

American Tribal Governments" (59 FR 22951), and Part 512 Section 2 of the Department of the Interior Manual, the NPS has evaluated potential effects on federally recognized Indian tribes and has determined that there are no potential effects.

Drafting Information

The principal contributors to this rule have been Craig Manson, Assistant Secretary of the Interior for Fish and Wildlife and Parks; Kym A. Hall, NPS Regulations Program Manager; A. Durand Jones, Deputy Director of the NPS; Larry Gamble, Chief of the Branch of Planning and Compliance, Rocky Mountain National Park; and Jeff Connor, Natural Resources Specialist, Rocky Mountain National Park.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

The Final Rule

■ For the reasons stated in the preamble, we amend the Special Regulations, Areas of the National Park System (36 CFR Part 7) as set forth below:

PART 7—SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority 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 7.7 is amended by revising paragraphs (e)(1) and (2) and removing paragraphs (e)(3) through (6).

§ 7.7 Rocky Mountain National Park

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(e)(1) *On what route may I operate a snowmobile?* Snowmobiles may be operated on the North Supply Access Trail solely for the purpose of gaining access between national forest lands on the west side of the park and the town of Grand Lake. Use of this trail for other purposes is not permitted. This trail will be marked by signs, snow poles or other appropriate means.

(e)(2) *When may I operate a snowmobile on the North Supply Access Trail?* The Superintendent will determine the opening and closing dates for use of the North Supply Access Trail each year, taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. The Superintendent will notify the public of such dates through one or more of the methods listed in § 1.7(a) of

this chapter. Temporary closure of this route will be initiated through the posting of appropriate signs and/or barriers.

Dated: June 17, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC98

Chickasaw National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Chickasaw National Recreation Area, Oklahoma. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS Management Policies 2001 require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

EFFECTIVE DATE: This rule is effective September 2, 2004.

ADDRESSES: Mail inquiries to Connie Rudd, Superintendent, Chickasaw National Recreation Area, 1008 W. Second Street, Sulphur, OK 73086, e-mail: chic@den.nps.gov.

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SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of PWC use within all units of the National Park System (65 FR 15077). This regulation prohibits PWC use in all National Park System units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the

legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed.

Description of Chickasaw National Recreation Area

Chickasaw National Recreation Area is a part of America's national system of parks, monuments, battlefields, recreation areas, and other natural and cultural resources. Chickasaw National Recreation Area is located in Murray County, near U.S. Highway 177, just south of the town of Sulphur, Oklahoma, approximately 90 miles south of Oklahoma City. Chickasaw National Recreation Area encompasses 9,888.83 acres of land and water. The recreation area includes many lakes and creeks, with the largest water areas being the Lake of the Arbuckles, created by the Arbuckle Dam, and Veterans Lake. Chickasaw National Recreation Area is the first national park in the State of Oklahoma. It is also one of the most heavily visited parks for its size in the National Park System, with over 3 million total visits including 1.5 million visits a year to use the park's recreational facilities. Chickasaw remains relatively undeveloped. Summer visitors engage in camping, picnicking, hiking, mountain biking, horseback riding, hunting, sightseeing, auto touring, nature viewing, photography, boating, waterskiing, fishing, and swimming.

The significance of Chickasaw stems from the following resources and values of the park:

- The availability of both mineral and fresh water, which come from one of the most complex geological and hydrological features in the United States.

- The presence of the cultural landscape of Platt Historic District, which reflects the era of 1933–1940 when the Civilian Conservation Corp (CCC) implemented NPS "rustic" designs.

- The availability of recreational opportunities for visitors to experience a wide range of outdoor experiences—swimming, boating, fishing, hiking, observing nature, hunting, camping, biking, horseback riding, family reunions, and picnicking.

• The presence of a transition zone where the eastern deciduous forest and the western prairies meet, which is unique to the central part of the United States.

Purpose of Chickasaw National Recreation Area

Chickasaw National Recreation Area was originally established by act of Congress as Sulphur Springs Reservation in 1902 near Sulphur, Oklahoma. Congress enlarged Sulphur Springs Reservation slightly and established it as Platt National Park in 1906. Later, it was combined with Lake of the Arbuckles to create the present day Chickasaw National Recreation Area.

The purpose of the park is addressed in the following statements that are excerpts from the park's Strategic Plan. The laws establishing Chickasaw provided for the National Park Service to:

- Provide for the proper utilization and control of springs and waters of its creeks.
- Provide for efficient administration of other adjacent areas containing scenic, scientific, natural, and historic values.
- Provide public outdoor recreation use and enjoyment of Arbuckle Reservoir.
- Permit hunting and fishing in some areas.

Therefore, the purpose of Chickasaw is the protection of springs and waters; the preservation of sites of archaeological or ethnological interest; the provision of outdoor recreation; the administration of scenic, scientific, natural, and historic values; the memorialization of the Chickasaw Indian Nation; and the provision for hunting and fishing.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks

* * *

16 U.S.C. 1a-1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *

As with the United States Coast Guard, NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a-2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Chickasaw National Recreation Area

Visitation at Chickasaw has remained relatively stable the last three years, with an average of 3 million visitors annually, including traffic passing through the park on U.S. Highway 177. Approximately 1.5 million visitors annually use the recreation area's facilities, including visitors pursuing recreational activities on the reservoir and those engaging in other recreational opportunities. Based on ranger observations and contacts, most PWC users are from the immediate region; within a radius of about 200 miles are Oklahoma City and the Dallas/Fort Worth area, with a population of about 5.5 million.

The majority of PWC use occurs primarily from April through September, although PWC users may be on the lake year-round. PWC users spend an average of four hours on the lake during a daily visit.

The park began counting PWC in 1996, and through the end of June 2001 approximately 1,820 PWC had been counted in the park (on a cumulative basis), compared to about 7,150 vessels. Based on the number of annual launch ramp permits issued, PWC use declined from 1997 to 2000. In addition to annual permits, day use permits are also issued. These do not specify the type of vessel being used and, based on staff observations, the percent of PWC entering the lake is higher for day use permits during the warm weather season. On busy summer weekends in 2001 and 2002, park staff observed between 34 and 94 PWC per day in the recreation area.

According to park records, approximately 59 PWC per day were observed during the midweek July 4,

2002, holiday period (Wednesday through Friday). Approximately 114 PWC per day were observed on Saturday and Sunday during that holiday weekend.

