years at the discretion of the TMA Director, or designee.

* * * * *

(d) * * *

(1) *In general.* CHAMPUS pays institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in this paragraph, with the exception of ambulatory surgery procedures performed in hospital outpatient departments, which are to be reimbursed in accordance with the provisions of paragraph (a)(5)(ii) of this section. This payment method is similar to that used by the Medicare program for ambulatory surgery. This paragraph applies to payment for freestanding ambulatory surgical centers. It does not apply to professional services. A list of ambulatory surgery procedures subject to the payment method set forth in the paragraph shall be published periodically by the Director, TRICARE Management Activity (TMA). Payment to freestanding ambulatory surgery centers is limited to these procedures.

* * * * *

Dated: December 5, 2008.

Patricia Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8–29251 Filed 12–5–08; 4:15 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1124]

Drawbridge Operation Regulation; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, Hempstead, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Wantagh State Parkway Bridge across Sloop Channel at mile 15.4, at Jones Beach, New York. Under this temporary deviation the bridge may operate on a limited operating schedule for four months to facilitate the completion of bridge construction.

DATES: This deviation is effective from December 1, 2008 through April 1, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1124 and are available online at *www.regulations.gov.* They are also available for inspection or copying two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Wantagh State Parkway Bridge has a vertical clearance in the closed position of 16 feet at mean high water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The New York State Department of Transportation requested a temporary deviation to facilitate the completion of bridge construction and to accommodate holiday work schedule.

The waterway has seasonal recreational vessels and fishing vessels of various sizes.

We contacted the New York Marine Trades Association and Station Jones Beach. No objection to the proposed temporary deviation schedule was received.

Under this temporary deviation, in effect from December 1, 2008 through April 1, 2009, the Wantagh State Parkway Bridge at mile 15.4, across Sloop Channel, shall operate as follows:

From Monday through Friday the bridge shall open on signal at 6:30 a.m. and 4 p.m. after at least a 30-minute advance notice is given. From 4 p.m. to 6:30 a.m. the bridge shall open on signal after at least a two-hour advance notice is given.

From Friday, 4 p.m. through Monday, 6:30 a.m. the bridge shall open on signal after at least a two-hour advance notice is given.

At all other times including 24, 25, 31 December 2008 and 1 January 2009, the bridge need not open for marine traffic.

Advance notice may be given by calling (631) 383–6598.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 1, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–29237 Filed 12–9–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

Fish and Wildlife Service

50 CFR Part 27

RIN 1024–AD70

General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service

AGENCIES: Fish and Wildlife Service and National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking amends regulations codified in 36 CFR part 2 and 50 CFR part 27, which pertain to the possession and transportation of firearms in national park areas and national wildlife refuges. The final rule updates these regulations to reflect state laws authorizing the possession of concealed firearms, while leaving unchanged the existing regulatory provisions that ensure visitor safety and resource protection such as the prohibitions on poaching and limitations on hunting and target practice.

DATES: This rule becomes effective on January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Lyle Laverty, 202–208–4416.

SUPPLEMENTARY INFORMATION:

I. Background

America's parks and wildlife refuges are an important part of our shared national heritage, and a source of inspiration and enjoyment for visitors from around the world. For nearly 100 years, Congress has vested the Secretary of the Interior with the responsibility for managing these lands and resources in a manner that ensures their preservation and seeks to provide for the safety of visitors and employees. In administering these lands, Congress has enacted various statutes authorizing the Secretary to work closely with respective State and local governments in the management of these areas. In the following decades, the Department has worked closely with its State, local

government and Tribal neighbors, and has adopted regulations in appropriate circumstances that look to the laws of the state in which that unit is located. This final rule is intended to extend similar treatment to non-conflicting state laws pertaining to carrying of concealed weapons.

Forty-eight States currently authorize law-abiding citizens to carry concealed firearms. However, existing Federal regulations governing firearms in national parks and national wildlife refuges, promulgated before the vast majority of these state laws were in effect, unnecessarily preclude law-abiding citizens from possessing, carrying, or transporting a concealed firearm that is otherwise legal in that state.

