

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Revise temporary § 165.T11-077(f), to read as follows:

#### § 165.T11-077 Security Zones; High Interest Vessels, San Francisco Bay and Delta ports, California.

\* \* \* \* \*

(f) *Effective Dates.* This section is effective at 11:59 p.m. PST on February 10, 2003, and will terminate at 11:59 p.m. PDT on September 30, 2003.

Dated: May 19, 2003.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 03-13696 Filed 5-28-03; 1:57 pm]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

RIN 1024-AD02

#### Assateague Island National Seashore, Personal Watercraft Use

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule designates areas where personal watercraft (PWC) may be used in Assateague Island National Seashore, Maryland and Virginia. This rule is necessary because regulations require any park allowing the use of PWC to promulgate a special regulation authorizing the use. The decision to allow use of PWC must consider whether PWC use is appropriate for a specific park area based on that area's enabling legislation, resources, values, other visitor uses, and overall management objectives. The NPS published a proposed rule in the **Federal Register** on May 6, 2002. The public was invited to comment on the rulemaking for 60 days.

**EFFECTIVE DATE:** This rule becomes effective June 30, 2003.

**ADDRESSES:** Mail inquires to Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811.

**FOR FURTHER INFORMATION CONTACT:** Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208-4206. e-mail: [Kym\\_Hall@nps.gov](mailto:Kym_Hall@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Park Service is granted broad authority under 16 U.S.C. 1 *et seq.*, the NPS "Organic Act", to regulate

the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks \* \* \*

16 U.S.C. 1a-1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established \* \* \*

As with the United States Coast Guard, NPS regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U. S. Constitution. In regards to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States \* \* \*" (16 U.S.C. 1a-2(h)). In 1996 the NPS clarified its authority to regulate activities within the park boundaries occurring on waters subject to the jurisdiction of the United States by adopting 36 CFR 1.2(a)(3).

#### **Personal Watercraft Use in the National Seashore**

PWC use at Assateague Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales during the 1980s and 1990s. During that period, the preponderance of PWC use within the National Seashore occurred in the ocean and bay waters surrounding the northernmost 6 miles of Assateague Island. This area is immediately adjacent to the town of Ocean City which, with its summertime population of 300,000 and numerous marinas and boat launching facilities, generates significant amounts of water-based recreation, including boating and PWC use.

On April 20, 2000, the National Park Service adopted a final rule (36 CFR 3.24) for managing PWC use in areas of the National Park System. The regulation was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-

based activity was appropriate for a specific park based upon the legislation establishing the area, the park's resources and values, other visitor uses of the area, and overall management objectives.

Prior to 2000, PWC use was allowed throughout Assateague Island National Seashore, although as previously noted, the vast majority occurred adjacent to the northern end of the Island. In May 2000, most of the waters within the National Seashore were closed to PWC use consistent with 36 CFR 3.24 and a local determination by the superintendent that their continued use threatened the resources and values for which the park was established to protect. The authority for this closure was based upon 36 CFR Section 1.5, Closure and Public Use Limits. As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate.

The process used to identify appropriate PWC use at Assateague Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. This rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The Master Plan for Chincoteague National Wildlife Refuge (CNWR) (approved December 27, 1993) in the section entitled "Public Use Management—Access" states that "From September 1 through March 14, allow boating access to Fishing Point, Toms Cove and year round at Assateague Point Beach." The Master Plan does not distinguish between boats and PWC in regards to access in the Assateague Point area of the CNWR. The Assateague Point Beach is the only area of the entire southern end of Assateague Island that is open to boat-in access during the summer months. The Seashore has identified the adjacent waters as open to PWC use in paragraph (c)(ii) of this regulation. CNWR and the Seashore work cooperatively to assure that unit specific regulations are as compatible as can be, given the somewhat different missions of the two agencies. Prohibiting PWC use in this area would substantially deprive PWC operators of any beach access within reasonable operating range for PWC from the town of Chincoteague and would conflict with the Refuge's allowance of PWC access at CNWR. Additionally, this would have a negative impact on the tourism-based

economy the town of Chincoteague depends on.

