,500 maximum fee was paid at the time of review of the proposed or ongoing rehabilitation project, no further fee will be charged for review of a Request for Certification of Completed Work.

# PART 68—THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

Sec.
68.1 Intent.
68.2 Definitions.
68.3 Standards.

AUTHORITY: The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); sec. 2124 of the Tax Reform Act of 1976, 90 Stat. 1918; EO 11593, 3 CFR part 75 (1971); sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 60 FR 35843, July 12, 1995, unless otherwise noted.

## § 68.1 Intent.

The intent of this part is to set forth standards for the treatment of historic properties containing standards for preservation, rehabilitation, restoration and reconstruction. These standards apply to all proposed grant-in-aid development projects assisted through the National Historic Preservation Fund. 36 CFR part 67 focuses on ''certified historic structures'' as defined by the IRS Code of 1986. Those regulations are used in the Preservation Tax Incentives Program. 36 CFR part 67 should continue to be used when property owners are seeking certification for Federal tax benefits.

## § 68.2 Definitions.

The standards for the treatment of historic properties will be used by the National Park Service and State historic preservation officers and their staff members in planning, undertaking and supervising grant-assisted projects for preservation, rehabilitation, restoration and reconstruction. For the purposes of this part:

(a) *Preservation* means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of

mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

(b) *Rehabilitation* means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

(c) *Restoration* means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

(d) *Reconstruction* means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

**§68.3 Standards.**

One set of standards—preservation, rehabilitation, restoration or reconstruction—will apply to a property undergoing treatment, depending upon the property's significance, existing physical condition, the extent of documentation available and interpretive goals, when applicable. The standards will be applied taking into consideration the economic and technical feasibility of each project.

(a) *Preservation*. (1) A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

(2) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(b) *Rehabilitation*. (1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

(2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or

examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) *Restoration.* (1) A property will be used as it was historically or be given a new use that interprets the property and its restoration period.

(2) Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Materials, features, spaces and finishes that characterize other historical periods will be documented prior to their alteration or removal.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

(6) Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

(7) Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(8) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(9) Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(10) Designs that were never executed historically will not be constructed.

(d) *Reconstruction.* (1) Reconstruction will be used to depict vanished or nonsurviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property.

(2) Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

(3) Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

(4) Reconstruction will be based on the accurate duplication of historic

features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.

(5) A reconstruction will be clearly identified as a contemporary re-creation.

(6) Designs that were never executed historically will not be constructed.

## PART 71—RECREATION FEES

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AUTHORITY: Sec. 4, Land and Water Conservation Fund Act of 1965 (16 U.S.C.A. 4601–6a (Supp., 1974)), as amended by Pub. L. 93–303; and sec. 3, Act of July 11, 1972, 86 Stat. 461; sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 39 FR 33217, Sept. 16, 1974, unless otherwise noted. Redesignated at 44 FR 7143, Feb. 6, 1979, and 46 FR 34329, July 1, 1981; correctly redesignated at 46 FR 43045, Aug. 26, 1981.

### § 71.1 Application.

This part is promulgated pursuant to section 4, Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601–6a (Supp., 1974), and section 3, Act of July 11, 1972, 86 Stat. 461. Any Federal recreation fee charged by any bureau of the Department of the Interior shall be charged according to criteria set forth in this part.

### § 71.2 Types of Federal recreation fees.

There shall be three types of Federal recreation fees:

(a) Entrance fees, charged either on an annual or single-visit basis, for admission to any Designated Entrance Fee Area;

(b) Daily recreation use fees for the use of specialized sites, facilities, equipment or services furnished at Federal expense; and

(c) Special recreation permit fees for specialized recreation uses, such as, but not limited to, group activities, recreation events, and the use of motorized recreation vehicles.

### § 71.3 Designation.

(a) An area or closely related group of areas shall be designated as an area at which entrance fees shall be charged (hereinafter ''Designated Entrance Fee Area'') if the following conditions are found to exist concurrently:

(1) The area is a unit of the National Park System administered by the Department of the Interior;

(2) The area is administered primarily for scenic, scientific, historical, cultural, or recreation purposes;

(3) The area has recreation facilities or services provided at Federal expense; and

(4) The nature of the area is such that entrance fee collection is administratively and economically practical.

(b) Any specialized site, facility, equipment or service related to outdoor recreation (hereinafter ''facility'') shall be designated as a facility for which a recreation use fee shall be charged (hereinafter ''Designated Recreation Use Facility'') if:

(1) For each Designated Recreation Use Facility, at least one of the following criteria is satisfied:

(i) A substantial Federal investment has been made in the facility,

(ii) The facility requires regular maintenance,

(iii) The facility is characterized by the presence of personnel, or

(iv) The facility is utilized for the personal benefit of the user for a fixed period of time; and,

(2) For each Designated Recreation Use Facility, all of the following criteria are satisfied:

(i) The facility is developed, administered, or provided by any bureau of the Department of the Interior,

(ii) The facility is provided at Federal expense, and

(iii) The nature of the facility is such that fee collection is administratively and economically practical.

(3) In no event shall any of the following, whether used singly or in any combination, be designated as facilities for which recreation use fees shall be charged: Drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, toilet facilities, picnic tables, and boat ramps. The first sentence of this paragraph does not apply to boat launching facilities with specialized facilities or services, such as mechanical or hydraulic boat lifts or facilities. Such boat launching facilities shall be designated as facilities for which recreation use fees shall be charged, *Provided*, They satisfy the requirements of paragraphs (b) (1) and (2) of this section.

(4) In no event shall a campground, which satisfies the requirements of paragraphs (b) (1) and (2) of this section, be designated as a facility for which recreation use fees shall be charged unless the campground has all of the following: Tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal fee collection, reasonable visitor protection, and simple devices for containing a campfire where campfires are permitted. A campground may be designated for recreation use fee collection whether the above enumerated amenities are provided for individual or group use.

(c) Any specialized recreation use including, but not limited to, group activities, recreation events, or the use of motorized recreation vehicles, shall qualify as a use for which a special recreation permit fee may be charged (hereinafter ''Special Recreation Permit Use'') if such use occurs in areas under the jurisdiction of any bureau of the Department of the Interior.

**§ 71.4 Posting.**

(a) The administering bureaus of the Department of the Interior shall provide for the posting of the following designation sign at entrances to Designated Entrance Fee Areas and at appropriate locations in areas with Designated Recreation Use Facilities in such a manner that the visiting public will be clearly notified that Federal recreation fees are charged. The designation sign shall:

(1) Be constructed of enameled steel, coated aluminum, silk screen reflective materials attached to wood or metal, or other permanent materials;

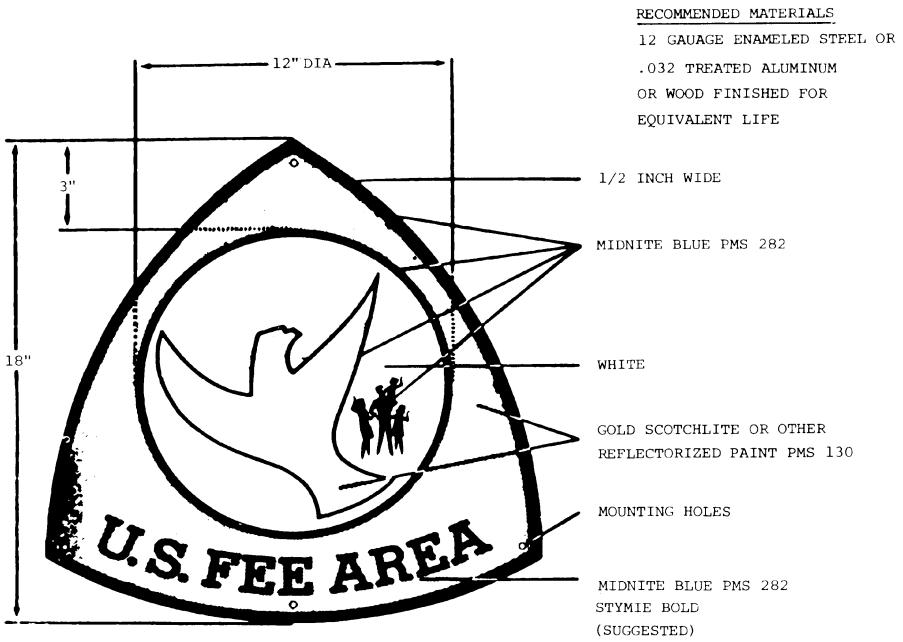
(2) Consist of the basic elements, proportion, and color as indicated below:

(i) The representation of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border) framed by a rounded triangle (colored gold with a midnight blue border).

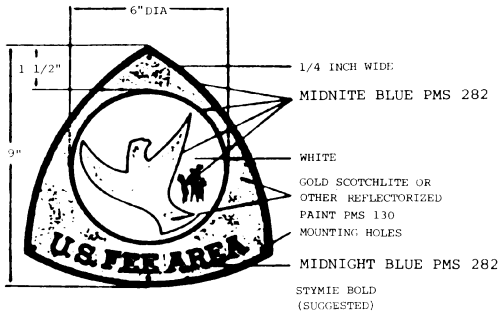
(A) The color midnight blue shall be Pantone Matching System 282; the color gold shall be Pantone Matching System 130;

(B) The rounded triangle shall be 18 inches in vertical height at all Designated Entrance Fee Areas, except that at those areas accessible only on foot, the rounded triangle may be 9 inches vertical height;

(ii) The words ''U.S. Fee Area'' as indicated below.




DIMENSIONS FOR STANDARD SIGN




DIMENSIONS FOR OPTIONAL
HALF-SIZE SIGN
FOR WALK-IN AREAS

(b) Clear notice shall be posted by any bureau issuing special recreation permits at its area headquarters having administrative jurisdiction over the area in which the use authorized by such a permit is to occur, that fees are charged for such permits. In addition, any specialized recreation use authorized by permit shall, if reasonably feasible, be posted with the designation sign described in paragraph (a) of this section at the site of use at the time of use.

(c) Proportionally sized replicas of the designation sign described in paragraph (a) of this section may be used in conjunction with other signs erected by any bureau of the Department of the Interior which direct the public to

Designated Entrance Fee Areas, Designated Recreation Use Facilities, or Special Recreation Permit Uses.

(d) No entrance fee for admission to any Designated Entrance Fee Area or recreation use fee for the use of any Designated Recreation Use Facility shall be collected unless such area or facility is posted in accordance with this section. No fee for any Special Recreation Permit Use shall be collected unless clear notice that such a fee is charged is posted at the area headquarters of the bureau issuing such permit in which the use authorized by the permit is to occur.

### § 71.5 Golden Eagle Passport.

(a) The Golden Eagle Passport is an annual permit, valid on a calendar-year basis, for admission to any Designated Entrance Fee Area. The charge for the Golden Eagle Passport shall be $10. The annual Golden Eagle Passport shall be nontransferable and the unlawful use thereof shall be punishable in the manner described in § 71.12 of this part.

(b) The Golden Eagle Passport shall admit the permittee and any persons accompany him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to Designated Entrance Fee Areas. Golden Eagle Passport coverage does not include a permittee and his spouse, children, or parents entering a Designated Entrance Fee Area in two separate, private, noncommercial vehicles. In this case, only the vehicle with the permittee shall be covered by the Passport. The persons in the second vehicle shall be subject to the single-visit entrance fee requirement.

(1) ''Private, noncommercial vehicle,'' for the purpose of this part, shall include any passenger car, station wagon, pickup camper truck, motorcycle, or other motor vehicle which is used for private recreation purposes.

(2) ''Accompanying,'' for the purpose of this section, shall be defined as coming immediately with (at the same time) and entering together with (in physical proximity).

(c) The annual Golden Eagle Passport does not authorize the use of any Designated Recreation Use Facility for which a recreation use fee is charged or any Special Recreation Permit Use for which a special recreation permit fee is charged.

(d) The annual Golden Eagle Passport shall be for sale at all Designated Entrance Fee Areas of the National Park Service, at the National Park Service headquarters, Washington, D.C., and at the Park Service field offices.

### § 71.6 Golden Age Passport.

(a) Issuance of the Golden Age Passport:

(1) Golden Age Passports will be issued by appropriate Federal personnel (hereinafter ''Issuing Officer'') at National Park Service headquarters, Washington, D.C., and at field offices designated by the heads of the bureaus administering Designated Entrance Fee Areas and Designated Recreation Use Facilities.

(2) The Golden Age Passport will be issued free of charge upon the presentation of identification or information which attests to the fact that the applicant is a person 62 years of age or older and a citizen of the United States, or if not a citizen, domiciled therein. To satisfy the age requirement such identification may include, but is not limited to a State driver's license or birth certificate. To satisfy the citizenship requirement, such identification may include, but is not limited to, a birth certificate or a voter registration card issued by a State or Territory, or a political subdivision thereof, of the United States.

(3) For the purpose of this section, an applicant should be regarded as being ''domiciled'' in the United States if he has a fixed and permanent residence in the United States or its Territories to which he has the intention of returning whenever he is absent. Accordingly, an alien may be domiciled in the United States if he maintains a fixed and permanent residence therein to which he has the intention of returning whenever he is absent. An alien who temporarily travels or works in the United States, even for a period of years, shall not be regarded as domiciled therein if that alien has no intention of permanently maintaining his residence in the United States.

(4) The Golden Age Passport, commencing with the issuance of the 1975 Golden Age Passports, shall be a lifetime permit valid for the life of the permittee.

(5) Any applicant meeting the age and other requirements described in paragraph (a)(2) of this section not having in his possession any identification or information evidencing his qualification for a Golden Age Passport may be issued such a Passport on the basis of the affidavit below, if such an affidavit is signed in front of the Issuing Officer.

Passport No _____

Date _____

To the Secretary of the Interior:

I do hereby swear or affirm that I am 62 years of age or older, that I am a citizen of the United States or that I am domiciled therein and that I am duly entitled to be issued free of charge one Golden Age Passport pursuant to the Land and Water Conservation Fund Act of 1965, 16 U.S.C. A.460*l*–6a (Supp., 1974), as amended by Pub. L. 93–303.

Signature _____

Street _____

Town, City, State _____

Issuing Officer _____

(6) The Passport must be applied for in person and signed in front of the Issuing Officer or otherwise it will be treated as invalid.

(7) The Golden Age Passport shall be nontransferable and the unlawful use thereof shall be punishable in the manner described in § 71.12 of this part.

(b) The Golden Age Passport shall admit the permittee and any persons accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the areas is by means other than private, noncommercial vehicle to Designated Entrance Fee Areas. Golden Age Passport coverage does not include a permittee and his spouse or children entering a Designated Entrance Fee Area in two separate, private, noncommercial vehicles. In this case, only the vehicle with the permittee shall be covered by the Passport. The persons in the second vehicle shall be subject to the single-visit entrance fee requirement.

(1) ''Private, noncommercial vehicle,'' for the purposes of this subsection, shall be defined the same as in § 71.5(b)(1).

(2) ''Accompanying,'' for the purpose of this subsection, shall be defined the same as in § 71.5(b)(2).

(c) Any Golden Age Passport permittee shall be entitled upon presentation of the Passport to utilize Designated Recreation Use Facilities at a rate of 50 percent of the established recreation use fees.

(d) The Golden Age Passport does not authorize any specialized recreation use for which a special recreation permit fee is changed.

### § 71.7 Entrance fees for single-visit permits.

(a) Entrance fees for single-visit permits shall be selected by the National Park Service from within the range of fees listed below, provided that such fees are established in accordance with the following criteria:

(1) The direct and indirect cost to the Government;

(2) The benefit to the recipient;

(3) The public policy or interest served;

(4) The comparable recreation fees charged by other Federal and non-Federal public agencies within the service area of the management unit at which the fee is charged;

(5) The economic and administrative feasibility of fee collection; and,

(6) Other pertinent factors.

(b) There shall be two types of single-visit entrance fees charged at Designated Entrance Fee Areas for those persons not covered by either Golden Eagle or Golden Age Passports.

(1) The fee for a single-visit permit applicable to those persons entering by private, noncommercial vehicle shall be no more than $3 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in said vehicle. The single-visit permit shall be valid only at the one Designated Entrance Fee Area for which it was purchased. ''Accompanying,'' for the purpose of this section, shall mean entering together with the permittee while being transported by the same private, noncommercial vehicle which the permittee occupies.

(2) The fee for a single-visit permit applicable to those persons entering by

any means other than private, noncommercial vehicle shall be no more than $1.50 per person and shall be valid at the one Designated Entrance Fee Area for which it is paid.

(c) Any of the permits provided for in paragraphs (a) and (b) of this section shall be valid at the Designated Entrance Fee Area for which it was purchased during the same calendar day of purchase. In addition, at overnight use areas, the single-visit permit shall be valid as long as the permittee and those covered by his permit remain within the boundaries of the Designated Entrance Fee Area, beginning from the first day of entry until the day of departure; except that on the same day that the entrance fee is paid, the permittee and those covered by the permit may leave and reenter without payment of additional fees.

[39 FR 33217, Sept. 16, 1974, as amended at 41 FR 22563, June 4, 1976. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981]

### § 71.8 Validation and display of entrance permits.

(a) Every annual and lifetime permit shall be validated by the signature of its bearer on the face of the permit at the time of its receipt.

(b) All annual, lifetime and single-visit permits shall be nontransferable.

(c) Every permit shall be kept on the person of its owner, and shall be exhibited on the request of any authorized representative of the administering bureau.

### § 71.9 Establishment of recreation use fees.

(a) Recreation use fees shall be established by all outdoor recreation administering agencies of the Department of the Interior in accordance with the following criteria:

(1) The direct and indirect cost to the government,

(2) The benefit to the recipient,

(3) The public policy or interest served,

(4) The comparable recreation fees charged by other Federal agencies, non-Federal public agencies and the private sector located within the service area of the management unit at which the fee is charged,

(5) The economic and administrative feasibility of fee collection, and

(6) Other pertinent factors.

(b) With the approval of the Secretary of the Interior recreation use fees may be established for other types of facilities in addition to those which are listed below.

(c) Types of recreation facilities for which use fees may be charged:

Tent, trailer and recreation vehicle sites[1]
Group camping sites[1,2]
Specialized boat launching facilities and services[3]
Lockers
Boat storage and handling
Elevators
Ferries and other means of transportation
Bathhouses
Swimming pools
Overnight shelters
Guided tours
Electrical hook-ups
Vehicle and trailer storage
Rental of nonmotorized boats
Rental of motorized boats
Rental of hunting blinds
Reservation services
Specialized sites (highly developed)

[45 FR 43168, June 26, 1980. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981]

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[1] Provided, That in no event shall there be a charge for the use of any campsite and adjacent related facilities unless the campground in which the site is located has all of the following: Tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the bureau operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted).

[2] The administering agency may establish a group use rate in lieu of the above ''Group Camping Sites'' recreation use fee in accordance with the criteria set out in this section provided such rate is not less than $3.00 per day per group. Such a group use rate may constitute either a special recreation permit fee or a recreation use fee as determined by the administering agency.

[3] Use fees for boat ramps are prohibited. However, in the case of boat launching facilities with specialized facilities or services, such as mechanical or hydraulic lifts, reasonable fees may be assessed in accordance with the criteria set out in a paragraph (a) of this section.

### § 71.10 Special recreation permits and special recreation permit fees.

(a) Special recreation permits may be required in accordance with procedures established by the administering bureaus for specialized recreation uses, such as, but not limited to, group activities, recreation events, and the use of motorized recreation vehicles. In any instance where such a permit is required, the following conditions must be satisfied:

(1) The use complies with pertinent State and Federal laws and regulations on public health, safety, air quality, and water quality;

(2) The use will not adversely impact archeological, historic or primitive values and is not in conflict with existing resource management programs and objectives;

(3) The necessary clean-up and restoration is made for any damage to resources or facilities; and

(4) The use is restricted, to the extent practicable, to an area where minimal impact is imposed on the environmental, cultural or natural resource values.

(b) Fees for special recreation permits shall be established by all outdoor recreation bureaus of the Department of the Interior issuing such permits in accordance with the following criteria:

(1) The direct and indirect cost to the Government;

(2) The benefit to the recipient;

(3) The public policy or interest served;

(4) The comparable recreation fees charged by other Federal and non-Federal public agencies within the service area of the management unit at which the fee is charged;

(5) The economic and administrative feasibility of fee collection; and

(6) Other pertinent factors.

### § 71.11 Collection of Federal recreation fees.

The bureaus of the Department of the Interior administering outdoor recreation programs shall provide for the collection of entrance fees at the place of admission to Designated Entrance Fee Areas; they shall provide for the collection of recreation use fees and/or special recreation permit fees at the place of use or at a location reasonably convenient for the public and the bureaus.

### § 71.12 Enforcement.

Persons authorized by the heads of the appropriate bureaus to enforce these regulations may arrest any person who violates these rules and regulations within areas under the administration or authority of such bureau head with a warrant or, if the offense is committed in his presence, without a warrant. Any violations of the rules and regulations issued in this part, except those in § 71.15, shall be punishable by a fine of not more than $100.

### § 71.13 Exceptions, exclusions, and exemptions.

In the application of the provisions of this part, the following exceptions, exclusions, and exemptions shall apply:

(a) Nothing contained herein shall authorize Federal hunting or fishing licenses or fees;

(b) No entrance fee shall be charged for travel by private noncommercial vehicle over any National Parkway, or any road or highway established as part of the National Federal-Aid System, which is commonly used by the public as a means of travel between two places, either or both of which are outside the Designated Entrance Fee Area;

(c) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway to any land in which such person has any property right if such land is within any Designated Entrance Fee Area.