On December 14, 2007, forty-seven United States Senators from both parties wrote to the Secretary of the Interior asking the National Park Service (NPS) and U.S. Fish and Wildlife Service (FWS) to ''remove their prohibitions on law-abiding citizens from transporting and carrying firearms on lands managed by these agencies'' by amending their regulations to allow ''firearms consistent with the state law where the National Park Service's sites and the National Wildlife Refuges are located.'' [1] The Senators observed that the ''regulations infringe on the rights of law-abiding gun owners'' and that the ''inconsistencies in firearms regulations for public lands are confusing, burdensome, and unnecessary.'' On February 11, 2008, four additional United States Senators wrote to the Secretary in support of the effort, adding that existing regulations ''preempt state regulatory frameworks for transporting and carrying firearms, thus invalidating concealed weapons permits and other state laws that allow law-abiding citizens to transport and carry firearms.'' [2]

[1] *See* Letter to the Honorable Dirk Kempthorne, Secretary of the Interior, dated December 14, 2007, from Senators Crapo (ID), Baucus (MT), Craig (ID), Johnson (SD), Inhofe (OK), Tester (MT), Vitter (LA), Pryor (AR), Smith (OR), Lincoln (AR), Hatch (UT), Dorgan (ND), Coleman (MN), Nelson (NE), Coburn (OK), Webb (VA), Gregg (NH), Murkowski (AK), Ensign (NV), Sununu (NH), Stevens (AK), Bennett (UT), Chambliss (GA), Cochran (MS), Isakson (GA), Bunning (KY), Allard (CO), Thune (SD), Grassley (IA), Corker (TN), Lott (MS), Hutchison (TX), Roberts (KS), Martinez (FL), Cornyn (TX), Shelby (AL), Hagel (NE), Graham (SC), Dole (NC), Enzi (WY), McCain (AZ), Barrasso (WY), Brownback (KS), Domenici (NM), DeMint (SC), Sessions (AL), and Kyl (AZ). A copy of this letter may be accessed at *http://www.doi.gov/issues/response_to_senators.html*.

[2] *See* Letter to the Honorable Dirk Kempthorne, Secretary of the Interior, dated February 11, 2008, from Senators Feingold (WI), Specter (PA), Bond (MO), and Wicker (MS). A copy of this letter may be accessed at *http://www.doi.gov/issues/response_to_senators.html*.

The Department agrees with the 51 United States Senators that the regulations should be amended to reflect developments in state law, particularly where, as in this case, the deference can be achieved without impacting the visitors or resources the regulations are designed to protect. Accordingly, on April 30, 2008, the Department chose to address this issue proactively through the development of a proposed regulation, which it published in the **Federal Register** with a request for public comment. *See* 73 FR 23388 (April 30, 2008). The Department initially provided a sixty-day comment period and subsequently provided an additional 30-day comment period. The Department received more than 125,000 comments during the comment period and thereafter formed a working group to carefully review and analyze the submissions.

We believe that in managing parks and refuges we should, as appropriate, make every effort to give the greatest respect to the democratic judgments of State legislatures with respect to concealed firearms. As stated in the proposed rule, Federal agencies have a responsibility to recognize the expertise of the States in this area, and Federal regulations should be developed and implemented in a manner that respects ''state prerogatives and authority.'' *See* Executive Order 13132 of August 10, 1999 (''Federalism''). As explained herein, the Department believes that this rule more appropriately gives effect to these federalism concepts as called for in the Executive Order, while simultaneously maintaining protection of visitors and the values for which these parks and refuges were established. We discuss these considerations more fully below.

II. Discussion

A. Summary of the Final Rule

The regulations being amended by this rule are intended by the NPS and the FWS to protect the natural and cultural resources of park areas and refuges, and to protect visitors, employees and property within those lands. In their previous form, these regulations generally prohibited visitors from possessing an operable and loaded firearm in areas administered by these bureaus unless the firearm is used for lawful hunting activities, target practice in areas designated by special regulations, or other purposes related to the administration of Federal lands in Alaska. The previous regulations also allowed visitors to transport firearms through parks and refuges subject to limitations that generally required the firearm to be unloaded and rendered inoperable or inaccessible. See 48 FR 30282 (June 30, 1983); 49 FR 18444 (April 30, 1984).

The previous FWS and NPS regulations were last substantively updated in 1981 and 1983, respectively. The overwhelming majority of States now provide for the possession of concealed firearms by their citizens. In many States, the authority to carry loaded and operable concealed firearms extends to State park and refuge lands, whether expressly or by operation of law.

