

determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. In addition, because many of these records come from other federal, state, local, joint, foreign, tribal, and international agencies, it is administratively impossible to ensure compliance with this provision.

\* \* \* \* \*

Dated: January 17, 2003.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

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**BILLING CODE 4410-02-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 4

RIN 1024-AC69

#### Operating Under the Influence of Alcohol or Drugs

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to amend its regulations concerning motor vehicle operation under the influence of alcohol. Currently, the NPS has regulations prohibiting operation with a blood alcohol concentration (BAC) of 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath. On March 3, 1998, a Presidential directive was issued directing the NPS, and other federal agencies, to promulgate regulations adopting a stricter limit of 0.08 grams BAC.

**DATES:** Written comments will be accepted through April 1, 2003.

**ADDRESSES:** Comments should be addressed to Kym Hall, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Fax: (202) 219-8835. Email: [WASO\\_Regulations@nps.gov](mailto:WASO_Regulations@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Kym Hall, Regulations Program Manager,

National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Telephone: (202) 208-4206. Email: [Kym\\_Hall@nps.gov](mailto:Kym_Hall@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The NPS administers 385 areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Although the nearly 300 million annual visitors to the National Park System use a variety of access methods, the vast majority rely on motor vehicles and roadways to reach park 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.

The NPS currently administers over 8,000 miles of roads within the National Park System that are open to the public. These 8,000 miles compare in magnitude to the State of Arizona's state 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, ranging 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 0.10 grams of alcohol per 210 liters of breath. The regulation provides, however, that if State Law that applies to operating 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 supercede the limits specified in this paragraph. The regulation is implemented primarily through signing, text in brochures and incidental public contact.

President Clinton issued a directive on March 3, 1998, which directed the NPS to propose rules and take other appropriate measures to lower the BAC limit in National Park Service areas. This includes, but is not limited to, strong enforcement, conducting education, awareness and other appropriate programs about the importance of the 0.08 BAC standard. The benefits of the 0.08 standard in lives saved and injuries prevented have been documented extensively.

#### 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 effects of 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. This change to the 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-monetized 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:

- 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. 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.

*Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No taking 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 affects 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 516 DM.

This rule does not constitute a major federal action affecting the quality of the human environment. An environmental assessment is not required.

*Government-to-Government Relationship with Tribes*

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, 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.

**Clarity of Rule**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example § 4.23 Operating Under the Influence of Alcohol or Drugs.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

*Drafting Information:* The primary author of this regulation was Chip Davis, Criminal Investigator, National Park Service.

*Public Participation:* If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Kym Hall, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Fax: (202) 219-8835. You may also comment via the internet to [WASO\\_Regulations@nps.gov](mailto:WASO_Regulations@nps.gov). Please also include "Attn: RIN 1024-AC69" in

the subject line and your name and return address in the body of your internet message. Finally, you may hand deliver comments to Kym Hall, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection.

**List of Subjects in 36 CFR Part 4**

National parks, Traffic regulations.

In consideration of the foregoing, we propose to amend 36 CFR Part 4 as follows:

**PART 4—VEHICLES AND TRAFFIC SAFETY**

1. The authority citation for Part 4 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 4.23 is (a)(2) revised to read as follows:

**§ 4.23 Operating under the influence of alcohol or drugs.**

(a) \* \* \*

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or breath is 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating 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.

\* \* \* \* \*

Dated: January 10, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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