(d) No Federal recreation fee shall be charged for commercial or other activities not related to recreation, including, but not limited to, organized tours or outings conducted for educational or scientific purposes related to the resources of the area visited by bona fide institutions established for these purposes. Applicants for waiver of fees on this basis will be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State or local government bodies and will also be required to provide a statement as to the purposes of the visit proposed. The use of any recreation facilities for which a

fee waiver is requested must relate directly to scientific or educational purposes of the visit and may not be primarily for recreational purposes. No Federal recreation fee shall be charged any hospital inmate actively involved in medical treatment or therapy in the area visited.

(e) No entrance fee shall be charged any person conducting State, local, or Federal government business.

(f) No entrance fee shall be charged at any entrance to Great Smoky Mountains National Park unless such fees are charged at main highway and thoroughfare entrances.

(g) No entrance fees shall be charged for persons who have not reached their 16th birthday.

(h) Until July 12, 1975, no entrance fee shall be charged a foreign visitor to the United States seeking admission to any Designated Entrance Fee Area upon presentation of a valid passport.

(i) No entrance fees shall be charged persons having a right of access to lands or waters within a Designated Entrance Fee Area for hunting or fishing privileges under a specific provision of law or treaty.

[39 FR 33217, Sept. 16, 1974; 39 FR 36114, Oct. 8, 1974. Redesignated at 44 FR 7143, Feb. 6, 1979, and 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981]

### § 71.14 Public notification.

The administering bureaus shall notify the public of the specific Federal recreation fees which will be charged at areas and for facilities and uses under their jurisdiction. Such notification shall be accomplished by the posting of fee information in accordance with § 71.4 and the inclusion of such information in publications distributed at each area or facility. Public announcements, press releases and any other suitable means may also be used to provide such notification.

### § 71.15 The Golden Eagle Insignia.

(a) *Definitions.* (1) The term ''The Golden Eagle Insignia'' (hereinafter ''Insignia'') as used in this section, means the words ''The Golden Eagle'' and the representation of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border) framed by a rounded triangle (colored gold with a midnight blue border) which was originated by the Department of the Interior as the official symbol for Federal recreation fee areas.

(2) The term ''Secretary'' as used in this section, means the Secretary of the Interior or any person designated to act for him in any matter to which this section refers.

(3) The term ''commercial use,'' as used in this section, refers to any use, including the reproduction, manufacture, importation, or distribution, of the Insignia the primary purpose of which is to make a profit.

(4) The term ''public service use,'' as used in this section, refers to any use, including the reproduction, manufacture, importation, or distribution, of the Insignia the primary purpose of which is to contribute to the public's information and education about the Federal recreation fee program.

(5) The term ''official use'' refers to uses of the Insignia pursuant to §§ 71.4, 71.5, 71.6, 71.8, 71.10, and 71.14, including, but not limited to, the posting of areas, facilities, and uses with the designation sign described in § 71.4(a), and the design of Golden Eagle and Golden Age Passports, and uses of the Insignia by other Federal agencies.

(6) The Golden Eagle program refers to the Federal outdoor recreation fee program, which provides for the designation of entrance fee areas, recreation use facilities, special recreation permit uses, the issuance of Golden Eagle and Golden Age Passports, and the collection and enforcement of fees at Federal areas and facilities and for specialized recreation uses established by the Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601–6a (Supp., 1974), as amended.

(b) *Licenses for commercial and public service use.* (1) Any person, business, or organization (hereinafter called the applicant) wishing a license for commercial or public service use of the Insignia must make written application to the Secretary stating:

(i) The nature and scope of the intended use.

(ii) The applicant's name and address.

(iii) The nature of the applicant's business or activities, and the relationship between the intended use and said business or activities.

(2) The Secretary, in determining whether to grant a license for the commercial use of the Insignia, will consider the following criteria:

(i) Whether the intended use will be an enhancement of the Golden Eagle program which would complement the program as it is administered by Federal recreation agencies and departments.

(ii) Whether the intended use is likely to cause confusion, or to cause mistake, or to deceive the general public by creating the impression that the use is official.

(iii) Whether the intended use is injurious to the integrity of the concept of the Insignia.

(iv) Whether the intended use is capable of generating enough royalty fee revenue to justify the administrative costs of licensing.

(3) The Secretary, in determining whether to grant a license for the public service use of the Insignia, will consider the following criteria:

(i) Whether the intended use will be an enhancement of the Golden Eagle program which would complement the program as it is administered by Federal recreation agencies and departments.

(ii) Whether the intended use is injurious to the integrity of the concept of the Insignia.

(4) Any license granted by the Secretary for commercial use of the Insignia is subject to the following terms and conditions:

(i) The license is nontransferable.

(ii) All proposed uses of the Insignia must be approved by the Secretary prior to manufacture, importation, or reproduction by the licensee. The Insignia shall not be used in conjunction with substances inherently dangerous to the public.

(iii) The license shall contain equal employment opportunity provisions in compliance with Executive Order 11246, 30 FR 12319 (1965), as amended, and regulations issued pursuant thereto (41 CFR Ch. 60) unless the royalty fees to be paid under the license are not expected to exceed $10,000.

(iv) The license shall be subject to revocation by the Secretary at any time that he finds that: (*a*) The criteria under which the license was granted are not being fulfilled; or (*b*) there has been a violation of the terms and conditions of the license.

(5) Any license granted by the Secretary for public service use of the Insignia is subject to the following terms and conditions:

(i) The license is nontransferable.

(ii) All proposed uses of the Insignia must be approved by the Secretary prior to manufacture, importation, reproduction, or distribution by the licensee.

(iii) The license shall be subject to revocation by the Secretary at any time that he finds that: (*a*) The criteria under which the license was granted are not being fulfilled; or (*b*) there has been a violation of the terms and conditions of the license.

(c) *Unauthorized use of the Insignia.* (1) Unauthorized use of the Insignia is all use except: The licensed commercial use or public service use of the Insignia; official use of the Insignia; and any lawful use of the Insignia, similar emblem, sign or words which antedates the Act of July 11, 1972, 86 Stat. 459.

(2) Whoever makes unauthorized use of the Insignia or any facsimile thereof, in such a manner as is likely to cause confusion, or to cause mistake or to deceive the public by creating the impression that the use is official, shall be fined not more than $250 or imprisoned not more than 6 months or both.

(3) Any unauthorized use of the Insignia may be enjoined at the suit of the Attorney General upon complaint by the Secretary.

(d) *Royalty fees for commercial and public service use.* (1) Royalty fees for licensed commercial use of the Insignia shall be established at reasonable rates by contract between the licensee and the Secretary.

(2) Royalty fees for licensed public service use of the Insignia shall be waived by the Secretary.

(e) *Abandonment of the Golden Eagle Insignia.* The rights of the United States in the Golden Eagle Insignia shall terminate if the use of the Insignia is abandoned by the Secretary.

Nonuse for a continued period of 2 years shall constitute abandonment.

# PART 72—URBAN PARK AND RECREATION RECOVERY ACT OF 1978

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AUTHORITY: Title X, National Parks and Recreation Act of 1978, Pub. L. 95–625 (16 U.S.C. 2501–2514); sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

## Subpart A—General

SOURCE: 45 FR 71718, Oct. 29, 1980, unless otherwise noted. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981.

### § 72.1 Purpose of regulations.

The purpose of this rule is to set forth guidelines for awarding and administering the three types of grants available through the UPARR program. The three types of grants available are: Rehabilitation, Innovation and Recovery Action Program. The objectives of this rule are to: (1) Explain the policies to be followed for awarding grants; (2) list the requirements and criteria to be met for each type of grant and discretionary eligibility; (3) discuss fundable uses and limitations; (4) explain how proposals will be selected and funded; and (5) describe the application process and administrative procedures for awarding grants.

### § 72.2 Legislative authority.

The policies and procedures of this rule are created to implement the Urban Park and Recreation Recovery

Act of 1978, Title X of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 2501–2514. The Act provides Federal grants to economically hard-pressed communities specifically for the rehabilitation of critically needed recreation areas and facilities, and for the development of improved recreation services this program is authorized for a period of five years.

**§ 72.3 Definitions.**

As used in this part:

*Applicant Jurisdiction:* The general purpose local government making the actual funding request or in receipt of UPARR funding assistance. This term applies whether the unit is an eligible or discretionary applicant.

*Appropriation:* The yearly funding level made available by Congress to implement the UPARR Act.

*Assistance:* Funds made available by the Service to a grantee in support of a public recreation project.

*Direct Expenditures or Direct Costs:* Those expenditures or costs that can be associated with a specific project.

*Director:* The Director of the National Park Service Conservation and Recreation Service or any other officer or employee of the Service to whom is delegated the authority involved.

*Discretionary Applicants:* General purpose local governments in Standard Metropolitan Statistical Areas as defined by the Census but not included in the list of eligible applicants developed and published in accord with Sec. 1005 of the UPARR Act.

*Federal Management Circular 74–4 (FMC 74–4):* FMC 74–4 establishes principles and standards for determining (administrative) costs applicable to grants and contracts with State and local governments.

*General Purpose Local Government:* Any city, county, town, township, parish, village, or other general purpose political subdivision of a State, including the District of Columbia, and insular areas.

*Grant:* The act of providing a specific sum of money for the development of a specific project, consistent with the terms of a signed agreement; also the amount of money requested or awarded.

*Grantee:* The general purpose local government receiving a UPARR grant for its given use, or for authorized pass-through to another appropriate public or private non-profit agency.

*NPS:* National Park Service Conservation and Recreation Service.

*Historic Property:* Such a property is one listed in, or determined eligible to be listed in the National Register of Historic Places.

*In-kind Contributions:* In-kind contributions represent the value of non-cash contributions provided by: (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of the value of donated or loaned equipment or supplies, or contributed services directly benefiting and specifically identifiable to the project, and can be used as part of the grantee's non-Federal matching share.

*Innovation Grants:* Matching grants to local governments to cover costs of personnel, facilities, equipment, supplies, or services designed to demonstrate innovative, and cost-effective or service-effective ways to augment park and recreation opportunities at the neighborhood level; and to address common problems related to facility operations and improved delivery of recreation service, excluding routine operation and maintenance activities.

*Insular Areas:* Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands.

*Maintenance:* All commonly accepted practices necessary to keep recreation areas and facilities operating in a state of good repair, and to protect them from deterioration resulting from normal wear and tear.

*OMB Circular A–95 (A–95):* Establishes procedures for the evaluation, review and coordination of Federal and federally assisted programs and projects. This circular defines project notification and review procedures governing Federal grant agencies, State, metropolitan and areawide clearinghouses.

*OMB Circular A–102 (A–102):* Circular A–102 provides the standard for establishing consistency and uniformity among Federal agencies in the administration of grants to States, localities and federally recognized Indian tribes.

*Participant:* The grantee, or other agency or organization requesting and/or receiving assistance.

*Pass-through:* The transfer of funds at the discretion of the applicant jurisdiction, to independent, general or special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups), or county or regional park authorities, who offer recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction.

*Pass-through recipient:* Synonymous with subgrantee.

*Private Non-profit Agency:* A reputable community-based, non-profit organization, corporation, or association organized for purposes of providing recreation, conservation, education or other community services directly to urban residents; on a neighborhood or communitywide basis, through voluntary donations, voluntary labor, or public or private grants.

*Project:* A single site-specific area or service-specific program proposed or approved for funding.

*Project Costs:* All necessary charges made by a grantee in accomplishing the objectives of a project, during the grant period.

*Property:* Site and/or facility.

*Proposal:* An application for UPARR assistance which may contain one or more projects.

*Recovery Action Program:* A local park and recreation Recovery Action Program (plan) required under section 1007 of the UPARR Act, which contains expressions of continuing local commitment to objectives, priorities and implementation strategies for overall park and recreation system planning, rehabilitation, service, operation and maintenance.

*Recreation Areas and Facilities:* Parks, buildings, sites, or other indoor or outdoor facilities which are dedicated to recreation purposes and administered by public or private non-profit agencies to serve the recreation needs of community residents. These facilities must be open to the public and readily accessible to residential neighborhoods. They may include multiple-use community centers which have recreation as one of their primary purposes, but major sports areas, exhibition areas, and conference halls used primarily for commercial sports, spectator, or display activities are excluded from UPARR assistance.

*Rehabilitation Grants:* Matching capital grants to local governments for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor recreation areas and facilities; including improvements in park landscapes, buildings, and support facilities; excluding routine maintenance and upkeep activities.

*Secretary:* The Secretary of the Interior.

*SMSA:* Standard Metropolitan Statistical Area as defined by the Bureau of the Census.

*Special Purpose Local Government:* Any local or regional special district, public-purpose corporation or other limited political subdivision of a State: including but not limited to, park authorities; park, conservation, water or sanitary districts; and school districts.

*Sponsor:* See Participant.

*State:* Any State of the United States, or any instrumentality of a State approved by the Governor; the Commonwealth of Puerto Rico, and insular areas.

*Statewide Comprehensive Outdoor Recreation Plan (SCORP):* A State recreation plan required by the Land and Water Conservation Fund Act.

*Subgrantee:* A general or special purpose local government, private nonprofit agency, county or regional park authority requesting or in receipt of UPARR funding under an applicant jurisdiction.

*UPARR:* Urban Park and Recreation Recovery Act of 1978 or Program.

**§§ 72.4–72.9 [Reserved]**

## Subpart B—Local Recovery Action Programs

SOURCE: 45 FR 15457, Mar. 10, 1980, unless otherwise noted. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981.

### § 72.10 General requirements.

Any eligible jurisdiction or discretionary applicant desiring to apply for a grant must develop, submit and have

approved a local Action Program. The Action Program must be submitted to the appropriate National Park Service Regional Office where it will be evaluated and approved. This is a necessary requirement which must precede the awarding of any rehabilitation or innovation grant. Until January 1, 1981, this requirement may be satisfied with an approved Preliminary Action Program. The Preliminary Action Program must include a firm commitment by the local government to complete and adopt a full Action Program within one year of approval of the Preliminary Action Program. After January 1, 1981, no rehabilitation or innovation grant will be awarded without an approved Recovery Action Program on file with the appropriate Regional Office. Communities are required to submit four (4) copies of the Action Program. Regional Offices and their States are:

*Northeast Region*

Federal Office Bldg. Room 9310, 600 Arch Street, Philadelphia, Pennsylvania 19106.
Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

*Southeast Region*

75 Spring Street, Atlanta, Georgia 30303.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands.

*Lake Central Region*

Federal Building, Ann Arbor, Michigan 48107.
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

*Mid-Continent Region*

Denver Federal Center, P.O. Box 25387, Denver, Colorado 80225.
Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

*Pacific Southwest Region*

450 Golden Gate Avenue, San Francisco, California 94102.
American Samoa, Arizona, California, Guam, Hawaii, and Nevada.

*Northwest Region*

Federal Building, 914 Second Avenue, Seattle, Washington 98174.
Idaho, Oregon and Washington.

*South Central Region*

5000 Marble Avenue, N.E., Albuquerque, New Mexico 87110.
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

*Alaska Area Office*

1011 East Tudor, Suite 297, Anchorage, Alaska 99503.

(Sec. 1007(a) and (b) of Title X National Parks and Recreation Act of 1978, Pub. L. 95–625, (16 U.S.C. 2506); sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262))

[45 FR 54335, Aug. 15, 1980. Redesignated at 46 FR 34329, July 1, 1981; and correctly redesignated at 46 FR 43045, Aug. 26, 1981]

### § 72.11 Action program components.

The local government will submit an Action Program which documents the recreation needs of the community together with action plans to meet those identified needs. This Action Program will indicate how the park and recreation system will be revitalized and maintained. While the emphasis of the Action Program will be placed on the rehabilitation of deteriorating facilities, it also will describe how the rehabilitation effort is linked to the overall goals, priorities and strategies of the park and recreation system. The local government must develop the Action Program consistent with and linked to the objectives, needs, plans, and institutional arrangements of the community. The Action Program must present evidence of its consistency with the community's long-range goals and plans as expressed in its comprehensive plans and other documents. The Action Program consists of two sections which are the Assessment and the Action Plan.

### § 72.12 Assessment of needs, problems and issues.

The Action Program should begin with an Assessment describing the existing park and recreation system; issues and problems; goals and objectives. The Assessment should summarize the entire system including: Operation and maintenance; employment and training; programs and services; rehabilitation of existing facilities; and the need for new facilities. The Assessment should also describe how the park and recreation system relates to other

public and private services. The Assessment consists of six parts which are as follows:

(a) *Context*. The context should provide:

(1) A short description of the local jurisdiction including: population; economy; geographical location; type of government; how the park department fits into the government structure; how the planning for parks and recreation is achieved; and the relationship to the community's comprehensive planning effort.

(2) A brief descriptive overview of the park and recreation system which includes a discussion of: The populations being served both within and outside of the jurisdiction; the types of services being provided; the degree to which the system is available and accessible to the populations intended to be served; and projected changes in system use.

(3) A discussion of the elements of planning, financing, programming, operation and maintenance, acquisition and development, and other factors common to park and recreation systems and other community services and prospects for future coordination.

(4) A discussion of the approaches and mechanisms used for citizen participation.

(b) *Physical Issues*. Summary information should be provided on existing facilities including:

(1) Types of facilities and the distribution of acreage and uses at different locations;

(2) Integration of park and recreation planning and facility use with other service agencies such as schools, transportation and housing;

(3) Special facilities for the handicapped or elderly as well as facilities which work to mainstream special populations;

(4) Heavily used non-public or quasi-public facilities;

(5) Facilities of historical and architectural significance which provide recreation and are managed by the park system;

(6) Dependence upon nearby recreation resources outside the local jurisdictions, including public and private resources;

(7) Deficiencies and existing facilities and the needs of the community for new facility development, expansion and/or closure of facilities and the effects of such activities.

(c) *Rehabilitation Issues*. Summary information should be provided on the need for rehabilitation of facilities. This should include:

(1) Geographic areas needing rehabilitation;

(2) Types of sites and properties for rehabilitation;

(3) Importance of rehabilitation in specific geographic areas; and

(4) Value of rehabilitation over replacement through new facility development.

(d) *Service Issues*. Summary information on existing services should outline activities and needs in the following areas:

(1) The type, extent and intended beneficiaries of recreation services;

(2) Special programs for the handicapped, elderly, minorities and mainstreaming programs for special populations;

(3) Relationship between and coordination with public and significant non-public programs and private sector groups;

(4) Extent to which park and recreation services relate to other community services including joint programs with schools, social service organizations, historic preservation groups, libraries, or community education facilities;

(5) Coordination with Federal, State (SCORP), regional, county and other jurisdictional plans and activities having direct and indirect impacts on parks and recreation.

(e) *Management Issues*. Management issues deal with operation of the park and recreation system. Information should summarize the needs and issues of:

(1) Process for developing procedures and policies;

(2) Staffing levels including full-time, seasonal and service personnel, and use of volunteers;

(3) Use of contractual services for recreation programming;

(4) Equipment maintenance and replacement policies; and

(5) Budgeting process, funding cycles and budgets for the past three years

and methods of budgeting (such as zero based or performance budgeting).

(f) *Conclusions, Implications and Issues.* This section should state major conclusions of the discussions in previous sections, summarize the major problems and highlight the implications for actions needed to address the problems which have been outlined in the issues sections.

**§ 72.13 Action plan.**

The purpose of the Assessment is to provide background and justification for an Action Plan. The Action Plan, which is the essential core of the Action Program, must be a clear statement of the community's specific objectives, priorities and implementation strategies in relation to the intent of the Urban Park and Recreation Recovery Program and the local government's overall recreation system goals. The Action Plan should be carefully tailored to the comprehensive community goals and directly responsive to the needs and problems identified in § 72.12. Citizen involvement in the development of the Action Plan is required and may include surveys, hearings, meetings, and/or consultation as appropriate. This involvement is essential in the development of goals, objectives and the setting of project priorities.

(a) *Goals for the System.* This section should set forth the overall goals and specific objectives for the system. Goals will clearly relate to the needs and issues identified in the Assessment and must be projected for at least the five-year life of the Action Program. The goals should be consistent with and, where appropriate, included in the general planning goals of the local government. Where local governments have developed, adopted and are utilizing an overall park and recreation plan, the goals of that plan may be appropriate for this requirement. Goals should be the basis for priorities, schedules and implementation strategies stated in the plan.

(b) *Strategies to Address National and Local Concerns.* This section should include a description of local strategies for recreation system recovery. A ''strategy'' defines the total approach to remedying system deficiencies and provides a rationale for priorities reflected in implementation schedules. Strategies should be devised which address the following national concerns:

(1) Ways in which park and recreation plans contribute to, and will be interrelated with, the local government's community development and urban revitalization efforts;

(2) The degree to which park and recreation plans serve citizens who reside in economically-distressed areas of the community and will improve access to park and recreation facilities and programs for minority groups, low- and moderate-income populations, and the handicapped;

(3) The extent to which the Action Program and its plan component will relate employment opportunities for minorities, youth and low- and moderate-income residents;

(4) How the plan seeks to obtain the widest range of beneficial uses of the natural environment and enhances and protects the natural environment;

(5) How park and recreation resources will be targeted in neighborhoods where other neighborhood revitalization efforts are occurring;

(6) How the plan seeks to restore outstanding or unique structures, landscapes, or similar features in parks of historical or architectural significance;

(7) Local commitments to innovative and cost-effective programs and projects on the neighborhood level which augment recovery of park and recreation systems;

(8) How the plan will be intergrated with other Federally assisted projects to maximize recreation opportunities;

(9) How the plan will convert for recreation use, derelict and other public lands not designated for recreation; and

(10) Inducements to encourage the private sector to provide neighborhood park and recreation facilities and programs.