1. The Department's Purpose

The Department's intent in adopting this final rule is to better reflect the decisions of the States in which parks and refuge units are located to determine who may lawfully possess a firearm within their borders, while preserving the Federal government's authority to manage its lands, buildings, and other facilities. Mindful of that objective, the Department's final rule amends the regulations to allow individuals to carry concealed, loaded, and operable firearms in Federal park units and refuges to the extent that they could lawfully do so under non-conflicting state law. By adopting state law in this manner, this rule is similar in approach to that already taken by NPS and FWS in various regulations pertaining to hunting, fishing, motor vehicles and boating. Additionally, the final rule treats state law in a similar manner to regulations adopted by the Bureau of Land Management (BLM) and the United States Forest Service (USFS), both of which allow visitors to carry weapons consistent with applicable Federal and state laws. *See* 36 CFR 261.8 (a)–(c); 43 CFR 8365.1–7.

Under the final rule, individuals must have actual authority to possess those loaded and concealed firearms under state law in order to carry those loaded concealed firearms in Federal park areas and refuges. This means that the State in which the park or refuge unit is located must have laws that authorize the individual to possess those concealed and loaded firearms, and the individual must be so authorized. Additionally, to the extent that a State's law recognizes licenses issued by other States, including the applicability of reciprocity agreements, the final rule would similarly recognize such reciprocal authorities. Finally, individuals authorized to carry firearms under this rule will continue to be subject to all other applicable state and Federal laws. Accordingly, as stated in the preamble to the proposed rule, this rule does not authorize visitors to use

firearms, or to otherwise possess or carry concealed firearms in Federal facilities in national parks and wildlife refuges as such possession is proscribed by 18 U.S.C. 930.

We also note that national park areas and wildlife refuges are often located in close proximity to state parks or wildlife management areas, National Forests, or public lands managed by the BLM. Visitors to these sites may frequently travel through a combination of Federal and state lands during the course of a trip or vacation. In these circumstances, the Department believes that adopting for these Federal lands the applicable state standards for the possession of firearms will promote uniformity of application and better visitor understanding and compliance with the requirements.

During the course of the public comment process, a number of entities and individuals, including the State of Alaska and employees of the FWS, suggested that the Department's reference to ''similar state lands'' in the proposed regulation is ambiguous and confusing since individual States provide for various management regimes that make it difficult to determine what areas are actually similar. As discussed more fully below, the Department agrees with this concern and has deleted this language in the final rule. The modified final language adopts state law in a similar manner to regulations adopted by other Federal agencies regarding firearms on public lands, as called for by the 51 United States Senators who wrote to us.

We understand that states with concealed carry laws routinely impose statutory prohibitions on the lawful possession of concealed handguns in certain locations. It is possible that a state may wish to prohibit an individual from possessing a concealed weapon on Federal lands within state boundaries. In the event a state enacts such a law, the Department's final rule respects the legislative judgment of the people of that State.

2. Constitutional Considerations

During the pendency of our public comment period, the Supreme Court announced its decision in *District of Columbia* v. *Heller*, 554 U.S.ll , 128 S. Ct. 2783; 171 L. Ed. 2d 637; 2008 U.S. LEXIS 5268; 76 U.S.L.W. 4631 (June 26, 2008) (''Heller''), which held that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a government militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home. Several individuals, including two members of Congress, wrote the Department suggesting that the Court's decision in this case is of significance to the proposal, and that the Department should extend the public comment period to allow citizens to comment on the potential impacts of this case on the proposed rule. In our view, the Supreme Court's decision in *Heller* does not directly impact our proposal to revise existing Federal regulations to more closely conform our regulations to appropriate state laws.

B. Summary of Comments and Responses

The Department received approximately 125,000 comments on the proposed rule from a wide variety of entities, including members of Congress, government agencies, current and former NPS employees, conservation groups, coalitions, and private individuals. Most of those comments were form letters or cards. Many of those expressed opposition to a change in the rules. The majority of supporting comments were submitted by individuals and elected officials favoring a rule that would align Federal policy with the adjacent state law. In addition to the original 51 United States senators who originally wrote to the Secretary, U.S. Senators Jim Webb (VA) and Senator Lisa Murkowski (AK) as well as Alaska Governor Sarah Palin wrote letters in support of the rule during the comment period. U.S. Senators Dianne Feinstein and Daniel K. Akaka along with U.S. House members Norman D. Dicks and Raul M. Grijalva submitted a letter during the comment period opposing any change to the existing regulations.

