

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