

Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement or continuance of the hearing, nor will such errors necessitate that the notice be republished.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Illinois program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t., on December 20, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95-29509 Filed 12-4-95; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Parts 1 and 13

RIN 1024-AC21

General Regulations for Areas Administered by the National Park Service and National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise portions of its general regulations for areas administered by the National Park Service which define the primary scope and applicability and contain definitions for terms used in the text of the regulations. NPS is also modifying regulations which relate to National Park System units in Alaska. This revision clarifies the applicability of those NPS regulations that apply in all National Park System areas to navigable waters located within park boundaries.

In order to protect wildlife and the other values and purposes of the National Park System, the NPS developed general regulations intended

to be applicable on navigable waters located within park boundaries irrespective of ownership of submerged lands. However, a recent court case concerning a seal shot in the navigable waters of a national park revealed that a 1987 editorial correction to 36 CFR 1.2(b), aimed at clarifying a separate and distinct application of the regulations, had the unforeseen and unintended effect of arguably linking federal title to submerged lands with the exercise of management authority over activities occurring on navigable waters. Rather than litigate this issue, this rulemaking will clarify the regulations thereby ensuring the continued protection of wildlife and other National Park System values and purposes on all navigable waters within parks, regardless of ownership of submerged lands. Accordingly, the revision clarifies that NPS regulations continue to apply on navigable waters, as they have for years. Two definitions, "park area" and "boundary," would be modified as a part of this revision. The proposed rule clarifies and interprets existing NPS regulatory intent, practices and policies, and generally would not place new or additional regulatory controls on the public.

DATES: Written comments will be accepted until February 5, 1996.

ADDRESSES: Comments should be addressed to: Associate Director, Operations, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127, Telephone (202) 208-4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addition, the Organic Act was amended in 1978 to provide:

The authorization of activities shall be construed and the protection, management

and administration of [NPS] areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a-1.

In addition to general regulatory authority delegated in 16 U.S.C. 3, the NPS has been authorized to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *." 16 U.S.C. 1a-2(h). "Waters subject to the jurisdiction of the United States" include navigable waters. See, H. Rep. No. 1569, 94th Cong., 2nd Sess., 4292 (1976). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

Prior to 1966, NPS regulations for boating, sanitation and other regulations affecting waters were scattered throughout 36 CFR Parts 1 and 2. In 1966, consolidated boating regulations were published as 36 CFR Part 3. The regulations provided for the enforcement of U.S. Coast Guard regulations by the NPS "on navigable waters of the United States" located within park boundaries (31 FR 16650). In 1983, water-use activity regulations were moved from Part 2 to Part 3 (48 FR 30290). In addition to regulations generally applicable in all national park areas, special park-specific regulations have also been promulgated for, and enforced on and in navigable waters within the boundaries of National Park System units. See, e.g., 36 CFR 7.45 (f)-(h) (Everglades National Park, fishing and boating); 36 CFR 7.83(a) (Ozark National Scenic Riverways, boating); 36 CFR 13.65(b) (Glacier Bay National Park, Vessel Management/whale protection).

Applicability and Scope Provision

In 1982-83 the NPS undertook a comprehensive review of general regulations that apply in virtually all NPS administered areas (47 FR 11598). The applicability and scope provisions adopted pursuant to the 1983 rulemaking included navigable waters. In that rulemaking, 36 CFR 1.2(a) provided that the regulations contained in 36 CFR chapter 1 would apply: (1) on federally owned waters, and (2) on waters "controlled, * * * administered or otherwise subject to the jurisdiction of the National Park Service * * *." (48 FR 30252). In some park areas, the

United States holds title to the submerged lands under navigable waters. In other park areas, the United States does not hold title to the submerged lands beneath navigable waters within the boundaries of the park; Federal authority to regulate within the ordinary reach of these waters is based on the commerce clause, not ownership. Like the United States Coast Guard, the NPS exercises authority over navigable waters irrespective of ownership of submerged lands. 16 U.S.C. 1a-2(h). 36 CFR 1.2(a)(2) reflects the congressional intent that NPS regulations will also apply in these waters.