To facilitate analysis of the public comments, we formed a working group composed of employees from the NPS, the FWS, and the Office of the Assistant Secretary for Fish and Wildlife and Parks. The group was charged with analyzing the comments and organizing them into categories for further review. The working group considered all of the information and recommendations submitted in developing the final rule. The following is a summary of the comments and our responses.

Issue 1: The Department should not rely on state law to manage firearms because Congress has given Federal government complete authority over Federal lands.

Response 1: We recognize that Congress may enact comprehensive and preemptive statutes in a wide range of areas that involve national interests. In these instances, the Supreme Court has consistently held that Federal law preempts state law and does not permit further regulation by the States. The Property Clause of the United States Constitution authorizes the Congress to enact laws to maintain and administer the Federal lands, including the laws establishing the National Park System and the National Wildlife Refuge System. These statutes are not necessarily preemptive of the field of law in that they allow for Federal agencies to appropriately adopt state law in a range of subjects, including law enforcement and firearms. *See*, e.g., 16 U.S.C. 1a–3; 1a–6; 1531(c); 1535 (cooperation with states); *see also* Coggins, George C., Wilkinson, Charles F., Leshy, John D., and Fischman, Robert L., *Federal Public Land and Resources Law* (6 Ed. 2007), p. 181 (''In most traditionally Federal areas where uniform national regulation is important, such as aliens, navigation, Indian affairs, labor, and civil rights, the Supreme Court has been quick to find preemption. Federal lands have never been regarded as such an area. Indeed, state law has always played an important role, applying to much private activity on federal lands.''). We believe that this principle applies here.

Issue 2: The proposed rule will not provide a uniform standard because state laws governing concealed firearms vary. Additionally, since many parks are located in two or more states with different licensing schemes, there is no way that visitors and park managers will be able to maintain clear standards and enforcement.

Response 2: We recognize that the proposed rule means that permissible activities in parks and refuges may vary from state to state. However, this circumstance is not unique and has not presented significant problems in other areas where state laws are adopted. For example, current NPS regulations adopt such an approach for hunting, fishing, motor vehicles and boating. Moreover, in the relatively few instances where parks and refuges are located in more than one state, we do not believe that this presents a situation any different than citizens already face. As is generally the case, and is also true under this rule, individuals remain responsible for familiarizing themselves with and obeying all applicable laws, including the laws of the state they are located within. We see no reason why citizens who are authorized to carry a concealed firearm are not capable of undertaking this same due diligence when they cross state boundaries within parks or refuges. In addition, the NPS and FWS will take appropriate steps to inform visitors about the applicable requirements when a unit is located in more than one state.

Issue 3: The Department's reference to ''similar state lands'' in the text of the proposed regulation is ambiguous and confusing since individual states appear to define their parks and refuge lands in different ways, and may regulate these lands differently within the same state. The text could be clarified by simply making a more general reference to state law as the governing standard which, by implication, will also include more specific regulations or policies adopted by the state with regard to the possession of a concealed firearm in a state park or wildlife refuge. The rule should be modified to cure this ambiguity.

Response 3: We agree with the commenters that the reference to ''similar state lands'' in the proposed rule was ambiguous and led to confusion as to what rules would apply to particular Federal park areas and national wildlife refuges. A very diverse range of commenters raised these concerns, including the National Parks Conservation Association (NPCA), senior employees of the FWS, the State of Alaska, and the West Virginia Citizens Defense League (WVCDL). Several commenters suggest that the ambiguities in the proposed language may be readily cured by amending the language of the proposed rule and simply making a more general reference to state law.

We have given consideration to this issue and have revised the proposed language to delete the references to ''similar lands'' and to more succinctly state that we are applying the rules established by the applicable state laws. First, by adopting this revision, the final rule more closely resembles the regulatory approach used by BLM and the USFS. Second, we believe the final rule will lessen or eliminate confusion about the application of the various Federal rules because the primary Federal land managers will now have a similar approach to addressing the issue. Finally, no State separately commented in opposition to permitting loaded firearms to be carried in Federal parks—whether such rules were related to ''similar state lands'' or any other state law standard. The only State to comment on the proposed rule was Alaska, which supported an amendment to existing regulations that would authorize loaded firearms in Federal parks consistent with state law.

