

4312-52-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

Fish and Wildlife Service

50 CFR Part 27

RIN 1024-AD70

General Regulations for Areas Administered by the National Park Service and the Fish and Wildlife Service

AGENCIES: Fish and Wildlife Service and National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior, through the National Park Service and the Fish and Wildlife Service, proposes to amend regulations presently codified in 36 CFR Part 2 and 50 CFR Part 27, which provide guidance and controls for the possession and transportation of firearms in national park areas and national wildlife refuges. The proposed amendments would update the regulations to reflect current state laws authorizing the possession of concealed firearms, while maintaining the existing regulatory provisions that ensure visitor safety and resource protection such as the prohibitions on poaching and limitations on hunting and target practice.

DATES: Written comments will be accepted through **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: You may submit comments, identified by the number 1024-AD70 by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Public Comments Processing, Attn: 1024-AD70; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203

- Hand-deliver: 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mark Lawyer, (202) 208-3181, Mark_Lawyer@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

Background

A core tenet of our system of government is that States have the prerogative to develop their own policies and standards in many areas, and this principle has long been honored with respect to policies governing the possession of firearms. Recognizing the importance of this long-standing tradition, we believe that federal agencies have a responsibility to recognize the competence of the States in this area, and that federal regulations should be developed and implemented in a manner that respects “state prerogatives and authority.” Cf. Executive Order 13132 of August 10, 1999 (“Federalism”).

This proposed regulation is intended to give greater effect to these principles. As discussed below, forty-eight States authorize citizens to carry concealed weapons for the purpose of self-defense. Existing federal regulations governing firearms in national parks and national wildlife refuges, promulgated before many of these State laws were in effect, properly limit poaching and target practice, but unnecessarily disable or limit the ability of law-abiding citizens to possess, carry, and transport a concealed firearm. The Department believes that Federal regulations should be amended to defer to this development in State law, particularly where, as in this case, the deference can be achieved without harm to the visitors or resources the regulations are designed to protect.

The existing regulations contained in Part 2 of Title 36, and Part 27 of Title 50 of the Code of Federal Regulations are used by the National Park Service (NPS) and the Fish and Wildlife Service (FWS) to protect the natural and cultural resources of park areas and refuges, and to protect visitors and property within those lands. In their current form, these regulations generally prohibit visitors from possessing an operable and loaded firearm in areas administered by these bureaus unless the firearm is used for lawful hunting activities, target practice in areas designated by special regulations, or other purposes related to the administration of federal lands in Alaska. The regulations also allow visitors to transport firearms through parks and refuges subject to limitations that generally require the firearm to be unloaded and rendered inoperable or inaccessible.

The current FWS and NPS regulations were last substantively updated in 1981 and 1983, respectively. Forty eight States now provide for the possession of concealed firearms by their citizens. In many States, the authority to carry loaded and operable concealed firearms extends

to State park and refuge lands, whether expressly or by operation of law. Since the Federal regulations have remained unchanged during this time, the provisions fail to distinguish between firearms used by the general public for recreational purposes and the concealed and loaded weapons a limited number of citizens may now carry pursuant to state authorities. This restricts fundamental freedoms without yielding the benefits the regulations were promulgated to achieve. It also results in unnecessary limitations on the applicability of state law.

The Department's intent in undertaking this rulemaking process is to better respect the ability of states to determine who may lawfully possess a firearm within their borders while preserving the Federal government's authority to manage its lands, buildings, and facilities. Mindful of that objective, the Department proposes to amend existing regulations in order to allow individuals to carry concealed weapons in park units and refuges to the extent that they could lawfully do so on analogous state-administered lands. In this regard, the proposal is not designed to authorize firearms possession in federal facilities, or when otherwise forbidden by state or federal law. Rather, the Department's proposed rule is intended to respect state authority in a similar manner to that adopted in existing regulations by the Bureau of Land Management and the U.S. Forest Service. Each of these agencies authorizes the possession of loaded and concealed weapons consistent with the applicable authorities of the state in which the lands are located.

By adopting state law in this manner, the Department continues a tradition of managing federal lands in cooperation with states. This often includes the adoption of non-conflicting state authorities. For example, the FWS and NPS have adopted state laws and regulations in the areas of hunting, fishing, and boating.

Under the proposed amendment, visitors must have authority to possess loaded and concealed firearms on analogous state lands before they will be allowed to carry firearms in Federal park areas and refuges. In practice, this will mean that two conditions must be met in order for this proposed regulatory change to permit the possession of firearms on federal parks and refuges. First, the state in which the park or refuge unit is located must have laws that allow the individual to possess concealed and loaded firearms. And second, the authorization to carry a concealed and loaded firearm must be applicable on the analogous state lands in the State in which the park or refuge is located. Where these conditions are present, the proposed amendments will accommodate State prerogatives with respect to recognition of licenses issued by other States, including reciprocity agreements. Individuals authorized to carry firearms under this rule will continue to be subject to all other applicable state and federal laws. Accordingly, as stated above, this rule does not authorize the carrying of concealed firearms in federal facilities in national parks and wildlife refuges.