Lake of the Arbuckles is the only lake in Chickasaw open to PWC use; the "Superintendent's Compendium" (1.5 and 1.7) has closed all lakes of 100 acres or less to PWC use, including Veterans Lake (67 acres). The central part of the main body of Lake of the Arbuckles is a high-use area for PWC. Four areas of Lake of the Arbuckles are closed to all vessels to protect swimmers. Those areas are: the Goddard Youth Camp Cove, a 150 foot wide zone around the picnic area at the end of Hwy 110 (known as "The Point") beginning at the buoy line on the north side of the picnic area and extending south and east into the cove to the east of the picnic area, the cove located directly north of the north branch of the F Loop Road, and the Buckhorn Campground D Loop beach shoreline. These closures are sometimes violated in the Buckhorn and The Point areas when visitors on PWC and vessels access picnic sites.

There are several areas designated as flat wake zones and are described as: the Guy Sandy arm upstream (north) of the east/west buoy line located near Masters pond, the Guy Sandy Cove (boat launch) west of the buoy marking the entrance to the cove, Rock Creek upstream (north) of the east/west buoy line at approximately 034°27'50" north latitude, the Buckhorn Ramp bay, east of the north/south line drawn from the Buckhorn Ramp Breakwater Dam, a 150 foot wide zone along the north shore of the Buckhorn Creek arm starting at the north end of the Buckhorn Boat Ramp Breakwater Dam and continuing southeast to the Buckhorn Campground D Loop Beach, the cove south and east of the Buckhorn Campground C and D Loops, the cove located east of Buckhorn Campground B Loop and adjacent to Buckhorn Campground A Loop, the second cove east of Buckhorn Campground B Loop, fed by a creek identified as Dry Branch, and Buckhorn Creek upstream (east) of the east/west buoy line located at approximately 096°59'3.50" longitude, known as the G Road Cliffs area.

PWC may land along the shore of the lake for access to non-water areas but launch and retrieval of PWC continues to be required at designated launch areas.

Conflicts in visitor use can arise in areas that restrict vessels of any kind, such as the end of Highway 110 and along the Buckhorn Pavilion to the F Loop picnic areas along the lake. These areas attract swimmers who may or may

not be associated with a vessel or PWC, and the conflict occurs when these vessels come into the areas to beach, pick up passengers, or change operators.

From 1995 to 2000 there were 20 vessel accidents in the recreation area, eight of which involved PWC. Four of the PWC accidents were collisions with vessels, two were collisions with other PWC, and two involved PWC operators falling or being thrown off their vessels. Six of the eight accidents resulted in personal injury, and two only in property damage. The accidents occurred in the following areas: Buckhorn Arm (4), Guy Sandy Arm (2), Point Arm (1), and the central lake area (1). From 2001 to present, a total of seven accidents have been reported, five vessel-only accidents and two PWC-only accidents.

Notice of Proposed Rulemaking and Environmental Assessment

On March 25, 2004, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Chickasaw National Recreation Area (NRA) (69 FR 15277). The proposed rule for PWC use was based on alternative B in the Environmental Assessment (EA) prepared by NPS for Chickasaw NRA. The EA was available for public review and comment from March 10, 2003, through April 8, 2003, and the NPRM was available for public comment from March 25, 2004, through May 24, 2004.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Chickasaw National Recreation Area to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012.

The environmental assessment evaluated four alternatives concerning the use of PWC at Chickasaw National Recreation Area. Three of the alternatives considered in the environmental assessment permit PWC use in the park under certain conditions. Alternative A reestablishes the PWC policies that existed prior to November 6, 2002, when PWC use was permitted in Chickasaw National Recreation Area under the current Superintendent's Compendium (1.5 and 1.7) (Revised October 23, 2002, <http://www.nps.gov/chic/compen02.htm>) Alternative B permits PWC use in roughly the same areas as Alternative A

with some additional restrictions, and monitoring and enforcement policies. Alternative C builds on the enforcement and monitoring policies and other restrictions in Alternative B, by adding additional area and operating restrictions to further limit the use of PWC.

In addition to these three alternatives for permitting restricted PWC use, a no action alternative was considered that prohibits all PWC use within the National Recreation Area. All four alternatives were evaluated with respect to PWC impacts on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, visitor safety, and cultural resources.

Based on the analysis, NPS determined that Alternative B is the park's preferred alternative. Alternative B best accomplishes the objectives of managing PWC use and fulfilling the park's mission without restricting lawful use. This document contains regulations to implement Alternative B at Chickasaw National Recreation Area.

Summary of Comments

The proposed rule was published for public comment on March 25, 2004, with the comment period lasting until May 24, 2004. The National Park Service received 78 timely written responses regarding the proposed regulation. Of the responses, 46 were on a petition, and 32 were separate letters. Of the 32 separate letters, 22 were from individuals, 6 from organizations, and 4 from businesses. Within the analysis, the term "commenter" refers to an individual, organization, or public agency that responded. The term "comments" refers to statements made by a commenter.

General Comments

1. Several commenters stated that PWC should not be singled out for analysis and restriction.

NPS Response: The Environmental Assessment (EA) was not designed to determine if personal watercraft caused more environmental damage to park resources than other boats, but rather, to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives.

2. One commenter stated that allowing PWC use violates the park's enabling legislation and NPS mandate to protect resources from harm.

NPS Response: The objective of the Environmental Assessment, as described in the "Purpose and Need" chapter of the EA, was "to ensure the protection of park resources and

values". As further stated in that chapter, a special analysis on the management of personal watercraft was also provided under each alternative to meet the terms of the settlement agreement between the Bluewater Network and the National Park Service, to consider impacts to water quality, air quality, soundscape, wildlife and wildlife habitat, shorelines and shoreline vegetation, visitor experience, and visitor conflicts and safety. As a result, the alternatives presented in the Environmental Assessment protect resources and values while providing recreational opportunities at Chickasaw National Recreation Area. As required by NPS policies, the impacts associated with personal watercraft and other recreational uses were evaluated under each alternative to determine the potential for impairment to park resources. Alternative B would not result in impairment of park resources and values for which the Chickasaw National Recreation Area was established. The recreation area's enabling legislation also states that the "Secretary shall administer Chickasaw National Recreation Area for general purposes of public outdoor recreation." The recreation area was established as a unit of the national park system. The goal of the national recreation area is to provide each visitor with an educational, enjoyable, safe and memorable experience.

3. One commenter states that the EA does not use the best available data and violates the court settlement with the Bluewater Network.

NPS Response: A summary of the NPS rulemaking and associated personal watercraft litigation is provided in Chapter 1, Purpose of and Need for Action, Background, of the EA. NPS believes it has complied with the court order and has assessed the impacts of personal watercraft on those resources specified by the settlement agreement, as well as other resources that could be affected. This analysis was done for every applicable impact topic with the best available data, as required by Council on Environmental Quality Regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff. The NPS believes that the environmental assessment is in full compliance with the court-ordered settlement and that the rationale for limited use within the national recreation area has been adequately analyzed and explained.

