readiness-related medical skills sustainment activities, to the extent approved by the ASD(HA).

* * * * *

(o) * * *

(3) *Quarterly installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in quarterly installments, each equal to one-fourth of the total amount. For any beneficiary paying his or her enrollment fee in quarterly installments, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, OCHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year. If enrollment in TRICARE Prime is terminated for failure to make a required installment payment, services received after the due date of the installment payment will be cost shared under TRICARE Extra.

* * * * *

4. Section 199.18 is amended by revising paragraphs (d)(2)(i) and (f), and by adding paragraph (c)(3), to read as follows:

§ 199.18 Uniform HMO benefit.

* * * * *

(c) * * *

(3) *Waiver of enrollment fee for certain beneficiaries.* The Assistant Secretary of Defense (Health Affairs) may waive the enrollment fee requirements of this section for beneficiaries described in 10 U.S.C. 1086(d)(2) (i.e., those who are eligible for Medicare on the basis of disability or end stage renal disease and who maintain enrollment in Part B of Medicare).

* * * * *

(d) * * *

(2) * * *

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: dependents of active duty members in pay grades E–1 through E–4; dependents of active duty members in pay grades of E–5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies to family health services, home health care visits, eye examinations, and immunizations. It does not apply to ancillary health services or to preventive health services described in paragraph (b)(2) of this section, or to maternity services under § 199.4(e)(16).

* * * * *

(f) *Limit on out-of-pocket costs under the uniform HMO benefit.* (1) Total out-of-pocket costs per family of dependents of active duty members under the Uniform HMO Benefit may not exceed $1,000 during the one-year enrollment period. Total out-of-pocket costs per family of retired members, dependents of retired members and survivors under the Uniform HMO Benefit may not exceed $3,000 during the one-year enrollment period. For this purpose, out-of-pocket costs means all payments required of beneficiaries under paragraphs (c), (d), and (e) of this section. In any case in which a family reaches this limit, all remaining payments that would have been required of the beneficiary under paragraphs (c), (d), and (e) of this section will be made by the program in which the Uniform HMO Benefit is in effect.

(2) The limits established by paragraph (f)(1) of this section do not apply to out-of-pocket costs incurred pursuant to paragraph (m)(1)(i) or (m)(2)(i) of § 199.17 under the point-of-service option of TRICARE Prime.

* * * * *

Dated: February 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4545 Filed 2–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC47

Cape Cod National Seashore; Off-Road Vehicle Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising the current regulation for off-road vehicle (ORV) use at Cape Cod National Seashore. Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, new and unrelated measures have impacted the off-road vehicle corridor identified in the amended plan. These measures have resulted from the necessity to protect the federally listed threatened piping plover (*Charadrius melodus*). Because of a lack of flexibility in the Amended 1985 Plan, there has been an inability to adapt it to changing natural resource concerns.

The piping plover became a federally listed threatened species in 1986. In 1995 there were 83 pair of plovers nesting on the beaches of Cape Cod National Seashore. Thirty-three pair were within the eight and one-half miles of the ORV corridor. During the Fourth of July weekend (a period of peak use for ORV's) in 1994, eight-tenths of a mile of the ORV corridor was open. In 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, it is expected that the birds will continue to nest here. Thus, Cape Cod National Seashore hopes to develop a more flexible and effective regulation governing ORV use that will accommodate the NPS's responsibilities for managing natural resources.

DATE: This rule becomes effective on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Telephone 508–349–3785, ext. 203.

SUPPLEMENTARY INFORMATION:

Background

The mission of the NPS is to preserve and protect park resources while at the same time allowing for the enjoyment of these same resources in a manner that will leave them unimpaired for future generations. In September 1995, Cape Cod National Seashore convened a committee to negotiate a rulemaking (per the Federal Advisory Commission Act (FACA), 5 U.S.C. App. II Sec. 9(c), and the Negotiated Rulemaking Act, 5 U.S.C. 561), to resolve an ongoing contentious issue of ORV use on Seashore beaches, while at the same time providing optimum protection for the piping plover (*Charadrius melodus*) in compliance with the Endangered Species Act of 1973, as amended, and other Seashore resources.

