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Part IV

Department of the Interior

Bureau of Reclamation

43 CFR Part 423

**Public Conduct on Bureau of Reclamation
Lands and Projects; Final Rule**

DEPARTMENT OF THE INTERIOR**Bureau of Reclamation****43 CFR Part 423**

RIN 1006-AA44

Public Conduct on Bureau of Reclamation Lands and Projects**AGENCY:** Bureau of Reclamation, Interior.**ACTION:** Final rule with request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) is issuing this rule to establish regulations regarding public conduct on all Reclamation lands (including waters) and Reclamation projects. Reclamation is required by law to issue this rule in order to provide for the security of dams, facilities, and resources under its jurisdiction.

DATES: This rule is effective on April 17, 2002, and shall expire on April 17, 2003. Reclamation must receive any comments on this final rule no later than June 17, 2002.

ADDRESSES: Any comments on this rule should be sent to Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, Attention: John Lambert, D-6020.

FOR FURTHER INFORMATION CONTACT: Larry Todd, Director, Operations, Bureau of Reclamation, 1849 C Street, NW., Washington, DC 20240, telephone (202) 513-0615.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 11, 2001, terrorists launched attacks on targets within the United States killing large numbers of people and damaging properties of national significance. Reclamation is responsible for protecting 348 reservoirs and more than 500 Federal dams, 58 hydroelectric power plants, and over 8 million acres of Federal property including 300 recreation areas, many of national significance. Additionally, Reclamation projects host 90 million visitors each year. Personnel, vehicles or water vessels operating at Reclamation lands, facilities, and waters could gain unauthorized access to these lands, facilities, and water, threaten the safety of Reclamation employees and visitors, or launch terrorist attacks or commit other criminal acts against dams, power plants, property, and adjacent population centers.

Public Law 107-69 (November 12, 2001) provides for law enforcement authority within Reclamation projects and on Reclamation lands and section

1(a) of this law requires us to "issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." This regulation establishes rules and regulations governing public conduct on all Reclamation lands and Reclamation projects, including all waters subject to the jurisdiction of Reclamation. The regulation establishes the minimum rules and regulations necessary for law enforcement officers to ensure the safety of the public and Reclamation employees, to protect critical water and power resource facilities, and to address potential criminal activities against Reclamation facilities and individuals within those facilities. Further, many of these regulations are derived from long-standing National Park Service regulations, which are well-known and well-understood by the public, and which in most, if not all, cases were subject to public comment and review when first proposed.

II. Determination To Issue Final Rule Effective in Less Than 30 Days

We did not publish a notice of proposed rulemaking for this regulation. In keeping with the requirements of 5 U.S.C. 553 (b), we find that good reason exists for not publishing a notice of proposed rulemaking. In keeping with the requirements of 5 U.S.C. 553 (d)(3), we also find that good reason exists for making this regulation effective in less than 30 days after publication in the **Federal Register**. National security officials warn that future terrorist attacks against high visibility civilian targets, including dams and power plants, may be anticipated. The measures contemplated by the rule are intended to prevent future terrorist attacks against Reclamation lands, facilities, and waters, and to protect visitors to and population centers adjacent to these lands, facilities, and waters. In addition, the rule is necessary to deal with a large increase in tourism and visitation to Reclamation lands, facilities, and recreation areas with the coming of Spring, Reclamation Centennial activities, and other upcoming events. To delay the effective date of this rule is impractical and contrary to the public interest because it may render individuals and facilities vulnerable to subversive activity, sabotage, or terrorist attack. Immediate action is required to accomplish these objectives. The regulations will expire one year from the date they take effect, which will be the date of publication. Reclamation will accept and consider comments on this rule for 60 days after the date of publication. Reclamation is

in the process of developing a more comprehensive public conduct rule, and it will use comments received on this rule in finalizing the comprehensive rule.

III. Procedural Matters*National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and Department Manual 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The rule is categorically excluded from NEPA review under 40 CFR 1508.4, Departmental Manual 516 DM 2, Appendix 1, paragraph 1.10.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. Executive Order 12866 defines a "significant regulatory action" as a regulatory action meeting any one of four criteria specified in the E.O. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. We have therefore submitted the regulation to OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies 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). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Act. The rule:

- (1) Will not have an annual effect on the economy of \$100 million or more.
- (2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. Moreover, the rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq) is not required.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. Thus, a takings implication assessment is not required. This rule only addresses the possible consequences of public conduct on Reclamation lands and Reclamation projects.

Paperwork Reduction Act

This rule does not require any information collection under the Paperwork Reduction Act. Therefore, an OMB Form 83-I is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, this rule does not have Federalism implications. A Federalism assessment is not required. The rule will not affect the roles, rights, and responsibilities of States in any way. The rule will not result in the Federal Government taking control of traditional State responsibilities, nor will it interfere with the ability of States to formulate their own policies. In addition, the rule will not affect the distribution of power, the responsibilities among the various levels of government, nor preempt State law.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Department's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13211, Energy Impacts

In accordance with Executive Order 13211, the rule will not have a significant adverse effect on the supply, distribution, and use of energy. Therefore, a Statement of Energy Effects is not required.

IV. Comments on this Rule

If you wish to comment on this rule, you may submit your comments by one of two methods. You may mail comments to: Bureau of Reclamation, P.O. Box 25007, Denver, CO 80403, Attn: Diana Trujillo, D-5300. You may also hand-deliver comments to the Bureau of Reclamation, Denver Federal Center, 6th and Kipling, Building 67, Room 124, Lakewood, Colorado. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 43 CFR Part 423

Law Enforcement, Public Conduct, Reclamation Lands and Reclamation Projects.