Issue 4: There is no reason to allow visitors to carry a concealed firearm for personal safety since visitors to a national park area or wildlife refuge are statistically unlikely to be a victim of violent crime or criminal assault.

Response 4: The available data indicates that National Parks and Wildlife Refuges are less prone to criminal activity than other areas in the United States. However, we also recognize that current statistics show an alarming increase in criminal activity on certain Federal lands managed by the Department of the Interior, especially in areas close to the border and in lands that are not readily accessible by law enforcement authorities. In 2007, for instance, the NPS reported 8 murders, 43 forcible rapes, 57 robberies, and 274 instances of aggravated assault. The fact that these crime rates may be lower than the national average does not mean that parks are free from violence, nor do these figures suggest that people should be less cautious or prepared when visiting a national park unit or national wildlife refuge. Congress recognized this fact in 1994 when it enacted a statute which requires the Department to (1) ''compile a list of areas within the National Park System with the highest rates of violent crime'' and (2) ''make recommendations concerning capital improvements, and other measures, needed within the National Park System to reduce the rates of violent crime, including the rate of sexual assault.'' 16 U.S.C. 1a–7a(b)(1)–(2).

The Department has recently proposed substantial budget increases to resolve some of these problems, and our law enforcement officials will continue to work with their colleagues in tribal, state, and local law enforcement to prevent criminal activities on Federal lands. We do not believe it is appropriate to decline to recognize state laws simply because a person enters the boundaries of a national park or wildlife refuge, or because there is a lesser chance that a visitor will be harmed or potentially killed by a criminal in a national park unit or wildlife refuge.

Issue 5: Visitors should not carry a concealed firearm for self-defense because NPS and FWS law enforcement officers are more than adequate to protect individuals from harm.

Response 5: The Department believes that NPS and FWS law enforcement officers work hard and perform valiant public service in their respective capacities. We also recognize that the NPS and FWS together employ approximately 3,000 full and part-time law enforcement officers who are responsible for patrolling and securing millions of acres of land, a substantial portion of which is remote wilderness. In these circumstances, NPS and FWS law enforcement officers are in no position to guarantee a specific level of public safety on their lands, and cannot prevent all violent offenses and crimes against visitors. See, e.g., *Bowers* v. *DeVito*, 686 F.2d 616 (7th Cir. 1982) (no Federal Constitutional requirement that police provide protection); *Warren* v. *District of Columbia*, 444 A.2d 1 (D.C. 1981) (''the government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen'').

Issue 6: Once a visitor sets up camp in a campground, the site becomes a temporary dwelling subject to legal protections. For that reason, the rule should recognize that a visitor has the right to possess an operable firearm in the campsite for self-defense.

Response 6: We understand that a number of Federal courts of appeal, as well as the Idaho Supreme Court, have concluded that citizens have a right under the Fourth Amendment to be free from unreasonable searches and seizures from government officials within tents and other temporary structures on public lands. *United States* v. *Sandoval*, 200 F.3d 659 (9th Cir. 2000), citing *United States* v. *Gooch*, 6 F.3d 673, 677 (9th Cir. 1993) (reasonable expectation of privacy in tent on public land). *See also State* v. *Pruss*, 181 P.3d 1231 (Idaho 2008) (''If the travel trailer is protected against government intrusion, then so is the tent.''). However, we are not aware of any cases that have extended this reasoning to the Second Amendment and determined that an individual has a constitutional right to keep and bear arms in a tent or trailer located on Federal public lands. Until such a precedent is clearly established, the Department will continue to assume that the Supreme Court's decision in *Heller* applies to a person's residential dwelling and not to a temporary dwelling on public land. *See Heller*, Slip Opinion at 56 (the Second Amendment proscribes the way the Federal government may place limits upon a citizen's ''inherent right of self-defense [which is] central to the Second Amendment right.''); *see also* 36 CFR 2.4(a)(2) (''weapons * * * may be carried, possessed, or used'' within a ''residential dwelling''); cf. *Pruss*, 181 P.3d at 1231 (''The respect for the sanctity of the home does not depend upon whether it is a mansion or hut, or whether it is a permanent or a temporary structure''); *see also Miller* v. *United States*, 357 U.S. 301, 307 (1958) (same).

Issue 7: A visitor with a concealed firearm may not be well-trained to use a firearm and thus be given a false sense security against potential attackers.