(11) How the plan will seek to preserve, restore and develop waterfront areas for recreation and open space.

If any of the above concerns are not of significance within a locality preparing the Recovery Action Program due to lack of the physical attributes described in the above eleven (11) items, the Action Plan should indicate why

such strategies are not appropriate. Most communities will also have their own special concerns and should develop strategies to address them. These should accompany the strategies discussed above and provide a focus for specific recommendations.

(c) *Recommendations.* Recommendations for improvement of the park and recreation system should be discussed. Each recommendation or group of recommendations should be accompanied by a discussion of the techniques the local government will use to implement the recommendations. Reference should be made to how the recommendations relate to deficiencies, needs, and opportunities identified in previous sections of the Action Program. A brief physical development plan for the entire park and recreation system should be included. This can be accomplished with a map which indicates where existing facilities and activities occur as well as where future developments are to occur. Particular reference shall be made to populations served and indicated deficiencies.

(d) *Program Priorities and Implementation Schedule.* A statement of system priorities and a schedule for implementation shall be included. These priorities, together with justifying objectives and strategies for implementation shall be presented. Priorities presented will be an important factor in the evaluation and approval of requests for UPARR funding. Active and continued citizen participation is necessary throughout the process. Specific projects to be undertaken and the programs to be improved, expanded, introduced, or eliminated through rehabilitation, physical, service, management, and coordination actions should be discussed. A clear assignment of agency responsibility and an estimate of the costs of implementation should accompany these priorities.

(e) *Evaluation and Updating of Action Program.* This section should outline a specific program for annual monitoring, evaluating, and updating of the complete Action Program, including both improvements needed in the Assessment and the Action Plan. Citizen involvement is essential in the evaluation and monitoring of the Action Program. Copies of approved Action Programs must be readily available to the public to insure adequate opportunities for citizen review and comment.

### § 72.14 [Reserved]

### § 72.15 Preliminary Action Program.

During an initial interim period, the Action Program requirements, as described in §§ 72.11, 72.12 and 72.13 may be satisfied by local governments' submission of a Preliminary Action Program. The initial interim period shall end on January 1, 1981. Communities are required to submit four (4) copies of the Preliminary Action Program.

(Sec. 1007(a) and (b) of Title X National Parks and Recreation Act of 1978, Pub. L. 95–625, (16 U.S.C. 2506); sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262))

[45 FR 54335, Aug. 15, 1980. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981]

### § 72.16 Preliminary Action Program requirements.

The following information must be submitted:

(a) *Evidence of physical deficiencies.* A general description of the problems confronted by the local government in bringing its facilities up to an adequate level of quality, the basis for the determination that certain facilities are deficient, and the general level of deficient facilities found within the jurisdictions. Maps and other graphics should be used to indicate where the deficiencies are located, particularly in reference to the populations to be served.

(b) *Level of resource support.* A summary of the public funds, including State and Federal, being spent by the jurisdiction on parks and recreation. A generalized description of the level of non-governmental support (neighborhood, voluntary and business) shall also be given.

(c) *Adoption of goals.* The existing park and recreation goals adopted by the governing body of the jurisdiction are to be included. Emphasis should be placed on what the local government is seeking to achieve in its parks and recreation systems, including the population it is attempting to serve, the facilities and services offered, and the

providers (public agency or private sector).

(d) *Statement of priorities and implementation strategies.* Description of the priorities set by the local government as related to the deficiencies outlined above, and the strategies used to allocate available resources over time. Included should be a brief discussion of the relationship of the Preliminary Action Program to other related community development, historic preservation and urban revitalization efforts underway in the jurisdiction.

(e) *Evidence of public participation.* A description of the means by which citizens and public officials will be included early in the decision process for project selection, the setting of priorities and schedules, and the development of implementation strategies. Existing public participation efforts within the jurisdiction should be used.

### § 72.17 Preliminary Action Program—commitments to be included.

Local governments may submit a Preliminary Action Program during the initial interim period in lieu of a full Action Program. The Preliminary Action Program must include a firm commitment by the local government to complete and adopt a full Action Program by October 1, 1980. This commitment must include a schedule for the development of the full Recovery Action Program. The schedule should outline the activities which will be undertaken, the anticipated time frame for the development and completion of these activities, and the resources of people, money and support services necessary for the development and completion of the Recovery Action Program. Notwithstanding the foregoing provisions concerning the use of the Preliminary Action Program, local governments are encouraged to prepare, adopt and submit as soon as possible a full Action Program which complies with the provisions of §§ 72.11, 72.12, and 72.13. Local governments which have already made a commitment to park and recreation systems by establishing ongoing planning, rehabilitation, service, operation and maintenance programs may use these as a starting point for meeting Action Program requirements.

### §§ 72.18–72.29 [Reserved]

## Subpart C—Grants for Recovery Action Program Development, Rehabilitation and Innovation

SOURCE: 45 FR 71719, Oct. 29, 1980, unless otherwise noted. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981.

### § 72.30 General requirements.

Applicants must have an approved Recovery Action Program on file with the appropriate NPS Regional Office prior to applying for Rehabilitation or Innovation grants. Rehabilitation and Innovation proposals must be based on priorities identified in the applicant jurisdiction's Recovery Action Program. Once NPS has indicated that a Rehabilitation or Innovation proposal is fundable, the applicant must meet all documentation requirements imposed by OMB Circulars A–102, A–95 and FMC 74–4. Regional offices of NPS will provide technical assistance to grantees in complying with these requirements.

### § 72.31 [Reserved]

### § 72.32 Funding and matching share.

(a) *Recovery Action Program Grant Matching.* Up to 50 percent matching grants are authorized for the preparation of Recovery Action Programs (RAP). State, local and private in-kind donations of assistance (salaries, supplies, printing, etc.) for the preparation of a RAP may be used as all or part of the 50 percent local match. Such in-kind contributions for the UPARR Program may not be used as the matching share for other federally-assisted programs. In addition, Section 1009 of the Act provides that reasonable local costs of Recovery Action Program development may be used as part of a local match for Innovation or Rehabilitation grants only when the applicant has not received a Recovery Action Program grant. Reasonable costs means costs for supplies, salaries, etc., which are not excessive in relation to the normal market value within a geographic area. These costs must be well documented and included in the preapplication for the proposal in which they are to be used as a match.

The match can only be used once, and allowed only after the RAP Has been approved by the respective NPS Regional Office.

(b) *Rehabilitation and Innovation grant matching*. The program provides for a 70 percent Federal match for rehabilitating existing recreation facilities and areas. Seventy percent matching funds are also authorized to local governments for innovation grants which will address systemwide coordination, management and community resource problems through innovative and cost-effective approaches.

(c) *Sources of Matching Share*—(1) *State Incentive*. As an incentive for State involvement in the recovery or urban recreation systems, the Federal government will match, dollar for dollar, State contributions to the local share of an Innovation or Rehabilitation grant; up to 15 percent of the approved grant. The Federal share will not exceed 85 percent of the approved grant. The Director shall also encourage States and private interests to contribute to the non-Federal share of project costs. State and local government shares may be derived from any State or local government source of revenue.

(2) *Cash*. State, local and private funds may be used as the non-Federal share of project costs. In addition, two types of Federal funds may be used as part of a local match: General Revenue Sharing (Treasury Department) and Community Development Block Grant (CDBG) program funds (Department of Housing and Urban Development) [See also § 72.56(b)]. Section 1009 of the UPARR Act prohibits use of any other type of Federal grant to match UPARR grants.

(3) *Non-Cash*—(i) *Material goods*. NPS encourages in-kind contributions including real property, buildings or building materials, and equipment to applicants by the State, other public agencies, private organizations or individuals. The value of the contributions may be used as all or part of the matching share of project costs, but must be appraised and approved by the Service prior to grant approval. Details regarding these types of donations are covered in OMB Circular A–102. In-kind contributions for the UPARR Program may not be used as the matching share for other Federally-assisted programs.

(ii) *Services*. Any type of service or assistance which relates directly to a grant and the provision of a recreation opportunity, can be used as a matching share; e.g., technical and planning services, construction labor, playground supervision or management services.

### § 72.33 Timing and duration of projects.

(a) Construction components of projects must be initiated during the first full construction season following grant approval. The time for completing construction components of either Rehabilitation or Innovation proposals will be limited to three years or three construction seasons, whichever is greater, unless in the opinion of the Director an extension of time not to exceed a designated period will assure that completion of the grant objectives will be cost-effective within funding currently available, in accord with established goals of the UPARR Program, and of benefit to the federal government. Any component of an Innovation proposal which is to provide services or programs, must be started within one year from grant approval. The grant project term and expiration date for Rehabilitation and Innovation proposals will be established by NPS at the time of grant approval.

(b) When an applicant wishes to complete a project in a number of stages, the applicant may request UPARR assistance for all the stages in a single application or proposal. In such cases, the three year limit on construction still applies. If an applicant wishes to request funding for only a single stage at time, each stage must be structured in such a manner that it will increase the recreation utility of the property, or provide direct recreation opportunities, independent of subsequent stages. Funding of one stage of a multi-staged proposal in no way implies that subsequent stages will also be funded.

(c) Supplemental grants to existing innovation grants may be approved by the Director.

[45 FR 71719, Oct. 29, 1980. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981, and amended at 47 FR 15137, Apr. 8, 1982; 48 FR 3971, Jan. 28, 1983]

### §§ 72.34–72.35 [Reserved]

### § 72.36 Land ownership, control and conversion.

Section 1010 of the Act provides that no property improved or developed with assistance through the program shall, without the approval of the Director, be converted to other than public recreation use. Therefore, any applicant or sub-grantee must demonstrate, at the time of grant approval, that it has adequate tenure and control of the land or facilities for which UPARR assistance is proposed, either through outright ownership or lease.

(a) Lands or facilities that are not under adequate tenure or control will not be considered for UPARR assistance. If the land is not owned by the applicant or sub-grantee, then a non-revocable lease of at least 25 years, or a non-revocable lease providing ample time to amortize the total costs of the proposed activity, must be in effect at the time of grant approval. The lease cannot be revocable at will be the lessor. The costs of acquisition or leasing of land or facilities are not eligible for assistance under the provisions of the Act, section 1014.

(b) The conversion or replacement of properties assisted through UPARR to non-recreation use must be in accord with the current local Recovery Action Program, and approved by the Director. Requests for permission to convert UPARR-assisted properties must be submitted to the Director in writing. The replacement property must assure the provision of adequate recreation properties and opportunities of reasonable equivalent location and recreation usefulness. For leased property which is developed or improved with UPARR funds, the grantee, as a condition of the receipt of these funds, must specify in a manner agreed to by the Director, in advance of the conversion, how the converted property will be replaced once the lease expires.

(c) UPARR Program funds may be used to rehabilitate facilities built or develop with LWCF assistance only after a determination is made by NPS that the facility has been maintained in accordance with the LWCF Program.

(d) Applicants must certify that any property acquired after January 2, 1971, and to be improved or enhanced by UPARR assistance, was acquired in conformance with Pub. L. 91–646, the Uniform Relocation and Land Acquisition Policies Act (See 41 CFR parts 114–50).

### § 72.37 Pass-through funding.

Section 1006(a)(1) of the Act states that at the discretion of the applicant jurisdiction, and if consistent with an approved application, Rehabilitation and Innovation grants may be transferred in whole or in part to independent special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups) or city, county, or regional park authorities, provided that assisted recreation areas owned or managed by them offer recreation opportunities to the general public within the boundaries of the applicant's jurisdiction. No UPARR funds may be passed through for Recovery Action Program grants. The decision on whether or not to pass money through to non-profit organizations or governmental units is made by the applicant jurisdiction which is responsible for the grant; not NPS. Organizations, agencies or governmental units seeking funding assistance on a pass-through basis must work with an applicant jurisdiction in the preparation of the UPARR application, and the applicant jurisdiction will be responsible for the submission of the application. The applicant jurisdiction has full responsibility and liability for funds passed through to subgrantees. In the event of default by the pass-through recipient, the applicant jurisdiction must assume responsibility for ensuring that all provisions of the grant agreement are carried out, including the continued delivery of recreation services resulting from the grant. The pass-through of funds may constitute the entire grant

proposal submitted by an applicant jurisdiction, or may be only a portion of it.

(a) *Applicant responsibilities.* The applicant jurisdiction possesses full responsibility and liability for funds passed-through to subgrantees. It should take precautions to ensure that pass-through agencies can reasonably be expected to comply with grant requirements.

(1) *Application requirements.* The applicant jurisdiction is responsible for actual preparation and submission of both the pre- and final grant applications. Organizations, agencies or governmental units seeking funding assistance on a pass-through basis must work with the applicant jurisdiction. The applicant jurisdiction may request any or all of the necessary documentation from the subgrantee. It is essential that applicants take precautions to pass-through grants only to reliable and capable agencies or organizations that can reasonably be expected to comply with grant and project requirements.

(2) *Recommended pass-through recipient standards.* Because the grantee has full responsibility for the pass-through grant, the grantee should ensure that subgrantees meet the following minimum standards.

(i) Demonstrate a history of providing recreation services to the distressed community. The history of providing recreation services must be commensurate with the amount of UPARR assistance requested. A pass-through subgrantee may be a non-profit or neighborhood organization which has provided other social services to the community, or a newly formed, but reliable and capable group which can reasonably be expected to comply with grant and project requirements.

(ii) Take responsibility for the same application, administration and compliance responsibilities as that of the applicant jurisdiction.

(iii) Certify that property improved or developed with UPARR funds will remain dedicated to public recreation use.

(iv) Work through and with the applicant jurisdiction.

(v) Demonstrate that the existing, or soon to be developed, recreation property which it owns or operates is accessible to residents of targeted distressed areas.

(vi) Demonstrate adequate tenure and control of the property to be rehabilitated or used for innovation, through lease or ownership.

(vii) Establish a contractual agreement with the applicant juisdiction which is binding and enforceable to assure that the applicant jurisdiction can adequately meet its contractual obligations under the grant.

(viii) Be empowered to contract or otherwise conduct the activities to be supported as a result of the grant.

(ix) Not discriminate on the basis of residence except in reasonable fee differentials.

(x) Be generally recognized as a provider of service to urban residents.

(xi) Have adequate financial resources, the necessary experience, organization, technical qualifications and facilities; or a firm commitment, arrangement, or ability to obtain such.

(xii) Have an adequate financial management system which provides efficient and effective accountability and control of all property, funds, and assets sufficient to meet grantee needs and grantee audit requirements.

(xiii) Private non-profit agencies or corporations should also be properly incorporated as a non-profit organization with an elected and autonomous board which meets regularly.

(b) *Pass-through property and fee limitations.* Rehabilitation or Innovation assistance on property not in public ownership, operated by a private non-profit organization through a pass-through grant, will be limited to that portion of the property which directly provides recreation services. Such recreation services must be available to the public on a non-membership, non-fee, or reasonable fee basis, and during reasonable prime time. If a fee is charged or is required for the services resulting through the Rehabilitation or Innovation grant, the fee should be comparable to prevailing local rates for similar services. Charges for recreation services will only be permitted if they do not unfairly jeopardize participation in the recreation service by the disadvantaged population.

**§§ 72.38–72.39 [Reserved]**

**§ 72.40 Historic properties.**

Properties listed in or determined eligible for listing in the National Register of Historic Places must be treated in accordance with the Advisory Council on Historic Preservation procedures described in 36 CFR 800, ''Protection of Historic and Cultural Properties.'' Applicants must identify such properties in the preapplication if they are situated at a UPARR grant site.

**§ 72.41 Demolition and replacement of existing recreation properties.**

Demolition will only be supported when rehabilitation is not feasible or prudent. In the case of demolition, the demolition costs should not exceed 75% of the proposed cost for replacement. The applicant must present a cost analysis (well documented case) for demolition and replacement versus rehabilitation. When assistance for demolition is requested, the applicant must also indicate how the replacement will increase the site's recreation utility, and how the useable life of the property will be increased.

**§ 72.42 Expansion and new development.**

(a) *Expansion*. Because the UPARR Program is targeted to distressed areas, every assurance should be made that if any expansion takes place, existing recreation facilities are up to building standards and the following general requirements are met.

(1) The general category of sites/facilities or programs involved must be an identified priority in the jurisdiction's Recovery Action Program.

(2) The results of the expansion must not substantially increase the personnel or maintenance costs of the applicant jurisdiction's overall recreation system unless expansion of the system has been addressed as a priority in the jurisdiction's Recovery Action Program, and the RAP strategies specifying how the funds for increased personnel or maintenance costs associated with the expansion will be obtained. The preapplication narrative must describe the extent of increased personnel and maintenance for the project(s) included in the proposal, if any, and methods of financing them.

(3) The expansion must increase the extent, volume, scope, or quality of recreation opportunities to residents of distressed neighborhoods.

(b) *New development*. For purposes of this program, new development is defined as the developing for changing of relatively unimproved property which has not previously been developed for recreation. This includes the creation of new parks and facilities.

(1) *Rehabilitation*. New development will not be assisted under a rehabilitation grant.

(2) *Innovation*. New development may be allowed under an Innovation grant when it is directly related to a specific innovative idea or technique, increases the utility of a property and/or service program, and increases recreation opportunities for users in the target area.

**§ 72.43 Fundable elements: Recovery Action Program grants.**

Reasonable and documented costs necessary for preparing a Recovery Action Program may be reimbursed by UPARR funds from a 50 percent matching grant. These costs may include expenses for professional services; local public meetings; data collection and analysis; preparation, editing and printing of appropriate reports, plans, maps, charts and other documents forming a part of the plan; and supporting costs, supplies and other approved costs. Costs incurred prior to the approval of a Recovery Action Program grant will not be eligible for reimbursement or cost sharing.

**§ 72.44 Fundable elements: Rehabilitation and Innovation grant common elements.**

(a) All Rehabilitation and Innovation proposals must be based on priorities identified in the applicant jurisdiction's local Recovery Action Program. An applicant may apply for UPARR assistance only in an amount which, together with other available public and private resources, is adequate to complete the work approved by the grant agreement. The applicant must document the availability and source of these resources at the time of preapplication for UPARR assistance.

Fundable elements in both Rehabilitation and Innovation proposals may include: materials and labor, site planning, architectural and engineering fees, and other costs for activities necessary to complete the approved project. Reasonable architectural and engineering fees essential to the preparation of a proposal application, incurred within a period 9 months prior to preapplication submission to NPS, are reimbursable. Architectural and engineering fees prior to the 9 month period will not be eligible for reimbursement or cost sharing. Other costs incurred prior to approval of any UPARR grant, and fees to consultants for preparation of UPARR grant applications are not reimbursable. No more than 5 percent of the total grant cost may be used by the grantee or pass-through sub-grantee for grant administrative costs. The remaining funds must be made available for projects. Any costs incurred for travel outside the local applicant jurisdiction will not be reimbursable without prior approval from NPS.

(1) *Local intent.* Rehabilitation and Innovation proposals which provide recreation to residents within a distressed local neighborhood area will be given higher priority. Proposals which have a primary intent to attract or to provide recreation for visitors from outside the applicant jurisdiction, or proposals whose primary objective is the enhancement of the area's economy through the attraction of visitors to the jurisdiction, will not be considered. Innovation proposals which transport residents from distressed neighborhoods to recreation opportunities outside the local jurisdiction, may be considered eligible for funding.

(2) *Conservation and energy.* Proposals which foster the conservation of energy and natural resources are encouraged; e.g. improvements in accessibility which reduce the need of automobile transportation, efficient use of electrical or other power sources, and water conservation.

(3) *Multiple site requests.* Rehabilitation and Innovation proposals may request funding for neighborhood-oriented recreation facilities or services which affect the entire recreation system of the applicant jurisdiction, several specific sites or areas, or a single site or area. Innovation proposals which affect multiple facilities or services must be oriented to a single purpose, or one basic innovative category or approach.

(4) *Support facilities.* The rehabilitation of support facilities for any grant project will be eligible for funding only when such facilities are well defined, are included as part of an overall rehabilitation effort, and provide direct recreation opportunities and benefits to the population being served. Rehabilitation grants may cover costs of remodeling, expanding or developing (see § 72.42) existing outdoor or indoor recreation areas and facilities, including improvements in park landscapes and buildings. Assistance for the rehabilitation of multi-service facilities must be prorated to those elements within the proposal necessary for the provision of recreation opportunities.

(5) *Elements excluded from funding.* The Act excludes UPARR assistance for major sport arenas, exhibition areas and conference halls used primarily for commercial sports, spectator, or display activities; routine maintenance and upkeep supplies or activities; and for the acquisition of land or interests in land.