The use of motor vessels is a traditional method of accessing Assateague Island for land-based recreational activities. As such, providing PWC owners with this opportunity is considered both desirable and compatible with park purposes. To identify areas of potential use, the effects of PWC were evaluated against a number of resource and public use issues. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. Under this rule, PWC use will be allowed only in the Ocean City Inlet and Horse Marsh areas primarily for the purpose of providing a transportation corridor to Assateague Island. Both areas have physical and biological characteristics that minimize the potential for adverse impacts to park resources and values, and both are located immediately adjacent to population centers and experience high levels of general boat traffic. The effect will be to provide island access for persons wanting to use PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Assateague Island.

#### **Summary of Comments**

The NPS published a proposed rule in the **Federal Register** on May 6, 2002 (67 FR 30339). The public was invited to comment on the rulemaking for 60 days. We received approximately 7,600 comments in the form of letters, faxes, emails and postcards on the rulemaking and supporting environmental assessment. Of the comments received, 7,264 support a complete ban on PWC use within the national seashore boundary. An additional 43 individuals support banning PWC use within the entire National Park System. Approximately 170 comments supported the proposed rule.

Comments that referred to the environmental assessment have been identified and responded to in the Finding of No Significant Impact. The following is a summary of the comments specific to the rulemaking and the responses by the NPS.

*Comment 1:* Personal Watercraft Industry Association (PWIA) would like to see a designated area along the ocean side of the island where PWC could come ashore, possibly south of where most beach-going visitors congregate.

*Response:* Ocean front use and beach access by personal watercraft was considered and rejected by the park. Concerns associated with such use/access included those related to visitor

conflicts, safety, noise, and wildlife disturbance.

*Comment 2:* The park service can set aside a one or two mile stretch of beach, (the larger the stretch the more spread out the users will be, thereby enhancing safety), and designate it a PWC use area. This portion should be in the ORV zone where fishermen do not frequent.

*Response:* The Park Service is not considering access to the island by PWC via the ocean front for several reasons. Although ORV use does occur along the beach, use of PWC along that same stretch of ocean conflict with other uses in that area such as surf fishermen, sea kayakers, and surfers. These users are in that area in order to avoid conflicts with swimmers using beaches in other areas. Additionally, in order to launch from the ORV use area on the ocean front, it would be necessary to bring trailers out onto the beach and that is prohibited. Without launch capabilities, PWC would be forced to travel great distances along the coast in order to use that area, possibly causing a fuel shortage problem for the PWC. All of these issues and concerns lead the NPS to conclude that PWC use in the proposed area cannot be accommodated.

*Comment 3:* There are no enforcement powers established in the rule for personal watercraft violations. Until enforcement powers are established in the rule, the rule should not go into effect.

*Response:* In April of 2000, a service-wide rule became effective that defined a PWC and established the requirements for PWC use in the National Park System. That rule is located at Title 36 Code of Federal Regulations, Section 3.24. In April 2002, the authority for PWC to operate within Assateague Island National Seashore expired and PWC have been prohibited within the Seashore's boundaries pending the promulgation of this final rule. When this rule becomes effective, it establishes areas where PWC may operate within the boundaries of the Seashore and under what conditions. As codified, 36 CFR 3.24 establishes what areas of the Seashore are closed to PWC use and what craft meet the definition of a PWC. The regulations contained in 36 CFR 3.24 continue to apply to the areas where PWC use is prohibited within the Seashore and are enforceable by all commissioned rangers within the NPS.

*Comment 4:* The Town [of Chincoteague] feels that the distance from the shoreline in the Assateague Channel adjacent to Chincoteague should be decreased to as little as 25' to accommodate a rather narrow navigable area. To compress the area available to

personal watercraft only creates a safety hazard by overcrowding the area that would be available in this narrow waterway.

*Response:* The NPS is authorizing PWC use to occur in the water area along the western shore of Assateague Island near Horse Marsh. The use area will increase the total available area for PWC to operate within the bay and will not compress the navigable use area. This should help to alleviate any safety concerns related to PWC and other craft attempting to operate in the Assateague Channel, a narrow waterway.

*Comment 5:* The U.S. Coast Guard expressed concern if the PWC use area described in Sinepuxent Bay in Alternative A is prohibited in Alternative B then Alternative B leaves only the inlet area for use. That could send the wrong signal and push a lot of folks into a very tight area where the currents max out, large vessels transit and over the next couple of years there will be a large scale Army Corps of Engineers project.

*Response:* Following their initial comments, the U.S. Coast Guard met with park staff to discuss the proposed action. The U.S. Coast Guard Command then retracted their original statement.

