

the expiration of the period specified in section 6226 for filing a petition for readjustment of a final S corporation administrative adjustment finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period; and

(5) For a corporation not subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A, the expiration of the period for filing a petition under section 6213 for the shareholder's taxable year for which the Commissioner has made a finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period.

(e) *Time of determination*—(1) *Court decision*. A court decision becomes a determination on the date the decision becomes final under rules applicable to the court rendering the decision.

(2) *Closing agreement*. A closing agreement becomes a determination on the date of its approval by the Commissioner.

(3) *Written agreement*. A written agreement described in paragraph (d)(3) of this section becomes a determination when it is signed by the district director having jurisdiction over the corporation (or by another Service official to whom authority to sign the agreement is delegated) and by an officer of the corporation authorized to sign on its behalf. Neither the request for a written agreement nor the terms of the written agreement suspend the running of any statute of limitations.

(4) *Implied agreement*. A determination under paragraph (d)(4) or (d)(5) of this section becomes effective on the day after the date of expiration of the period specified under section 6226 or 6213, respectively.

#### § 1.1377-3 Effective date.

Sections 1.1377-1 and 1.1377-2 apply to taxable years of an S corporation beginning after [the date of publication as final regulations in the **Federal Register**].

### PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

**Par. 3.** The authority citation for part 18 continues to read as follows:

**Authority:** 26 U.S.C. 7805 sec. (6)(c)(3)(B)(iii) of the Subchapter S Revision Act of 1982.

#### § 18.1377-1 [Removed]

**Par. 4.** Section 18.1377-1 is removed.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### RIN 1024-AC29

### Cape Lookout National Seashore; Operation of Aircraft

**AGENCY:** National Park Service.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to close the Portsmouth Village Airstrip at Cape Lookout National Seashore, North Carolina, to the operation of aircraft. This action is necessary to prevent aircraft accidents and eliminate a use that is incompatible with preserving the historic scene in Portsmouth Village, a historic district listed on the National Register of Historic Places. The primary intent of this proposed rule is to protect the flying public by closing an airstrip that does not comply with Federal Aviation Administration and North Carolina Department of Transportation safety standards. Secondary goals include reducing the potential for an aircraft accident destroying one or more irreplaceable historic structures, eliminating the anachronistic intrusion of aircraft in a historic village and providing for the safety of park visitors who cross the runway as they walk from the Village to the beach. Aircraft noise and the visual intrusions detract from the visitor's opportunity to experience Portsmouth Village in a quiet setting, appropriate to the period it represents.

**DATES:** Written comments will be accepted through September 11, 1995.

**ADDRESSES:** All comments should be addressed to: Mr. William A. Harris, Superintendent, 131 Charles Street, Harkers Island, North Carolina 28531.

**FOR FURTHER INFORMATION CONTACT:** Charles F. Harris, Chief of Park Operations, 131 Charles Street, Harkers Island, North Carolina 28531; (919) 240-1409.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Portsmouth Village Airstrip (Airstrip) is located on the northeast corner of Portsmouth Village (Village), NC. The Village is geographically

remote because of its location on a part of the outer banks (Core Banks) that is not connected to the mainland by bridge. The origins of Portsmouth Village can be traced back to 1752, when it was authorized by the Colonial Legislature of North Carolina. There are no permanent residents in this well-preserved "ghost town." The historical significance of Portsmouth Village is underscored by its listing on the National Register of Historic Places. Approximately 2,000+ people visit the Village annually.

Long-term residents in the Portsmouth Village area report that the unpaved Airstrip was constructed by private individuals for recreational use shortly after World War II. In this earlier period, the Airstrip was not as long as it is today, but was leveled and extended to its present approximate length of 1640 feet in 1959.

The NPS began managing the Airstrip after North Carolina ceded Core Banks to the Federal government to establish Cape Lookout National Seashore (Seashore) in 1976. Seashore management has maintained the grass surface and trimmed back encroaching woody vegetation to the extent that limited funding allows. In 1984, the NPS composed a regulation, Section 7.98(a), in Title 36, Code of Federal Regulations, legalizing aircraft operations on the Airstrip.

The NPS recently became concerned about potential hazards related to aircraft operations on the Airstrip. These concerns stem from a report by an inspector of the North Carolina Department of Transportation, Division of Aviation, that the airstrip does not meet the following Federal Aviation Administration runway standards:

Standard	Description
FAA, Part 77 .....	Each end of the runway should have a 20 to 1 approach slope. (Obstacles should not exceed more than one foot of rise for every 20-foot increment of horizontal distance from the end of a runway).
FAA AC 150/5300-1300.	Each side of the runway centerline should be clear of obstacles by at least 125 feet.