Response 7: Many individuals authorized under State law to carry

concealed firearms are in possession of permits, the acquisition of which is conditioned on some form of training in the use and storage of firearms. Moreover, there is no data before us that would suggest that these citizens lack the requisite skills and/or training to properly use their firearms for self-defense. In fact, statistics maintained by the Justice Department show that from 1987–92 about 83,000 crime victims per year used a firearm to defend themselves or their property, and a majority of these individuals used their firearms during a violent crime. See United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft* (1994); *see also* National Research Council, Committee on Law and Justice, *Firearms and Violence: A Critical Review* (Washington, DC: The National Academies Press, 2004), pp. 7.

Issue 8: Visitors who carry a concealed firearm permitted under state law are likely to use their handguns to shoot or injure wildlife.

Response 8: The Bureau of Land Management and the U.S. Forest Service and a number of state parks and refuges currently authorize the possession of concealed firearms consistent with the laws of the state in which they are located. The available data does not suggest that visitors to these lands misuse their legally permitted firearms for poaching or illegal shooting, or that there is additional danger posed to the public from lawfully carried concealed firearms. See, e.g., National Research Council, Committee on Law and Justice, *Firearms and Violence: A Critical Review* (Washington, DC: The National Academies Press, 2004), p.6; Dodenhoff, David, *Concealed Carry Legislation: An Examination of the Facts*, Wisconsin Public Policy Research Institute (2006), p. 5; see also, Jeffrey Snyder, *Fighting Back: Crime, Self-Defense, and the Right to Carry a Handgun* (October 1997); Kopel, David, et al., *Policy Review* No. 78 (July & August 1996).

Issue 9: The rule will inhibit the ability of park rangers to halt poaching because brandishing a firearm would no longer be probable cause to search for evidence of wildlife parts.

Response 9: We disagree. The final rule continues to maintain existing prohibitions on poaching, unauthorized target shooting, and other illegal uses of firearms, including laws against brandishing a firearm in public. As with any other law or regulation, we expect visitors to obey those requirements. Individuals who break the law by using illegally their concealed firearms will be subjected to arrest and/or prosecution.

Issue 10: The proposed rule is too narrow and should be expanded to allow visitors to carry all forms of firearms, including shotguns and rifles.

Response 10: The Department recognizes that long guns are an important part of America's hunting and recreation tradition, and that many individuals use these arms for self-defense of their home and person. Although we understand that there may be good reasons to update our policies with regard to these firearms, we have decided at this time to adopt a narrowly-tailored rule to give greater respect to state laws which authorize law-abiding citizens to possess and carry concealed firearms.

Issue 11: The proposed rule should have been subjected to a full environmental review under the National Environmental Policy Act so that the public could comment on the impacts of the rule on the environment.

Response 11: The Department agrees that policies and rules which have a significant effect on the environment must be fully analyzed under the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347). Consistent with this commitment, we have analyzed the final rule under NEPA and concluded that (i) the action is subject to a categorical exclusion under 43 CFR 46.210 since the final regulation is in the nature of a legal change to existing regulations, and (ii) no ''extraordinary circumstances'' exist which would prevent the proposed action from being classified as categorically excluded. *Id.* This decision is fully described in our decision document dated November 18, 2008, which is available to the public at *http://www.doi.gov/*.

Issue 12: The proposed rule should have been subjected to study and consultation under Section 7 of the Endangered Species Act.

Response 12: Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 et seq.), provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat.'' We have analyzed the final rule and have concluded that it is solely a legal amendment to existing rules, and that it does not authorize any new uses or activities that may affect endangered or threatened species or designated critical habitat. *See* 50 CFR 402.14(a). For this reason, we have determined that the final rule has ''no effect'' on listed species or on designated critical habitat. Accordingly, we are not required to conduct a Section 7 consultation under the ESA for the final rule.

Issue 13: National Parks and Wildlife Refuges are designed to be havens of peace and safety. In this respect, visitors who do not like guns will not fully enjoy their visit to a National Park or Wildlife Refuge if they know that another visitor in close proximity is carrying a loaded and operable firearm permitted by the state.

Response 13: The Department seeks to provide opportunities for all those who visit national park areas and national wildlife refuges to enjoy their experience. Insofar as the final rule adopts the State law that also governs outside the national park or refuge area, the Department believes that its applicability to these Federal areas will not diminish the experience of most visitors, particularly where, as here, NPS and FWS law enforcement officers already carry firearms which are visible to the public.