The 1981 ORV Management Plan was challenged in U.S. District Court. However, the plan, as amended in 1985 (50 FR 31181), was upheld by the District Court in 1988 and the U.S. Court of Appeals in 1989. The District Court found that ORV use at Cape Cod National Seashore is not inappropriate; that the 1985 Plan minimized user conflicts; that the NPS had provided other recreational users adequate use of the Seashore; that the NPS had properly surveyed the sentiments of Seashore users; and that ORV use, as managed by the NPS, does not adversely affect the Seashore's values or its ecology.

The 1985 regulation that established an 8.5 mile ORV corridor on the 40 miles of outer beach within the Seashore would have provided a satisfactory solution except that since

1988, the number of nesting pair of piping plover increased in this area over 800 percent. The ORV corridor is one of the prime nesting areas in the Seashore (in 1995, 33 of 87 pair nested in the corridor). Primarily because of plovers in the corridor, the Seashore staff monitors every bird, nest and egg daily to determine if the ORV corridor should be open or closed. Symbolic fencing is put up as soon as a nest is established to identify the site. Wire enclosures are put up once the eggs have been laid and the ORV corridor is closed from the time the birds hatch until they fledge, approximately 28 days later. In the past few years, during the time when the Seashore receives the most visitors (Fourth of July), including people wishing to use the ORV corridor, only 0.4 to 0.6 miles of the corridor has been open.

Decision To Initiate Negotiated Rulemaking

The need for a new rule and the use of the negotiated process was motivated by a number of events including legislative requirements, past litigation, management issues and inflexibility of the existing rule to deal with changing conditions such as the use of the corridor by the piping plover. The negotiated rulemaking process was an attempt to manage off-road vehicle (ORV) access on the outer beach in a way that accommodates the wishes of ORV enthusiasts and those choosing other forms of beach use, while minimizing impacts to natural and cultural resources and providing a degree of flexibility for managing the beach.

Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, issues which had not been anticipated or addressed previously impacted the off-road vehicle corridor. These impacts were mainly in response to the importance of and the efforts to protect the piping plover. Thus, Cape Cod National Seashore hopes the new regulation will be more flexible and effective in governing ORV use, and will accommodate the NPS's responsibilities for managing natural resources and the recreational opportunities mandated in the Seashore's enabling legislation.

The objective of negotiated rulemaking was to front load the controversy by getting all the interested parties involved in the decision making process from the beginning and acknowledging, if not resolving, all the issues and concerns. The process brings together at the negotiating table the organizations that are interested in the issues and charges them with developing a solution that is acceptable to everyone. This process is used by many Federal agencies, but this was the first time the NPS used negotiated rulemaking to develop a rule that will become part of the Code of Federal Regulations (CFR).

A total of 23 agencies, organizations and interest groups with long term interests and involvement in the ORV issue were identified for the committee. They included State agencies, the 6 towns the Seashore is located within, ORV user groups, environmental groups, Federal agencies, and tourism and preservation groups.

Specifically, the Committee consisted of members from the following organizations:

1. Association for the Preservation of Cape Cod
2. Cape Cod Chamber of Commerce
3. Cape Cod Commission
4. Cape Cod Salties
5. Citizens Concerned for Seacoast Management
6. Conservation Law Foundation
7. Eastham Forum
8. Highland Fish and Game Club
9. Massachusetts Audubon Society
10. Massachusetts Beach Buggy Association
11. Massachusetts Coastal Zone Management
12. Massachusetts Department of Environmental Protection
13. Massachusetts Division of Fisheries and Wildlife
14. Massachusetts Division of Marine Fisheries
15. National Park Service
16. Sierra Club
17. Town of Chatham
18. Town of Eastham
19. Town of Orleans
20. Town of Provincetown
21. Town of Truro
22. Town of Wellfleet
23. U.S. Fish and Wildlife Service

Each organization selected one representative to sit at the table. This person spoke and made commitments for that organization. Only representatives were allowed to participate in the formal discussions. All participants at the table had an equal voice. To avoid problems with unbalanced votes on one ''side,'' the negotiated rulemaking was done as a consensus process (every organization had veto authority). The task assigned the committee was to develop a new ORV regulation for Cape Cod National Seashore. If the committee was unable to reach consensus on a new regulation, then the NPS would develop a new rule using the ideas, information and creativity that had been gathered from the group. This process allowed every issue, idea and concern to be heard; all sides had a chance to hear what was most important and what most worried the other participants. The NPS agreed that if consensus was reached, the consensus regulation would be put forward as a proposed rule through the notice and comment rulemaking process with full public involvement. The proposed rule was published in the **Federal Register** on May 6, 1997 (FR 62 24624).

