Rulemaking Analyses and Notices

(a) Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have considered the impact of the rulemaking action under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

(b) Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this rule on small entities. Based on the evaluation, the agencies hereby certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

(c) Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

(d) Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

(e) National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that this action would not have any effect on the quality of the environment.

(f) Executive Order 12778 (Civil Justice Reform)

This action does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather simply removes a regulation to reflect statutory changes. The enabling legislation does not establish a procedure for judicial review of the final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Notice and Comment

Because the amendments relate to a grant program and are therefore not covered by the Administrative Procedure Act, and since they reflect statutory changes and do not impose any additional requirements, the amendments are being made without prior notice and opportunity to comment.

List of Subjects in 23 CFR Part 1230

Highway Safety Program Standards—Applicability to Federally Administered Areas.

PART 1230—[REMOVED]

Under the authority of 49 CFR Parts 1.48 and 1.50, the Administrators of the National Highway Traffic Safety Administration and Federal Highway Administration amends Title 23 of the Code of Federal Regulations by removing part 1230.

Issued on: May 3, 1996.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Safety Traffic Administration.

[FR Doc. 96–14259 Filed 6–05–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC29

Cape Lookout National Seashore, Airstrip Closure

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is publishing this final rule to close the Portsmouth Village Airstrip at Cape Lookout National Seashore, North Carolina, to the operation of aircraft. The special regulation is necessary for the operation of the airstrip. Removal of the special regulation will effectively close the airstrip as a violation of 36 CFR 2.17. 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. This rule will protect the flying public by closing an airstrip that does not comply with Federal Aviation Administration (FAA) and North Carolina Department of Transportation safety standards. Closure of the airstrip will also eliminate the potential for an aircraft accident that could destroy one or more irreplaceable historic structures, eliminate the anachronistic intrusion of aircraft in a historic village and provide for the safety of park visitors who cross the airstrip runway as they walk from Portsmouth Village to the beach.

EFFECTIVE DATE: This final rule becomes effective on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: A. James Zahradka, Supervisory Park Ranger, Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC. 28531. Telephone 919–728–2250.

SUPPLEMENTARY INFORMATION:

Background

Portsmouth Village Airstrip (Airstrip) is located on the northeast corner of Portsmouth Village (Village). The Village is geographically remote because of its location on a part of the outer banks (Core Banks) 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,'' although over 2,000 people visit annually. The historical significance of the Village is underscored by its listing on the National Register of Historic Places.

Long-term residents of the 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 the State of North Carolina ceded Core Banks to the Federal Government to establish Cape Lookout National Seashore (Seashore) in 1976. Operating or using aircraft on lands and waters managed by the NPS is prohibited (36 CFR 2.17(a)(1)) other than at locations designated pursuant to special regulations. In 1984, the NPS promulgated a special regulation (36 CFR 7.98(a)) legalizing aircraft operations on the Airstrip. Seashore management continued to maintain the grass surface and trimmed back encroaching woody vegetation to the extent that limited funding allowed.

Recently, the NPS 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 FAA recommended runway standards:

Standard	Description
FAR, Part 77	Each end of the runway should have a 20 to 4 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 accidents are officially documented with the National Transportation Safety Board (NTSB). A review of these NTSB reports indicates 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 the 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 considered high with continued use of this narrow Airstrip. It would be necessary to move the Station and nearby associated structures to bring the Airstrip into compliance with FAA standards. Moving historic structures from their original locations seriously degrades their historical integrity and may affect their status on the National Register of Historic Places.

Direct impact is not the only concern of the NPS. The Airstrip and the Village lie in a mixed brush/maritime forest. Dense vegetation of this plant community grows inside the 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 the isolated character of the Village, fire suppression services are minimal. The foot and vehicle trail from the Village to the beach crosses the Airstrip at the old Lifesaving Station. As a result, visitors potentially are exposed to aircraft takeoffs and landings without prior warning. Visitors also desire a quiet, historic scene when visiting the Village. Aircraft noise and visual intrusions are not conducive to preserving such a setting.

Approximately 300 of the 2,000+ people 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 6 miles from the Airstrip. NPS-authorized 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 of Comments Received

On July 12, 1995, the NPS published proposed regulations that would close Portsmouth Village Airstrip to Aircraft use (60 FR 35887) and public comment was invited. The comment period closed August 12, 1995. During the public comment period, the NPS received two written responses regarding the proposed rule. One responder opposed the closure. The other sought clarification of the proposed closure.

1. Issue: *After affect of closure.* One responder was concerned that government agencies/entities would still use the Airstrip after the closure and wanted to know if the NPS was planning to post the Airstrip with signs such as ''Closed to the Recreational Users.'' This responder was also concerned as to whether the NPS would allow the Airstrip to revert to a natural state.