The Coast Guard's initial concern was the ramification of a closed area in Sinepuxent Bay and how this would potentially increase traffic in Ocean City Inlet. The NPS reported that they had previously engaged the local PWC rental companies, discussed the proposed closure area and the impact this would have on their operation. The area in question is just west of Assateague and north of the 611 bridge. In alternative A, this area is indicated by the "PWC use area" markings. The PWC rental companies stated that this would not impact their operation, because the area in question is very shallow and would likely cause damage to their craft. Their renters are directed to stay in the deeper water to the west outside of the park boundaries. Therefore, the Coast Guard does not have a problem with the ban in that region, as it would negligibly impact inlet congestion.

*Comment 6:* Some provision for non-official emergency personnel rescue use should be allowed in Sinepuxent Bay, such as towing a drifting kayaker, windsurfer, swimmer, etc. There are no enforcement powers established in the rule for personal watercraft violations. Until enforcement powers are established in the rule, the rule should not go into effect. The EA does not take into account the considerable law enforcement burden caused by PWC users.

Water-based boundaries are difficult to define and enforce. A complete ban on PWC landings on Assateague Island National Seashore beaches and Chincoteague National Wildlife Refuge beaches and in these areas' respective waters would likely lead to less confusion and fewer enforcement actions. Once a community of PWC users understands that there is a complete prohibition on operating PWC in park and refuge waters, the demands on NPS enforcement personnel would be minimized.

*Response:* All mariners, regardless of type of vessel used, are obligated to render assistance to those in distress on the sea precluding the need for verbiage in the rule allowing such actions. The rule permits personal watercraft to beach on the ocean side of the island in case of injury or mechanical failure. The final rule will be enforceable pursuant to the authority provided in Title 36 Code of Federal Regulations, Sections 3.24 and 7.65. The limited amount of park water legally accessible by personal watercraft will make enforcement relatively easy.

*Comment 7:* The Town questions the right of the United States National Park Service or the United States Fish and Wildlife Service to regulate waters for which jurisdiction was granted to the Town by the Virginia General Assembly. The Town Charter as granted by the State gives jurisdictional authority over the surrounding waters of Chincoteague to the mean low water level of the Assateague shoreline.

*Response:* Congress in 16 U.S.C. 1a-2(h) has directed the NPS to regulate the waters within areas of the National Park System. The particular waters at issue are navigable waters which are clearly subject to the jurisdiction of the United States.

Public Law 89-195 September 21, 1965 authorized the establishment of Assateague Island National Seashore "together with the adjacent water areas not more than one-half mile beyond the mean high waterline." Sec. 4 of that law required the Secretary of the Interior to publish the location of the seashore in the **Federal Register**. This was published in FR Vol. 50 No. 159 August 16, 1985.

Together with the authority the Commonwealth of Virginia may have granted to the Town of Chincoteague, the National Park Service has the authority to regulate activities in the waters surrounding Assateague Island. However, under the Supremacy Clause of the U.S. Constitution, federal law and regulations may supercede state and local laws when necessary to protect the federal interest. In this rule, the NPS has

determined it is necessary to regulate the use of PWC in order to protect the resources of Assateague Island National Seashore and is consistent with the statutory direction to regulate boating and related activities.

*Comment 8:* One organization commented that the PWC industry has claimed that PWC are recognized by the U.S. Coast Guard (USCG) as "Class A" vessels and therefore cannot be regulated differently than other motorboats. However, the USCG states that the term "class A vessel" has no meaning insofar as USCG regulations are concerned. To date, the USCG has refrained from defining PWC and encourages other government agencies to define the craft. The NPS determined that PWC are different from conventional motorboats and finalized PWC-specific regulations in March of 2000.

*Response:* The NPS definition of PWC is as follows: Personal watercraft refers to a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull.

The NPS agrees that PWC have sufficient individual characteristics to warrant regulations specific to this type of craft. With this in mind, the NPS evaluated and chose the best regulatory approach in the preferred alternative in order to maintain the opportunities for various types of recreation while protecting the resources of Assateague Island National Seashore.

#### Changes to the Final Rule

Based on the preceding comments and responses, the NPS does not intend to make any changes to the provisions of this rule with regard to PWC operations.

#### Compliance With Other Laws

##### *Regulatory Planning and Review (Executive Order 12866)*

This document is a significant rule and has been reviewed 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.