The 1983 regulations also provided that—except in park areas under the legislative jurisdiction of the United States, where 10 specifically enumerated provisions were intended to apply regardless of ownership—the regulations were "not applicable on privately owned lands and waters * * *." (48 FR 30252); 36 CFR 1.2(b). While 36 CFR 1.2(b) was specific as to the applicability of the 10 enumerated provisions on privately owned lands, it was silent as to the applicability of those 10 regulations on lands and waters owned by a state or other government entity. In 1987, in response to questions concerning this issue, and in order to clarify the original NPS intent (i.e., that the 10 specifically enumerated provisions were meant to apply on all lands and waters regardless of land ownership) the term "privately owned lands and waters" was replaced with the term "non-federally owned lands and waters". (52 FR 35238; see also, 52 FR 12037). The 1987 rulemaking emphasized that it was only an editorial change and not a substantive change, the sole purpose of which was to clarify the originally intended reach of the 10 enumerated provisions; there was no change intended concerning state lands.

However, in its effort to ensure that (in areas of legislative jurisdiction) the 10 enumerated regulations clearly apply on all "non-federally owned lands and waters" within the boundaries of park areas, the 1987 revision to Section 1.2(b) inadvertently incorporated language that seems ambiguous and could preclude park regulation of "non-federally owned * * * waters." See, 52 FR 35238, September 18, 1987. The NPS recognizes that regulations must provide an ordinary person a reasonable opportunity to know what is prohibited. Accordingly, this rulemaking is proposed to clarify that NPS regulations otherwise applicable within the boundaries of a National Park System unit apply on and within waters subject

to the jurisdiction of the United States located within that unit, 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, or up to the ordinary high water mark in other places that are navigable), irrespective of ownership of submerged lands, tidelands or lowlands.

This rulemaking also proposes to revise the definition of "boundary." "Boundary," as revised, would better cover the many and diverse sites that have been placed under the care and administration of the NPS. The revision would afford comprehensive protection to persons and property at NPS sites such as maintenance facilities and warehouses, administrative sites, ranger stations, visitor information centers and associated parking lots, which, though located outside a park proper, are managed and administered by the NPS as components of the National Park System. The definition is also tailored to cover the various NPS-administered sites in the District of Columbia. The term "park area" would be revised to mean the same as the term "National Park System." The proposed definition for "National Park System" repeats the statutory definition from 16 U.S.C. 1c.

The proposed revision to Section 13.2 serves three purposes: (1) Paragraph (c) is revised to clarify that Alaska National Interest Lands Conservation Act (ANILCA) Title VIII subsistence regulations apply "on the public lands within" those parks where subsistence is authorized; (2) paragraph (e) is revised to clarify that, pursuant to proposed § 1.2(a)(3), NPS general regulations are specifically applicable within the reach of navigable waters located within the boundaries of park areas in Alaska; and (3) paragraph (e) is revised to clarify that the Part 13 modifications (that generally are relaxations of prohibitions contained in the general regulations) also apply on the navigable waters of national parks in Alaska (e.g., ANILCA § 1110(a) special authorization for motorboat travel to villages).

Section-by-Section Analysis

Section 1.2 paragraph (a) is proposed as it currently exists. This paragraph limits the applicability of NPS regulations to within park boundaries and interests.

Proposed subparagraphs (a)(1) and (a)(2) provide that the regulations apply, respectively, on lands and waters located within park system boundaries that are federally owned, or administered as park lands by the NPS (in whole or in part) through an

agreement with the owner, party of interest, or the person, corporation, company, organization, state or political subdivision holding an interest in, or title to, such land. An agreement could be in the form of a lease, public use easement, memorandum (of agreement), or some other written form. Lands and waters administered under this subparagraph would usually be subject to the same general regulations as federally owned lands (Parts 1 through 5, and Parts 7 and 13 as applicable). An owner or party of interest who wishes to retain certain rights or uses could do so as part of the written agreement, otherwise NPS general regulations will apply equally to the owner or party of interest as they would to third parties. Without such an agreement, NPS regulations would not apply on non-federally owned lands within park boundaries, the exception being particular regulations containing a provision that makes them specifically applicable to such lands. See, e.g., 36 CFR 2.2(g) (regulation applicable to lands and waters under legislative jurisdiction within a park); See also, 36 CFR Part 6 (59 FR 65948). Two other provisions that are contained in existing subparagraph (a)(2) are, in this rulemaking, proposed separately as subparagraphs (a)(3) and (a)(4).