As required by FACA, all formal meetings were announced in the **Federal Register** and were open to the public. There was a public comment period at the end of each meeting. Letters could be submitted to be included in the official record if someone was unable to attend.

The rulemaking sessions were conducted by contracted professional negotiators. The sessions were limited to three, two-day meetings. These meetings were spaced one month apart to allow the representatives sufficient time between meetings to report back to their respective organizations and to ensure that they were not committing to things the organizations could not support and, very importantly, to allow time for independent interactions and negotiations among committee members to occur.

The committee was successful in reaching consensus on a proposed ORV regulation for Cape Cod National Seashore. It is the contents of that regulation that have been used to identify issues, alternatives and potential impacts for National Environmental Policy Act (NEPA) compliance.

Issues of Concern Raised During the Negotiated Rulemaking

During the course of negotiations, many ideas and issues were discussed, clarified and agreed to by the negotiating committee. The committee reached consensus on the following items and agreed that, although not appropriate for inclusion in the text of the regulation, these items were important points, ideas and agreements that should be included in the preamble where they would be part of the official record and identified as part of the committee consensus.

Executive Order 11644, as amended by E.O. 11989, ''Use of Off-Road Vehicles on Public Lands'' directs the NPS to monitor the impacts of the ORV program on the resources of Cape Cod National Seashore. The committee supported this monitoring to identify the actual effects (or lack of effects) of ORV use at the Seashore. The intent of

this research is not to develop ''new'' science on the effects of ORV use on the outer beaches, but to document specifically the current condition of the ORV corridor and to monitor the changes, if any, that occur over time. This data will be used to assess any changes that occur in the area where the ORV corridor is located and to try to identify the causes of these changes. The monitoring methods identified for use by the NPS will undergo peer review by the broader scientific community to identify weaknesses, including areas of monitoring not covered by the technical research design. In this context, ''peer'' includes scientists beyond the NPS scientific community. The monitoring will result in an annual report that NPS will also distribute for public and peer review and comment. While user fees gathered from ORV permits can be used to fund this research, this funding is limited.

The committee recognized the importance and relative fragility of barrier spits, such as the sand spit at Hatches Harbor. The NPS agrees to work in consultation with the Massachusetts Office of Coastal Zone Management to address concerns specific to barrier spits. It is understood that these areas are more sensitive; that they are important to shorebirds and for protecting the natural resources located behind them; and that a closer look at these sensitive areas may result in a need to limit use or further control existing uses to protect resources.

The Cape Cod National Seashore Advisory Commission will be requested to develop a new subcommittee to provide input and advice on the ORV program at Cape Cod National Seashore. The chair of the subcommittee will be a duly appointed member of the Commission. Other members of the subcommittee will represent the same general mix of interests represented in the negotiated rulemaking committee. This subcommittee will be assigned to review and analyze the annual monitoring report. Following its review and analysis, the subcommittee may refer any ORV program management issues it identifies to the commission for further deliberation, and the Commission may advise the Superintendent with respect to those issues.

Night fishing is recognized as an important activity on the beaches of Cape Cod National Seashore. Vehicles displaying a permit approved by the Superintendent are able to access paved public parking lots, closed to the general public after hours, for nighttime fishing.

An annual report submitted to the Secretary of the Interior will include an analysis of the annual operating costs of the ORV program.