### § 72.45 Fundable elements: Innovation grants.

(a) Innovation grants may cover costs related to improved delivery of recreation services (including personnel, training, facilities, recreation equipment and supplies), except those which pertain to routine operation and maintenance not directly related to the provision of recreation opportunities. All equipment and supply requests in Innovation proposals will be reviewed to assure that they will substantially contribute to the recreation services intended under the specific grant. The intent of Innovation grants is to test new ideas, concepts and approaches aimed at improving facility design, operations or programming in the delivery of neighborhood recreation services. They should also contribute to a systems approach to recreation by linking recreation services with other critical community programs; such as transportation, housing,

and health programs. The UPARR Program will competitively choose the best quality Innovation proposals with nationwide demonstration potential, and which serve people who most need the new recreation services. An innovative community recreation project may be a service, a process, an organizational arrangement or a technique. The innovation should demonstrate a concept that is untried, unique, and/or advances the state of the art for recreation. Ideas from successful Innovation proposals will be disseminated nationwide through annual progress reports to Congress, as required in section 1015(b) of the Act, and through the ongoing technical assistance efforts of NPS. Information seminars, workshops and other techniques may also be used to provide the greatest possible exposure of these ideas for use in other communities. Because the legislation limits the yearly funds available for Innovation grants (not more than 10% of funds authorized), the majority of Innovation grants should ideally be monetarily smaller awards aimed at leveraging public and private community support and providing activities with high demonstration value, rather than large-scale development or expansion projects. The long-range intent of funding innovative proposals is to support and demonstrate a great variety of ideas during the five year implementation of the UPARR Program. For this reason, only one or two proposals having a similar emphasis or approach will be funded. Proposed Innovation projects which have been demonstrated before or are currently being operated in other cities, may be considered for UPARR assistance if the application identifies and addresses the question of the special nature or circumstances surrounding the new project.

(1) *Program services*. Innovation grant costs may include those costs which relate to: demonstrations of the improved multiple-use of public buildings e.g., schools, community centers, libraries; unique program expansions or increases in services; purchase of recreation services on a contractual basis; increased access to recreation areas; and cost-effective management techniques.

(2) *Adaptive reuse*. In addition to providing services for areas or facilities already in recreation use, Innovation grants may provide funding for the adaptive reuse of areas or facilities not currently in recreation use, or those where mixed community use occurs. Physical rehabilitation of facilities not currently in recreation use (whether public or private) may be funded as part of an Innovation proposal, and would be classified as adaptive reuse. An example would be conversion of an abandoned building to a unique community recreation center. When only a portion of the area or facility will be used for recreation, only that portion will be eligible for UPARR funding.

(3) *Supplies*. Funds may be used to purchase expendable supplies and equipment which relate directly to an Innovation proposal, such as sports equipment, arts and crafts supplies, chairs and tables if needed for an activity, and essential emergency or safety equipment. General office supplies and furniture not used exclusively to provide recreation services as a part of the proposal, or not an inherent component of the proposal, will not be reimbursable.

(4) *Coordination*. Local costs incurred for coordinating any grant proposal activities and programs with other public, non-profit or private community services may be reimbursable.

(5) *Personnel*. Eligible personnel costs for Innovation proposals will be limited to salaries and benefits of those employees directly engaged in the provision of recreation services or formulation of new techniques. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of committed volunteer service may be counted toward the local matching share of funds, if the service provided is an integral part of an approved proposal.

(6) *Special populations*. A proposal which will provide recreation opportunities primarily for a specific demographic group, such as the elderly, youth or handicapped, may be funded. However, the recreation provided must be open to the public, incorporate some activities for the general population, and address needs as identified in the

local Recovery Action Program. Services for special populations, such as transportation to recreation facilities, may also be funded.

(b) *Basic types of Innovation proposals.* Types of Innovation proposals which can be funded are suggested by, but not limited to, the following types:

(1) The unique integration of recreation with other community services; such as transportation, public housing and public safety; either to expand or update current services, or to link programs within the social service structure of a neighborhood, or between neighborhoods.

(2) New management and cost-saving or service-efficient approaches for improving the delivery of recreation services should be fundamental to all Innovation and Rehabilitation proposals, and may also be the prime focus of an Innovation proposal. Extending hours of operation, increasing the variety of recreation programs, contracting with commercial or private non-profit agencies to supply specific recreation services, or assisting citizens in designing and operating their own programs, are examples of management approaches.

(3) New approaches to facility design which emphasize user needs and preferences and promote efficient operation and energy conservation.

(4) New fiscal techniques to generate revenue for continuing operation and maintenance, such as tax credits.

(5) Techniques for improving transportation and access to recreation opportunities.

(6) Techniques to facilitate private, non-profit, and community involvement in providing recreation opportunities.

(7) Improved use of land resources; such as utilizing abandoned railroads and highway rights-of-way, waterfronts, street spaces, or derelict land for recreation.

(8) Adaptive reuse or multiple use of public or private facilities and areas. (Private areas or facilities utilized must be opened to the public.)

(9) Techniques to prevent or reduce crime, abuse and vandalism; such as better design, non-destructible building materials, or use of community volunteers to supervise areas.

(10) Communications and public awareness of recreation opportunities, including education in leisure services; but excluding research.

### § 72.46 Citizen participation requirements.

(a) *Recovery Action Program Grants.* Citizen participation is required for developing and implementing a Recovery Action Program (§ 72, Subpart B), but is not required in the process of preparing a local Recovery Action Program grant application.

(b) *Rehabilitation and Innovation grant.* The applicant shall provide citizens with an adequate opportunity to participate in the development of a Rehabilitation and/or Innovation proposal and in implementation, monitoring and evaluation of the activities supported through the grants. The applicant shall also encourage the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens with low and moderate incomes. The applicant is encouraged to utilize a variety of approaches to ensure public involvement. Nothing in these requirements, however, shall be construed to restrict the legal responsibility and authority of the applicant for the execution of its Recovery Action Program, and the development of its UPARR applications.

### § 72.47 [Reserved]

### § 72.48 Federal coordination.

Applicants requesting UPARR assistance under one of the three grant categories shall investigate the possibilities of administrative and/or funding coordination with other Federal programs. Higher priority is given to proposals which relate to a comprehensive neighborhood revitalization strategy, including, but not limited to programs such as the Department of Housing and Urban Development (HUD) Neighborhood Self-Help program.

### § 72.49 [Reserved]

## Subpart D—Grant Selection, Approval and Administration

SOURCE: 45 FR 71723, Oct. 29, 1980, unless otherwise noted. Redesignated at 46 FR 34329,

July 1, 1981; correctly redesignated at 46 FR 43045, Aug. 26, 1981.

### § 72.50 Grant selection criteria.

(a) *Recovery Action Program grant selection criteria.* The following criteria will be used in evaluating Recovery Action Program grant applications and in deciding priorities for funding:

(1) Degree of need for funds to develop a Recovery Action Program and an ongoing planning process, including the size and complexity of the community's problems, deficiencies in existing planning, and in the capability of the community to initiate and sustain continuing planning efforts.

(2) Degree of the community's commitment to systematic planning, including financial, personnel and time resources already devoted to planning or committed for the future.

(3) Extent to which current park and recreation planning is integrated with overall community planning or would be better integrated as a result of the grant, including use of other Federal or State funds for related planning purposes.

(4) Appropriateness and efficiency of the planning program's work elements (scope, timing, methodology, staffing and costs) in relation to the basic requirements for Recovery Action Programs contained in subpart B, §§ 72.10 through 72.18 (45 FR 15456).

(b) *Rehabilitation Grant Selection Criteria.* The following criteria will be used to evaluate and rank Rehabilitation proposals:

(1) The Federal UPARR investment per person served by the entire system; relationship between the size of the community and the amount of grant funds requested. Highest priority will be given to proposals with lower per capita costs in relation to recreation benefits provided.

(2) Providing neighborhood recreation needs. Higher priority will be given to proposals serving close-to-home recreation needs, lower priority to those serving area or jurisdiction-wide needs.

(3) Condition of existing recreation properties to be rehabilitated, including the urgency of rehabilitation and the need to maintain existing services.

(4) Improvement in the quality and quantity of recreation services as a result of rehabilitation, including improvements at specific sites and overall enhancement of the recreation system.

(5) Improvement of recreation service to minority and low to moderate income residents, special populations, and distressed neighborhoods.

(6) Proposal's consistency with local government objectives and priorities for overall community revitalization.

(7) Neighborhood employment opportunities created.

(8) State participation in the proposal, including financial and technical assistance.

(9) Private participation by both the non-profit and for-profit sectors in the proposal, including contributions of financial assistance.

(10) Jurisdiction's commitment to implementing its overall Recovery Action Program.

(c) *Innovation Grant Selection Criteria.* The following criteria will be used to evaluate and rank Innovation proposals:

(1) Degree to which the proposal provides a new, unique or more effective means of delivering a recreation service that can serve as a model for other communities.

(2) Degree of citizen involvement in proposal conceptualization and implementation.

(3) Degree to which the proposal may lead to a positive, systemic change in how park and recreation services are provided. Extent to which the proposal creates opportunities for new partnerships between the people affected, private interests within the community, and public agencies (e.g., Mayor's Office, Recreation Department, Board of Education, Planning Department, social service agencies).

(4) Degree of commitment of community and proposal participants to continue the long term program objectives, including commitments to continue funding after the requested Federal grant money is no longer available. Extent of private resources committed to providing funds or in-kind services for continuing operation and maintenance of projects.

(5) Degree to which proposal managers use the Federal funds to leverage

greater public or private investments (in the form of services and materials, as well as dollars).

(6) Degree to which the proposal provides potential coordination with other community, State and Federal programs of community development and those providing recreation to the target population (e.g., public and private non-profit, education programs, CETA for employment, HUD programs).

(7) Extent of improvement in the quality and quantity of recreation services as a result of the Innovation project.

(8) Degree to which the proposal ties in with goals, priorities and implementation strategies expressed in the local park and recreation Recovery Action Program.

(9) Degree to which the proposal leads to a transfer of a recreation role traditionally performed by a public entity, to quasi-public or private nonprofit interests. This degree means the degree to which the private sector can take full responsibility, supplement, or fill the gaps in public recreation services, management or operation; either through a transfer of funding responsibility, or an exchange of technique or method approaches which may prove to be more effective under the private sector. This should in no way alter the public sector responsibility to continue to provide and/or monitor good quality recreation facilities and services.

(10) Degree to which a proposal benefits disadvantaged community populations and/or those areas within a distressed community which have the greatest recreation deficiencies.

NOTE: Innovation proposals for the adaptive reuse of non-recreation areas or structures, through rehabilitation for recreation should also address rehabilitation selection criteria, particularly the criteria covering Federal investment per person served and the degree to which the proposal would serve close to home recreation needs.

### § 72.51 A–95 clearinghouse requirements.

Notice of intent to submit any application for UPARR funding must be forwarded by the applicant, no later than 60 days prior to submission of a grant application, to the State clearinghouse and appropriate metropolitan or areawide clearinghouses, in accordance with OMB Circular A–95 and Interior Department Manual part 511. If a jurisdiction wishes to compress the A–95 timetable, it must receive approval of the clearinghouse. Appropriate A–95 notifications must be submitted for all three types of UPARR grants at both preapplication and full application stages. Standard Form 424 is to be used for these notices unless otherwise specified by the clearinghouse. Comments from clearinghouses, if available, must be included with the preapplication. All A–95 comments will become part of the required application and proposal file which will be retained by NPS. A–95 requirements for Recovery Action Programs and grants are discussed in § 72.52.

### § 72.52 Recovery Action Program grant applications.

The application procedure for Recovery Action Program grants differs from the procedure for Rehabilitation and Innovation grants. Ranking and selection for funding of Recovery Action Program grants will be initiated on the basis of a full application, preparation of which will be assisted through meetings with NPS regional staff.

(a) *Preapplication Conference.* In the preparation of a Recovery Action Program grant application, applicants are encouraged to discuss with NPS regional personnel, or State personnel, when an agreement between NPS and the State covers such action, the adequacy of the proposal in meeting the requirements for a Recovery Action Program. Prior to formal submission, the Recovery Action Program grant application should be reviewed with the appropriate NPS Regional Office.

(b) *Submission of Applications.* In addition to Standard Form 424 on Federal Assistance notification, applicants for Recovery Action Program grants shall submit the following documents and required attachments to NPS Regional Offices:

(1) OMB Form 80–RO190, completed as prescribed by OMB Circular A–102. (Application for Federal assistance, for non-construction programs).

(2) Grant agreement form.

(3) Narrative statements which will be used in evaluating grant applications in relationship to the selection

criteria as defined in § 72.50(a), including:

(i) The need for the planning grant.

(ii) The jurisdiction's existing or proposed commitments to developing a full Recovery Action Program and an ongoing planning process.

(iii) The relationship of the planning program to overall community plans and programs.

(iv) Appropriateness of the proposed planning program's scope, timing and methodology in relation to UPARR planning requirements and the community's identified planning needs.

(v) Dollars and work years to be devoted to development of each element in the proposed Recovery Action Program, including some indications of the qualifications of staff members who will work on the program.

(vi) If appropriate, a discussion of work elements to be contracted out to other government agencies, private consultants or private non-profit agencies, including the reasons for contracting work elements instead of doing the work within the community's own planning agencies.

(4) Applications for RAP grants need a full 60 day A–95 clearinghouse review. Clearinghouse comments for RAP grants must then be submitted to NPS. Final RAP's also must be submitted to clearinghouses, in accordance with OMB Circular A–95.

### § 72.53 Preapplication process for Rehabilitation and Innovation grants.

To reduce the amount of time and documentation needed for a full application, and to foster the competitive aspects of the UPARR program, a preapplication procedure is used.

(a) The preapplication must provide information adequate to guide proposal selection. Grants will be awarded in accordance with the availability of funds. Funding for an approved grant will not be increased from subsequent yearly appropriations.

(b) Applicants are encouraged to discuss their proposals with their NPS Regional Office to determine basic fundability and competitiveness prior to submitting a preapplication.

(c) If a State is assisting the applicant in preapplication preparation, providing a source of matching share, or giving technical assistance, the State may assist in submission of the preapplication to the appropriate NPS Regional Office with the applicant's prior approval. The amount, source and assurance of State assistance for a matching share must be specified in the preapplication.

(d) The following procedural guidelines shall apply to submission and approval of Rehabilitation and Innovation proposals.

(1) Preapplications shall be submitted to the appropriate NPS Regional Office by the chief executive officer of the applicant jurisdiction. The preapplication must include those items as set forth in the *Preapplication Handbook*, available from any NPS Regional Office. In addition to the narrative on selection criteria, all preapplications for Rehabilitation proposals must include a short description stating; (i) the problem addressed by the proposal, including existing conditions, (ii) the reason for the problem or why the condition exists, and (iii) the proposed solution to the problem and what corrective measures will be used.

(2) An applicant may have no more than one Innovation and one Rehabilitation proposal under consideration in any one funding cycle.

(3) Any existing and/or proposed fees or charges for recreation opportunities or services provided through a UPARR grant, whether for public, private or non-profit activities, must be identified in the preapplication.

(4) Discretionary applicants must submit a narrative statement, signed by the chief executive of the applicant jurisdiction, which explains and quantifies the degree of physical and economic distress in the community. Statistics and discussion on distress shall address, but need not be limited to, the criteria used to select eligible jurisdictions contained in Appendix A of this part. A discretionary narrative statement must be included in each preapplication.

(5) All submitted grant preapplications will be reviewed by NPS Regional Offices to assure that they meet all minimum legal and technical standards before being certified as eligible for competition. Proposals not meeting minimum standards will

be returned to the applicant. Periodically, all certified proposals will be evaluated in the Regional Offices before being submitted to Washington, where they will be judged by national panels whose member are knowledgeable in recreation and urban revitalization. Innovation and Rehabilitation proposals will be judged by separate panels.

(6) Following review and ranking by the panels, the Director will approve tentative grant offers for those proposals which may be funded. Successful applicants will be notified by the NPS Regional Offices, and completion of the formal application process will take place. The formal application process must be completed within 120 days of notification of the tentative grant offer, or the tentative grant offer may be withdrawn. Final approval of a grant and obligation of funds will occur when all application requirements have been met and the appropriate documents are on file. No costs may be incurred or reimbursed, except incurred architectural and engineering fees indicated in § 72.44, until NPS approval of the grant agreement.

(7) Unfunded proposals may require modifications to improve their competitiveness. Applicants with such proposals will be advised by NPS of suggested modifications, if any, to increase their chances for funding in future grant rounds.

(8) If an applicant wishes a proposal to remain in competition, it may be considered for two additional funding cycles, with or without minor modifications, before it is returned to the applicant. Major modifications of scope and/or total funding request will require complete resubmission of a proposal as a new preapplication. Applicants who wish to change the scope and/or total funds requested for a proposal which is already in competition, must submit a written request for withdrawal of the previous proposal before submitting a new proposal in the same competition.

(9) The Director reserves the right to withdraw a grant offer if it is determined that any preapplication contains misstatements or misrepresentations of fact, or problems identified which cannot be resolved.

### § 72.54 Rehabilitation and Innovation grants—full application process.

Once a Rehabilitation or Innovation proposal has received a tentative grant offer, applicants will be responsible for compliance with all applicable Federal laws and regulations listed in OMB Circular A–102, including those specific Acts and Executive Orders listed in § 72.56 of these regulations. The applicant must also complete all documentation and other requirements specified by OMB circulars A–102, and A–95 within 120 days. Regional Offices of NPS will provide technical assistance to grantees in complying with these requirements. A grant will not be approved until the applicant is in compliance with the above requirements.

### § 72.55 [Reserved]

### § 72.56 Grant program compliance requirements.

(a) Once a proposal has received a grant offer, applicants will be responsible for compliance with all applicable Federal laws and regulations, including, but not limited to:

Architectural Barriers Act of 1968 (P.L. 90–480)
Clean Air Act and Federal Water Pollution Control Act
Copeland Anti-kickback Act
Endangered Species Act of 1973 (Pub. L. 93–205)
Executive Order 11246, Equal Employment Opportunity
Executive Order 11593, Protection and Enhancement of the Cultural Environment
Executive Order 11625, Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise
Executive Order 11988, Floodplains Management
Executive Order 11990, Protection of Wetlands
Executive Order 12088, Federal compliance with Pollution Control Standards
Executive Order 12185, Conservation of Petroleum and Natural Gas
Flood Disaster Protection Act of 1973 (Pub. L. 93–234)
Historical and Archeological Data Preservation Act of 1974 (Pub. L. 93–291) 36 CFR 66
National Environmental Policy Act of 1969 (Pub. L. 91–190)
National Historic Preservation Act (Pub. L. 89–665)
Nondiscrimination section 109 of the Housing and Community Development Act of 1974 (42 USC 5301) as amended.

Section 504 of the Rehabilitation Action Act of 1973
Title VI of the Civil Rights Act of 1964, Executive Order 11764
Title VIII of the Civil Rights Act of 1968 (42 USC 3601) as amended, Executive Order 11063 (27 FR 11527)
Uniform Relocation Assistance & Land Acquisition Policies Act of 1970 (Pub. L. 91–646)

(b) Applicants using General Revenue Sharing or Community Development Block Grant monies as a matching share must check with the responsible Federal agencies, i.e. Treasury or HUD to determine if the Davis-Bacon Act is applicable. (HUD regulations 24 CFR part 570 [CDBG]. Treasury regulations 31 CFR part 51, State and Local Fiscal Assistance Amendments of 1976 [P.L. 94–488], General Revenue Sharing program.) Questions concerning other CDBG requirements should be addressed to the HUD Area Office serving the UPARR applicant jurisdiction.

**§§ 72.57–72.59 [Reserved]**

**§ 72.60 Grant administrative procedures.**

(a) *Admininstrative Requirements for Recipients of UPARR Assistance*. For all grants under this Program, the administrative requirements are the attachments listed in the Office of Management and Budget (OMB) Circular A–102 (as revised).

(b) *Accounts, Audit, Inspection*. Adequate financial records must be maintained by the applicant to support all expenditures or costs covered by a Recovery Action Program, Rehabilitation or Innovation project, as specified in Federal Management Circular (FMC) 74–4 and OMB Circular A–102.

(c) *Additional conditions*. The Director may, with respect to any grant, impose additional conditions prior to, or at the time of grant approval, when in his or her judgement these conditions are necessary to assure or protect advancement of the grant purposes, the interests of public health or safety, or the conservation of grant funds. Extra requirements may be imposed on high-risk grantees who have records of default on prior Federal grants.

(d) *Remedies for Noncompliance*. In appropriate circumstances, the Director may suspend or recoup the financial assistance provided under UPARR, upon the formal finding that the Grantee is in violation of the terms of the grant or the provisions of these regulations.

**§ 72.61 [Reserved]**

**§ 72.62 Amendments to approved grants.**

Changes which alter the scope of any approved UPARR competitive grant must be submitted to and approved by NPS. Once a grant offer is made, based upon the preapplication, no increases in the amount of UPARR funding specified in the original proposal will be considered. Such changes should be the basis of a new proposal or application.

**§ 72.63 Grant payments.**

The Director shall make payments to a grantee of all, or a portion of any grant award, either in advance or by way of reimbursement. Advance payments on approved Rehabilitation or Innovation grants will be in an amount not to exceed 20% of the total grant cost [section 1006(2) of the Act].

**§ 72.64 [Reserved]**

**§ 72.65 Other requirements.**

(a) *Requirements for Operation and Maintenance*. Grantees are required to keep all UPARR assisted properties in reasonable repair to prevent undue deterioration, and to encourage public use during reasonable hours and times of the year, according to the type of facility and intended uses.

(b) *Non-discrimination*. There shall be no discrimination for UPARR assisted programs or services on the basis of residence, except in reasonable fee differentials.

