

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 7**

RIN 1024-AD12

**New River Gorge National River
Hunting Regulation****AGENCY:** National Park Service (NPS), Interior.**ACTION:** Interim final rule.

SUMMARY: The National Park Service (NPS) is promulgating this interim final rule to authorize the continuation of hunting as it presently exists at New River Gorge National River (the park) in West Virginia. The park's 1978 enabling legislation gives the NPS discretionary authority to permit hunting in the park. An NPS regulation adopted in 1983 requires us to adopt an individual, or special, regulation for parks that have been authorized by Congress to permit hunting as a discretionary activity. This rulemaking creates such a regulation for the park. The rule assimilates the existing West Virginia State hunting program and applicable laws. The adoption of this rule will result in no changes to the way hunting has taken place since the park was authorized in 1978. The NPS is publishing this rule without a prior proposal because we believe this action is not controversial and we do not expect any significant opposition to this procedural action.

DATES: Effective: September 25, 2003. There is no deadline for sending comments on this interim final rule.

ADDRESSES: Comments should be sent to the Superintendent by mail to National Park Service, Park Headquarters, New River Gorge NR, P.O. Box 246, Glen Jean, West Virginia 25846; or by e-mail to neri_hunting@nps.gov; or by fax to (304) 465-6559.

FOR FURTHER INFORMATION CONTACT: Gary Hartley, Chief Ranger, National Park Service, New River Gorge NR, P.O. Box 246, Glen Jean, West Virginia, 25846. Telephone: (304) 465-0508. Fax: (304) 465-6559. Email: neri_hunting@nps.gov

SUPPLEMENTARY INFORMATION:**Background***A. Why Is This Rule Necessary?*

Congress specifies the appropriate uses for units of the national park system as they are created. Of the 388 units of the national park system, 57 allow hunting and 331 do not. Congress specifically authorized hunting as a discretionary activity when it authorized the New River Gorge National River in 1978. Hunting has

been a popular recreational and subsistence pastime since then, managed by the park in consultation with, and under the laws of, the State of West Virginia.

Part 2 of the NPS general regulations (36 CFR Part 2) concerns resource protection, public use and recreation. As amended in 1983, Section 2.2(b)(2) requires that, in cases where Congress has authorized (but not mandated) hunting within the boundaries of a national park area, the park superintendent must determine that the activity is consistent with public safety and enjoyment, and sound resource management principles for that particular park. With publication of this special regulation the park will be in compliance with that requirement.

B. Where Does This Rule Apply?

This rule applies only to hunting on lands within the boundaries of New River Gorge National River. The two other national park system units in West Virginia (*i.e.*, Gauley River National Recreation Area and Bluestone National Scenic River) are mandated to allow hunting and do not require a special regulation in order for it to occur.

C. What Decisions Has the NPS Made in This Rule?

This rule:

(1) Puts into regulation what has been occurring in practice since before the park was authorized in 1978.

(2) Assures compliance with NPS general regulations concerning hunting.

(3) Specifies that hunting, where allowed, will be conducted in accordance with the laws of the State of West Virginia.

(4) Does not add new Federal requirements to the State hunting regulation for the New River Gorge National River.

(5) Continues to allow the Superintendent to exercise discretion in how lands within the park boundary are managed.

D. Why Does the NPS Want To Allow Hunting To Continue at New River Gorge National River?

(1) Hunting has a long tradition and a popular following within West Virginia. Some residents depend on hunting as a source of food for themselves and their families.

(2) The park General Management Plan, adopted in 1982, had wide public input. At that time, a determination was made that hunting was an appropriate activity and consistent with the purposes of the park. If public comments on this rule raise issues about the appropriateness of hunting, they

will be considered during the development of a new General Management Plan, scheduled to begin this Fall.

(3) Hunting has occurred for the past two decades without significant safety problems and has not had unacceptable impacts on other visitor or management activities.

(4) Hunting has not caused unacceptable impacts to hunted species nor to other species in the park.

E. What Is the Effect of This Interim Final Rule?

This rule allows hunting to continue in the park. We do not expect the addition of this Part 7 regulation to change hunting within the park in any substantive way. The regulation does not impose any new requirements, such as a separate permit, license, or fee, nor does it affect West Virginia's authority to otherwise regulate hunting practices. It satisfies the requirement for the park to have a special regulation that recognizes hunting as an activity allowed within the park's boundaries.

F. Why Wasn't There a Proposed Rule Before Today's Interim Final Rule?

The NPS recognizes that new rules are ordinarily afforded a comment period before going into effect. For this interim regulation, however, we have determined under 5 U.S.C. 553(b)(B) and 318 DM 5.3 that it would be unnecessary and contrary to the public interest to delay the effective date to accommodate notice and comment procedures. This decision is based on the following reasons:

(1) This rule simply codifies existing practice. It is necessary in order to comply with an NPS procedural requirement, but it will not result in any substantive changes in the existing hunting or other programs at New River Gorge National River.

(2) No particular public interest in the content of this rule is expected. Though the NPS has received one comment letter alerting it to the procedural need for this rulemaking, neither that letter nor any other source has suggested any public interest in the content of this special regulation. We believe this action is not controversial and do not expect any significant opposition to it.