The negotiated rulemaking committee discussed a potential future need for commercial permittees who would bring people to various outer beach locations to fish, swim, picnic or enjoy other activities compatible with the establishment of the Seashore. This service could potentially reduce the number of people needing to drive their personal ORV'S on the beach. The Seashore agreed to evaluate the impact if the number of commercial permits for the ORV corridor exceeded the number issued in 1981 (18). Operators of a passenger vehicle for hire, engaged in carrying passengers for a fee on a designated ORV route, will obtain a permit for commercial use issued by the Superintendent. One condition of this permit will be that the applicants must demonstrate they possess adequate knowledge of the Seashore's off-road system and points of interest, and they must comply with all applicable Federal, State and local regulations. The fee for this permit will be based on the costs incurred by the NPS to administer this program. Failure to comply with any provision of an ORV permit, any regulation listed in this section or Part 2 or Part 4 of this chapter, or the requirements of the commercial use permit may result in revocation of permits by the Superintendent.

The committee recognized that, even given the greater flexibility of the consensus rule, there is a high probability portions of the beach may be closed at various times because of resource protection concerns. To provide access to some locations immediately adjacent to prime fishing areas, the committee identified ''limited parking areas'' for fishing access. These areas will be sand pull-offs located behind the primary dunes and be limited to two or three cars. NPS staff will identify areas for these to be located on the High Head access route and the Power Line route. Every attempt will be made to locate the parking spaces on previously impacted areas. They will be located to provide minimal visual impact and to minimize widening of the route or impact to vegetation. The spaces will be posted to identify that only people actively fishing may park.

It is recognized that boat launching, within the ORV corridor, is permitted by properly approved and permitted vehicles. The definition of boat in this context does not include personal watercraft (e.g., jet skis style vessel). Additional information regarding the requirements pertaining to the use of personal watercraft and boats is contained within the Compendium of Designations, Closures (36 CFR 1.5 and 1.7) for Cape Cod National Seashore and 36 CFR Part 3.

Self-contained vehicles will continue to be managed as they have in the past. A self-contained vehicle is a vehicle with a water or chemical toilet and a permanently installed holding tank able to hold a minimum of three days of waste material. It is recognized that self-contained vehicles need to be located within close proximity to a beach access route. They also need to be located on a wider section of beach away from vegetation. The access route for self-contained vehicles must be fairly flat and stable. These factors will limit the possible locations for this activity. The committee agreed that, while the location of the self-contained parking area may need to shift somewhat, neither the scale nor the general level of impact would increase.

All the organizations represented by the committee agreed that the protection of the piping plover is important. There was consensus on the need to close beaches to ORV's when chicks have hatched and before they have fledged.

The committee acknowledged Executive Order 12962, Recreational Fisheries, which, in part, acknowledges the importance of participating in recreational fishing, and protecting and conserving fish stock.

The NPS recognizes the importance of citizen participation in the ORV program. In accordance with NPS policy, a program will be developed to make use of the unique skills and knowledge of individuals within the ORV community. This program will formalize and recognize the preservation efforts, education, beach clean up and other activities many of these individuals already perform.

Comments Received on Proposed ORV Regulation

During the public review period for the proposed Off-Road Vehicle Regulation for Cape Cod National Seashore, 15 written comments were received. Because of the concurrent comment period for the Environmental Assessment (EA) and the proposed regulation, some of these letters dealt partially or totally with comments on the EA. Response to EA comments will be dealt with separately as part of the NEPA process.

Of the 15 comments received, nine supported the regulation, one opposed it and five offered comment but were neutral as to whether they supported or opposed it. In addition to written comments, approximately 6 telephone comments were received. All telephone contacts supported the regulation.

In compliance with guidelines established as part of the negotiated rulemaking process and agreed to by all participants, organizations that were at the table during the rulemaking were not allowed to comment on the proposed regulation. They were invited to comment on the EA because this was drafted solely by the NPS and, unlike the proposed regulation, the organizations did not have a chance to review or comment on it during the rulemaking process. Individual members of organizations that were represented at the table were allowed to comment on the proposed regulation.

Annual Cap of 3400 Permits

The issue raised by the most people or organizations (four) was about the annual cap of 3,400 permits. Concerns were raised as to how this limit was established and justified. One group felt the number was too high, whereas others felt there should not be a limit to the number of permits issued. Some suggested that there should be a limit to the number of vehicles on the beach at any one time. Two suggested this system favored people who live in Massachusetts.

