

Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.70(g), is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in this preamble, the final rule is a part 7 special regulation for Glen Canyon National Recreation Area that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of PWC in units of the national park system unless an individual park area has designated the use of PWC by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (68 FR 2466) on January 17, 2003, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedure Act, pursuant to the exception in paragraph (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 before the effective date does not apply to the Glen Canyon National Recreation Area final rule.

The Attorney General's Manual on the Administrative Procedure 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 paragraph (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 paragraph (d)(1) exception applies automatically" (884 F.2d at 591). The facts are that Glen Canyon 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 paragraph (d)(1) exception applies to this rule.

In accordance with the Administrative Procedure Act, this rule is also excepted from the 30-day waiting period by the "good cause" exception in 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 document. Also as part of this process, the park prepared a Draft Environmental Impact Statement (DEIS) that was made available to the public on September 13, 2002, for comment. The DEIS evaluated the various alternatives for managing PWC use at Glen Canyon, including an alternative with no PWC use. After reviewing the comments to the DEIS the NPS modified the proposed alternatives and responded to comments in a Final Environmental Impact Statement that was made available to the public on May 16, 2003. This rule will now implement the preferred alternative B with certain modifications as a result of the public comments received in response to the proposed rule and the DEIS.

"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). The primary purpose of the 30-day waiting period is to provide the public with

time to prepare for the changes caused by the new rule. This rule authorizes the continued use of PWCs at Glen Canyon National Recreation Area. Because of the two-year grace period established by the March 2000 Final Rule and the temporary lifting of the PWC ban for the summer of 2003, PWC use has been allowed to continue at Glen Canyon despite the prohibition in 36 CFR 3.24. Providing a 30-day waiting period would not benefit the parties affected by this rule, 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 D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Section 7.70 is amended by adding paragraph (g) to read as follows:

§ 7.70 Glen Canyon National Recreation Area.

* * * * *

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

(i) On the Colorado River between Glen Canyon Dam and the downstream river boundary of Glen Canyon National Recreation Area where it adjoins Grand Canyon National Park.

(ii) On the Colorado River upstream of Sheep Canyon.

(iii) On the San Juan River upstream of Clay Hills pullout.

(iv) On the Escalante River upstream of Coyote Creek.

(v) On the Dirty Devil River upstream of Utah Highway 95 bridge.

(2) A person may not operate a PWC at speed in excess of flat wake speed on the Escalante River from Cow Canyon to Coyote Creek.

(3) After December 31, 2012, no one may operate a PWC that does not meet the 2006 emission standards set by EPA for the manufacturing of two-stroke engines. A person operating a PWC that meets the EPA 2006 emission standards through the use of direct injection two-stroke or four-stroke engines, or the