The National Park Service has completed the report "Economic

Analysis of Personal Watercraft Regulations in Assateague Island National Seashore" (Law Engineering and Environmental Sciences, Inc.) dated March 2002. The report found that this proposed rule would not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact to the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality. The economic analysis estimates that PWC users and related businesses to experience a net present value of \$475,000–\$506,600 in benefits over the next ten years as a result of implementing the preferred alternative. True social benefits are expected to be somewhat lower, since this estimate does not include increased park enforcement costs or potential adverse effects to non-PWC users due to lack of data.

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

Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(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.

This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel policy issues. The proposed regulation was the first special regulation for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. This regulation, and other PWC rules have generated considerable public interest because of potential environmental and economic impacts from these rules.

#### 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.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, "Economic Analysis of

Personal Watercraft Regulations in Assateague Island National Seashore" (Law Engineering and Environmental Sciences, Inc., March 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that small businesses would experience a small economic gain as a result of implementing the preferred alternative.

#### *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. The National Park Service has completed an economic analysis to make this determination. 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.

c. Do 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. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

#### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule only effects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

#### *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.

#### *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 National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). Additionally, a Finding of No Significant Impact was completed and signed on January 30, 2003. A copy of that finding may be obtained by contacting the Superintendent of Assateague Island National Seashore.

#### *Government-to-Government Relationship With Tribes*

In accordance with 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.

#### *Administrative Procedures Act*

This final rule will be effective upon publication in the **Federal Register**. In accordance with the Administrative Procedures Act, specifically, 5 U.S.C. 553(d)(1), this rule (36 CFR 7.48 (g)) is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in the preamble of this rule, the final rule is a Part 7 special regulation for Assateague Island National Seashore that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of personal watercraft in units of the national park system unless an individual park area has designated the use of personal watercraft by adopting a Part 7 special regulation. The proposed rule was published in the **Federal Register** (67 FR 30339) on May 6, 2002, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedures Act, pursuant to the exception in (d)(1), waives the section 553(d) 30-day waiting period when the published rule

"grants or recognizes an exemption or relieves a restriction." In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period does not apply to the Assateague Island National Seashore final rule.

The Attorney General's Manual on the Administrative Procedures Act explained that the "reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one 'granting or recognizing exemption or relieving restriction', there by exempting it from the thirty-day requirement." This rule is within the scope of the exception as described by the Attorney General's Manual and the 30-day waiting period should be waived. *See also, Independent U.S. Tanker Owners Committee v. Skinner*, 884 F.2d 587(D.C.Cir. 1989). In this case, the court found that (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. "In sum, the good cause exception must be invoked and justified; the (d)(1) exception applies automatically." at 591. The facts are that Assateague Island National Seashore is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the (d)(1) exception applies to this rule.

In accordance with the Administrative Procedures Act, this rule is also excepted from the 30-day waiting period by 5 U.S.C. 553 (d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. "The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was 'to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.' S.Rep. No. 752, 79th Cong., 1st Sess.15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946)." *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule

for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

The rule has been developed in full compliance with section 553(b) and (c) rulemaking requirements. The proposed rule was published in the **Federal Register** and provided 60 days for public comments. The public comments received are summarized and analyzed in this rule. "In determining whether to invoke the exception, the agency is 'required to balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of its ruling.' *The Northern Arapahoe Tribe v. Hodel*, 808 F.2d 741, 752 (10th Cir. 1987). Since the primary purpose of the 30-day waiting period is so the public can prepare for the changes caused by the new rule, this rule authorizes the continued use of PWCs at Assateague Island National Seashore and will not require any changes that will require a 30-day waiting period for the public to prepare itself. There is no need to utilize the 30-day waiting period for the benefit of the affected parties, instead there is good cause for making this rule effective upon publication so that affected parties can begin using PWCs again.

#### **List of Subjects in 36 CFR Part 7**

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

■ For the reasons stated in the preamble, the National Park Service is amending 36 CFR part 7 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. Section 7.65 is amended by adding paragraph (c) to read as follows:

#### **§ 7.65 Assateague Island National Seashore**

\* \* \* \* \*

(c) *Personal Watercraft*. (1) Personal Watercraft (PWC) are allowed in Assateague Island National Seashore within the following locations and under the following conditions:

(i) *Ocean City Inlet*: PWC may operate, transit, launch in water or beach on land between the north shore of Assateague Island and the south margin of the established Ocean City

Inlet channel, between Lighted Buoy #10 at approximate latitude 38.19.30N, longitude 75.05.30W and Lighted Buoy #11 at approximate latitude 38.19.16N, longitude 75.09.0W

(ii) *Chincoteague Bay*: PWC may operate, transit or launch in waters between the established Park boundary and the western shore of Assateague Island, from Assateague Point north to that portion of Horse Marsh located due east of the Memorial Park boat ramp on Chincoteague Island.