III. Required Determinations

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and is subject to review by the Office of Management and Budget (OMB) 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.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule raises novel legal or policy issues.

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.*).

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:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

c. 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.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not require the preparation of a federalism assessment.

Civil Justice Reform (Executive Order 12988)

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Paperwork Reduction Act

This regulation does not contain information collection requirements, and a submission under the Paperwork Reduction Act is not required.

National Environmental Policy Act

The Department has analyzed the final rule under NEPA and determined that the action is subject to a categorical exclusion under applicable regulations. *See* 43 CFR 46.210. First, the rulemaking is in the nature of a legal change to existing rules that will not have any actual effects on the environment. And second, the Department has determined that no ''extraordinary circumstances'' exist which would prevent the proposed action from being classified as categorically excluded. *Id.* This decision is fully described in our decision document dated November 18, 2008, which is available to the public at *http://www.doi.gov/*.

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 22961), and 512 DM 2, the Department has invited federally recognized tribal governments to jointly evaluate and address the potential effects, if any, of the proposed regulatory action.

IV. Section-by-Section Analysis

36 CFR Part 2

Section 2.4—Weapons, Traps, and Nets

Previously, Section 2.4 generally prohibited visitors from possessing an operable and loaded firearm in national park areas unless the firearm is used for lawful hunting activities, target practice in areas designated by special regulations, or other purposes related to the administration of Federal lands in Alaska. Under the final rule, an individual may possess, carry, and transport concealed, loaded, and operable firearms within a national park area in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in the state in which the Federal park, or that portion thereof, is located. Possession of concealed firearms in national parks as authorized by this section must also conform to applicable Federal laws. Accordingly, nothing in this regulation shall be construed to authorize concealed carry of firearms in any Federal facility or Federal court facility as defined in 18 U.S.C. 930.

50 CFR Part 27

Section 27.42—Firearms

The previous regulation in Section 27.42 generally prohibited visitors from possessing an operable and loaded firearm in a national wildlife refuge unless the firearm is used for lawful hunting activities. Under the final rule, an individual may possess, carry, and transport concealed, loaded, and operable firearms within a national wildlife refuge in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in the state in which the national wildlife refuge, or that portion thereof, is located. Possession of concealed firearms in national wildlife refuges as authorized by this section must also conform to applicable Federal laws. Accordingly, nothing in this regulation shall be construed to authorize concealed carry of firearms in any Federal facility or Federal court facility as defined in 18 U.S.C. 930.

List of Subjects

36 CFR Part 2

National parks.

50 CFR Part 27

Wildlife refuges.

■ For the reasons discussed in the preamble, we amend part 2 of title 36 and part 27 of title 50 of the Code of Federal Regulations as follows:

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DOI

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

■ 2. Amend § 2.4 by adding a new paragraph (h) to read as follows:

§ 2.4 Weapons traps and nets.

* * * * *

(h) Notwithstanding any other provision in this Chapter, a person may possess, carry, and transport concealed, loaded, and operable firearms within a national park area in accordance with the laws of the state in which the national park area, or that portion thereof, is located, except as otherwise prohibited by applicable Federal law.

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DOI

PART 27—PROHIBITED ACTS

■ 1. The authority citation for part 27 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, Stat. 449 (16 U.S.C. 690d); Sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); Sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); 49 Stat. 383 as amended; Sec. 4, 76 Stat. (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 685, 752, 690d); 16 U.S.C. 715s).]

Subpart D—Disturbing Violations: With Weapons

■ 2. Amend § 27.42 by adding a new paragraph (e) to read as follows:

§ 27.42 Firearms.

* * * * *

(e) Notwithstanding any other provision in this Chapter, persons may

possess, carry, and transport concealed, loaded, and operable firearms within a national wildlife refuge in accordance with the laws of the state in which the wildlife refuge, or that portion thereof, is located, except as otherwise prohibited by applicable Federal law.

Dated: December 5, 2008.

Lyle Laverty,

Assistant Secretary of the Interior for Fish and Wildlife and Parks.

[FR Doc. E8–29249 Filed 12–9–08; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 41

[Docket No.: PTO–P–2007–0006]

RIN 0651–AC12

Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Delay of Effective and Applicability Dates

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; delay of effective and applicability dates.