4. One commenter is concerned about the use of Federal Aid in Sport Fish Restoration Act (FASFRA) funds to construct boat launches and facilities.

NPS Response: There are no provisions within the preferred alternative for construction of new boat launches and facilities. No FASFRA funds are used within the national recreation area to construct boat launches.

5. Several commenters stated that the decision violates the Organic Act, and other NPS laws, and will result in the impairment of resources.

NPS Response: The "Summary of Laws and Policies" section in the "Environmental Consequences" chapter of the EA summarizes the three overarching laws that guide the National Park Service in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of personal watercraft on Lake Meredith National Recreation Area resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

An impairment to a particular park resource or park value must rise to the magnitude of a major impact, as defined by its context, duration, and intensity and must also affect the ability of the National Park Service to meet its mandates as established by Congress in the park's enabling legislation. For each resource topic, the Environmental Assessments establish thresholds or indicators of magnitude of impact. An impact approaching a "major" level of intensity is one indication that impairment could result. For each impact topic, when the intensity approached "major," the park would consider mitigation measures to reduce the potential for "major" impacts, thus reducing the potential for impairment.

The PWC Use Environmental Assessment is a proactive measure to protect national recreation area resources from harm. The purpose of the EA is to assess the impacts of PWC use on identified resources within the recreation area boundaries. The National Park Service has determined that under the final rule, which is based on the preferred alternative, Alternative B, there will be no negative impacts on park resources or values.

Comments Regarding the Preferred Alternative

6. One commenter stated that the carrying capacity restriction in the preferred alternative seem difficult to

determine and unfair to PWC users without a carrying capacity for other types of boats.

NPS Response: This comment is correct in part. There is no definitive threshold to determine when minor or moderate adverse effects occur. Monitoring protocols for these effects have not been established for Chickasaw National Recreation Area. The reason that the carrying capacity issue is directed toward PWCs is because PWC use is the subject of this particular Environmental Assessment. Carrying capacities for other watercraft may be addressed in future Environmental Assessments.

Comments Regarding Water Quality

7. One commenter stated that the analysis disregarded or overlooked relevant research regarding impacts to water quality from PWC use as well as the impact to downstream resources and long term site-specific water quality data on PWC pollutants.

NPS Response: The EA states that in 2002 impacts to water quality from PWCs on a high-use day would be negligible for all chemicals evaluated based on ecological benchmarks and for benzo(a)pyrene based on human health benchmarks; impacts would be moderate for benzene and human health. In 2012, impacts would be negligible based on all ecological and human health benchmarks.

"Impairment" is clearly defined in the EA (page 78) and is the most severe of the five potential impact categories. The other impact categories starting with the least severe are: negligible, minor, moderate, and major. Impacts downstream from the lake are not expected to be more severe when the environmental processes affecting concentrations of organics (e.g., evaporation, dilution, deposition) are considered.

8. One commenter stated that the analysis represents an outdated look at potential emissions from an overstated PWC population of conventional 2-stroke engines, and underestimated the accelerating changeover to 4-stroke and newer 2-stroke engines. The net effect is that the analysis overestimates potential PWC hydrocarbon emissions, including benzene and PAHs, to the water in the Lake of the Arbuckles.

NPS Response: Assumptions regarding PWC use (135 per day in 2002 and 148 per day in 2012) were based on actual count data from the month of July 2002. These data were the only data available for Chickasaw (EA, page 76). Because data from other high-use days or other months or years were not available, trends in PWC use at

Chickasaw could not be determined for use in the EA. The July 2002 data can be considered a "worst case" estimate, but it is not "unrealistic" since it is based on actual Chickasaw data. Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible to moderate for all alternatives evaluated. Cumulative impacts from personal watercraft and other outboard motorboats are expected to be negligible to major. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in CARB (1998) and Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Personal Watercraft and Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

Reductions in emissions used in the water quality impact assessment are in accordance with the overall hydrocarbon emission reduction projections published by the EPA (1996). EPA (1996) estimates a 52% reduction by personal watercraft by 2010 and a 68% reduction by 2015. The 50% reduction in emissions by 2012 (the future date used in the EA) is a conservative interpolation of the emission reduction percentages and associated years (2010 and 2015) reported by the EPA (1996) but with a one-year delay in production line testing (EPA 1997).

The estimate of 2.8 mg/kg for benzo(a)pyrene in gasoline used in the calculations is considered conservative, yet realistic, since it is within the range of concentrations measured in gasoline according to Gustafson *et al.* (1997).

9. One of the commenters stated that the analysis overstates the potential water quality impacts of resuming PWC use because the newer engine technology is not taken into account.

NPS Response: The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in CARB (1998) and

Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Personal Watercraft and Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

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For benzene, factors other than numbers of PWCs or watercraft would affect surface water concentrations. The half-life of benzene in water is less than five hours at summer water temperatures near 30 °C (Verschuren 1983; USEPA 2001). In other words, half the benzene in water would evaporate in five hours, in many cases reducing it to below the human health criterion of 1.2 µg/L. Given that threshold volumes of benzene and human health impacts were greater than calculated threshold volumes for any other compound, this evaporation rate is more applicable to the discussion of water quality impacts than evaporation of unspecified gasoline and additives described in the comment.

The NPS used emission reduction estimates from the EPA (1996) that are readily available for public review and not confidential sales information. Because the Sierra Research analysis is based on “* * * confidential sales information * * *,” the NPS cannot challenge the assumptions in the Sierra Research analysis. The NPS did not “ignore” the manufacturers’ confidential sales data.

Use of the Sierra information, if verified, could have potentially reduced the calculated water quality threshold volumes. However, impact estimates for personal watercraft are already negligible to minor (EA pages 26 and 71–85), using the impact threshold descriptions provided on page 68 of the EA. Impacts to water quality from other

motorboats are potentially more significant than those due to personal watercraft. Therefore, cumulative impacts from personal watercraft and other motorboats, which are negligible to moderate, would not be reduced substantially by the inclusion of the Sierra emission reduction projections for personal watercraft.

Comments Regarding Air Quality

10. One commenter stated that the use of air quality data collected at Lake Murray, 20 miles from the NRA, in the analysis does not provide the best representation of air quality at the lake.

NPS Response: The Lake Murray monitoring station is the closest air quality monitoring site to the study area. The data from this site were discussed in the EA; however, these data were not used in the impact analysis. The analysis was based on the results of an EPA air emissions model, which used estimated PWC and boat usage at Chickasaw NRA as inputs.