(3) Delaying implementation of this rule could prevent it from being in place in time for the opening of the regular hunting season in West Virginia. If the lands normally open to hunting within the boundary of the National River are not available for the upcoming hunting season, it will adversely affect a popular and successful hunting program and create confusion as to the status of

hunting at New River Gorge and surrounding areas. The harm to the public from such a procedural delay should be avoided, given the probable lack of public interest in the content of this rule. The NPS still welcomes comments on this interim final rule, and will consider them as part of our update of the National River's General Management Plan (GMP), which is scheduled to begin in Fall 2003. The update of the GMP will consider a full range of park management issues, including hunting. If we determine that it is necessary to change this rule, the changes will be proposed as part of the GMP process, and the public will have further opportunity to comment.

G. When Does This Rule Go Into Effect?

This rule is effective immediately. The NPS recognizes that new rules ordinarily go into effect thirty days after publication in the **Federal Register**. For this interim regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective immediately. This rule relieves the ordinary restrictions on hunting and does not require a delay in its effective date. In addition, good cause exists for an immediate effective date for the following reasons:

(1) Normally, the purpose of a delayed effective date is to give affected parties a chance to learn about a new regulation and how to comply with it. Such a delay is not needed here because this rule simply maintains the status quo and does not change anything for the affected parties (hunters).

(2) As discussed above, delaying implementation of this rule could prevent it from being in place in time for the opening of regular hunting season in West Virginia, and would thus adversely affect the public. The harm to the public from such a procedural delay should be avoided, given the lack of any benefit to the public in delaying the effective date.

Compliance With Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Order 12866)

This rule is not significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This action authorizes the continued

application of State requirements for the purpose of hunting within the New River Gorge National River. It imposes no additional requirements beyond those already imposed by State law.

(2) This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It follows other land management agencies and other national park areas in recognizing the role of the State in the management of hunting.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. This rule does not impose any new requirements or in any way change the existing program.

(4) This rule does not raise novel legal or policy issues. This rule is consistent with the park legislation and NPS general regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The overall economic effects of this rulemaking will be negligible, since there will be no change to longstanding practices. This action authorizes pre-existing requirements under Federal and State law for the purpose of hunting within the boundaries of New River Gorge National River. It does not impose any enforceable duty beyond that required by existing Federal and State law. There are no expected increases in costs or prices for consumers, individual industries, or State or local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(1) Does 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) Does 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

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. 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. This action will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings assessment is not required. This rule will not alter property rights.

Federalism (Executive Order 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required since this rule applies only to the State of West Virginia and does not alter the State's authority to develop and implement a hunting program.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule will not impose a new burden on the judicial system.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

The 1982 New River Gorge National River General Management Plan and Environmental Assessment (GMP) considered the issue of hunting within the boundary of the park, and found that it was appropriate to have this traditional use continue.

Subsequent to the approval of the GMP, the NPS promulgated a regulation that requires parks to pass special regulations to permit hunting, where it is authorized and where the

superintendent has determined that such activity is consistent with public safety and enjoyment, and sound resource management principles. The NPS has reviewed the previous GMP/EA and the environmental impacts associated with implementing this regulation and has analyzed whether environmental changes since the original issuance of the environmental assessment would trigger additional compliance activities under the National Environmental Policy Act of 1969. Based on that review, the NPS has determined that the regulation is not in conflict with the Final GMP and that there have been no changes to conditions that would require additional NEPA compliance. In addition, when viewed in the context of current Department of the Interior and NPS standards of review, the regulation is covered by a categorical exclusion (516 DM 6, Appendix 7.4 A.10; RM 12.3.4.A(8)), and no exceptions to categorical exclusions (516 DM 2, Appendix 2; RM-12.3.5) apply to the regulation. As a result, the NPS is not legally required to prepare, and has not prepared, either an additional environmental assessment or an Environmental Impact Statement.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2 we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects; the rule will simply continue an activity that has been ongoing since before the NPS.

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may:

(1) Mail or hand deliver comments to the park Superintendent at National Park Service, Park Headquarters, New River Gorge NR, P.O. Box 246, Glen Jean, West Virginia 25846.

(2) Send comments by e-mail to neri_hunting@nps.gov; or by fax to (304) 465-6559.

(3) Comment via the Internet to neri_hunting@nps.gov.

Please include "NERI Hunting Rule" in the subject line and your name and return address in the body of your message. Our practice is to make comments, including names and

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 which we will honor to the extent 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 or organizations or businesses, available for public inspection in their entirety.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example § 7.89 New River Gorge National River.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Drafting Information: The primary authors of this regulation were Patricia Sheehan, NPS Northeast Regional Office; Chick Fagan, NPS Office of Policy and Regulations; Calvin Hite, Superintendent, New River Gorge National River; and Jason Waanders, Office of the Solicitor, Department of the Interior.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

The Interim Final Rule

■ For the reasons stated in the preamble, the NPS amends the Special Regulations, Areas of the National Park System (36 CFR part 7) to read 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); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

■ 2. Add § 7.89 to read as follows:

§ 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]

Dated: September 9, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AL40

Eligibility for an Appropriate Government Marker for a Grave Already Marked at Private Expense

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations to reflect changes made by the Veterans Education and Benefits