The rulemaking group spent considerable time discussing this issue. The group agreed that it was important to limit the number of vehicles on the beach, but at the same time to allow some growth in the number of users. The group understood the complexity of instituting a daily limit—numerous access points, potential traffic problems as users lined up to wait for people to leave, people who buy an annual pass but use it only for a limited time would be unsure if they would have access and additional staff needed to control access. Because of these concerns, the daily limit option was dropped in favor of the annual cap.

The annual cap was arrived at by looking at the number of permits which have been issued in the past and adding 10% to that number. Because the number of annual permits that can be issued in a calendar year exceeds the usual number issued, there has been no need to establish a procedure for issuing permits. When it appears that the annual cap will be reached, the NPS will work with an advisory group, which is a sub-committee of the Cape Cod National Seashore Advisory Commission, to establish a procedure that gives equal access to permits for people in-state as well as for people from out-of-state.

Personal Watercraft (PWC)

One group reminded the NPS that one of the areas of consensus during the negotiated rulemaking, was that the launching of PWC from the ORV corridor was prohibited. This statement is in the preamble of the regulation and has been codified in the park's compendium in the section dealing with boating. In addition, the NPS will be addressing the issue of PWCs through comment rulemaking in the general regulations.

Piping Plovers

One individual questioned the need to have an automatic closure of a section of the corridor from April 1 through July 20th. During the negotiated rulemaking many groups saw an advantage to having an automatic closure of a section of the corridor, especially with the establishment of another section which had a higher probability of not having nesting plovers. Because of the high concentration of plovers on the beach in the section scheduled for automatic closure, ORV users had to check daily to see whether or not they would be able to get out to that section of the beach. Also, this section of the beach required a high amount of management by the NPS as all the nests, eggs and chicks had to be checked each day. Because of these and other reasons, the group decided to schedule the automatic closure of a section of the corridor.

Cost

One individual questioned the cost of running the ORV program, specifically the cost of patrolling the night fishing area, and stated that as a taxpayer they did not want to support this high cost activity. The regulation specifically states that the costs to run and manage the ORV program will be recovered by the Seashore through the cost of the permits. The cost of the program will be borne by the people who benefit from the program.

Winter Use of the ORV Corridor

One group stated that the regulation was unclear as to how limited access passes (LAP) for winter ORV use would be managed. The regulation states that winter use of the beach for ORV use would require an annual ORV pass as well as a LAP. Access must be for the purposes of getting to the town shellfishing beds at Hatches Harbor, recovering personal property or flotsam and jetsam from the beach, caretaker functions at a dune cottage or fishing. In addition, an operator is required to view a special education program on the unique situations encountered on a winter beach. To allow for the development of a system that is flexible and meets the needs of the users, provides for visitor safety and protects the resources, the specifics of the limited access pass are not included in the regulation. The Seashore staff, working with the advisory group, will develop procedures for winter access that meet all of these requirements. If problems arise the procedures will be reviewed, and if appropriate, revised to best accommodate all concerns while meeting the objectives of the regulation.

Support for the Regulation

One letter from a local resident claims that all of the surfcasters he has spoken with are 100 percent behind the new regulations. He made a point of saying that their appreciation will be shown by their making an extra effort to follow any guidelines to the ''T'', and to be courteous and considerate to all they come across in their travels.

Drafting Information

A formal negotiated rulemaking was utilized in the development of this proposed rule in accordance with the Federal Advisory Commission Act (FACA) and the Negotiated Rulemaking Act (5 U.S.C. 561).

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this rule have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue off-road vehicle permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Specifically, the NPS needs the following information to issue a permit:

(1) Name and address of registered owner.

(2) Driver's license number and State of issue.

(3) Vehicle license plate number and State.

(4) Vehicle description, including year, make, model and color.

(5) Make, model and size of tires.

(6) List of equipment on board as required in section 4 of the rule.