11. One commenter stated that the analysis failed to mention the impact of PWC permeation losses on local air quality.

NPS Response: Permeation losses of volatile organic compounds (VOC) from personal watercraft were not included in the calculation of air quality impacts primarily because these losses are insignificant relative to emissions from operating watercraft. Using the permeation loss numbers in the comment (estimated to be half the total of 7 grams of losses per 24 hours from the fuel system), the permeation losses per hour are orders of magnitude less than emissions from operating personal watercraft. Therefore, including permeation losses would have no effect on the results of the air quality impact analyses. Also, permeation losses were not included because of numerous related unknown contributing factors, such as number of personal watercraft refueling at the reservoir and the location of refueling (inside or outside of the airshed).

12. One commenter stated that the use of the study by Kado *et al.* to suggest that the changeover from two-stroke carbureted to two-stroke direct injection engines may increase emissions of polycyclic aromatic hydrocarbons (“PAH”) is in error.

NPS Response: The criteria for analysis of impacts from PWC to human health are based on the National Ambient Air Quality Standards (NAAQSs) for criteria pollutants, as established by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act, and on criteria pollutant annual emission levels. This

methodology was selected to assess air quality impacts for all NPS EAs to promote regional and national consistency, and identify areas of potential ambient standard exceedances. PAHs are not assessed specifically as they are not a criteria pollutant. However, they are indirectly included as a subset of Total Hydrocarbons (THC), which are assessed because they are the focus of the EPA’s emissions standards directed at manufacturers of spark ignition marine gasoline engines (see 61 FR 52088; October 4, 1996). Neither peak exposure levels nor NIOSH nor OSHA standards are included as criteria for analyzing air quality related impacts except where short-term exposure is included in a NAAQS. The methodology for assessing air quality impacts was based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public.

The “Kado Study” (Kado *et al.* 2000) presented the outboard engine air quality portion of a larger study described in Outboard Engine and Personal Watercraft Emissions to Air and Water: A Laboratory Study (CARB 2001). In the CARB report, results from both outboards and personal watercraft (2-stroke and 4-stroke) were reported. The general pattern of emissions to air and water shown in CARB (2001) was 2-stroke carbureted outboards and personal watercraft having the highest emissions, and 4-stroke outboard and personal watercraft having the lowest emissions. The only substantive exception to this pattern was in NO_x emissions to air—2-stroke carbureted outboards and personal watercraft had the lowest NO_x emissions, while the 4-stroke outboard had the highest emissions. Therefore, the pattern of emissions for outboards is generally applicable to personal watercraft and applicable to outboards directly under the cumulative impacts evaluations.

We agree with the technical statement and summation that adverse health risk to the public would be unlikely from exposure. The methodology for assessing air quality impacts is based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public. OSHA and NIOSH standards are intended primarily for workers and others exposed to airborne chemicals for specific time periods. The OSHA and NIOSH standards are not as suitable for application in the context of local and regional analysis of a park or recreational area as are the ambient standards, nor are they intended to protect the general public from exposure to pollutants in ambient air.

13. One commenter expressed concern that PWC emissions were declining faster than forecasted by the EPA. As the Sierra Report documents, in 2002, HC + NO_x emissions from the existing fleet of PWC were already 23% lower than they were before the EPA regulations became effective, and will achieve reductions greater than 80% by 2012.

NPS Response: The U.S. EPA's data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that these data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA's NONROAD Model, which was used to estimate emissions.

However, the level of detail included in the Sierra Research report has not been carried into the EA for reasons of consistency and conformance with the model predictions. Most States use the EPA's NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with State programs and with the methods of analysis used for other similar NPS assessments, the NPS has elected not to base its analysis on focused research such as the Sierra Report for assessing PWC impacts.

It is agreed that the relative quantity of HC + NO_x are a very small proportion of the county based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis.

For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 S.I Engine Rule which are consistent with the widely used NONROAD emissions estimation Model. The outcome is that estimated emissions from combusted fuel may be in the conservative range, if compared to actual emissions.

14. Several commenters stated that research indicated that direct-injection 2-stroke engines are dirtier than 4-stroke engines.

NPS Response: It is agreed that two-stroke carbureted and two-stroke DI engines generally emit greater amounts of pollutants than four-stroke engines. Only 4 of the 20 PAHs included in the analyses were detected in water: naphthalene, 2-methylnaphthalene, fluorene, and acenaphthylene. The discussion of toxicity of PAHs in the comment must be from another (unreferenced) document since this discussion was not found in CARB (2001). It is agreed that some pollutants (BTEX and formaldehyde) were reported by CARB in the test tanks after 24 hours at approximately 50% the

concentrations seen immediately following the test. No results for PAH concentrations after 24 hours were seen in the CARB (2001) results, but a discussion of sampling/analyses of PAHs in the six environmental compartments was presented.

EPA NONROAD model factors differ from those for CARB. As a result of the EPA rule requiring the manufacturing of cleaner PWC engines, the existing carbureted 2-stroke PWC will, over time, be replaced with PWC with less-polluting models. This replacement, with the anticipated resultant improvement in air quality, is parallel to that experienced in urban environments as the automobile fleet becomes cleaner over time.

15. One commenter stated that the analysis failed to consider that the PWC companies have been rapidly converting from carbureted two-stroke engine models to direct injection two-stroke and four-stroke engine models and most PWC units will meet the more stringent CARB standards over time.

NPS Response: The California Air Resources Board regulations were not discussed for Chickasaw because the park is located in Oklahoma. Because CARB regulations are not enforceable in Oklahoma, the schedule for reductions in emissions as stipulated by USEPA (1996, 1997) was applied in the impact analyses. For example, it is estimated that approximately a 50% reduction in hydrocarbon emissions would be seen by 2012 (Table 17 of the EA). This is an interpolation of the fleet emission reduction percentages and associated years (2010 and 2015) by the USEPA (1996) but with a one-year delay in production line testing (USEPA 1997).

Comments Regarding Soundscapes

16. One commenter stated that continued PWC use in the Chickasaw NRA will not result in sound emissions that exceed the applicable Federal or State noise abatement standards and technological innovations by the PWC companies will continue to result in substantial noise reductions.

NPS Response: The NPS concurs that on-going and future improvements in engine technology and design would likely further reduce the noise emitted from PWC. However, given the ambient noise levels in the recreation area, it is unlikely that the improved technology could reduce all cumulative impacts beyond minor to moderate throughout the recreation area.

17. One commenter stated that the NPS places too much hope in new technologies significantly reducing PWC noise since there is little possibility that the existing fleet of more than 1.1

million machines (most of which are powered by conventional two-stroke engines) will be retooled to reduce noise.