(c) *Sunset Reports*. In compliance with the sunset and reporting provision of the Act, section 1015(b), an annual report will be prepared on the achievements of the Innovation grant program, with emphasis on the nationwide implications of successful innovation projects. A final report on the overall impact of the UPARR Program will be prepared within 90 days of the expiration of the authority. Additional project information may be requested from applicants to facilitate the preparation of such reports.

## Subpart E—Post-Completion Compliance Responsibilities

SOURCE: 51 FR 34186, Sept. 25, 1986, unless otherwise noted.

### § 72.70 Applicability.

These post-completion responsibilities apply to each area or facility for which Urban Park and Recreation Recovery (UPARR) program assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility. Responsibility for compliance with these provisions rests with the grant recipient. The responsibilities cited herein are applicable to the 1010 area depicted or otherwise described in the 1010 boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this area exceeds that actually receiving UPARR assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under UPARR, compliance with post-completion requirements of the grant following lease expiration is dictated by the terms of the project agreement.

### § 72.71 Information collection.

The information collection requirements contained in § 72.72 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0048. The information is being collected to determine whether to approve a grant recipient's request to convert an assisted site or facility to other than public recreation uses. The information will be used to assure that the requirements of section 1010 of the UPARR Act would be met should the proposed conversion be implemented. Response is required in order to obtain the benefit of Department of the Interior approval.

### § 72.72 Conversion requirements.

(a) *Background and legal requirements.* The UPARR program has made funds available for the renovation and rehabilitation of numerous urban parks and recreation facilities. In many cases, the UPARR funds were used only in a portion of a site or facility or were only a small percentage of the funds required to renovate or rehabilitate a property. Nevertheless, all recipients of funds for renovation and rehabilitation projects are obligated by the terms of the grant agreement to continually maintain the site or facility for public recreation use regardless of the percent of UPARR funds expended relative to the project and the facility as a whole. This provision is contained in the UPARR Program Administration Guideline (NPS–37) and is also referenced in § 72.36. In accordance with section 1010 of the UPARR Act, no property improved or developed with UPARR assistance shall, without the approval of NPS, be converted to other than public recreation uses. A conversion will only be approved if it is found to be in accord with the current local park and recreation Recovery Action Program and/or equivalent recreation plans and only upon such conditions as deemed necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness. Section 1010 is designed to ensure that areas or facilities receiving UPARR grant assistance are continually maintained in recreation use and available to the general public.

(b) *Prerequisites for conversion approval.* Requests for permission to convert UPARR assisted properties in whole or in part to other than public recreation uses must be submitted by the recipient to the appropriate NPS Regional Director in writing. NPS will only consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) The proposed conversion and substitution are in accord with the current Recovery Action Program and/or equivalent recreation plans.

(3) The proposal assures the provision of adequate recreation properties and opportunities of reasonably equivalent usefulness and location. Dependent upon the situation and at the discretion of NPS, the replacement property need not provide identical recreation experiences or be located at the same

site, provided it is in a reasonably equivalent location. It must, however, be administered by the same political jurisdiction as the converted property. Equivalent usefulness and location will be determined based on the following criteria:

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site.

(ii) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for recreation facilities, then the project sponsor should seek to locate the substitute area in another location within the jurisdiction.

(4) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(5) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 1010 action. In cases where the proposed conversion arises from another Federal action, final review of the proposal shall not occur until NPS is assured that all environmental review requirements related to that other action have been met.

(6) State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original grant.

(c) *Amendments for conversion*. All conversions require amendments to the original grant agreement. Amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out with NPS. Section 1010 project boundary maps shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the request for the conversion. It will, however, be NPS policy to avoid such a situation if at all possible and to agree only if warranted by exceptional circumstances. In such cases, express commitment to satisfy section 1010 substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the local government agency in the form of a grant amendment.

(d) *Obsolete facilities*. Recipients are not required to continue operation of a particular facility beyond its useful life. However, when a facility is declared obsolete, the site must nonetheless be maintained in public recreation use following discontinuance of the assisted facility. Failure to so maintain is considered to be a conversion. Requests regarding changes from a UPARR funded facility to another otherwise eligible facility at the same site that significantly contravene the original plans for the area must be made in writing to the Regional Director. NPS approval must be obtained prior to the occurrence of the change. NPS approval is not necessarily required, however, for each and every facility use change. Rather, a project area should be viewed in the context of overall use and should be monitored in this context. A change from UPARR-developed tennis courts to basketball courts, for example, would not require NPS approval. A change from a swimming pool

to a less intense area of limited development such as picnic facilities, or vice versa, would, however, require NPS review and approval. To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the recipient of *all* proposed changes in advance of their occurrence. A primary NPS consideration in the review of requests for changes in use will be the consistency of the proposal with the Recovery Action Program and/or equivalent recreation plans. Changes to other than public recreation use require NPS approval and the substitution of replacement land in accordance with section 1010 of the UPARR Act and paragraphs (a) through (c) of this section.

### § 72.73 Residency requirements.

(a) *Background*. UPARR policy prohibits discrimination on the basis of residence (refer to § 72.65(b)) including preferential reservation or membership systems on properties improved with UPARR assistance. This prohibition applies to both regularly scheduled and special events. The general provisions regarding non-discrimination at sites assisted under Interior programs and, thereby, all other recreation facilities managed by the recipient, are covered in 43 CFR part 17 which implements the provisions of title VI of the Civil Rights Act of 1964 for the Department.

(b) *Policy*. There shall be no discrimination for UPARR assisted programs or services on the basis of residence, except in reasonable fee differentials. Post-completion compliance responsibilities of the recipient should continue to ensure that discrimination on the basis of residency is not occurring.

(c) *Fees*. For parks or recreation properties or programs funded with UPARR assistance, fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged to nonresidents, the nonresident fees cannot exceed fees charged at comparable State or local public facilities having fee systems. These fee provisions apply only to the approved 1010 areas applicable to the recipient. Reservation, membership, or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents. Recipients are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only.

### §§ 72.74–72.75 [Reserved]

## APPENDIX A TO PART 72—CRITERIA FOR ELIGIBILITY

Jurisdictions were considered for eligibility if they were functioning general purpose local governments in one of three categories:

1. Central cities of Standard Metropolitan Statistical Areas in either 1970 or 1976 (1970 data derived from U.S. Bureau of the Census, Census of Population: 1970, 1976 data derived from U.S. Bureau of the Census, 1976 Revenue Sharing Estimates File).

2. Cities and townships with Populations of 40,000 or more in either 1970 or 1976 (1970 data derived from U.S. Bureau of the Census, Census of Population: 1970, 1976 data derived from U.S. Bureau of the Census, 1976 Revenue Sharing Estimates File).

3. Counties with populations of 250,000 or more in either 1970 or 1976 (1970 data derived from U.S. Bureau of the Census, Census of Population: 1970; 1976 data derived from 1976 Revenue Sharing Estimates File).

Indicators (variables) of distress and need were selected to determine eligibility for the program and were chosen for timeliness, reliability, and relevance to the Act. Certain variables were not used due to duplication, others because they were not available for all jurisdictions, and some because they were unrelated to the purposes of the Act. (Section 1002 of the Act states that the Congress finds that (a) the quality of life in urban areas is closely related to the availability of fully functional park and recreation systems including land, facilities, and service programs; (b) residents of cities need close-to-home recreational opportunities that are adequate to specialized urban demands, with parks and facilities properly located, developed, and well maintained; (c) the greatest recreational deficiencies with respect to land, facilities, and programs are found in many large cities, especially at the neighborhood level; (d) inadequate financing of urban recreation programs due to fiscal difficulties in many large cities has led to the deterioration of facilities, nonavailability of recreation services, and an inability to adapt recreational programs to changing circumstances; and (e) there is no existing Federal assistance program which fully addresses the needs for physical rehabilitation and

revitalization of these park and recreation systems.)

The National Park Service asked the Bureau of the Census to assist in the analysis of national data in order to ensure that reliable, timely and applicable indicators of distress were used in determining eligibility for the program. NPS received comments from a number of interested individuals on what they considered, in their best judgment, to be the criteria that should be used in the program. NPS also received numerous position papers from national interest groups on what they thought were suitable indicators for the program. NPS then began a narrowing process intended to select the most appropriate criteria for eligibility in the program.

Listed below are the six variables selected for eligibility criteria:

*Population Per Square Mile*

This variable is commonly termed population density, and it is defined as the number of persons per square mile of land. It provides an indication of the extent to which an area is urbanized. Highly urbanized areas are most lacking in land set aside for recreation and park facilities and are experiencing difficulty in maintaining existing facilities. Highly dense areas tend to have the greatest need for assistance in revitalization of their neighborhood park and recreation facilities. Therefore, jurisdictions having high values for density would be favored by this variable, based on 1975 data of the U.S. Bureau of the Census.

*Net Change in Per Capita Income 1969–75*

Per capita income is the estimated average amount of total money income per person. It is derived by dividing the total income of a particular group by the total population in that group. Comparison of change in per capita income between urban jurisdictions provides an indication of each jurisdiction's economic growth. If the income of a city is growing more slowly than another city, the city with slower growth is in a relatively weaker economic position. As cited in the ''Report on the Fiscal Impact of the Economic Stimulus Package on 48 Large Urban Governments (1978),'' income growth is a determinant of taxable wealth and level of economic activity, and indicates a jurisdiction's capability to finance its own recreation and other projects. This measure of financial capacity is related to the Act which stipulates that the Secretary of the Interior consider factors related to economic distress. Therefore, jurisdictions with either negative or low relative growth in per capita income would be favored by this variable, based on 1976 data of the U.S. Bureau of the Census.

*Percent Unemployed, 1977*

Percent unemployed, commonly termed the unemployment rate is defined as the number of people unemployed as a percent of the civilian labor force. The unemployment data are the product of a Federal/State cooperative program in which State Employment Security agencies prepare labor force and unemployment estimates using concepts, definitions, and technical procedures established by the Bureau of Labor Statistics. The *National Urban Recreation Study* found that recreation and leisure time opportunities are most limited for the economically disadvantaged, including the unemployed. The 17 field studies of the *National Urban Recreation Study* reveal that low-income neighborhoods have less program diversity, little, if any, commercial recreation opportunities, and fewer year-round programs than higher income neighborhoods. Consideration of this variable is consistent with the mandate of the Act which requires that criteria be considered related to physical and economic distress. Therefore, this variable would tend to favor jurisdictions having high unemployment rates.

*Percent of Households Without Automobiles Available, 1970*

Automobile availability, as defined by the Bureau of the Census, represents the number of passenger automobiles, including station wagons, which are owned or regularly used by any member of the household and which are ordinarily kept at home. Taxicabs, pickups, or larger trucks were not counted. Lack of automobile availability is closely related to lack of recreation opportunity. The Recreation Access Study (U.S. Department of Transportation, 1975) found that access to a diversity of recreation opportunities is generally assured for those who have automobiles and are willing to travel reasonable distances, but such opportunities are often severely limited for people without cars. In addition, the 17 field studies of the *National Urban Recreation Study* concluded that most recreation opportunities for those without access to a personal auto is limited to immediate neighborhoods or place of residence. This variable is relevant to the Act in that the transportation disadvantaged households are the group that has the greatest need for expanded opportunities to enjoy their close to home resources.

Therefore, jurisdictions having a high proportion of households without automobiles would be favored by this variable, based on 1970 data of the U.S. Bureau of the Census.

*Total Population Under 18 Years of Age, and 60 Years and Over, 1970*

This variable identifies those persons most likely to be the most frequent users of public park and recreation facilities. While many

senior citizens have adequate incomes, they tend to be considerably less affluent and less mobile than the general population. Younger and older children also need public recreation facilities, especially in highly urbanized areas, where recreation facilities are most lacking. This variable was selected to favor areas with greater concentrations of the dependent population where need for recreation would be the greatest, and where rehabilitation of existing facilities the most pressing, in accordance with the Act. The variable was used in its absolute rate to give an indication of the size of the client populations in each jurisdiction, based on 1970 data of the U.S. Bureau of the Census.

*Percent Persons With Income Below 125 Percent Poverty Level, 1970*

In 1970, percent of population below poverty level was calculated by the Bureau of the Census as the proportion of the total population which reported income below the poverty level. This variable is the most current available indicator of poverty status for the jurisdictions in question. To accommodate the needs of economically disadvantaged people whose incomes are somewhat above the poverty level, such as those employed part-time, or those in very low-paid jobs, persons with incomes up to 125% of poverty are included in this variable. The poor and near-poor have the greatest need for public recreation opportunities and services in proximity to their homes. This variable is also related to that part of the Act which stipulates that the Secretary of the Interior consider ''deficiencies in access to neighborhood recreation facilities, particularly for . . . low- and moderate-income residents,'' and the extent to which park and recreation recovery efforts would provide employment opportunities for low- and moderate-income residents. Rehabilitation of parks is a relatively labor intensive activity having the potential for providing short-term jobs with low-skill requirements. Persons with poverty level incomes tend to lack skills and jobs. Therefore, this variable was selected to favor jurisdictions having a large percentage of its population in poverty. The poverty level of income is based on an index developed by the Social Security Administration in 1964 and subsequently modified by a Federal Interagency Committee. In 1969, the poverty thresholds ranged from $1,487 for a female unrelated individual 65 years old and over living on a farm to $6,116 for a nonfarm family with a male head and with seven or more persons. The average poverty threshold for a nonfarm family of four headed by a male was $3,745.

*Determination of Eligibility*

The method used to combine the variables had four steps. First, all values for each of the six variables were expressed in common or standard units. Second, for each jurisdiction, the standardized values for the six variables were added to produce a score. Third, the scores were ranked from high values (most eligible) to low values (least eligible). Fourth jurisdictions having scores above the median score for all jurisdictions were designated ''eligible.''

*County Eligibility*

The Administration stated before the Senate Subcommittee on Parks and Recreation on June 27, 1978, that it would ensure fair consideration of urban counties for eligibility under the Urban Park and Recreation Recovery Program. The Administration has kept this commitment by subjecting urban county data to the same eligibility standards as cities and including urban counties which meet those standards on the eligibility list. All urban counties with a population over 250,000 were considered under the same criteria (indicators of distress and need) as the city counterparts. Counties within and SMSA not on the eligibility list may compete for assistance as discretionary applicants.

The history of the Administration's UPARR proposal clearly indicates that this program is part of an overall national urban policy. Therefore, in accordance with the legislative mandate, project selection criteria will require that county projects be justified in terms of direct service to identifiable urban neighborhoods (residential areas), and that there must be evidence of cooperation between a county and its major city.

*Discretionary Grants*

Section 1005(b) of the Bill states that at the Secretary's discretion, up to 15 percent of the program funds annually may be granted to local governments which do not meet eligibility criteria, but are located in Standard Metropolitan Statistical Areas, provided that these grants to general purpose governments are in accord with the intent of the program. These governments may apply for grants under the program regardless of whether or not they are included on the list of eligible jurisdictions.

[44 FR 58091, Oct. 9, 1979. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981]

## APPENDIX B TO PART 72—LIST OF ELIGIBLE JURISDICTIONS

The following are those jurisdictions eligible for the Urban Park and Recreation Recovery Program:

*Cities Eligible for the Urban Park and Recreation Recovery Program*

Akron, Ohio
Albany, Georgia
Albany, New York
Alexandria, Louisiana
Alhambra, California
Allentown, Pennsylvania
Altoona, Pennsylvania
Aguadilla, Puerto Rico
Anniston, Alabama
Arecibo, Puerto Rico
Asbury Park, New Jersey
Asheville, North Carolina
Athens, Georgia
Atlanta, Georgia
Atlantic City, New Jersey
Auburn, Maine
Augusta, Georgia
Babylon Township, New York
Baldwin Park, California
Baltimore, Maryland
Baton Rouge, Louisiana
Battle Creek, Michigan
Bayamon, Puerto Rico
Bay City, Michigan
Bayonne, New Jersey
Bellflower, California
Bellingham, Washington
Berkeley, California
Biloxi, Mississippi
Binghamton, New York
Birmingham, Alabama
Bloomfield, New Jersey
Bloomington, Indiana
Boston, Massachusetts
Bradenton, Florida
Bridgeport, Connecticut
Bridgeton, New Jersey
Bristol, Tennessee
Brockton, Massachusetts
Brookline Township, Massachusetts
Brownsville, Texas
Buffalo, New York
Caguas, Puerto Rico
Cambridge, Massachusetts
Camden, New Jersey
Canton, Ohio
Carolina, Puerto Rico
Carson, California
Cayey, Puerto Rico
Charleston, South Carolina
Charlottesville, Virginia
Chattanooga, Tennessee
Chester, Pennsylvania
Chicago, Illinois
Chicago Heights, Illinois
Chicopee, Massachusetts
Chula Vista, California
Cicero, Illinois
Cincinnati, Ohio
Clarksville, Tennessee
Cleveland, Ohio
Cocoa, Florida
Columbia, South Carolina
Columbus, Georgia
Columbus, Ohio
Compton, California
Corpus Christi, Texas
Covington, Kentucky
Danville, Illinois
Danville, Virginia
Dayton, Ohio
Daytona Beach, Florida
Denison, Texas
Denver, Colorado
Detroit, Michigan
District of Columbia
Dothan, Alabama
Duluth, Minnesota
Durham, North Carolina
East Chicago, Indiana
East Lansing, Michigan
East Orange, New Jersey
East Providence, Rhode Island
East St. Louis, Illinois
Easton, Pennsylvania
Edinburg, Texas
El Monte, California
El Paso, Texas
Elizabeth, New Jersey
Elmira, New York
Erie, Pennsylvania
Evanston, Illinois
Evansville, Indiana
Everett, Massachusetts
Everett, Washington
Fall River, Massachusetts
Fayetteville, North Carolina
Fitchburg, Massachusetts
Flint, Michigan
Florence, Alabama
Ft. Myers, Florida
Freeport, New York
Fresno, California
Gadsden, Alabama
Gainesville, Florida
Galveston, Texas
Gary, Indiana
Gastonia, North Carolina
Grand Rapids, Michigan
Granite City, Illinois
Greenville, Mississippi
Greenville, South Carolina
Guayama, Puerto Rico
Guaynabo, Puerto Rico
Gulfport, Mississippi
Hamilton, Ohio
Harlingen, Texas
Harrisburg, Pennsylvania
Hartford, Connecticut
Hattiesburg, Mississippi
Haverhill, Massachusetts
Hawthorne, California
Hazelton, Pennsylvania
Hemstead Township, New York
Hialeah, Florida
High Point, North Carolina
Hoboken, New Jersey
Holyoke, Massachusetts
Hopkinsville, Kentucky
Humacao, Puerto Rico
Huntington, West Virginia

Indianapolis, Indiana
Inglewood, California
Irvington, New Jersey
Jackson, Michigan
Jackson, Mississippi
Jackson, Tennessee
Jacksonville, Florida
Jersey City, New Jersey
Johnson City, Tennessee
Johnstown, Pennsylvania
Joplin, Missouri
Juana Diaz, Puerto Rico
Kalamazoo, Michigan
Kankakee, Illinois
Kansas City, Kansas
Kansas City, Missouri
Kenner, Louisiana
Kenosha, Wisconsin
Killeen, Texas
Knoxville, Tennessee
Kokomo, Indiana
La Crosse, Wisconsin
Lafayette, Louisiana
Lake Charles, Louisiana
Lakeland, Florida
Lakewood, Ohio
Lancaster, Pennsylvania
Lansing, Michigan
Laredo, Texas
Las Cruces, New Mexico
Lawrence, Massachusetts
Lawton, Oklahoma
Lewiston, Maine
Lima, Ohio
Lompoc, California
Long Beach, California
Long Branch, New Jersey
Los Angeles, California
Louisville, Kentucky
Lowell, Massachusetts
Lynchburg, Virginia
Lynn, Massachusetts
Lynwood, California
Macon, Georgia
Maiden, Massachusetts
Manchester, New Hampshire
Mansfield, Ohio
Marietta, Ohio
Marion, Indiana
Marshall, Texas
Mayaguez, Puerto Rico
McAllen, Texas
Medford, Massachusetts
Melbourne, Florida
Memphis, Tennessee
Meriden, Connecticut
Meridian, Mississippi
Miami, Florida
Miami Beach, Florida
Middletown, Ohio
Millville, New Jersey
Milwaukee, Wisconsin
Minneapolis, Minnesota
Mobile, Alabama
Modesto, California
Monroe, Louisiana
Montgomery, Alabama
Moss Point, Mississippi
Mount Vernon, New York
Muncie, Indiana
Muskegon, Michigan
Muskegon Heights, Michigan
Muskogee, Oklahoma
National City, California
New Bedford, Massachusetts
New Britain, Connecticut
New Brunswick, New Jersey
New Haven, Connecticut
New London, Connecticut
New Orleans, Louisiana
New Rochelle, New York
New York, New York
Newark, New Jersey
Newark, Ohio
Newport News, Virginia
Niagara Falls, New York
Norfolk, Virginia
North Bergen Township, New Jersey
North Chicago, Illinois
Norwalk, California
Norwich, Connecticut
Oak Park, Illinois
Oakland, California
Oceanside, California
Ogden, Utah
Omaha, Nebraska
Ontario, California
Orange, Texas
Orlando, Florida
Oshkosh, Wisconsin
Oxnard, California
Panama City, Florida
Parkersburg, West Virginia
Pasco, Washington
Passaic, New Jersey
Paterson, New Jersey
Pawtucket, Rhode Island
Pensacola, Florida
Perth Amboy, New Jersey
Petersburg, Virginia
Pharr, Texas
Philadelphia, Pennsylvania
Phoenix, Arizona
Pico Rivera, California
Pine Bluff, Arkansas
Pittsburgh, Pennsylvania
Pittsfield, Massachusetts
Plainfield, New Jersey
Pomona, California
Ponce, Puerto Rico
Pontiac, Michigan
Port Arthur, Texas
Portland, Maine
Portland, Oregon
Portsmouth, Virginia
Poughkeepsie, New York
Pritchard, Alabama
Providence, Rhode Island
Provo, Utah
Pueblo, Colorado
Quincy, Illinois
Quincy, Massachusetts
Rantoul, Illinois
Reading, Pennsylvania