The public reporting burden for the collection of information in this instance is estimated to be 0.28 hours per response, including the time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined 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.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

This regulation is subject to National Environmental Policy Act (NEPA) compliance and an Environmental Assessment (EA) has been completed and a Finding of No Significant Impact has been determined. This document is available for public review and can be obtained by contacting the park at the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, NPS amends 36 CFR Chapter I 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 Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Revise section 7.67(a) to read as follows:

§ 7.67 Cape Cod National Seashore.

(a) Off-road operation of motor vehicles.

(1) *What do I need to do to operate a vehicle off road?* To operate a vehicle off road at Cape Cod National Seashore, you must meet the requirements in paragraphs (b) through (e) of this section. You also must obtain a special permit if you:

(i) Will use an oversand vehicle (see paragraphs (a)(6) and (a)(7) of this section for details);

(ii) Will use an oversand vehicle to camp (see paragraph (a)(8) of this section for details); or

(iii) Are a commercial operator (see paragraph (a)(9) of this section for details).

(2) *Where and when can I operate my vehicle off road?* You may operate a vehicle off road only under the conditions specified in the following table. However, the Superintendent may close any access or oversand route at any time for weather, impassable conditions due to changing beach conditions, or to protect resources.

Route	When you may use the route
On the outer beach between the opening to Hatches Harbor, around Race Point to High Head, including the North and South Beach access routes at Race Point and the bypass route at Race Point Light.	April 15 through November 15, except Exit 8 to High Head which is closed April 1 through July 20.
Off road vehicle corridor from Exit 8 to High Head	July 21 through November 15.
Access road at High Head from the inland parking area to the primary dune.	January 1 through December 31.
Designated dune parking area at High Head (for fishing only)	January 1 through December 31.
Power Line Route access and fishing parking area	Only when the Superintendent opens the route due to high tides, beach erosion, shorebird closure or other circumstances which will, as a result, warrant public use of this access way.
On controlled access routes for residents or caretakers of individual dune cottages in the Province Lands.	January 1 through December 31.
On commercial dune taxi routes following portions of the outer beach and cottage access routes as described in the appropriate permit.	April 15 through November 15.
On the outer beach from High Head to Head of the Meadow	July 1 through August 31.
Coast Guard beach in Truro to Long Nook beach	April 15 through November 15 (hours posted).

(3) *May I launch a boat from a designated route?* Boat trailering and launching by a permitted vehicle from a designated open route corridor is permitted.

(4) *What travel restrictions and special rules must I obey?* You must comply with all applicable provisions of this chapter, including part 4, as well as the specific provisions of this section.

(i) On the beach, you must drive in a corridor extending from a point 10 feet seaward of the spring high tide drift line to the berm crest. You may drive below the berm crest only to pass a temporary cut in the beach, and you must regain the crest immediately following the cut. Delineator posts mark the landward side of the corridor in critical areas.

(ii) On an inland oversand route, you must drive only in a lane designated by pairs of delineator posts showing the sides of the route.

(iii) An oversand route is closed at any time that tides, nesting birds, or surface configuration prevent vehicle travel within the designated corridor.

(iv) When two vehicles meet on the beach, the operator of the vehicle with the water on the left must yield, except that self-contained vehicles always have the right of way.

(v) When two vehicles meet on a single-lane oversand route, the operator of the vehicle in the best position to yield must pull out of the track only so far as necessary to allow the other vehicle to pass safely, and then must back into the established track before resuming the original direction of travel.

(vi) If you make a rut or hole while freeing a stuck vehicle, you must fill the rut or hole before you remove the vehicle from the immediate area.

(5) *What activities are prohibited?* The following are prohibited:

(i) Driving off a designated oversand route.

(ii) Exceeding a speed of 15 miles per hour unless posted otherwise.

(iii) Parking a vehicle in an oversand route so as to obstruct traffic.

(iv) Riding on a fender, tailgate, roof, door or any other location on the outside of a vehicle.

(v) Driving a vehicle across a designated swimming beach at any time when it is posted with a sign prohibiting vehicles.

(vi) Operating a motorcycle on an oversand route.

(6) *What special equipment must I have in my vehicle?* You must have in your vehicle all the equipment required by the Superintendent, including:

(i) Shovel;

(ii) Tow rope, chain, cable or other similar towing device;

(iii) Jack;

(iv) Jack support board;

(v) Low air pressure tire gauge; and

(vi) Five tires that meet or exceed established standards.