NPS Response: The analysis of the preferred alternative states that noise from PWC would continue to have minor to moderate, temporary adverse impacts, and that impact levels would be related to the number of PWC and sensitivity of other visitors. This recognizes that noise will occur and will bother some visitors, but site-specific modeling was not needed to make this assessment. The availability of noise reduction technologies is also growing, and we are not aware of any scientific studies that show these technologies do not reduce engine noise levels. Also, the analysis did not rely heavily on any noise reduction technology. It recognizes that the noise from the operation of PWC will always vary, depending on the speed, manner of use, and wave action present.

Although PWC use does occur throughout the lake, it is concentrated more in certain areas, and this is noted in the soundscapes impact analysis that follows the introductory statements and assumptions listed on page 103 of the EA. The analysis of impacts states that "PWC users generally distribute themselves throughout the lake, although the density of personal watercraft can be higher near launch areas and shoreline use areas, especially near the Buckhorn developed area." The analysis did not assume even distribution of PWC and predicted moderate impacts from concentrated PWC use in one area.

The noise annoyance costs in the "Drowning in Noise" study are recognized in the EA by the moderate impacts predicted, although no monetary costs are assigned. These costs would vary by type and location of user. Given the intended usage of the higher use marina/beach areas of Chickasaw and visitor expectations and tolerances at these areas, it is unlikely that the PWC noise experienced there would meet the definition of "major" impact, as defined in the EA.

18. One commenter stated that the noise associated with PWC is more invasive due to the constantly fluctuating noise levels.

NPS Response: The EA discusses the fluctuating noise aspect of PWC operation in the Affected Environment section (page 53 of the EA), under "Visitor Responses to PWC Noise," and recognizes that the "irregular noise may be more annoying than that of a standard motorboat * * *" The analysis recognizes that different visitors will have different tolerance for PWC noise.

19. One commenter stated that the new technologies proposed by the personal watercraft industry will not reduce noise impacts associated with PWC use.

NPS Response: The analysis did not assume that PWC noise would be substantially reduced in the future, although it does recognize that newer machines, and those powered by 4-stroke engines, are quieter. The analysis does take into account continued noise from PWC and an increase in PWC numbers over time.

20. One commenter stated that there is no evidence that PWC noise adversely affects aquatic fauna or animals.

NPS Response: Typically PWC exhaust below or at the air/water transition areas, not above the water. Sound transmitted through the water is not expected to have more than negligible adverse impacts on fish and the EA does not state the PWC noise adversely affects underwater fauna.

21. One commenter stated that the analysis did not include *Drowning in Noise: Noise Costs of PWC in America* and therefore the noise analysis underrepresents the actual impacts.

NPS Response: One of the initial tasks in the development of the Chickasaw EA was a literature search. *Drowning in Noise: Noise Costs of Jet Skis in America* was one of the many studies reviewed. The reference to that study (Komanoff and Shaw 2000) was discussed in the "Summary of Available Research on the Effects of Personal Watercraft" section of the EA.

Comments Regarding Wildlife and Wildlife Habitat

22. Two commenters stated that the analysis lacked site-specific data for impacts to fish, wildlife, and threatened and endangered species at Chickasaw NRA.

NPS Response: The scope of the EA did not include conducting site-specific studies regarding potential effects of PWC use on wildlife species at Chickasaw National Recreation Area. No admission of an absence of a complete inventory of all NRA wildlife can be found on page 55 of the EA as claimed in the comments. Analysis of potential impacts of PWC use on wildlife at the national recreation area was based on best available data, input from park staff, and the results of analysis using that data. A listing of mammals, amphibians, and reptiles known to occur in Chickasaw NRA is provided in Table 9, and a list of protected species is provided in Table 10 of the EA.

23. One commenter stated that PWC use and human activities associated with their use may not be any more

disturbing to wildlife species than any other type of motorized or non-motorized watercraft. The commenter cites research by Dr. James Rodgers, of the Florida Fish and Wildlife Conservation Commission, whose studies have shown that PWC are no more likely to disturb wildlife than any other form of human interaction. PWC posed less of a disturbance than other vessel types. Dr. Rodgers' research clearly shows that there is no reason to differentiate PWC from motorized boating based on claims on wildlife disturbance.

NPS Response: Based on the documents provided as part of this comment, it appears that personal watercraft are no more apt to disturb wildlife than are small outboard motorboats. In addition to this conclusion, Dr. Rodgers recommends that buffer zones be established, creating minimum distances between boats (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. In Chickasaw National Recreation Area, a 150-ft wide no-wake zone along portions of the shoreline is already established where the use of watercraft is restricted. With this restriction in mind, impacts to wildlife and wildlife habitat under all four alternatives were judged to be negligible to minor at most locations along the shoreline.

24. One commenter states that the analysis shows that a ban on PWC could result in "some animals reinhabiting" areas of previously high PWC operation, therefore a ban would be a better alternative.

NPS Response: This apparent inconsistency between discussions of impacts under alternative A and the no-action alternative will be corrected in the EA. The ban on PWC would allow use of some areas currently avoided by animals, but this avoidance does not constitute a change in population or community structure, but rather a temporary and periodic limitation on use of all available habitat.

25. One commenter states that the analysis indicates no impacts to aquatic organisms such as plankton and zooplankton. However, research at Lake Tahoe clearly shows that two-stroke motors release pollutants that are toxic to microscopic organisms at minute levels. Moreover, the NPS leaves the impression that PWC operation that pushes wildlife out of preferred habitat is acceptable.

NPS Response: Results of toxicity studies at Lake Tahoe are not directly applicable to Chickasaw. Many confounding factors, including water transparencies, suspended solids, UV

light levels, and a different mix of engine types (2- and 4-stroke) affect the phototoxicity of PAHs in water. Also, the process of photodegradation of PAHs in addition to phototoxicity is occurring in water as described by Fasnacht and Blough (2002). Given that the greatest calculated threshold volume for a PAH (1-methyl naphthalene) released by PWCs is less than 1% of the available volume, it is highly unlikely that there is any measurable impact on aquatic life in the lake.

Regarding flushing of birds along shorelines, full discussions of potential impacts to birds are provided in the *Environmental Consequences* section of the EA. For all alternatives, the impacts to birds from PWCs are described as minor since most PWC use is not in the spring breeding season, and shoreline use of PWCs is around developed facilities where desirable wildlife habitat characteristics are lacking.

26. One commenter stated that wildlife biologists are finding that PWC cause lasting impacts to fish and wildlife.

NPS Response: A large portion of this comment is about potential impacts to marine mammals, in particular, bottlenose dolphins. Marine mammals are not found in Lake of the Arbuckles. The preferred alternative (alternative B) calls for monitoring for the presence of threatened or endangered species, and seasonally or permanently closing areas as needed to protect these species.

