

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", thereby 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(DC 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 Lake Mead National Recreation Area 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. Also as part of this process, the park prepared an environmental impact statement (EIS) that was made available to the public on April 24, 2002, for public review and comment. The EIS evaluated the various alternatives for managing PWC use at Lake Mead, including an alternative with no PWC use. This rule will now implement the preferred alternative identified in the EIS with some changes as a result of the public comments received on both the proposed rule and the draft EIS.

"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 Lake Mead National Recreation Area and will not require any changes that will require a 30-day waiting period for the public to prepare itself. Because of the ongoing grace period, PWC use has been allowed to continue at Lake Mead despite the prohibition in 36 CFR 3.24. The intent of the grace period was to provide time for parks, such as Lake Mead National Recreation Area, to promulgate special regulations without having the prohibition of 36 CFR 3.24 take effect and, for other parks that decided not to promulgate special regulations authorizing PWC use such as Cape Cod National Seashore and Delaware Water Gap National Recreational Area, to give people additional time to adjust their recreational use patterns, *i.e.*, find alternative places to use their PWCs. 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 continue using PWCs.

List of Subjects in 36 CFR Part 7

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

■ In consideration of the foregoing, the National Park Service amends 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 DC Code 8–137(1981) and DC Code 40–721 (1981).

■ 2. Section 7.48 is amended by adding paragraph (g) to read as follows:

§ 7.48 Lake Mead National Recreation Area.

* * * * *

(g) *Personal Watercraft* (1) A person may launch and operate a personal watercraft in park waters or beach a personal watercraft on park lands, except in the following areas:

(i) In the designated Primitive area known as the Gypsum Beds, which is described as Arizona T31N; R20W Portions of sections 2, 3, 10 and 11; and

(ii) In the designated Primitive area known as the Virgin River, which is described as Nevada T36N; R68E Portions of Sections 25, 26, 34, 35, 36; and

(iii) In the designated Primitive/Semiprimitive area in Black Canyon, from the Willow Beach Harbor to Hoover Dam, prohibited from the first Tuesday following Labor Day weekend through Friday of Memorial Day weekend; and prohibited only on Sundays and Mondays from the Sunday of Memorial Day weekend through the Monday of Labor Day weekend, which is described as Nevada T22S; R65E Portions of Sections 32; T23S; R65E Portions of Sections 5, 8, 17, 20, 21, 28, 29, 34; T23½S; R65E Portions of Sections 34; T23S; R65E Portions of Sections 1, 2, and 12. Arizona T30N; R23W Portions of Sections 3, 10, 15, 22, 27, 34; T29N; R23W Portions of Sections 2, 12, 13; T29N; R22W Portions of Sections 18, 19, 20, 29; and

(iv) In the designated Semiprimitive area known as the Muddy River Confluence with Lake Mead (Overton Wildlife Management Area), which is described as Nevada T16S; R68E Portions of Sections 28, 29, 32, 33 and 34 and T17; R68E; and

(v) In the designated Semiprimitive area known as Grand Wash Bay, which is described as Arizona T33N; R16W Portions of Sections 16, 17, 21, 22, 27, 28, 29, 33 and 34, and T32½ N; R16W Portions of Sections 32 and 33; and

(vi) In the designated Semiprimitive area known as Bonelli Bay, which is described as Arizona T31N; R20W Portions of Sections 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29 and 30.

(2) A person may not operate a personal watercraft at a speed in excess