Revere, Massachusetts
Richmond, California
Richmond, Indiana
Richmond, Virginia
Roanoke, Virginia
Rochester, New York
Rome, New York
Rosemead, California
Sacramento, California
Saginaw, Michigan
St. Joseph, Missouri
St. Louis, Missouri
St. Paul, Minnesota
St. Petersburg, Florida
Salem, Massachusetts
Salinas, California
San Antonio, Texas
San Benito, Texas
San Bernardino, California
San Diego, California
San Francisco, California
San Juan, Puerto Rico
Santa Ana, California
Santa Cruz, California
Santa Fe, New Mexico
Santa Maria, California
Santa Monica, California
Sarasota, Florida
Savannah, Georgia
Schenectady, New York
Scranton, Pennsylvania
Seaside, California
Seattle, Washington
Shreveport, Louisiana
Somerville, Massachusetts
South Gate, California
Spartanburg, South Carolina
Spokane, Washington
Springfield, Massachusetts
Springfield, Ohio
Springfield, Oregon
Steubenville, Ohio
Stockton, California
Suffolk, Virginia
Superior, Wisconsin
Syracuse, New York
Tacoma, Washington
Tampa, Florida
Taunton, Massachusetts
Terre Haute, Indiana
Texarkana, Arkansas
Texarkana, Texas
Titusville, Florida
Toa Baja, Puerto Rico
Toledo, Ohio
Trenton, New Jersey
Troy, New York
Trujillo Alto, Puerto Rico
Tucson, Arizona
Tuscaloosa, Alabama
Union City, New Jersey
Upper Darby Township, Pennsylvania
Urbana, Illinois
Utica, New Jersey
Vega Baja, Puerto Rico
Vineland, New Jersey
Waco, Texas
Waltham, Massachusetts
Warren, Ohio
Waterbury, Connecticut
West Haven, Connecticut
West New York, New Jersey
West Palm Beach, Florida
Wheeling, West Virginia
Wilkes-Barre, Pennsylvania
Williamsport, Pennsylvania
Wilmington, Delaware
Wilmington, North Carolina
Winston-Salem, North Carolina
Winter Haven, Florida
Woonsocket, Rhode Island
Worcester, Massachusetts
Wyandotte, Michigan
Yakima, Washington
Yauco, Puerto Rico
Yonkers, New York
York, Pennsylvania
Youngstown, Ohio

*Counties Eligible for the Urban Park and Recreation Recovery Program*

Alameda Co., California
Allegheny Co., Pennsylvania
Bernalillo Co., New Mexico
Bexar Co., Texas
Bristol Co., Massachusetts
Camden Co., New Jersey
Charleston Co., South Carolina
Cook Co., Illinois
Cuyahoga Co., Ohio
Dade Co., Florida
El Paso Co., Texas
Erie Co., New York
Essex Co., Massachusetts
Essex Co., New Jersey
Franklin Co., Ohio
Fresno Co., California
Fulton Co., Georgia
Hamilton Co., Ohio
Hamilton Co., Tennessee
Hampden Co., Massachusetts
Hillsborough Co., Florida
Hudson Co., New Jersey
Jackson Co., Missouri
Jefferson Co., Alabama
Kern Co., California
Los Angeles Co., California
Lucas Co., Ohio
Luzerne Co., Pennsylvania
Mahoning Co., Ohio
Maricopa Co., Arizona
Middlesex Co., Massachusetts
Milwaukee Co., Wisconsin
Mobile Co., Alabama
Nassau Co., New York
Nueces Co., Texas
Oneida Co., New York
Onondaga Co., New York
Orange Co., Florida
Passaic Co., New Jersey
Pinellas Co., Florida
Plymouth Co., Massachusetts

Polk Co., Florida
Riverside Co., California
St. Clair Co., Illinois
San Bernardino Co., California
San Diego Co., California
San Joaquin Co., California
Shelby Co., Tennessee
Sonoma Co., California
Suffolk Co., New York
Wayne Co., Michigan
Worcester Co., Massachusetts

[44 FR 58091, Oct. 9, 1979. Redesignated at 46 FR 34329, July 1, 1981, and correctly redesignated at 46 FR 43045, Aug. 26, 1981, and amended at 47 FR 15137, Apr. 8, 1982]

# PART 73—WORLD HERITAGE CONVENTION

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AUTHORITY: 94 Stat. 3000; 16 U.S.C. 470 a–1, a–2, d.

SOURCE: 47 FR 23397, May 27, 1982, unless otherwise noted.

## § 73.1 Purpose.

The purpose of these rules is to set forth the policies and procedures that the Department of the Interior, through the National Park Service (NPS), uses to direct and coordinate U.S. participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, which was ratified by the Senate on October 26, 1973. The rules describe the procedures used to implement the Convention under the National Historic Preservation Act Amendments of 1980. The purpose of the World Heritage Convention is to enhance worldwide understanding and appreciation of heritage conservation, and to recognize and preserve natural and cultural properties throughout the world that have outstanding universal value to mankind.

## § 73.3 Definitions.

*Cultural Heritage*—Article 1 of the Convention defines ''Cultural Heritage'' as:

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings, and combinations of features, which are of outstanding universal value from the point of view of history, art, or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art, or science; and

Sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological, or anthropological points of view.

*Natural Heritage*—Article 2 of the Convention defines ''Natural Heritage'' as:

Natural features, consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; and

Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation, or natural beauty.

*Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage*, or *World Heritage Committee*, means the Committee established by Article 8 of the Convention and assisted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). It is composed of 21 nations participating in the Convention, and is responsible for implementing the Convention at the international level. Countries represented on the Committee are elected by participating nations and serve for three sessions of the UNESCO General Conference (six years). The Committee establishes criteria which properties must satisfy for inclusion on the World

Heritage List, sets policy and procedures, and approves properties for inclusion on the World Heritage List.

*World Heritage Convention*, or *Convention*, means the Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the U.S. Senate on October 26, 1973.

*World Heritage List*, means the List established by Article 11 of the Convention which includes those cultural and natural properties judged to possess outstanding universal value for mankind.

*UNESCO*, means the United Nations Educational, Scientific and Cultural Organization, which provides staff support for the Convention and its implementation.

*Assistant Secretary*, means the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, or the designee authorized to carry out the Assistant Secretary's responsibilities.

*Department*, means the U.S. Department of the Interior.

*Federal Interagency Panel for World Heritage*, or *Panel*, means the Panel consisting of representatives from the Office of the Assistant Secretary, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; and the Department of State.

*Owner*, means the individual(s) or organization(s) of record that own private land that is being nominated for World Heritage status, or the head of the public agency, or subordinate to whom such authority has been delegated, responsible for administering public land that is being nominated for World Heritage status.

*Owner concurrence*, means the concurrence of all owners of any property interest that is part of the World Heritage nomination.

[47 FR 23397, May 27, 1982, as amended at 62 FR 30235, June 3, 1997]

### § 73.5 Authority.

The policies and procedures contained herein are based on the authority of the Secretary of the Interior under title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 94 Stat. 3000; 16 U.S.C. 470a–1, a–2) which directs the Secretary to ensure and direct U.S. participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the U.S. Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.

### § 73.7 World Heritage nomination process.

(a) *What is the U.S. World Heritage nomination process?* (1) The Assistant Secretary for Fish and Wildlife and Parks (''Assistant Secretary'') is the designated official who conducts the United States World Heritage Program and periodically nominates properties to the World Heritage List on behalf of the United States. The National Park Service (NPS) provides staff support to the Assistant Secretary.

(2) The Assistant Secretary initiates the process for identifying candidate properties for the World Heritage List and subsequently preparing, evaluating, and approving U.S. nominations for them by publishing a First Notice in the FEDERAL REGISTER. This notice includes a list of candidate sites (formally known as the Indicative Inventory of Potential Future U.S. World Heritage nominations) and requests that public and private sources recommend properties for nomination.

(3) The Assistant Secretary, with advice from the Federal Interagency Panel for World Heritage (''Panel''), may propose for possible nomination a limited number of properties from the Indicative Inventory.

(4) Property owners, in cooperation with NPS, voluntarily prepare a detailed nomination document for their property that has been proposed for nomination. The Panel reviews the accuracy and completeness of draft nominations, and makes recommendations on them to the Assistant Secretary.

(5) The Assistant Secretary decides whether to nominate any of the proposed properties and transmits approved United States nominations, through the Department of State, to the World Heritage Committee to be

considered for addition to the World Heritage List.

(b) *What requirements must a U.S. property meet to be considered for nomination to the World Heritage List?* A property in the United States must satisfy the following requirements established by law and one or more of the World Heritage Criteria before the Assistant Secretary can consider it for World Heritage nomination:

(1) The property must be nationally significant. For the purposes of this section, a property qualifies as ''nationally significant'' if it is:

(i) A property that the Secretary of the Interior has designated as a National Historic Landmark (36 CFR part 65) or a National Natural Landmark (36 CFR part 62) under provisions of the 1935 Historic Sites Act (Public Law 74–292; 49 Stat. 666; 16 U.S.C. 461 *et seq.*);

(ii) An area the United States Congress has established as nationally significant; or

(iii) An area the President has proclaimed as a National Monument under the Antiquities Act of 1906 (16 U.S.C. 433).

(2) The property's owner(s) must concur in writing to the nomination.

(i) If a unit of United States government (Federal, State, and/or local) owns or controls the property, a letter from the owner(s) demonstrates concurrence.

(ii) If private parties own or control the property, they must provide the protection agreement outlined in § 73.13(c).

(iii) All owners must concur before the Assistant Secretary can include their property within a World Heritage nomination. For example, a responsible Federal management official can concur for the unit, but cannot concur for any non-Federal property interest within the boundaries of the unit. NPS will seek the concurrence of those who own or control any non-Federal property interest if we determine that the property interest is integral to the entire property's outstanding universal values.

(3) The nomination document must include evidence of such legal protections as may be necessary to ensure the preservation of the property and its environment. Section 73.13 identifies the distinct protection requirements for public and private properties.

(c) *How does the U.S. World Heritage nomination process begin?* The Assistant Secretary, through the NPS, will periodically publish a First Notice in the FEDERAL REGISTER to begin the U.S. World Heritage nomination process. This notice, among other things:

(1) Sets forth the schedule and procedures for identifying proposed U.S. nominations to the World Heritage List. It includes specific deadlines for receipt of suggestions and comments, and for preparing and approving nomination documents for properties proposed as U.S. nominations;

(2) Includes the Indicative Inventory of Potential Future U.S. World Heritage Nominations (Indicative Inventory), solicits recommendations on which properties on it should be nominated, and requests suggestions of properties that should be considered for addition to it; and

(3) Identifies any special requirements that properties must satisfy to be considered for nomination.

(d) *What is the Indicative Inventory and how is it used?* (1) The World Heritage Convention (Article 11) requests each signatory nation to submit a list of candidate sites for the World Heritage List. These lists are also known as tentative lists, or Indicative Inventories. The NPS compiles and maintains the U.S. Indicative Inventory, which is formally known as the Indicative Inventory of Potential Future U.S. World Heritage Nominations. It is a list of cultural and natural properties located in the United States that, based on preliminary examination, appear to qualify for the World Heritage List and that the United States may consider for nomination to the List.

(2) Inclusion of a property on the Indicative Inventory does not confer World Heritage status on it, but merely indicates that the Assistant Secretary may further examine the property for possible nomination. The Assistant Secretary selects proposed nominations from among the potential future nominations included on the Indicative Inventory. Thus, the Assistant Secretary uses the Indicative Inventory as the basis for selecting United States

nominations, and it provides a comparative framework within which to judge the outstanding universal value of a property. Any agency, organization, or individual may recommend additional properties, with accompanying documentation, for inclusion on the Indicative Inventory. Ordinarily, a property must have been listed on the Indicative Inventory before the Assistant Secretary can consider it for nomination.

(3) The Assistant Secretary, in cooperation with the Panel and other sources as appropriate, decides whether to include a recommended property on the Indicative Inventory. If a property is included, NPS will list it the next time we publish the Indicative Inventory in the FEDERAL REGISTER. The Assistant Secretary periodically transmits a copy of the Indicative Inventory, including documentation on each property's location and significance, to the World Heritage Committee for use in evaluation of nominations.

(e) *How are U.S. World Heritage nominations proposed?* (1) After the First Notice's comment period expires, NPS compiles all suggestions and comments. The Assistant Secretary then reviews the comments and suggestions and works in cooperation with the Federal Interagency Panel for World Heritage to decide whether to identify any properties as proposed U.S. nominations. In addition to how well the property satisfies the World Heritage criteria (§ 73.9) and the legislative requirements outlined in paragraph (b)(1) of this section, the Assistant Secretary may consider:

(i) How well the particular type of property (i.e., theme or region) is represented on the World Heritage List;

(ii) The balance between cultural and natural properties already on the List and those under consideration;

(iii) Opportunities that the property affords for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation; and

(v) Other relevant factors, including public interest and awareness of the property.

(2) Selection as a proposed nomination indicates that a property appears to qualify for World Heritage status and that the Assistant Secretary will encourage the preparation of a complete nomination document for the property.

(f) *Who is notified when U.S. World Heritage nominations are proposed?* (1) The Assistant Secretary for Fish and Wildlife and Parks publishes notice of decisions on proposed U.S. nominations in the FEDERAL REGISTER (Second Notice). If any properties are identified as proposed nominations, the Assistant Secretary also notifies the following parties in writing:

(i) The owner(s) of lands or interests of land that are to be included in the nomination; and

(ii) The House Resources Committee and the Senate Energy and Natural Resources Committee.

(2) The Second Notice advises the recipients of the proposed action, references these rules, and sets forth the process for preparing a nomination. NPS also prepares and issues a press release on the proposed nomination.

(g) *How is a U.S. World Heritage Nomination prepared?* NPS coordinates arrangements for the preparation of a complete nomination document for each proposed property. If you are a property owner(s), you, in cooperation with NPS, are responsible for preparing the draft nomination and for gathering documentation in support of it. NPS oversees the preparation of the nomination and ensures that it follows the procedures contained in these rules and the format and procedural guidelines established by the World Heritage Committee. Each nomination is prepared according to the schedule set forth in the First Notice.

(h) *How is a draft U.S. World Heritage nomination evaluated?* The draft nomination document serves as the basis for the Assistant Secretary's decision to nominate the property to the World Heritage Committee. NPS coordinates the review and evaluation of draft World Heritage nominations. We distribute copies to all members of the Federal Interagency Panel for World Heritage and request comments regarding the significance of the property and the adequacy of the draft nomination.

Afterward, we compile the recommendations and comments received from the members of the Panel.

(i) *How is a U.S. World Heritage nomination approved and submitted?* (1) The Assistant Secretary, based on personal evaluation and the recommendations from the Panel, may nominate a property that appears to meet the World Heritage criteria to the World Heritage Committee on behalf of the United States. The Assistant Secretary sends an approved nomination document, through the Department of State, to the World Heritage Committee. The nomination document should be transmitted so that the World Heritage Committee receives it before the deadline established for any given year.

(2) Nomination by the United States does not place a property on the World Heritage List. The World Heritage Committee must consider and approve the nomination, usually at a meeting during the year following its nomination, before it is inscribed as a World Heritage Site.

(j) *Who is notified when a U.S. property has been nominated to the World Heritage List?* (1) Upon approving a nomination, the Assistant Secretary notifies the following parties in writing (Third Notice):

(i) The owner(s) of land or interests in land that are included in the nomination;

(ii) The House Resources Committee; and

(iii) The Senate Energy and Natural Resources Committee.

(2) The Assistant Secretary also publishes notice of the United States World Heritage nomination in the FEDERAL REGISTER. In addition, NPS issues a press release on the nomination.

[66 FR 57880, Nov. 19, 2001]

### § 73.9 World Heritage criteria.

(a) *What are the World Heritage criteria and how are they applied?* The World Heritage Committee uses the following criteria to evaluate cultural and natural properties nominated to the World Heritage List. To qualify for addition to the World Heritage List, sites must meet one or more of the criteria. For information on how to apply the criteria, you should consult their annotated text in the Operational Guidelines for the World Heritage Convention. The Operational Guidelines are published periodically by the World Heritage Centre. You may obtain copies of the World Heritage Convention, the Operational Guidelines, and other program information upon request to the Office of International Affairs of the National Park Service, 1849 C Street, NW., Room 2242, Washington, DC 20240. The World Heritage Convention and the Operational Guidelines are also posted on the World Heritage Centre's Web site at *www.unesco.org/whc*.

(b) *What are the cultural criteria?* The criteria for the inclusion of cultural properties in the World Heritage List should always be seen in relation to one another and should be considered in the context of the definition set out in Article 1 of the Convention. A monument, group of buildings or site—as defined in Article 1 of the Convention—which is nominated for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purpose of the Convention when the Committee finds that it meets one or more of the following criteria and the test of authenticity:

(1) Each property nominated should therefore:

(i) Represent a masterpiece of human creative genius; or

(ii) Exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design; or

(iii) Bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; or

(iv) Be an outstanding example of a type of building or architectural or technological ensemble or landscape which illustrates a significant stage(s) in human history; or

(v) Be an outstanding example of a traditional human settlement or land-use which is representative of a culture (or cultures), especially when it has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding

universal significance (the Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances and in conjunction with other criteria cultural or natural).

(2) In addition to the criteria in paragraphs (b)(1)(i) through (b)(1)(vi) of this section, the sites should also meet the test of authenticity in design, material, workmanship or setting and in the case of cultural landscapes their distinctive character and components (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture) and have adequate legal and/or contractual and/or traditional protection and management mechanisms to ensure the conservation of the nominated cultural properties or cultural landscapes.

(c) *What are the natural criteria?* A natural heritage property—as defined in Article 2 of the Convention—which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria specified by the Operational Guidelines and fulfills the conditions of integrity:

(1) Sites nominated should therefore:

(i) Be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features; or

(ii) Be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals; or

(iii) Contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance; or

(iv) Contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

(2) In addition to the criteria in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, the sites should also fulfill the following conditions of integrity:

(i) The sites described in paragraph (c)(1)(i) of this section should contain all or most of the key interrelated and interdependent elements in their natural relationships.

(ii) The sites described in paragraph (c)(1)(ii) of this section should have sufficient size and contain the necessary elements to demonstrate the key aspects of processes that are essential for the long-term conservation of the ecosystems and the biological diversity they contain.

(iii) The sites described in paragraph (c)(1)(iii) of this section should be of outstanding aesthetic value and include areas that are essential for maintaining the beauty of the site.

(iv) The sites described in paragraph (c)(1)(iv) of this section should contain habitats for maintaining the most diverse fauna and flora characteristic of the biogeographic province and ecosystems under consideration.

(3) The sites should have a management plan. When a site does not have a management plan at the time when it is nominated for the consideration of the World Heritage Committee, the State Party concerned should indicate when such a plan will become available and how it proposes to mobilize the resources required for the preparation and implementation of the plan. The State Party should also provide other document(s) (e.g. operational plans) which will guide the management of the site until such time when a management plan is finalized.

[66 FR 57881, Nov. 19, 2001]

### § 73.11 Federal Interagency Panel for World Heritage.

(a) *Responsibilities.* The Federal Interagency Panel for World Heritage is established to advise the Department of the Interior on implementation of the World Heritage Convention. Among other things, the panel assists in the following activities:

(1) The development of policy and procedures for effectively implementing the Convention in the U.S.;

(2) The evaluation of draft U.S. nomination documents;

(3) The making of recommendations for approval of U.S. nominations;

(4) The dissemination of information on the Convention within other Federal agencies; and

(5) The promotion of increased awareness and understanding of the importance of heritage conservation.

(b) *Composition*. (1) The Federal Interagency Panel for World Heritage is composed of representatives, named by their respective agencies, from the following agencies and offices:

(i) The Office of the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior;

(ii) The National Park Service, U.S. Department of the Interior;

(iii) The U.S. Fish and Wildlife Service, U.S. Department of the Interior;

(iv) The President's Council on Environmental Quality;

(v) The Smithsonian Institution;

(vi) The Advisory Council on Historic Preservation;

(vii) The National Oceanic and Atmospheric Administration, Department of Commerce; and

(viii) The Department of State.

(2) Additional representatives from other Federal agencies with mandates and expertise in heritage conservation may be requested to participate in the Panel from time to time.

(3) The Assistant Secretary, or his/her designee, chairs the Panel, and sets its agenda and schedule. The NPS provides staff support to the Panel.