It is agreed that most of the PWCs currently in use have 2-stroke engines. However, in response to USEPA (1996, 1997) regulations, all new PWCs must have lower emissions of pollutants, and these lower emission requirements will be met through the use of direct injection 2-stroke engines or 4-stroke engines. By 2006, USEPA requirements will reduce PWC noise, in association with improvements to engine technology (USEPA 1996). Also, in response to public complaints, the PWC industry reportedly is using new technologies to reduce sound by 50 to 70% in 1999 and newer models (Sea-Doo 2000; Hayes 2002). Over the long term, the increased use of new PWC models will help reduce noise levels and organic pollutant emission levels which will minimize effects on fish and wildlife.

Comments Regarding Shoreline/ Submerged Aquatic Vegetation

27. One commenter stated that there has been no documentation of any adverse effects to shoreline vegetation from PWC use.

NPS Response: We agree that PWC use as recommended by the

manufacturer should not adversely affect submerged aquatic vegetation. At Chickasaw NRA, the primary concern is shoreline vegetation, and the analysis recognizes that PWC use would result in only negligible to minor adverse impacts to this vegetation, mostly from PWC operators leaving their vessels and trampling vegetation.

Comments Associated With Visitor Use, Experience, and Safety

28. One commenter stated that the reported accident numbers involving PWC are higher because they get reported more often than other boating accidents.

NPS Response: Incidents involving watercraft of all types, including personal watercraft, are reported to and logged by National Park Service staff. A very small proportion of incidents in the recreation area are estimated to go unreported. In the "Visitor Conflicts and Visitor Safety" section of the "Affected Environment" chapter, it is reported by the National Transportation Safety Board that in 1996 personal watercraft represented 7.5% of State-registered recreational boats but accounted for 36% of recreational boating accidents. In the same year, PWC operators accounted for more than 41% of people injured in boating accidents. PWC operators accounted for approximately 85% of the persons injured in accidents studied in 1997. In other words, personal watercraft are 5 times more likely to have a reportable accident than are other boats. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and minor relative to other motorboats at the national recreation area.

29. One commenter stated that the analysis did not adequately address PWC fire hazards.

NPS Response: According to the National Marine Manufacturers Association, PWC manufacturers have sold roughly 1.2 million watercraft during the last ten years. Out of 1.2 million PWC sold the U.S. Coast Guard had only 90 reports of fires/explosions in the years from 1995–1999. This is a minute fraction of PWC having reports of problems associated with fires/explosions. As far as the recall campaigns conducted by Kawasaki and Bombardier, the problems that were associated with fuel tanks were fixed. Kawasaki conducted a recall for potentially defective fuel filler necks and fuel tank outlet gaskets on 23,579 models from the years 1989 and 1990. The fuel tank problems were eliminated in Kawasaki's newer models, and the 1989 and 1990 models are most likely

not in use anymore since life expectancy of a PWC is only five to seven years according to PWIA. Bombardier also did a recall for its 1993, 1994, and 1995 models to reassess possible fuel tank design flaws. However, the number of fuel tanks that had to be recalled was a very small percent of the 1993, 1994, and 1995 fleets because fuel tank sales only amounted to 2.16% of the total fleet during this period (Bombardier Inc.). The replacement fuel tanks differed from those installed in the watercrafts subject to the recall in that the replacement tanks had revised filler neck radiuses, and the installation procedure now also requires revised torque specifications and the fuel system must successfully complete a pressure leak test. Bombardier found that the major factor contributing to PWC fires/explosions was over-torquing of the gear clamp. Bombardier was legally required by the U.S. Coast Guard to fix 9.72% of the recalled models. Out of 125,349 recalls, the company repaired 48,370 units, which was approximately 38% of the total recall, far exceeding their legal obligation to repair units with potential problems.

Further fuel tank and engine problems that could be associated with PWC fires has been reduced significantly since the National Marine Manufacturers Association set requirements for meeting manufacturing regulations established by the U.S. Coast Guard. Many companies even choose to participate in the more stringent Certification Program administered by the National Marine Manufacturers Association (NMMA). The NMMA verifies annually, or whenever a new product is put on the market, boat model lines to determine that they satisfy not only the U.S. Coast Guard Regulations but also the more rigorous standards based on those established by the American Boat and Yacht Council.

30. Several commenters stated that the analysis does not adequately assess the safety threat posed to park visitors by PWC use.

NPS Response: The concern about PWC operation and safety is discussed in the EA. Some of the provisions of the preferred alternative, such as extended no wake zones, and the formation of a PWC user group and PWC user education program, were included to provide a higher level of safe PWC operations and to lessen potential conflicts with other park users. The NPS agrees that some PWC users operate their vessels in an unsafe manner, and has provided for additional locational restrictions and safety—focused education in its preferred alternative

(see response above). In addition, enforcement will be increased to enforce new restrictions and promote education about safe operation. Finally, the NPS' analysis recognizes the danger of PWC operation. However, not all PWC operation results in loss of a "safe and healthful" environment, and NPS cannot regulate activities based on the type of injuries likely to be sustained if the public wishes to participate in an activity that is supported by the park's enabling legislation. However, NPS is providing safe operating instruction, use restrictions, and enforcement to minimize the possibility of any serious injuries.

31. One commenter, Personal Watercraft Industry Association, stated that there is no basis to impose no-wake restrictions on PWC only, as proposed in Alternative B, and doing so would endanger all boaters.

NPS Response: The proposed no-wake zones under Alternative B would apply to all motorized vessels. The description of Alternative B on page 23 of the EA does not indicate that the no wake zone applies only to PWC.

Comments Related to Socioeconomics

32. One commenter stated that the analysis did not adequately assess socioeconomic impacts on the regional economy.

NPS Response: The number of recreational visits at Chickasaw National Recreation Area in calendar year 2002, through November, was 1,609,152. In 2003 through November, the recreational visits were 1,510,270; a reduction of 6.15%. This percentage is similar to the reduction in visitation at Glen Canyon and the eight un-named parks in the above comment. There were no PWCs allowed at Chickasaw during that time. The number of boats on the Lake of the Arbuckles in 2002 through November were 64,500 boats, plus 3,236 PWCs, for a total of 67,736. The total boats through November 2003 were 55,826 (no PWCs). The decrease of boats overall was 17.6 percent. However, the percentage of boats that were PWCs in 2002 was only 4.7 percent. The reduction in usage correlates with the nationwide decrease in visitation regardless of the PWC ban. Several factors including high fuel prices, a general sluggish economy, and the fear of terrorism could also be factors for the decline.

The socioeconomic study did not address the future potential costs of environmental damage. The study looked at the potential effect that the ban would have on the local economy, and the potential effects on socio-economically disadvantaged groups.

The comment is correct in stating that the same level of analysis was not given to the future environmental costs.

33. One commenter stated that by banning PWC use at the park, there would be an increase in other visitors which would offset the economic losses from PWC users.