(7) *What requirements must I meet to operate an oversand vehicle?* You may operate an oversand vehicle only if you first obtain an oversand permit from the Superintendent. The Superintendent administers the permit system for oversand vehicles and charges fees that are designed to recover NPS administrative costs.

(i) The oversand permit is a Special Use Permit issued under the authority of 36 CFR 1.6 and 4.10. You must provide the following information for each vehicle for which you request a permit:

(A) Name and address of registered owner;

(B) Driver's license number and State of issue;

(C) Vehicle license plate number and State of issue; and

(D) Vehicle description, including year, make, model and color; make, model and size of tires.

(ii) Before we issue a permit, you must:

(A) Demonstrate that your vehicle is equipped as required in paragraph (a)(6) of this section;

(B) Provide evidence that you have complied with all Federal and State licensing registering, inspecting and insurance regulations; and

(C) View an oversand vehicle operation educational program and ensure that all other potential operators view the same program.

(iii) The Superintendent will affix the permit to your vehicle at the time of issuance.

(iv) You must not transfer your oversand permit from one vehicle to another.

(8) *What requirements must I meet to operate an oversand vehicle in the off season?*

To operate an oversand vehicle between November 16 and April 14, you must obtain from the Superintendent an oversand permit and a limited access pass. We will issue you a limited access pass if you have a valid oversand permit (see paragraph (a)(7) of this section) and if you have viewed an educational program that outlines the special aspects of off season oversand use.

(i) You may operate a vehicle during the off-season only on the portion of the beach between High Head and Hatches Harbor.

(ii) You must not operate a vehicle during the off-season within two hours either side of high tide.

(iii) We may issue a limited access pass for the following purposes:

(A) Access to town shellfish beds at Hatches Harbor;

(B) Recovery of personal property, flotsam and jetsam from the beach;

(C) Caretaker functions at a dune cottage; or

(D) Fishing.

(9) *What requirements must I meet to use an oversand vehicle for camping?* You may use an oversand vehicle to camp on the beach only in the manner authorized in this section or as authorized by the Superintendent through another approved permitting process.

(i) You must possess a valid permit issued under paragraph (a)(7) of this section.

(ii) You may camp only in a self-contained vehicle that you park in a designated area. A self-contained vehicle has a self-contained water or chemical toilet and a permanently installed holding tank with a minimum capacity of 3 days waste material. There are two designated areas with a maximum combined capacity of 100 vehicles.

(A) You must drive the self-contained vehicle off the beach to empty holding tanks at a dumping station at intervals of no more than 72 hours.

(B) Before returning to the beach, you must notify the Oversand Station as specified by the Superintendent.

(iii) You must not drive a self-contained vehicle outside the limits of a designated camping area except when entering or leaving the beach by the most direct authorized route.

(iv) You are limited to a maximum of 21 days camping on the beach from July 1 through Labor Day.

(10) *What special requirements must I meet if I have a commercial vehicle?*

(i) To operate a passenger vehicle for hire on a designated oversand route, you must obtain a permit from the Superintendent. The Superintendent issues the permit under the authority of 36 CFR 1.6, 4.10 and 5.6.

(ii) You must obey all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire.

(iii) You must provide the following information for each vehicle that will use a designated oversand route:

(A) Name and address of tour company and name of company owner;

(B) Make and model of vehicle;

(C) Vehicle license plate number and State of issue; and

(D) Number of passenger seats.

(11) *How will the Superintendent manage the off-road vehicle program?*

(i) The Superintendent will issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(ii) The Superintendent will monitor the use and condition of the oversand routes to review the effects of vehicles on natural, cultural, and aesthetic resources in designated corridors. If the Superintendent finds that resource degradation or visitor impact is occurring, he/she may amend, rescind, limit the use of, or close designated routes. The Superintendent will do this consistent with 36 CFR 1.5 and 1.7 and all applicable Executive Orders;

(iii) The Superintendent will consult with the Cape Cod National Seashore Advisory Commission regarding management of the off-road vehicle program.