Proposed subparagraph (a)(3) more clearly defines and includes waters subject to federal jurisdiction that are located within National Park System boundaries, including navigable waters, within the scope of NPS regulations. Subparagraph (a)(4) contains a provision for the NPS to administer lands and waters in the District of Columbia (pursuant to the Act of March 17, 1948 (62 Stat. 81)), that was added to the existing subparagraph (2) in 1986 (51 FR 37010). The less-than-fee interests provision, currently subparagraph (a)(3), has been revised, renumbered and proposed as subparagraph (a)(5). This provision encompasses scenic easements (sometimes referred to as negative easements) and other federal interests where NPS administration of the site is shared or limited.

Proposed paragraph (b) continues to limit the applicability of NPS general regulations to federally owned lands in the absence of an agreement or a superseding provision. Similarly, in order for NPS general regulations to apply on Indian tribal trust lands located within National Park System boundaries, the NPS must enter into an agreement with the benefiting Indian nation, tribe, band or pueblo (pursuant to proposed subparagraph (a)(2)). Without such an agreement, and regardless of jurisdictional status, NPS

authority on Indian lands located within National Park System units is limited to federal laws and implementing regulations made applicable at the express direction of Congress.

Proposed paragraph (d) would extend existing administrative exceptions to include Part 13 regulations.

Section 1.4 proposes a revision to the definition of the terms "boundary" and "park area." "Boundary," as revised, would afford comprehensive coverage to the many and diverse sites that have been placed under the care and administration of the NPS, particularly those sites located in the District of Columbia. The term "park area" would be revised to mean the same as the term "National Park System." The proposed definition for "National Park System" repeats the statutory definition from 16 U.S.C. 1c.

Section 13.2 proposed paragraph (c) has been revised to clarify that subsistence regulations for Alaska apply only "on the public lands within" those parks where subsistence is authorized. Paragraph (e) has been revised to clarify that NPS general regulations (e.g., Part 2), as modified by Part 13, apply to waters subject to federal jurisdiction, including navigable waters, located within the boundaries of park areas in Alaska.

Drafting Information

The primary authors of this revision are Michael Tiernan, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C., and Steve Shackelton and Russel J. Wilson of the Alaska Field Area, National Park Service. Richard G. Robbins, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C., also contributed.

Paperwork Reduction Act

This rule does not contain collections of information requiring 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 has 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 that may compromise the nature and characteristics of the area, or cause 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, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects

36 CFR Part 1

National parks, Reporting and recordkeeping requirements.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I, Parts 1 and 13, as follows:

PART 1—GENERAL PROVISIONS

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

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

2. Section 1.2 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 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; or
 - (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; or
 - (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; or

(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); or

(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 and 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) of this section or in regulations specifically written to be applicable on such lands and waters.

* * * * *

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

* * * * *

3. Section 1.4 is amended in paragraph (a) by revising the definition of *Boundary*, by adding a definition for *National Park System*, and by revising the definition of *Park area* to read as follows:

§ 1.4 Definitions.

(a) * * *

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.

* * * * *

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.

* * * * *

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

* * * * *

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

4. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; subpart D also issued under 16 U.S.C. 20, 3197; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

5. Section 13.2 is amended by republishing the first sentence of paragraph (c) and revising the second sentence of paragraph (c), and by revising paragraph (e) to read as follows:

§ 13.2 Applicability and Scope.

* * * * *

(c) Subpart B of this part 13 contains regulations applicable to subsistence activities. Such regulations apply on public lands within park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park and parts of Denali National Park. * * *

* * * * *

(e) For purposes of this chapter, "federally owned lands" does not include those land interests:

- (1) Tentatively approved to the State of Alaska; or
- (2) Interim conveyed to a Native Corporation.

Dated: October 20, 1995.
George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95-29565 Filed 12-4-95; 8:45 am]
BILLING CODE 4310-70-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-5341-1]

Clean Air Act Reclassification; Pennsylvania—Liberty Borough Nonattainment Area; PM-10; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published on September 19, 1995 (60 FR 48439). In the September 19 notice, EPA proposed to find that the Liberty Borough, Pennsylvania nonattainment area for particulate matter of nominal aerodynamic diameter smaller than 10 micrometers (PM-10) did not attain national ambient air quality standards