NPS Response: The evaluation concentrated on the effects of PWC management on the local economy. There is no data available indicating that the presence of PWC has decreased the recreation area visitation by other visitors. Thus, a conclusion cannot be made that banning PWC would increase use by other groups. According to the visitor survey (summer 2000), most visitors identified issues associated with PWC operation within the recreation area as “no problem or slight problem.”

Changes to the Final Rule

Based on the preceding comments and responses, the NPS has made no

changes to the proposed rule language with regard to PWC operations.

Summary of Economic Impacts

Alternative A would reinstate Personal Water Craft (PWC) use at Chickasaw National Recreation Area as previously managed prior to November 2002, and as described in the 2000 Superintendent's Compendium. That Compendium permitted the use of PWCs in Lake of the Arbuckles under existing boating regulations, closed lakes 100 acres or less to PWCs, and imposed no-wake speed restrictions in certain areas. Alternative B would reinstate PWC use as previously managed, but with additional management restrictions. Alternative C would reinstate PWC use as previously managed, but limit use areas. Alternative D is the no-action alternative and represents the baseline conditions for this economic analysis. PWCs would be banned under Alternative D. All benefits and costs

associated with Alternatives A, B, and C are measured relative to that baseline.

The primary beneficiaries of Alternatives A, B, and C would be the park visitors who use PWCs and the businesses that provide services to PWC users such as rental shops, restaurants, gas stations, and hotels. Additional beneficiaries include individuals who use PWCs in substitute areas outside the park where PWC users displaced from Chickasaw National Recreation Area ride due to the ban. Over a ten-year horizon from 2005 to 2014, the present value of benefits to PWC users is expected to range between \$5,596,540 and \$8,522,620, depending on the alternative analyzed and the discount rate used. The present value of benefits to businesses over the same timeframe is expected to range between \$28,850 and \$379,750. These benefit estimates are presented in Table 1. The amortized values per year of these benefits over the ten-year timeframe are presented in Table 2.

TABLE 1.—PRESENT VALUE OF BENEFITS FOR PWC USE IN CHICKASAW NATIONAL RECREATION AREA, 2005–2014 (2001 \$)

	PWC users	Businesses	Total ^a
Alternative A:			
Discounted at 3% ^b	\$8,522,620	\$49,780 – \$379,750	\$8,572,400 – \$8,902,370
Discounted at 7% ^b	6,995,650	40,850 – 311,710	7,036,500 – 7,307,360
Alternative B:			
Discounted at 3% ^b	7,670,370	42,500 – 317,680	7,712,870 – 7,988,050
Discounted at 7% ^b	6,296,090	34,890 – 260,760	6,330,980 – 6,556,850
Alternative C:			
Discounted at 3% ^b	6,818,120	35,150 – 255,530	6,853,270 – 7,073,650
Discounted at 7% ^b	5,596,540	28,850 – 209,750	5,625,390 – 5,806,290

^a Benefits may not sum to the indicated values due to independent rounding.

^b Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—AMORTIZED TOTAL BENEFITS PER YEAR FOR PWC USE IN CHICKASAW NATIONAL RECREATION AREA, 2005–2014 (2001 \$)

	Amortized total benefits per year ^a
Alternative A:	
Discounted at 3% ^b	\$1,004,947 to \$1,043,629
Discounted at 7% ^b	1,001,839 to \$1,040,404
Alternative B:	
Discounted at 3% ^b	904,184 to \$936,443
Discounted at 7% ^b	901,389 to \$933,548
Alternative C:	
Discounted at 3% ^b	803,412 to \$829,248
Discounted at 7% ^b	800,929 to \$826,685

^a This is the present value of total benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.

^b Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

The primary group that would incur costs under Alternatives A, B, and C would be the park visitors who do not use PWCs and whose park experiences would be negatively affected by PWC

use within the park. At Chickasaw National Recreation Area, non-PWC uses include boating, canoeing, fishing, and hiking. Additionally, the public could incur costs associated with

impacts to aesthetics, ecosystem protection, human health and safety, congestion, nonuse values, and enforcement. However, these costs

could not be quantified because of a lack of available data.

Because the costs of Alternatives A, B and C could not be quantified, the net benefits associated with those alternatives (benefits minus costs) also could not be quantified. However, from an economic perspective, the selection of Alternative B as the preferred alternative was considered reasonable even though the quantified benefits are smaller than under Alternative A because certain costs could not be quantified. Those costs, relating to non-PWC use, aesthetics, ecosystem protection, human health and safety, congestion, or nonuse values, would likely be greater for Alternative A than for Alternative B due to increasingly stringent restrictions on PWC use. Quantification of these costs could reasonably result in Alternative B having the greatest level of net benefits.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed 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.

The National Park Service has completed the report "Economic Analysis of Management Alternatives for Personal Watercraft in Chickasaw National Recreation Area" (MACTEC Engineering) dated June 2003. The report found that this rule will not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact on the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality.

(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 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 policy issues. This regulation is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management but no significant changes to use are implemented in this rule.

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.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, "Economic Analysis of Management Alternatives for Personal Watercraft in Chickasaw National Recreation Area" (MACTEC Engineering) dated June 2003. The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that the potential loss for these types of businesses as a result of this rule would be minimal to none.

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.

The National Park Service has completed an economic analysis to make this determination. 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.

This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings 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 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 has prepared an Environmental Assessment (EA). The EA was open for public review and comment from March 10, 2003, through April 8, 2003. The EA has been posted on the NPS Web site (<http://www.nps.gov/chic/CHICPWCEA.pdf>). A Finding of No Significant Impact (FONSI) was signed on June 28, 2004.

Copies of these documents may be requested by calling Susie Staples at 580-622-3161, extension 1-220, or by writing the Superintendent, Chickasaw National Recreation Area, 1008 W. 2nd Street, Sulphur, OK 73086.

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. The following tribes were contacted; Apache Tribe of Oklahoma, Caddo Tribal Council, The Chickasaw Nation, The Choctaw Nation of Oklahoma, Comanche Tribal Business Committee, The Pawnee Business Council, The Wichita Executive Committee. None of the tribes had any comments on the proposed action.

Administrative Procedure Act

This final rule is effective upon publication in the **Federal Register**. In accordance with the Administrative Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.57(h), 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 Chickasaw 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** (69 FR 15277) on March 25, 2004, 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 Chickasaw 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 the NPS 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 the 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.

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 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. Add new paragraph (b) to § 7.50 to read as follows:

§ 7.50 Chickasaw Recreation Area.