SUMMARY: On June 10, 2008, the United States Patent and Trademark Office (Office) published the final rule that amends the rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in *ex parte* patent appeals. The final rule states that the effective date is December 10, 2008, and that the final rule shall apply to all appeals in which an appeal brief is filed on or after the effective date. On June 9, 2008, the Office published a 60-Day **Federal Register** Notice requesting the Office of Management and Budget (OMB) to establish a new information collection for BPAI items in the final rule and requesting public comment on the burden impact of the final rule under the provisions of the Paperwork Reduction Act (PRA). On October 8, 2008, the Office published a 30-Day **Federal Register** Notice stating that the proposal for the collection of information under the final rule was being submitted to OMB and requesting comments on the proposed information collection be submitted to OMB. The proposed information collection is currently under consideration by OMB. Since the review by OMB has not been completed, the Office is hereby notifying the public that the effective and applicability date of the final rule is not December 10, 2008. The effective and applicability dates will be identified in a subsequent notice.

DATES: The effective date for the final rule published at 73 FR 32938, June 10, 2008, is delayed, pending completion of OMB review of the proposed information collection under the PRA. The Office will issue a subsequent notice identifying a revised effective date on which the final rule shall apply.

FOR FURTHER INFORMATION CONTACT: Allen MacDonald, Administrative Patent Judge, at (571) 272–9797, or Kimberly Jordan, Chief Trial Administrator, at (571) 272–4683, Board of Patent Appeals and Interferences, directly by phone, or by facsimile to (571) 273–0043, or by mail addressed to: Mail Stop Board of Patents Appeals and Interferences, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: On June 10, 2008, the United States Patent and Trademark Office (Office) published the final rule that amends the rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in *ex parte* patent appeals. *See Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals;* Final Rule, 73 FR 32938 (June 10, 2008), 1332 *Off. Gaz. Pat. Office* 47 (July 1, 2008) (hereinafter ''BPAI final rule 2008''). The BPAI final rule 2008 states that the effective date is December 10, 2008, and that the final rule shall apply to all appeals in which an appeal brief is filed on or after the effective date.

On June 9, 2008, the Office published a new information collection request for OMB to review several BPAI items in the BPAI final rule 2008 as subject to the PRA. *See Board of Patent Appeals and Interferences Actions;* New Collection, Comment Request, 73 FR 32559 (June 9, 2008) (hereinafter ''60-Day Notice''). In addition to requesting OMB to establish a new information collection, the 60-Day Notice invited comments from the public and other Federal agencies on the burden impact of the proposed information collection under the provisions of the PRA. The 60-Day Notice specified that comments were to be submitted on or before August 8, 2008.

On October 8, 2008, the Office published a notice that the proposed information collection was being submitted to OMB and public comments on the proposed collection were to be submitted to OMB on or before November 7, 2008. *See Submission for OMB Review; Comment Request;* 73 FR 58943 (October 8, 2008) (hereinafter ''30-Day Notice''). On October 9, 2008, the Office filed a Supporting Statement with OMB (*http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200809–0651–003*). The Supporting Statement included the Office's response to comments received following the 60–Day Notice. The 30–Day Notice requested public comments be submitted to OMB on or before November 7, 2008.

The proposed information collection request is currently under consideration for approval by OMB. The review by OMB has not been completed. Therefore, the effective and applicability dates of the BPAI final rule 2008 will not be December 10, 2008. The Office will notify the public when the revised effective and applicability dates are set. In the subsequent notification, the Office will provide at least a 30-day time period before the BPAI final rule 2008 becomes effective.

On November 20, 2008, the Office published a clarification notice on the effective date provision. *See Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals,* 73 FR 70282 (November 20, 2008). As indicated in the clarification notice, the Office will not hold an appeal brief as non-compliant solely for following the new format even though it is filed before the effective date. Thus, appeal briefs filed before the effective date of the BPAI final rule 2008 (yet to be determined) must either comply with current 37 CFR 41.37 (which remains in effect) or revised 37 CFR 41.37 (the effective date of which has yet to be determined). Furthermore, the Office has posted a list of questions and answers on the USPTO Web site (at *http://www.uspto.gov/web/offices/dcom/bpai/rule.html*) regarding the implementation of the BPAI final rule 2008. These questions and answers will be revised accordingly.

Dated: December 5, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8–29297 Filed 12–9–08; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0672; FRL–8390–8]

Mefenpyr-diethyl and Metabolites; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.