(iii) *Oceanside*: PWC are allowed to beach along the ocean side of the island only in the case of personal injury or mechanical failure.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: May 27, 2003.

**Craig Manson,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 03-13578 Filed 5-29-03; 8:45 am]

BILLING CODE 4312-60-P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

#### RIN 0651-AB37

### Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Since continued prosecution application (CPA) practice is largely redundant in view of RCE practice, the Office is eliminating CPA practice as to utility and plant applications. An applicant for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application. Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

**EFFECTIVE DATE:** July 14, 2003.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** The AIPA was enacted into law on November 29, 1999. See Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999). Among other things, the AIPA amended title 35 of the United States Code to provide for a request for continued examination (RCE) practice. See 35 U.S.C. 132(b). RCE practice is applicable to any utility or plant application filed on or after June 8, 1995. See 113 Stat. at 1501A-560 through 1501A-561. The Office amended the rules of practice in title 37 of the Code of Federal Regulations to implement the RCE provisions of the AIPA by an interim rule published in March of 2000 and a final rule published in August of 2000. See *Changes to Application Examination and Provisional Application Practice*, 65 FR 14865 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (Apr. 11, 2000) (interim rule), and *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR 50091 (Aug. 16, 2000), 1238 *Off. Gaz. Pat. Office* 13 (Sept. 5, 2000) (final rule).

The AIPA also amended title 35 of the United States Code to provide, with certain exceptions, for the publication of pending patent applications (other than design applications) eighteen months after the earliest claimed filing date. See 35 U.S.C. 122(b). The eighteen-month publication provisions of the AIPA apply to utility and plant applications filed on or after November 29, 2000, including any CPA filed on or after November 29, 2000. The Office amended the rules of practice in title 37 of the Code of Federal Regulations to implement the eighteen-month publication provisions of the AIPA by a final rule published in September of 2000. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR 57023 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63 (Oct. 10, 2000) (final rule). That notice indicated that the Office must create a patent application publication of a CPA using the copy of the prior application that is contained in the Office's Patent Application Capture and Review (PACR) system database or microfilm records. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response). The PACR system database or

microfilm records for applications filed before November 29, 2000, however, are often inadequate for eighteen-month publication purposes. For example, the copy of the specification or drawings contained in the Office's PACR system database or microfilm records for applications filed before November 29, 2000, is often of too poor a quality for use in the eighteen-month publication process. Since the eighteen-month publication of a CPA often requires special handling, the Office has been obliged to create a special eighteen-month publication process for CPAs, which makes the eighteen-month publication of CPAs both costly and inefficient.

The Office revised the rules of practice in December of 1997 to permit applicants to effectively obtain continued examination of an application using a streamlined continuing application practice (*i.e.*, CPA practice). See 37 CFR 1.53(d). CPA practice was a regulatory substitute for statutory authority to provide continued examination of an application for a fee. See *Changes to Patent Practice and Procedures*, 62 FR 53131, 53142 (Oct. 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 72 (Oct. 21, 1997) (final rule) (comment 17 and response). As a convenience to applicants, the Office did not eliminate CPA practice as to utility and plant applications when RCE practice was implemented. The Office, however, did make CPA practice a transitional practice as to utility and plant applications, by requiring that the prior application have been filed before May 29, 2000. See *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR at 50100, 1238 *Off. Gaz. Pat. Office* at 20. This change to CPA practice was designed to cause CPA filings to phase out over time in utility or plant applications. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response). Thus, CPA practice was retained only as a temporary transitional practice as to utility and plant applications after RCE practice was implemented.

CPA filings are in the process of being phased out, but the phasing out of CPA filings is resulting in an ever increasing percentage of requests for a CPA being improper because the prior application was not filed before May 29, 2000. Continuing to permit the filing of a CPA in utility or plant applications (filed before May 29, 2000) requires the Office to: (1) check every request for a CPA to determine whether it is a proper CPA; and (2) maintain a special eighteen-