### § 73.13 Protection of U.S. World Heritage properties.

(a) *Requirements*. (1) Article 5 of the Convention mandates that each participating nation shall take, insofar as possible, the appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, preservation, and rehabilitation of properties of outstanding universal value; and

(2) Title IV of Pub. L. 96–515 requires that no non-Federal property may be nominated to the World Heritage List unless its owner concurs in writing to such nomination. The nomination document for each property must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment, including, for example, restrictive covenants, easements, and other forms of protection (16 U.S.C. 470a–1).

(b) *Protection Measures for Public Properties*. For properties owned or controlled by Federal, State, and/or local governments, the following items satisfy the protection requirements outlined in paragraph (a) of this section:

(1) Written concurrence by the owner prior to nomination;

(2) The nomination document must include reference to:

(i) All legislation establishing or preserving the area; and

(ii) All existing and proposed administrative measures, including management plans, that would ensure continued satisfactory maintenance of the property and its environment; and

(3) A written statement by the owner(s) that such protection measures satisfy the requirements outlined in (a) above.

(c) *Protection Measures for Private Properties*. For properties owned or controlled by private organizations or individuals, the following items satisfy the protection requirements outlined in (a) of this section.

(1) A written covenant executed by the owner(s) prohibiting, in perpetuity, any use that is not consistent with, or which threatens or damages the property's universally significant values, or other trust or legal arrangement that has that effect; and

(2) The opinion of counsel on the legal status and enforcement of such a prohibition, including, but not limited to, enforceability by the Federal government or by interested third parties. In addition, if the owner(s) is willing, a right of first refusal may be given for acquisition of the property, along with a guaranteed source of funding and appropriate management framework, in the event of any proposed sale, succession, voluntary or involuntary transfer, or in the unlikely event that the requirements outlined above prove to be inadequate to ensure the preservation of the property's outstanding universal value. The protection measures for each private property being considered for possible nomination to the World Heritage List will be reviewed on a case-by-case basis to ensure that the

requirements set forth above fulfill the mandate of Pub. L. 96–515.

### § 73.15 International World Heritage activities.

(a) The Assistant Secretary, and other officials as appropriate, may represent the U.S. at meetings of the World Heritage Committee, the Bureau of the World Heritage Committee, or other international organizations or agencies which have activities that relate to World Heritage.

(b) In furtherance of Article 6 of the Convention and to the extent that resources permit, the Department will encourage and provide international assistance to other nations in activities relating to the identification, protection, conservation, and preservation of cultural and natural properties. The Secretary, or his designee, may develop and make available to other nations and international organizations training in, and information concerning, professional methods and techniques for the preservation of historic and natural properties (16 U.S.C. 470d; 16 U.S.C. 1537).

(c) NPS staff, in conjunction with the Federal Interagency Panel for World Heritage, provide support for the Assistant Secretary's international activities, including the preparation of documentation, briefing papers, and position statements.

(d) The Assistant Secretary responds, on behalf of the U.S., to requests from the World Heritage Committee, international heritage conservation organizations, or other nations regarding U.S. participation in the World Heritage Convention.

### § 73.17 Public information and education activities.

(a) To the extent that time and resources permit, owners of U.S. properties approved for inclusion on the World Heritage List are encouraged to publicize the status of the property, through appropriate signs, plaques, brochures, public dedication ceremonies, and interpretive displays or programs.

(b) The Department, through the NPS, may provide guidance to owners of U.S. World Heritage properties in developing publicity, educational, and/or interpretive programs.

(c) The NPS is responsible for developing and distributing general information materials on the World Heritage Convention, including brochures, slideshows, lectures, or other presentations in order to strengthen appreciation and understanding of the importance of World Heritage as set forth in Article 27 of the Convention.

## PARTS 74–77 [RESERVED]

## PART 78—WAIVER OF FEDERAL AGENCY RESPONSIBILITIES UNDER SECTION 110 OF THE NATIONAL HISTORIC PRESERVATION ACT

Sec.

78.1 Authorization.
78.2 Definitions.
78.3 Federal Agency decision to waive responsibilites.
78.4 Federal Agency notice.
78.5 Review by the Secretary of the Interior.

AUTHORITY: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et. seq.*

SOURCE: 50 FR 7590, Feb. 25, 1985, unless otherwise noted.

### § 78.1 Authorization.

Section 110 of the National Historic Preservation Act of 1966, as amended (''Act''), sets forth certain responsibilities of Federal agencies in carrying out the purposes of the National Historic Preservation Act of 1966. Subsection 110(j) authorizes the Secretary of the Interior to promulgate regulations under which the requirements in section 110 may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security. Waiver of responsibilities under section 110 does not affect an agency's section 106 responsibilities for taking into account the effects of emergency activities on properties included in or eligible for the National Register of Historic Places and for affording the Advisory Council on Historic Preservation an opportunity to comment on such activities.

### § 78.2 Definitions.

*Federal Agency Head* means the highest administrative official of a Federal agency, or designee.

*Imminent Threat to the National Security* means the imminence of any natural, technological, or other occurrence which, in determination of a Federal Agency Head, because of its size or intent, seriously degrades or threatens the national security of the United States such that an emergency action would be impeded if the Federal Agency were to concurrently meet its historic preservation responsibilities under section 110 of the National Historic Preservation Act, as amended.

*Major Natural Disaster* means any hurricane, tornado, storm, flood, high water, tidal wave, earthquake, volcanic eruption, landslide, snowstorm, fire, explosion, or other catastrophe, in any part of the United States which, in the determination of a Federal Agency Head, causes damage of sufficient severity and magnitude such that an emergency action is necessary to the preservation of human life or property, and that such emergency action would be impeded if the Federal Agency were to concurrently meet its historic preservation responsibilities under section 110 of the National Historic Preservation Act, as amended.

[50 FR 7590, Feb. 25, 1985, as amended at 62 FR 30235, June 3, 1997]

### § 78.3 Federal Agency decision to waive responsibilities.

(a) When a Federal Agency Head determines, under extraordinary circumstances, that there is an imminent threat of a major natural disaster or an imminent threat to the national security such that an emergency action is necessary to the preservation of human life or property, and that such emergency action would be impeded if the Federal Agency were to concurrently meet its historic preservation responsibilities under section 110 of the Act, that Federal Agency Head may immediately waive all or part of those responsibilities, subject to the procedures set forth herein and provided that the agency head implements such measures or procedures as are possible in the circumstances to avoid or minimize harm to historic properties.

(b) Waiver under § 78.3(a) shall not exceed the period of time during which the emergency circumstances necessitating the waiver exist.

(c) In no event shall a Federal Agency Head delay an emergency action necessary to the preservation of human life or property for the purpose of complying with the requirements in section 110 of the Act.

### § 78.4 Federal Agency notice.

(a) Federal Agency Heads making use of the waiver authority shall, within 12 days of the effective date of the waiver, notify the Secretary of the Interior, in writing, identifying:

(1) The major natural disaster or imminent threat to the national security necessitating the waiver and the emergency action taken;

(2) The period of effect of the waiver;

(3) Which provisions of section 110 have been waived;

(4) The geographic area to which the waiver applies; and

(5) The measures and procedures used to avoid or minimize harm to historic properties under the conditions necessitating the waiver.

(b) Information copies of the notice under § 78.4(a) shall be forwarded by the Federal Agency Head to the Advisory Council on Historic Preservation and the appropriate State Historic Preservation Officer.

### § 78.5 Review by the Secretary of the Interior.

(a) If the Secretary considers that all or part of the agency's decision as outlined under § 78.4(a) is inconsistent with the intent of the Act or these regulations for use of the waiver under extraordinary circumstances, the Secretary shall notify the Agency Head and the Director of the Office of Management and Budget within 5 days of receipt of the Federal Agency notice under § 78.4(a) of termination of the waiver, or make appropriate recommendations for modifications of the waiver's use. Termination of a waiver by the Secretary is final.

(b) If the waiver is still in effect at the time the Federal Agency Head receives recommendations from the Secretary, the Agency Head shall consider the recommendations and any comments received from the Advisory Council and the State Historic Preservation Officer before deciding whether to continue, withdraw, or modify the waiver. The Federal Agency Head shall respond to recommendations received from the Secretary either accepting or rejecting those recommendations, and, where recommendations are rejected, explaining the reasons for such a decision. Information copies of such response shall be forwarded by the Federal Agency Head to the Advisory Council on Historic Preservation and the appropriate State Historic Preservation Officer.

(c) If the waiver is no longer in effect at the time the Federal Agency Head receives recommendations from the Secretary or comments from the Advisory Council or the State Historic Preservation Officer, the Federal Agency Head should consider such recommendations and comments in similar future emergencies.

## PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHAEOLOGICAL COLLECTIONS

Sec.

79.1 Purpose.
79.2 Authority.
79.3 Applicability.
79.4 Definitions.
79.5 Management and preservation of collections.
79.6 Methods to secure curatorial services.
79.7 Methods to fund curatorial services.
79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.
79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.
79.10 Use of collections.
79.11 Conduct of inspections and inventories.
APPENDIX A TO PART 79—EXAMPLE OF A DEED OF GIFT
APPENDIX B TO PART 79—EXAMPLE OF A MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES FOR A FEDERALLY-OWNED COLLECTION
APPENDIX C TO PART 79—EXAMPLE OF A SHORT-TERM LOAN AGREEMENT FOR A FEDERALLY-OWNED COLLECTION

AUTHORITY: 16 U.S.C. 470*aa-mm*, 16 U.S.C. 470 *et seq.*

SOURCE: 55 FR 37630, Sept. 12, 1990, unless otherwise noted.

### § 79.1 Purpose.

(a) The regulations in this part establish definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469*c*), section 110 of the National Historic Preservation Act (16 U.S.C. 470*h*–2) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*). They establish:

(1) Procedures and guidelines to manage and preserve collections;

(2) Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;

(3) Standards to determine when a repository has the capability to provide long-term curatorial services; and

(4) Guidelines to provide access to, loan and otherwise use collections.

(b) The regulations in this part contain three appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a Federal agency and a non-Federal owner of material remains who is donating the remains to the Federal agency.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

(3) Appendix C to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a federally-owned collection (or a part thereof).

(4) The three appendices are meant to illustrate how such agreements might

appear. They should be revised according to the:

(i) Needs of the Federal agency and any non-Federal owner;

(ii) Nature and content of the collection; and

(iii) Type of contract, memorandum, agreement or other written instrument being used.

(5) When a repository has preexisting standard forms (e.g., a short-term loan form) that are consistent with the regulations in this part, those forms may be used in lieu of developing new ones.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

### § 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470*a*) which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under the authority of section 110 of that Act (16 U.S.C. 470*h*–2), the Reservoir Salvage Act (16 U.S.C. 469–469*c*) and the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*) are deposited in an institution with adequate long-term curatorial capabilities.

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archaeological Resources Protection Act (16 U.S.C. 470*dd*) which gives the Secretary of the Interior discretionary authority to promulgate regulations for the:

(1) Exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources recovered from public and Indian lands under that Act; and

(2) Ultimate disposition of archeological resources recovered under that Act (16 U.S.C. 470*aa-mm*), the Antiquities Act (16 U.S.C. 431–433) or the Reservoir Salvage Act (16 U.S.C. 469–469*c*).

(3) It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over such lands.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

### § 79.3 Applicability.

(a) The regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469*c*), section 110 of the National Historic Preservation Act (16 U.S.C. 470*h*-2) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license or permit.

(1) Material remains, as defined in § 79.4 of this part, that are excavated or removed from a prehistoric or historic resource generally are the property of the landowner.

(2) Data that are generated as a result of a prehistoric or historic resource survey, excavation or other study are recorded in associated records, as defined in § 79.4 of this part. Associated records that are prepared or assembled in connection with a Federal or federally authorized prehistoric or historic resource survey, excavation or other study are the property of the U.S. Government, regardless of the location of the resource.

(b) The regulations in this part apply to preexisting and new collections that meet the requirements of paragraph (a) of this section. However, the regulations shall not be applied in a manner that would supersede or breach material terms and conditions in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

(c) Collections that are excavated or removed pursuant to the Antiquities Act (16 U.S.C. 431–433) remain subject to that Act, the Act's implementing rule (43 CFR part 3), and the terms and conditions of the pertinent Antiquities Act permit or other approval.

(d) Collections that are excavated or removed pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*) remain subject to that Act, the Act's implementing rules (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229), and the terms and conditions of the pertinent Archaeological Resources Protection Act permit or other approval.

(e) Any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, to safeguard and preserve the associated records and any material remains that are deposited in the repository.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

**§ 79.4 Definitions.**

As used for purposes of this part:

(a) *Collection* means material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

(1) *Material remains* means artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks and mounds);

(ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry and textiles);

(iii) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers and pigments);

(iv) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

(v) Organic material (such as vegetable and animal remains, and coprolites);

(vi) Human remains (such as bone, teeth, mummified flesh, burials and cremations);

(vii) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;

(viii) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo);

(ix) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

(x) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

(2) *Associated records* means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog and inventory records);

(ii) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar,

magnetometers, subbottom profilers, radar and fathometers);

(iii) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(iv) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs and receipts); and

(v) Administrative records relating to the survey, excavation or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*), and National Register of Historic Places nomination and determination of eligibility forms).

(b) *Curatorial services*. Providing curatorial services means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

(1) Inventorying, accessioning, labeling and cataloging a collection;

(2) Identifying, evaluating and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing and conserving a collection in such a manner to preserve it.

(c) *Federal Agency Official* means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

(d) *Indian lands* has the same meaning as in §–.3(e) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(e) *Indian tribe* has the same meaning as in §–.3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(f) *Personal property* has the same meaning as in 41 CFR 100–43.001–14. Collections, equipment (e.g., a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

(g) *Public lands* has the same meaning as in §–.3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(h) *Qualified museum professional* means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's ''Position Classification Standards for Positions under the General Schedule Classification System'' (U.S. Government Printing Office, stock No. 906–-028–00000–0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM–1015) and the museum technician and specialist series (GS/GM–1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM–1420), the archeologist series (GS/GM–193), the anthropologist series (GS/GM–190), and the historian series (GS/GM–170). In general, grades GS–9 and below are assistants and trainees while grades GS–11 and above are professionals at the full performance level. Grades GS–11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type and scope of the work.

(2) The Office of Personnel Management's ''Qualification Standards for Positions under the General Schedule (Handbook X–118)'' (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS–11 and above.

(3) The ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (i.e., historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW., Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

(i) *Religious remains* means material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

(j) *Repository* means a facility such as a museum, archeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State or local Government agency or Indian tribe that can provide professional, systematic and accountable curatorial services on a long-term basis.

(k) *Repository Official* means any officer, employee or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

(l) *Tribal Official* means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

### § 79.5 Management and preservation of collections.

The Federal Agency Official is responsible for the long-term management and preservation of preexisting and new collections subject to this part. Such collections shall be placed in a repository with adequate long-term curatorial capabilities, as set forth in § 79.9 of this part, appropriate to the nature and content of the collections.

(a) *Preexisting collections.* The Federal Agency Official is responsible for ensuring that preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this rule, are being properly managed and preserved. The Federal Agency Official shall identify such repositories, and review and evaluate the curatorial services that are being provided to preexisting collections. When the Federal Agency Official determines that such a repository does not have the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, the Federal Agency Official may either:

(1) Enter into or amend an existing contract, memorandum, agreement or other appropriate written instrument

for curatorial services for the purpose of:

(i) Identifying specific actions that shall be taken by the repository, the Federal agency or other appropriate party to eliminate the inadequacies;

(ii) Specifying a reasonable period of time and a schedule within which the actions shall be completed; and

(iii) Specifying any necessary funds or services that shall be provided by the repository, the Federal agency or other appropriate party to complete the actions; or

(2) Remove the collections from the repository and deposit them in another repository that can provide such services in accordance with the regulations in this part. Prior to moving any collection that is from Indian lands, the Federal Agency Official must obtain the written consent of the Indian landowner and the Indian tribe having jurisdiction over the lands.

(b) *New collections.* The Federal Agency Official shall deposit a collection in a repository upon determining that:

(1) The repository has the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part;

(2) The repository's facilities, written curatorial policies and operating procedures are consistent with the regulations in this part;

(3) The repository has certified, in writing, that the collection shall be cared for, maintained and made accessible in accordance with the regulations in this part and any terms and conditions that are specified by the Federal Agency Official;

(4) When the collection is from Indian lands, written consent to the disposition has been obtained from the Indian landowner and the Indian tribe having jurisdiction over the lands; and

(5) The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing and packaging) has been completed, and associated records have been prepared and organized in accordance with the repository's processing and documentation procedures.

(c) *Retention of records by Federal agencies.* The Federal Agency Official shall maintain administrative records on the disposition of each collection including, but not limited to:

(1) The name and location of the repository where the collection is deposited;

(2) A copy of the contract, memorandum, agreement or other appropriate written instrument, and any subsequent amendments, between the Federal agency, the repository and any other party for curatorial services;

(3) A catalog list of the contents of the collection that is deposited in the repository;

(4) A list of any other Federal personal property that is furnished to the repository as a part of the contract, memorandum, agreement or other appropriate written instrument for curatorial services;

(5) Copies of reports documenting inspections, inventories and investigations of loss, damage or destruction that are conducted pursuant to § 79.11 of this part; and

(6) Any subsequent permanent transfer of the collection (or a part thereof) to another repository.

### § 79.6 Methods to secure curatorial services.

(a) Federal agencies may secure curatorial services using a variety of methods, subject to Federal procurement and property management statutes, regulations, and any agency-specific statutes and regulations on the management of museum collections. Methods that may be used by Federal agencies to secure curatorial services include, but are not limited to:

(1) Placing the collection in a repository that is owned, leased or otherwise operated by the Federal agency;

(2) Entering into a contract or purchase order with a repository for curatorial services;

(3) Entering into a cooperative agreement, a memorandum of understanding, a memorandum of agreement or other agreement, as appropriate, with a State, local or Indian tribal repository, a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering into an interagency agreement with another Federal agency for curatorial services;

(5) Transferring the collection to another Federal agency for preservation; and

(6) For archeological activities permitted on public or Indian lands under the Archaeological Resources Protection Act (16 U.S.C. 470 *aa–mm*), the Antiquities Act (16 U.S.C. 431–433) or other authority, requiring the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit.

(b) *Guidelines for selecting a repository.* (1) When possible, the collection should be deposited in a repository that:

(i) Is in the State of origin;

(ii) Stores and maintains other collections from the same site or project location; or

(iii) Houses collections from a similar geographic region or cultural area.

(2) The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(3) Except when non-federally-owned material remains are retained and disposed of by the owner, material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) *Sources for technical assistance.* The Federal Agency Official should consult with persons having expertise in the management and preservation of collections prior to preparing a scope of work or a request for proposals for curatorial services. This will help ensure that the resulting contract, memorandum, agreement or other written instrument meets the needs of the collection, including any special needs in regard to any religious remains. It also will aid the Federal Agency Official in evaluating the qualifications and appropriateness of a repository, and in determining whether the repository has the capability to provide adequate long-term curatorial services for a collection. Persons, agencies, institutions and organizations that may be able to provide technical assistance include, but are not limited to the:

(1) Federal agency's Historic Preservation Officer;

(2) State Historic Preservation Officer;

(3) Tribal Historic Preservation Officer;

(4) State Archeologist;

(5) Curators, collections managers, conservators, archivists, archeologists, historians and anthropologists in Federal and State Government agencies and Indian tribal museum;

(6) Indian tribal elders and religious leaders;

(7) Smithsonian Institution;

(8) American Association of Museums; and

(9) National Park Service.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

### § 79.7 Methods to fund curatorial services.

A variety of methods are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those methods include, but are not limited to, the following:

(a) Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. As appropriate, curatorial activities that may be funded by Federal agencies include, but are not limited to:

(1) Purchasing, constructing, leasing, renovating, upgrading, expanding, operating, and maintaining a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(2) Entering into and maintaining on a cost-reimbursable or cost-sharing basis a contract, memorandum, agreement, or other appropriate written instrument with a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(3) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2), reimbursing a grantee for curatorial costs paid by the grantee as a part of the grant project;

(4) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2), reimbursing a State agency for curatorial costs paid by the State agency to carry out the

historic preservation responsibilities of the Federal agency;

(5) Conducting inspections and inventories in accordance with § 79.11 of this part; and

(6) When a repository that is housing and maintaining a collection can no longer provide adequate long-term curatorial services, as set forth in § 79.9 of this part, either:

(i) Providing such funds or services as may be agreed upon pursuant to § 79.5(a)(1) of this part to assist the repository in eliminating the deficiencies; or

(ii) Removing the collection from the repository and depositing it in another repository that can provide curatorial services in accordance with the regulations in this part.

(b) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2) and section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 469*c*–2), for federally licensed or permitted projects or programs, Federal agencies may charge licensees and permittees reasonable costs for curatorial activities associated with identification, surveys, evaluation and data recovery as a condition to the issuance of a Federal license or permit.

(c) Federal agencies may deposit collections in a repository that agrees to provide curatorial services at no cost to the U.S. Government. This generally occurs when a collection is excavated or removed from public or Indian lands under a research permit issued pursuant to the Antiquities Act (16 U.S.C. 431–433) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*). A repository also may agree to provide curatorial services as a public service or as a means of ensuring direct access to a collection for long-term study and use. Federal agencies should ensure that a repository that agrees to provide curatorial services at no cost to the U.S. Government has sufficient financial resources to support its operations and any needed improvements.

