

areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

There are approximately 8,000 miles of NPS-administered roads open to the public within the national park system. These 8,000 miles compare in magnitude to the State of Arizona's road system, except that they are scattered throughout the United States and its territories. There is great variety in the nature and extent of park roads. They range from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several States, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain State and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

On April 2, 1987, the NPS promulgated a final rule (36 CFR 4.23) concerning operating a motor vehicle under the influence of alcohol (52 FR 10683). That rule prohibits the operation or control of a motor vehicle if the alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. The regulation provides, however, that if State law governing operation of a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph. The regulation is implemented primarily through roadside signing, text in brochures, and incidental public contact.

On March 3, 1998, President Clinton directed the Secretary of Transportation to work with Congress, other Federal agencies, the States, and others to develop a plan to promote the adoption of 0.08 BAC as the legal limit for a per se impaired driving offense. Specifically, he further directed that the plan consider setting a 0.08 BAC standard on all Federal property, including Department of Defense installations and the national parks. The directive also called for strong enforcement of, and publicity regarding, the 0.08 BAC standard. The benefits of the 0.08 standard in lives saved and injuries prevented have been documented extensively.

On January 31, 2003, the NPS published a proposed rule in the **Federal Register** (68 FR 4975), stating

that it proposed to revise its regulation to reduce the BAC standard from 0.10 grams of alcohol per 100 milliliters of blood or 210 liters of breath, to 0.08 grams.

Discussion of Comments

The NPS received two comments in response to the proposed rule, both of which support adoption of the lower 0.08 BAC standard.

The first commenter stated that he supported the 0.08 BAC standard, and also urged its adoption by the NPS with regard to boating and water use activities. That subject is dealt with in part 3 of 36 CFR, specifically 36 CFR 3.6(b). This rule deals only with part 4. The suggestion, however, will be taken into consideration in any future revision of part 3.

The second commenter also supported the lower BAC standard, but noted that the language of the proposed revision (as contained in the proposed rule) would also add a superfluous reference to breath. Specifically, the language of the proposed revision would have added "breath is" to the first sentence of 36 CFR 4.23(a)(2), just after "100 milliliters of blood or" and just before "0.08 grams or more of alcohol per 210 liters of breath." The NPS agrees that the extra wording is unnecessary, and that the only change needed in the language of the existing 36 CFR 4.23(a)(2) is to substitute "0.08" for "0.10". The second commenter also stated that authorities in the State of California have had difficulty treating violations of the NPS regulation as prior offenses under California's driving under the influence (DUI) statutes. The reasons cited by the commenter, however, do not relate to the BAC standard, but to other factors such as, for example, the California courts' strict interpretation of the State's DUI laws.

After considering the comments, and in light of their unanimous support of the lower 0.08 BAC standard, the NPS is adopting the rule as proposed, with the editing change discussed in the paragraph above.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

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

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

(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 effect 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 does not raise novel legal or policy issues. The lower legal blood alcohol concentration level is prevalent throughout the United States and has been adopted by most other Federal agencies and States.

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.*).

Although the regulation has significant implications for public safety, it does not have monetary implications. There are no businesses that depend on the public's ability to operate a motor vehicle while intoxicated. The rule will likely provide non-monetary benefits to the NPS and other law enforcement agencies through decreased accidents and injuries.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(1) Does not have an annual effect on the economy of \$100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.