Dated: April 3, 2002.

Bennett W. Raley,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation amends title 43 of the Code of Federal Regulations by adding a new part 423 to read as follows:

PART 423—PUBLIC CONDUCT ON RECLAMATION LANDS AND PROJECTS

Sec.

- 423.1 Purpose and applicability of this part.
- 423.2 Definitions of terms used in this part
- 423.3 Prohibition of trespassing, tampering, and vandalism.
- 423.4 Restrictions on water vessel operation.
- 423.5 Applicability of State law to vehicle operation.
- 423.6 Restrictions on weapons.
- 423.7 Prohibition of disorderly conduct.
- 423.8 Prohibition on interfering with agency functions.
- 423.9 Prohibition of explosives.
- 423.10 Criminal penalty for violations of this part.

Authority: 43 U.S.C. 373b, 16 U.S.C. 4601-31

§ 423.1 Purpose and applicability of this part.

The purpose of this part is to maintain law and order and protect persons and property on Reclamation lands, as defined in this part and at Reclamation projects as defined in this part. This part shall not apply where the Federal government has no ownership interest.

§ 423.2 Definitions of terms used in this part.

Disorderly conduct means committing any of the following acts with the intent to cause or create a risk of public alarm, nuisance, jeopardy or violence:

(1) Fighting or threatening, or violent behavior;

(2) Language, utterance, gesture, or display or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;

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

(4) Creating or maintaining a hazardous or physically offensive condition.

Reclamation means the Bureau of Reclamation of the United States Department of the Interior.

Reclamation lands means all real property administered by the Commissioner of Reclamation, and includes all acquired and withdrawn lands and water areas under the jurisdiction of Reclamation.

Reclamation projects means any water supply projects or water delivery projects constructed or administered by Reclamation under the Federal reclamation laws, and Acts supplementary thereto and amendatory thereof.

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

Vessel means every type or description of craft that is used or capable of being used as a means of transportation on water. Any buoyant device that permits or is capable of free flotation is a vessel. A seaplane is not a vessel.

Weapon means any of the following:

(1) A firearm, which is a loaded or unloaded pistol, rifle, shotgun or other device which is designed to, or may be readily converted to expel a projectile by the ignition of a propellant;

(2) A compressed gas or spring-powered pistol or rifle, irritant gas device, explosive device; or

(3) Any other implement designed to discharge missiles.

§ 423.3 Prohibition of trespassing, tampering, and vandalism.

(a) The following activities are prohibited:

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

(2) *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; and

(3) *Vandalism* or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

(b) Reclamation reserves the right to close and restrict public access to Reclamation lands and Reclamation projects subject to this part for security or public safety reasons. Each closure order or order restricting public access must:

(1) Identify the facilities, lands or waters that are closed or restricted as to public use;

(2) Specify the uses that are restricted;

(3) Specify the period of time during which the closure or restriction shall apply (including indefinite periods, if necessary); and

(4) Be posted at places near or within the area to which the closure or restriction applies, in such manner and location as is reasonable to bring prohibitions to the attention of the public.

(c) Within 15 days of the beginning of the closure or restriction, Reclamation will publish the closure or restriction in the **Federal Register**, unless the Commissioner determines that publication is contrary to national security or the public interest.

§ 423.4 Restrictions on water vessel operation.

The following are prohibited:

(a) Operating a vessel in a closed area;

(b) Failing to observe restrictions established by a regulatory marker (i.e., signs, buoys);

(c) Operating a vessel, or knowingly allowing another person to operate a vessel, in a reckless or negligent manner, or in a manner that endangers or is likely to endanger a person or property; and

(d) Operating a vessel when under the influence of alcohol or legally-used controlled substance that may endanger life or property.

§ 423.5 Applicability of State law to vehicle operation.

Any person operating a vehicle within Reclamation lands or Reclamation projects is subject to State laws in effect at the time.

§ 423.6 Restrictions on weapons.

(a) Carrying or possessing a weapon in violation of applicable Federal or State law is prohibited.

(b) Discharge of a weapon, except where allowed by State law, is prohibited.

(c) Authorized Federal, State, local and tribal law enforcement officers may carry and use weapons in the performance of their official duties.

§ 423.7 Prohibition of disorderly conduct.

Disorderly conduct is prohibited.

§ 423.8 Prohibition on interfering with agency functions.

The following are prohibited:

(a) 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;

(b) Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during law enforcement actions, and emergency operations that involve a threat to public safety or Reclamation resources, or other activities where the control of public movement and activities is necessary to maintain order and public safety;

(c) Knowingly giving a false or fictitious report or other false information to an authorized person investigating an accident or violation of law or regulation; and

(d) Knowingly giving a false report or false information for the purpose of misleading a government employee or agent in the conduct of official duties.

§ 423.9 Prohibition of explosives.

Using, possessing, storing, or transporting explosives, blasting agents, or explosive materials is prohibited except as allowed by State and Federal law and as authorized by Reclamation.

§ 423.10 Criminal penalty for violations of this part.

In accordance with Section 1(b) of Public Law 107-69, anyone responsible for violation of the provisions of this part is subject to a fine under subchapter 227, subchapter C of title 18 United States Code, can be imprisoned for not more than 6 months, or both.

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