Response: The Airstrip will be closed to all aircraft use. The Airstrip has been removed from the 1996 North Carolina and National Aeronautical Charts and has been physically marked with an ''X'' at both ends. At present, the park mows the Airstrip at least once a week during the grass growing season. This frequency will not be necessary after the official closure of the airstrip.

The NPS intends to reduce the threat of fire to the historic district by brushing the undergrowth to bring the area back to its approximate appearance of the early 1900's. Portions of the present Airstrip will be maintained as open space.

2. Issue: *No reference to a visitor visiting the Village by an ultra-light aircraft or seaplane.*

Response: There is no documented history of the airstrip being used by an ultra-light aircraft. Seaplanes are prohibited under 36 CFR 2.17. 36 CFR 7.98(a) was promulgated to allow aircraft use of the Airstrip.

3. Issue: *Safety and the likelihood of damage to the historical structures at the end of the airstrip.* One responder questioned safety as a justification for the closure and that the FAA standards cited do not apply to this Airstrip. The responder felt that the history of minor damage to planes as a result of the soft runway is not justification for closure and that most pilots are proficient enough to prevent becoming stuck.

Response: On August 25, 1989, an Aviation Planner/Inspector with the North Carolina Department of Transportation visited the Airstrip to gather information for the FAA Airport Safety Data Program.

At that time, the NPS learned that the Airstrip was in violation of the ''recommended safety standards''. With the lack of fire and rescue protection at Portsmouth and, knowing that the airstrip is sub-standard, the NPS chooses not to add to the risk of the visiting public nor to increase the risk of damage to the historical structures. No funds are planned to be allocated in the future to maintain the Airstrip in a safe and operational condition. With each passing year, the Airstrip will continue to deteriorate and foot traffic in the area will increase.

4. Issue: *Historical use and significance.* One responder commented on the history of the Airstrip and the

role aviation played in making Portsmouth more accessible.

Response: The NPS's decision to preserve an area of historical importance is based on the criteria of its uniqueness and national significance. It was determined that Portsmouth would preserve American life in the early 1900's. Aviation history may be interpreted as part of Portsmouth's history, but preservation of an active airstrip is not necessary to interpret the area and is incompatible with the early 1900's scene. In recent history, with access to Portsmouth via private and public vessels and one vehicle ferry, the number of persons visiting Portsmouth will not be significantly affected by the closure of the Airstrip.

5. Issue: *Delay in concern for hazards.* One responder asked why it took the NPS 11 years to register a concern for the hazards if the Airstrip was in violation of safety regulations. Specifically, was a cut in the NPS budget a cause in the delay?

Response: The NPS became aware and concerned about the hazards as a result of the inspection by the North Carolina Department of Transportation on August 25, 1989. The NPS then developed cost estimates for meeting and maintaining the recommended safety standards. With a decline in use of the Airstrip, the already existing incompatibility concern, and the high cost of maintaining the Airstrip to standards, the NPS decided that the Airstrip should be closed. An ''X'' was placed on both ends of the Airstrip and persons who inquired were advised of the safety conditions. The budget was a factor in the decision to close the Airstrip, but it was not the only factor.

6. Issue: *Recent use statistics.* One responder inquired that there was no mention of historical use of the Airstrip. The responder used the example of ''1984 landings and takeoff's vs. 1994 landings and takeoffs.''

Response: No record has been maintained on the amount of use for the Airstrip other than the 74 flights per year, a figure derived in the late 1980's. Local observation is that there has been a decline in aircraft landings annually.

7. Issue: *Noise and visual intrusions including military operations.* One responder questioned the noise and visual intrusions, based on the number of aircraft landings and takeoffs, as not being significant enough to justify closure. The responder added that military air operations in the area pose a far greater intrusion to the quiet setting of Portsmouth Village.

Response: The NPS agrees that the noise level of military jets overhead presents an intrusion, but this intrusion is for a short duration measured in seconds. The NPS has a Memorandum of Understanding with the United States Marine Corps stating that air operations will be no closer than 2 miles to the south of the Village and at an altitude of not less than 500 feet.

Summary and Conclusion

The Airstrip does not comply with FAA safety standards and the flying public should not be exposed to the potential hazards associated with operating aircraft from a substandard airstrip. 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 justifiable. For these reasons, the NPS is closing Portsmouth Village Airstrip by deleting Section 7.98(a) of Title 36 Code of Federal Regulations.

Drafting Information

The primary authors of this rule are Felix Revello, Chief Ranger, Fort Larned National Historic Site, Charles Harris, Chief of Operations, Cape Lookout National Seashore, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

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 U.S.C. 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this final rule will not have a significant effect on the quality of 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 non-compatible uses which 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 rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Impact Statement (EIS) nor an Environmental Assessment (EA) has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended 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, 462(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.98 [Removed]

2. Section 7.98 is removed.

Dated: May 29, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–14102 Filed 6–5–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH78

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the