* * * * *

(b) *Personal watercraft (PWC)*. (1) PWC may operate on Lake of the Arbuckles except in the following closed areas:

- (i) The Goddard Youth Camp Cove.
- (ii) A 150 foot wide zone around the picnic area at the end of Highway 110 known as "The Point", beginning at the buoy line on the north side of the picnic area and extending south and east into the cove to the east of the picnic area.
- (iii) The cove located directly north of the north branch of F Loop Road.
- (iv) A 150 foot wide zone around the Buckhorn Campground D Loop shoreline.
- (2) PWC may not be operated at greater than flat wake speed in the following locations:
 - (i) The Guy Sandy arm north of the east/west buoy line located near Masters Pond.
 - (ii) The Guy Sandy Cove west of the buoy marking the entrance to the cove.
 - (iii) Rock Creek north of the east/west buoy line at approximately 034°27'50" North Latitude.
 - (iv) The Buckhorn Ramp bay, east of the north south line drawn from the Buckhorn Boat Ramp Breakwater Dam.
 - (v) A 150 foot wide zone along the north shore of the Buckhorn Creek arm starting at the north end of the Buckhorn Boat Ramp Breakwater Dam and continuing southeast to the Buckhorn Campground D Loop beach.
 - (vi) The cove south and east of Buckhorn Campground C and D Loops.
 - (vii) The cove located east of Buckhorn Campground B Loop and adjacent to Buckhorn Campground A Loop.
 - (viii) The second cove east of Buckhorn Campground B Loop, fed by a creek identified as Dry Branch.
 - (ix) Buckhorn Creek east of the east/west buoy line located at approximately 096°59'3.50" Longitude, known as the G Road Cliffs area.
 - (x) Within 150 feet of all persons, docks, boat launch ramps, vessels at anchor, vessels from which people are fishing, and shoreline areas near campgrounds.
- (3) PWC may only be launched from the following boat ramps:
 - (i) Buckhorn boat ramp.
 - (ii) The Point boat ramp.
 - (iii) Guy Sandy boat ramp.
 - (iv) Upper Guy Sandy boat ramp.
- (4) The fueling of PWC is prohibited on the water surface. Fueling is allowed only while the PWC is away from the water surface and on a trailer.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: August 24, 2004.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

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POSTAL SERVICE

39 CFR Part 111

Experimental Outside-County Periodicals Co-Palletization Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: This interim rule provides standards for a Postal Service™ experiment. The experiment will test whether additional rate incentives would encourage the co-palletization and dropshipment of currently sacked bundles of individual Periodicals publications that have high-editorial content, are heavier weight, and have small mailed circulation. This interim rule will implement editorial per-pound discounts that are based on the entry points and zones skipped resulting from dropshipping and co-palletization. The editorial per-pound discounts, resulting from Docket No. MC2004-1 at the Postal Rate Commission, would apply to pieces in bundles placed on sectional center facility (SCF) and area distribution center (ADC) pallets that are dropshipped to either a destination area distribution center (DADC) or a destination sectional center facility (DSCF). The interim rule includes procedures for preparing and documenting co-palletized mailings and for requesting approval to participate in the experiment.

Co-palletization is designed to move publications, big and small, out of sacks and onto pallets with an additional advantage of mail being entered closer to destination for better service. Both of these changes are expected to make the processing of Periodicals mail more efficient and less expensive. This change is especially beneficial in the case of smaller publications that are prepared in smaller sacks largely entered at the origin.

DATES: This interim rule is effective October 3, 2004. Applications for

participation in the experiment will be available beginning September 1, 2004. The starting date for the experiment is October 3, 2004. Comments on the standards must be received on or before October 2, 2004.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260-3436. Copies of all written comments will be available for inspection and photocopying at U.S. Postal Service Headquarters Library, 475 L'Enfant Plaza SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Postal Service offers certain worksharing incentives in the form of discounts to encourage palletization and dropshipping of Periodicals mailings. Co-palletization allows mailers to combine separately presorted bundles of different titles and editions on pallets to achieve the minimum pallet weight required to take advantage of current pallet and dropshipment discounts for Periodicals mail (e.g., 250 pounds of mail to a destination area distribution center (DADC)).

Effective April 20, 2003, the Postal Service implemented the Experimental Outside-County Periodicals Co-Palletization Classification (Docket No. MC2002-3) that provided two additional per-piece discounts to co-palletized Periodicals that could not otherwise be palletized because they lacked sufficient volume and density. The experimental discounts are available for pieces in Periodicals mailings and mailing segments that would have otherwise been prepared in sacks but now may be prepared on ADC or sectional center facility (SCF) pallets and dropshipped to DADCs and DSCFs as a result of co-palletization.

A report filed with the Postal Rate Commission (See <http://www.prc.gov> under Docket No. MC2002-3) in May 2004 shows over 9 million co-palletized pieces with a corresponding removal of over 180,000 sacks from Postal Service operations. We expect additional publications, printers, and consolidators to participate in the existing experiment, and believe that this experiment will lead to better preparation and deeper penetration of Periodicals mail into the Postal Service system.

While the initial experiment has been reasonably successful, current per-piece incentives under the experiment are not

sufficient to encourage co-palletization and dropshipment of publications with high editorial content. The current co-palletization experiment provides additional per-piece incentives when mailers go through the extra step of combining their mailings to build pallets and dropship them to destination ADCs and SCFs. Because the current rate structure has a flat editorial pound rate, publications that contain little or no advertising have little incentive to dropship, especially if they have heavier copy weights and lack the density to make single-publication pallets.

On February 25, 2004, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission (PRC) a request for a decision recommending new experimental co-palletization incentives for Outside-County Periodicals. The request was designated as Docket No. MC2004-1 by the PRC. The PRC recommended the experimental classification change and new discounts on July 7, 2004. This recommendation was approved by the Board of Governors on July 19, 2004; and the Board of Governors set October 3, 2004, as the anticipated implementation date for the experiment.

The Postal Service will implement a 2-year experimental classification change to allow high-editorial, heavier weight, small circulation publications to receive the new proposed discounts on editorial pounds for pieces that are co-palletized and dropshipped, and meet all required conditions. The 2-year period will allow the Postal Service to measure the impact of the level of the discount structure. Also, the classification change extends the current co-palletization experiment (Docket No. MC2002-3) so that both experiments conclude at the same time. It is hoped that any future classification or structural change in the rate schedule would address both experiments together. The proposed classification language would also allow both experiments to continue until a proposal for a permanent discount is resolved, if that proposal is filed before the end of the 2-year period.

Based on the response to the current experimental discounts, the Postal Service concluded that an additional rate design solution was needed to provide a fair, equitable, and adequate incentive. The new discounts will apply to editorial pounds based on the cost savings that the Postal Service would realize as a result of the mail being prepared on pallets and having those pallets dropshipped (i.e., skipping zones). The discounts will reflect the difference between the original zone for