(d) Funds provided to a repository for curatorial services should include costs for initially processing, cataloging and accessioning the collection as well as costs for storing, inspecting, inventorying, maintaining, and conserving the collection on a long-term basis.

(1) Funds to initially process, catalog and accession a collection to be generated during identification and evaluation surveys should be included in project planning budgets.

(2) Funds to initially process, catalog and accession a collection to be generated during data recovery operations should be included in project mitigation budgets.

(3) Funds to store, inspect, inventory, maintain and conserve a collection on a long-term basis should be included in annual operating budgets.

(e) When the Federal Agency Official determines that data recovery costs may exceed the one percent limitation contained in the Archeological and Historic Preservation Act (16 U.S.C. 469*c*), as authorized under section 208(3) of the National Historic Preservation Act Amendments (16 U.S.C. 469*c*–2), the limitation may be waived, in appropriate cases, after the Federal Agency Official has:

(1) Obtained the concurrence of the Secretary of the U.S. Department of the Interior by sending a written request to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013–7127; and

(2) Notified the Committee on Energy and Natural Resources of the U.S. Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

### § 79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.

The Federal Agency Official shall ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services that is entered into by or on behalf of that Official, a Repository Official and any other appropriate party contains the following:

(a) A statement that identifies the collection or group of collections to be covered and any other U.S. Government-owned personal property to be furnished to the repository;

(b) A statement that identifies who owns and has jurisdiction over the collection;

(c) A statement of work to be performed by the repository;

(d) A statement of the responsibilities of the Federal agency and any other appropriate party;

(e) When the collection is from Indian lands:

(1) A statement that the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition; and

(2) Such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands;

(f) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, such terms and conditions as may have been developed pursuant to §–.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(g) The term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination;

(h) A statement of costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments;

(i) Any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving, and exhibiting the collection;

(j) Instructions and any terms and conditions for making the collection available for scientific, educational and religious uses, including procedures and criteria to be used by the Repository Official to review, approve or deny, and document actions taken in response to requests for study, laboratory analysis, loan, exhibition, use in religious rituals or spiritual activities, and other uses. When the Repository Official to approve consumptive uses, this should be specified; otherwise, the Federal Agency Official should review and approve consumptive uses. When the repository's existing operating procedures and criteria for evaluating requests to use collections are consistent with the regulations in this part, they may be used, after making any necessary modifications, in lieu of developing new ones;

(k) Instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or removed;

(l) A statement that copies of any publications resulting from study of the collection are to be provided to the Federal Agency Official and, when the collection is from Indian lands, to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(m) A statement that specifies the frequency and methods for conducting and documenting the inspections and inventories stipulated in § 79.11 of this part;

(n) A statement that the Repository Official shall redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner;

(o) A statement that the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner;

(p) A statement that the Repository Official shall not sell the collection; and

(q) A statement that the repository shall provide curatorial services in accordance with the regulations in this part.

**§ 79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.**

The Federal Agency Official shall determine that a repository has the capability to provide adequate long-term curatorial services when the repository is able to:

(a) Accession, label, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using professional museum and archival practices; and

(b) Comply with the following, as appropriate to the nature and consent of the collection;

(1) Maintain complete and accurate records of the collection, including:

(i) Records on acquisitions;

(ii) Catalog and artifact inventory lists;

(iii) Descriptive information, including field notes, site forms and reports;

(iv) Photographs, negatives and slides;

(v) Locational information, including maps;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Inventory and inspection records, including any environmental monitoring records;

(ix) Records on lost, deteriorated, damaged or destroyed Government property; and

(x) Records on any deaccessions and subsequent transfers, repatriations or discards, as approved by the Federal Agency Official;

(2) Dedicate the requisite facilities, equipment and space in the physical plant to properly store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(3) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collection and the physical plant; and

(vii) Inspecting the physical plant in accordance with § 79.11 of this part for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Require staff and any consultants who are responsible for managing and preserving the collection to be qualified museum professionals;

(5) Handle, store, clean, conserve and, if exhibited, exhibit the collection in a manner that:

(i) Is appropriate to the nature of the material remains and associated records;

(ii) Protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents and general neglect; and

(iii) Preserves data that may be studied in future laboratory analyses. When material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. Untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Store site forms, field notes, artifacts inventory lists, computer disks and tapes, catalog forms and a copy of

the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; or

(iii) Ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State museum or university. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Inspect the collection in accordance with § 79.11 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(8) Conduct inventories in accordance with § 79.11 of this part to verify the location of the material remains, associated records and any other Federal personal property that is furnished to the repository; and

(9) Provide access to the collection in accordance with § 79.10 of this part.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

### § 79.10 Use of collections.

(a) The Federal Agency Official shall ensure that the Repository Official makes the collection available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

(b) *Scientific and educational uses.* A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archeological contractors and educators. Students may use a collection when under the direction of a qualified professional. Any resulting exhibits and publications shall acknowledge the repository as the curatorial facility and the Federal agency as the owner or administrator, as appropriate. When the collection is from Indian lands and the Indian landowner and the Indian tribe having jurisdiction over the lands wish to be identified, those individuals and the Indian tribe shall also be acknowledged. Copies of any resulting publications shall be provided to the Repository Official and the Federal Agency Official. When Indian lands are involved, copies of such publications shall also be provided to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands.

(c) *Religious uses.* Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, Alaskan Native corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(d) *Terms and conditions.* (1) In accordance with section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470*hh*) and section 304 of the National Historic Preservation Act (16 U.S.C. 470 *w*–3), the Federal Agency Official shall restrict access to associated records that contain information relating to the nature, location or character

of a prehistoric or historic resource unless the Federal Agency Official determines that such disclosure would not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located.

(2) Section –.18(a)(2) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 sets forth procedures whereby information relating to the nature, location or character of a prehistoric or historic resource may be made available to the Governor of any State. The Federal Agency Official may make information available to other persons who, following the procedures in §–.18(a)(2) of the referenced uniform regulations, demonstrate that the disclosure will not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located. Other persons generally would include, but not be limited to, archeological contractors, researchers, scholars, tribal representatives, Federal, State and local agency personnel, and other persons who are studying the resource or class or resources.

(3) When a collection is from Indian lands, the Federal Agency Official shall place such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(4) When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Federal Agency Official shall place such terms and conditions as may have been developed pursuant to §–.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(5) The Federal Agency Official shall not allow uses that would alter, damage or destroy an object in a collection unless the Federal Agency Official determines that such use is necessary for scientific studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenienced, nonunique, nonfragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(e) No collection (or a part thereof) shall be loaned to any person without a written agreement between the Repository Official and the borrower that specifies the terms and conditions of the loan. Appendix C to the regulations in this part contains an example of a short-term loan agreement for a federally-owned collection. At a minimum, a loan agreement shall specify:

(1) The collection or object being loaned;

(2) The purpose of the loan;

(3) The length of the loan;

(4) Any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) Except as provided in paragraph (e)(4) of this section, that the borrower shall handle the collection or object being borrowed during the term of the loan in accordance with this part so as not to damage or reduce its scientific, educational, religious or cultural value; and

(6) Any requirements for insuring the collection or object being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(f) The Federal Agency Official shall ensure that the Repository Official maintains administrative records that document approved scientific, educational and religious uses of the collection.

(g) The Repository Official may charge persons who study, borrow or use a collection (or a part thereof) reasonable fees to cover costs for handling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

**§ 79.11 Conduct of inspections and inventories.**

(a) The inspections and inventories specified in this section shall be conducted periodically in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) Consistent with paragraph (a) of this section, the Federal Agency Official shall ensure that the Repository Official:

(1) Provides the Federal Agency Official and, when the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands with a copy of the catalog list of the contents of the collection received and accessioned by the repository;

(2) Provides the Federal Agency Official will a list of any other U.S. Government-owned personal property received by the repository;

(3) Periodically inspects the physical plant for the purpose of monitoring the physical security and environmental control measures;

(4) Periodically inspects the collection for the purposes of assessing the condition of the material remains and associated records, and of monitoring those remains and records for possible deterioration and damage;

(5) Periodically inventories the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(6) Periodically inventories any other U.S. Government-owned personal property in the possession of the repository;

(7) Has qualified museum professionals conduct the inspections and inventories;

(8) Following each inspection and inventory, prepares and provides the Federal Agency Official with a written report of the results of the inspection and inventory, including the status of the collection, treatments completed and recommendations for additional treatments. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report;

(9) Within five (5) days of the discovery of any loss or theft of, deterioration and damage to, or destruction of the collection (or a part thereof) or any other U.S. Government-owned personal property, prepares and provides the Federal Agency Official with a written notification of the circumstances surrounding the loss, theft, deterioration, damage or destruction. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the notification; and

(10) Makes the repository, the collection and any other U.S. Government-owned personal property available for periodic inspection by the:

(i) Federal Agency Official;

(ii) When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands; and

(iii) When the collection contains religious remains, the Indian tribal elders, religious leaders, and other officials representing the Indian tribe or other group for which the remains have religious or sacred importance.

(c) Consistent with paragraph (a) of this section, the Federal Agency Official shall have qualified Federal agency professionals:

(1) Investigate reports of a lost, stolen, deteriorated, damaged or destroyed collection (or a part thereof) or any other U.S. Government-owned personal property; and

(2) Periodically inspect the repository, the collection and any other U.S. Government-owned personal property for the purposes of:

(i) Determining whether the repository is in compliance with the minimum standards set forth in § 79.9 of this part; and

(ii) Evaluating the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument.

(d) The frequency and methods for conducting and documenting inspections and inventories stipulated in this section shall be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official, and be appropriate to the nature and content of the collection:

(1) Collections from Indian lands shall be inspected and inventoried in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(2) Religious remains in collections from public lands shall be inspected and inventoried in accordance with such terms and conditions as may have been developed pursuant to §–.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(3) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(4) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections and inventories.

(5) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(6) Persons such as those listed in §79.6(c) of this part who have expertise in the management and preservation of similar collections should be able to provide advice to the Federal Agency Official concerning the appropriate frequency and methods for conducting inspections and inventories of a particular collection.

(e) Consistent with the Single Audit Act (31 U.S.C. 75), when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into an interagency agreement for the purposes of:

(1) Requesting the Repository Official to coordinate the inspections and inventories, stipulated in paragraph (b) of this section, for each of the collections;

(2) Designating one or more qualified Federal agency professionals to:

(i) Conduct inspections, stipulated in paragraph (c)(2) of this section, on behalf of the other agencies; and

(ii) Following each inspection, prepare and distribute to each Federal Agency Official a written report of findings, including an evaluation of performance and recommendations to correct any deficiencies and resolve any problems that were identified. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report; and

(3) Ensuring consistency in the conduct of inspections and inventories conducted pursuant to this section.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

## APPENDIX A TO PART 79—EXAMPLE OF A DEED OF GIFT

DEED OF GIFT
TO THE
(Name of the Federal agency)

*Whereas*, the (name of the Federal agency), hereinafter called the Recipient, is dedicated to the preservation and protection of artifacts, specimens and associated records that are generated in connection with its projects and programs;

*Whereas*, certain artifacts and specimens, listed in Attachment A to this Deed of Gift, were recovered from the (name of the prehistoric or historic resource) site in connection with the Recipient's (name of the Recipient's project) project;

*Whereas*, the (name of the prehistoric or historic resource) site is located on lands to which title is held by (name of the donor), hereinafter called the Donor, and that the Donor holds free and clear title to the artifacts and specimens; and

*Whereas*, the Donor is desirous of donating the artifacts and specimens to the Recipient to ensure their continued preservation and protection;

*Now therefore*, the Donor does hereby unconditionally donate to the Recipient, for unrestricted use, the artifacts and specimens listed in Attachment A to this Deed of Gift; and

The Recipient hereby gratefully acknowleges the receipt of the artifacts and specimens.

Signed: (signature of the Donor)

Date: (date)

Signed: (signature of the Federal Agency Official)

Date: (date)

Attachment A: Inventory of Artifacts and Specimens.

[55 FR 37630, Sept. 12, 1990; 55 FR 41639, Oct. 10, 1990]

## APPENDIX B TO PART 79—EXAMPLE OF A MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES FOR A FEDERALLY-OWNED COLLECTION

MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES BETWEEN THE
(Name of the Federal agency)
AND THE
(Name of the Repository)

This Memorandum of Understanding is entered into this (day) day of (month and year), between the United States of America, acting by and through the (name of the Federal agency), hereinafter called the Depositor, and the (name of the Repository), hereinafter called the Repository, in the State of (name of the State).

The Parties do witnesseth that,

*Whereas,* the Depositor has the responsibility under Federal law to preserve for future use certain collections of archeological artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and made a part hereof, and is desirous of obtaining curatorial services; and

*Whereas,* the Repository is desirous of obtaining, housing and maintaining the Collection, and recognizes the benefits which will accrue to it, the public and scientific interests by housing and maintaining the Collection for study and other educational purposes; and

*Whereas,* the Parties hereto recognize the Federal Government's continued ownership and control over the Collection and any other U.S. Government-owned personal property, listed in Attachment B which is attached hereto and made a part hereof, provided to the Repository, and the Federal Government's responsibility to ensure that the Collection is suitably managed and preserved for the public good; and

*Whereas,* the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and maintained by the Repository;

*Now therefore,* the Parties do mutually agree as follows:

1. The Repository shall:

a. Provide for the professional care and management of the Collection from the (names of the prehistoric and historic resources) sites, assigned (list site numbers) site numbers. The collections were recovered in connection with the (name of the Federal or federally-authorized project) project, located in (name of the nearest city or town), (name of the county) county, in the State of (name of the State).

b. Perform all work necessary to protect the Collection in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C to this Memorandum.

c. Assign as the Curator, the Collections Manager and the Conservator having responsibility for the work under this Memorandum, persons who are qualified museum professionals and whose expertise is appropriate to the nature and content of the Collection.

d. Begin all work on or about (month, date and year) and continue for a period of (number of years) years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Provide and maintain a repository facility having requisite equipment, space and adequate safeguards for the physical security and controlled environment for the Collection and any other U.S. Government-owned personal property in the possession of the Repository.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of stabilization, conservation, scientific study, analysis and research. Any activity that will involve the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Annually inspect the facilities, the Collection and any other U.S. Government-owned personal property. Every (number of years) years inventory the Collection and any other U.S. Government-owned personal property. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of inventories, inspections and treatments to the Depositor.

h. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, deterioration and damage to, or destruction of the Collection and any other U.S. Government-owned personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss, deterioration, damage or destruction. Any actions that will involve the repair and restoration of any of the Collection and any other U.S. Government-owned personal property must be approved in advance and in writing by the Depositor.

i. Review and approve or deny requests for access to or short-term loan of the Collection (or a part thereof) for scientific, educational or religious uses in accordance with the regulation 36 CFR part 79 for the

curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C of this Memorandum. In addition, refer requests for consumptive uses of the Collection (or a part thereof) to the Depositor for approval or denial.

j. Not mortgage, pledge, assign, repatriate, transfer, exchange, give, sublet, discard or part with possession of any of the Collection or any other U.S. Government-owned personal property in any manner to any third party either directly or in-directly without the prior written permission of the Depositor, and redirect any such request to the Depositor for response. In addition, not take any action whereby any of the Collection or any other U.S. Government-owned personal property shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed or damaged.

2. The Depositor shall:

a. On or about (month, date and year), deliver or cause to be delivered to the Repository the Collection, as described in Attachment A, and any other U.S. Government-owned personal property, as described in Attachment B.

b. Assign as the Depositor's Representative having full authority with regard to this Memorandum, a person who meets pertinent professional qualifications.

c. Every (number of years) years, jointly with the Repository's designated representative, have the Depositor's Representative inspect and inventory the Collection and any other U.S. Government-owned personal property, and inspect the repository facility.

d. Review and approve or deny requests for consumptively using the Collection (or a part thereof).

3. Removal of all or any portion of the Collection from the premises of the Repository for scientific, educational or religious purposes may be allowed only in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections; the terms and conditions stipulated in Attachment C to this Memorandum; any conditions for handling, packaging and transporting the Collection; and other conditions that may be specified by the Repository to prevent breakage, deterioration and contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the terms and conditions stipulated in Attachment C to this Memorandum. All exhibits, reproductions and studies shall credit the Depositor, and read as follows: ''Courtesy of the (name of the Federal agency).'' The Repository agrees to provide the Depositor with copies of any resulting publications.

5. The Repository shall maintain complete and accurate records of the Collection and any other U.S. Government-owned personal property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this (day) day of (month and year), and shall remain in effect for (number of years) years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection and any other U.S. Government-owned personal property to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates, or is in default of, this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

*In witness whereof,* the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection

Attachment B: Inventory of any other U.S. Government-owned Personal Property

Attachment C: Terms and Conditions Required by the Depositor

## APPENDIX C TO PART 79—EXAMPLE OF A SHORT-TERM LOAN AGREEMENT FOR A FEDERALLY-OWNED COLLECTION

SHORT-TERM LOAN AGREEMENT
BETWEEN THE
(Name of the Repository)
AND THE
(Name of the Borrower)

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A, which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site

number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and damage to, or destruction of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: ''Courtesy of the (names of the Federal agency and the Repository).'' The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)

Date: (date)

Signed: (signature of the Borrower)

Date: (date)

Attachment A: Inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

## PARTS 80–199 [RESERVED]

# FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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**(Revised as of July 1, 2010)**

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7.21 (a)(1), (4) introductory text, (5) introductory text, and (9)(vi) revised; (a)(2) removed ..... 69477

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7.22 (g)(1), (4), (6) and (7)(vi) revised; (g)(2) and (3) removed ..... 69477
7.100 Revised ..... 8481
13.73 (a)(1) amended; (a)(2) redesignated as (3); (a)(1) heading and (3) heading revised; (a)(2) added ..... 8483

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4.23 (a)(2) revised ..... 46279
7.11 Added ..... 50077
7.13 (l) revised ..... 69282
7.21 (a) revised ..... 69285
7.22 (g) revised ..... 69287
7.46 Added; interim ..... 16435
7.48 (g) added ..... 17306
7.65 (c) added ..... 32375
7.70 (g) added ..... 55465
7.73 (a) added; (d) and (e) revised; interim ..... 16435
7.89 Added; interim ..... 55317

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7.7 (e)(1) and (2) revised; (e)(3) through (6) removed ..... 53630
7.13 (l) revised ..... 65360
7.21 (a) revised ..... 65362
7.22 (g) revised ..... 65364
7.44 Added; eff. 7-14-04 ..... 32876

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7.50 (b) added ..... 53640
7.55 Heading revised; (c) added ..... 35526
7.57 Heading revised; (h) added ..... 30223
7.71 (e)(1)(i) through (vi) revised ..... 57181
7.79 (d) added ..... 30216
13 Authority citation revised ..... 70068
13.1 Amended ..... 70068
13.4 Revised ..... 70069
13.10 Added ..... 70069
13.18 Revised ..... 70069
13.19 Revised ..... 70069
13.20 Revised ..... 70069
13.21 (d)(5) added ..... 70070
13.22 (b) revised ..... 70070
13.30 (c) and (d) revised; (h) redesignated as (i); new (h) added ..... 70070
13.46 (e) revised ..... 70070
13.60 (b) added ..... 70070
13.62 (a) revised ..... 70070
13.63 (b) revised; (i), (j) and (k) added ..... 70070
13.65 (a)(4)(ii) and (5)(i) through (v) revised; (b)(1) amended; (b)(3)(ix)(C)(*1*), (*2*) and (5) through (9) added; (b)(7) removed ..... 70071
13.66 (b) redesignated as (a); new (b) through (e) added ..... 70072
13.67 (b) and (c) added ..... 70073
13.68 Revised ..... 70073
13.69 (a)(1) revised ..... 70073
13.72 Revised ..... 70073
13.73 (b) through (e) added ..... 70073

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7.20 (d) added ..... 38767
7.32 (d) added ..... 61905
7.82 Existing text designated as (a); (b), (c) and (d) added ..... 16716
7.92 (d) added ..... 31353

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7.12 (c) added ..... 26244
7.27 Revised ..... 76164
7.49 Added ..... 53031
7.51 (d) added ..... 55119
13 Revised ..... 69333

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7.21 Revised ..... 70799
7.22 (g) revised ..... 70802
7.45 (e)(8) removed; (e)(9) redesignated as (e)(8) ..... 13706
7.48 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f) ..... 13706
7.57 (c) removed; (d) through (h) redesignated as (c) through (g) ..... 13706
7.70 (c) and (d) removed; (e), (f) and (g) redesignated as (c), (d) and (e) ..... 13706
7.79 (c) removed; (d) redesignated as (c) ..... 13706
7.96 (f)(5) added ..... 54843
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7.21 (a) revised ..... 74608
7.22 (g) revised ..... 74610
7.96 (g)(4) revised ..... 67744
7.97 (d) added ..... 54321
13 Authority citation revised ..... 3185
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13.440 (b) removed; (c) redesignated as new (b) ..... 3185
13.485 (a) and (c) introductory text revised ..... 3185
13.550 (Subpart H) Added ..... 3185
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13.902 Revised ..... 67393
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13.1118 Added ..... 3186
13.1206 (c) redesignated as (d); new (c) added ..... 3186

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7.22 (g) revised ..... 60192

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7.96 (g)(4)(vii) correctly added; (g)(5)(iv) correctly removed; (g)(5)(v) through (xiv) correctly redesignated as new (g)(5)(iv) through (xiii) ..... 8807