The Department recognizes that national park areas and wildlife refuges may present resource management obligations that differ from those of state park units and wildlife areas. National park areas and refuges are often located in close proximity to state parks or refuges, and visitors to these sites may frequently travel through a combination of federal and state lands during the course of a visit. In these circumstances, we believe that adopting the state standards for the possession of firearms on federal lands will promote uniformity of application, better visitor understanding of the requirements, visitor safety, resource protection, and increased cooperation between state and federal law enforcement officials.

The Department believes that the proposed amendments give greater effect to principles of Federalism while maintaining protection of visitors and the values that have led to the establishment of park areas and wildlife refuges. We note that a number of individuals throughout America have obtained permits to carry firearms under state laws, most of which require background screening and some form of training or certification in gun safety. Moreover, a number of states also allow individuals to carry operable and concealed firearms in state park areas or wildlife refuges. We strongly endorse the principle that States have the prerogative to develop appropriate policies and standards in this area, and believe that our management of parks and refuges should give the greatest respect to the democratic judgments of State Legislatures.

Section-by-Section Analysis

36 CFR Part 2

Section 2.4 - Weapons, traps, and nets.

Current Section 2.4 generally prohibits visitors from possessing an operable and loaded firearm in park areas unless the firearm is used for lawful hunting activities, target practice in areas designated by special regulations, or other purposes related to the administration of federal lands in Alaska. Under the proposed amendment, an individual will be able to possess, carry, and transport concealed, loaded, and operable firearms within a national park area in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in any state park in the state in which the federal park, or that portion thereof, is located. Possession of concealed firearms in national parks as authorized by this section must also conform to applicable federal laws.

Section 27.42 - Firearms

The current regulation in Section 27.42 generally prohibits visitors from possessing an operable and loaded firearm in a national wildlife refuge unless the firearm is used for lawful hunting activities. Under the proposed amendment, an individual will be able to possess, carry, and transport concealed, loaded, and operable firearms within a national wildlife refuge in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in any state wildlife refuge, or any functionally similar unit of state land, in the state in which the national wildlife refuge, or that portion thereof, is located. Functionally similar state lands will include, but not be limited to State wildlife management areas and state game areas. Possession of concealed firearms in national wildlife refuges as authorized by this section must also conform to applicable federal laws.

COMPLIANCE WITH LAWS, EXECUTIVE ORDERS, AND DEPARTMENT POLICY

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and is subject to review by the Office of Management and Budget (OMB) 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.

(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.

(4) This rule raises novel legal or policy issues.

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.).

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.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not require the preparation of a federalism assessment.

Civil Justice Reform (Executive Order 12988)

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act.

National Environmental Policy Act

We are required under the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438) to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. We are currently working to determine the appropriate level of NEPA assessment and documentation that will be required for promulgation of this regulation.

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 22961), and 512 DM 2, the Department will consult with federally recognized tribal governments throughout the development of the regulation to jointly evaluate and address the potential effects, if any, of the proposed regulatory action.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

36 CFR Part 2

National Parks

50 CFR Part 27

Wildlife Refuges

In consideration of the foregoing, we propose to amend part 2 of title 36 and part 27 of title 50 of the Code of Federal Regulations as follows:

Title 36--Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DOI

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 16 U.S.C. 1, 3, 9a, 17j-2, 462.

2. Amend § 2.4 by adding a new paragraph (h) to read as follows:

§ 2.4 Weapons, traps and nets.

* * * * *

(h) A person may possess, carry, and transport concealed, loaded, and operable firearms within a national park area in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in any state park, or any similar unit of state land, in the state in which the federal park, or that portion thereof, is located, provided that such possession, carrying and transporting otherwise complies with applicable federal and state law

Title 50--Wildlife and Fisheries

CHAPTER I--UNITED STATES FISH AND WILDLIFE SERVICE, DOI

PART 27--PROHIBITED ACTS

1. The authority citation for part 27 continues to read as follows:

AUTHORITY: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, Stat. 449 (16 U.S.C. 690d); Sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); Sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); 49 Stat. 383 as amended; Sec. 4, 76 Stat. (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 685, 752, 690d); 16 U.S.C. 715s).

Subpart D -- Disturbing Violations: With Weapons

2. Amend § 27.42 by adding a new paragraph (e) to read as follows:

§ 27.42 Firearms.

* * * * *

(e) Persons may possess, carry, and transport concealed, loaded, and operable firearms within a national wildlife refuge in the same manner, and to the same extent, that a person may lawfully possess, carry, and transport concealed, loaded and operable firearms in any state wildlife refuge, or any similar unit of state land, in the state in which the national wildlife refuge, or that portion thereof, is located, provided that such possession, carrying and transporting otherwise complies with applicable federal and state law.

Dated

Lyle Laverty
Assistant Secretary of the Interior
for Fish and Wildlife and Parks

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