Instead, brush and small trees up to 12 feet tall grow on the south end of the airstrip. Dense brush and trees growing on the airstrip edges narrow the area clear of obstacles from the centerline to an average of only 59 feet, less than half the recommended width.

Although several accidents have occurred to aircraft landing on or taking off from the airstrip, only three are officially documented with the National Transportation Safety Board (NTSB). A review of these NTSB reports indicate that the airstrip is considered "unsuitable terrain" because it has a soft spot at its center and has "high obstructions" (dense brush and trees up to 20 feet tall) lining the runway.

Protecting irreplaceable historic structures and preserving the historic scene are also very important concerns related to aircraft use. One of the most important historic structures in Portsmouth Village, the Portsmouth Life Saving Station (Station), is only 101 feet east of the airstrip centerline. A detached kitchen for the Station is only 78 feet east of the centerline. And, the Station-stable is only 89 feet west of the centerline. The possibility of aircraft eventually colliding with structures so close to the center line is high with continued use of this narrow Airstrip. It would be necessary to move the Station and nearby associated structures to bring the Airstrip completely into compliance with FAA standards. Moving historic structures from their original locations seriously degrades their historical significance. The National Historic Preservation Act provisions generally do not permit Federal agencies to take such action (incompatible uses do not justify such action).

Direct impact is not the only concern. The Airstrip and Village lie in a mixed brush/maritime forest. Dense vegetation of this plant community grows inside Portsmouth Village. Fire from an aircraft accident in the vicinity of the Airstrip could easily spread from the brush/forest into the Village and destroy many structures. Because of its isolated character, fire suppression services are minimal in the area. The foot and vehicle trail from the Village to the beach crosses the Airstrip at the old Lifesaving Station. Visitors are potentially exposed to aircraft takeoffs and landings that they often cannot hear. Visitors also desire a quiet, historic scene to enjoy Portsmouth Village. Aircraft noise and visual intrusions are not conducive to preserving such a setting.

Approximately 300 of the 2,000+ persons visiting the Village annually arrive by aircraft. (This estimate is based on approximately 75 aircraft landings recorded by staff annually, with an average of four visitors per aircraft.) An alternate airport, Ocracoke Island Airport, is just six miles from the Airstrip. Ferry boat services provide transportation between Ocracoke and

the Village for \$15 to \$20 per person. At least one of these services offers free ground transportation between Ocracoke Island Airport and the ferry dock for groups that prefer landing at Ocracoke Island Airport rather than the Airstrip.

The anticipated costs, approximately \$40,000, of clearing vegetation from the Airstrip centerline and repairing the runway surface (levelling and resodding) are prohibitive under present funding levels for the Seashore. The estimated annual cost for maintaining the grass surface of the Airstrip is \$3,000, also prohibitive under present fiscal constraints.

### Summary

The Airstrip does not comply with FAA safety standards. The flying public should not be exposed to the potential hazards associated with operating aircraft from a standard airstrip; and, the taxpayer should not risk liability for an aircraft accident resulting from a defect in the Airstrip. Derogating the historical significance of nearby National Register structures to accommodate aircraft operations is not justifiable. Even if funding levels allowed compliance with safety standards, low visitor use and availability of a nearby alternate airport with connecting transportation services suggest that such an expenditure is neither cost-effective nor warranted. For these reasons, the NPS proposes closing Portsmouth Village Airstrip by revoking 36 CFR 7.98(a).

### Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rule making. The NPS will review comments and consider making changes to the rule based upon an analysis of the comments.

### Draft Information.

The primary authors of this rule are Felix Revello, Supervisory Park Ranger and Charles Harris, Chief of Park Operations, both of Cape Lookout National Seashore.

### Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

- (a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
- (b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;
- (c) Conflict with adjacent ownerships or land uses; or
- (d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental Regulations in 516 DM 6, (49 FR 21438) an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) have been prepared.

### List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

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

1. The authority citation for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Section 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

#### § 7.98 [Removed and Reserved]

2. Section 7.98 is removed and reserved.

Dated: June 9, 1995.

**George T. Frampton, Jr.,**  
Assistant Secretary for Fish and Wildlife and Parks.

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