(iv) The Superintendent will recognize and use volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use. The Superintendent will do this in accordance with 16 U.S.C. 18 g–j.

(v) The Superintendent will report annually to the Secretary of the Interior and to the public the results of the monitoring conducted under this section, subject to availability of funding.

(12) *What are the penalties for violating the provisions of this section?* Violation of a term or condition of an oversand permit issued in accordance with this section is prohibited. A violation may also result in the suspension or revocation of the permit.

(13) *Has OMB approved the collection of information in this section?* As required by 44 U.S.C. 3501 *et. seq.*, the Office of Management and Budget has approved the information collection requirement contained in this section. The OMB approval number is 1024–0026. We are collecting this information to allow the Superintendent to issue off-road vehicle permits. You must provide the information in order to obtain a permit.

* * * * *

Dated: February 8, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–4638 Filed 2–23–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5966–4]

Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) published a direct final rule and an associated notice of proposed rulemaking of the same title on April 11, 1996 (61 FR 16050, 61 FR 16068). Both actions were to delete or modify certain rules previously promulgated under the Clean Air Act in the Code of Federal Regulations (CFR), 40 CFR parts 51 and 52, clarify their legal status and remove unnecessary, obsolete or burdensome regulations. EPA received adverse comments on the deletion of rules 40 CFR 51.100(o), 40 CFR 51.101, 40 CFR 51.110(g) and 40 CFR 51.213 as published in both the direct final rule and associated notice of proposed rulemaking. In response to those comments, EPA withdrew those sections from the direct final rule on June 14, 1996 (61 FR 30162). In today's action, EPA is finalizing the notice of proposed rulemaking with respect to these sections. Separate from the notice of proposed rulemaking action, EPA is also removing sections 40 CFR 51.103(a)(1) and (a)(2), as they were superseded by the Clean Air Act Amendments of 1990.

DATES: This rule will be in effect on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review (202) 260–7431.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer, to identify those rules that are obsolete or unduly burdensome. EPA conducted a review of such rules, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). On June 29, 1995, EPA deleted more than 200 Clean Air Act rules that were no longer legally in effect under the amended Clean Air Act. 60 FR 33915 (June 29, 1995).

On April 11, 1996, EPA simultaneously published a direct final notice of rulemaking and a notice of proposed rulemaking consisting of EPA's second phase of its revision effort. 61 FR 106050 (April 11, 1996). Where EPA determined that a regulation did not add substantial value to what is already contained in the law, or where there are alternative means to accomplish the regulatory end without restricting EPA's ability to respond to factual peculiarities in a timely and appropriate way, EPA determined that the regulation should be deleted. The rulemaking specified that EPA would withdraw any portions of the direct final rule that were the subject of filed adverse or critical comments. EPA received adverse comments on the revisions to 40 CFR 51.100(o), 40 CFR 51.101, 40 CFR 51.110(g) and 40 CFR 51.213 as published in the direct final rule and associated notice of proposed rulemaking within 30 days of publication in the **Federal Register** of the proposed rule and withdrew those portions of the direct final rule on June 14, 1996 (61 FR 30162). This final rule summarizes the comments received on these CFR sections and EPA's responses.

Removal of any rules from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to the publication of this rule, or which may be initiated in the future to readdress violations of the rules that occurred when the rules were still legally in effect. Removal of provisions on the ground that they reiterate or are redundant of statutory provisions does not affect any obligation or requirement to comply with such statutory provision.

II. Deletion and Modification of Unnecessary or Burdensome Rules

40 CFR 51.110(g)

Section 51.110(g) states that EPA encourages states, in developing their attainment plans, to identify alternative control strategies and the costs and benefits thereof. EPA proposed to delete this provision and rely on Clean Air Act sections 110(a)(2)(A) and 101(a)(3), as well as *Train* v. *NRDC*, 421 U.S. 60, 78–79 (1975) and *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–57 (1976), which make clear that a state is free to consider a broad range of factors in constructing its attainment plans.

Commenters suggest that without section 51.110(g) states may be hesitant to submit an implementation plan with provisions outside of the specific requirements of the CFR or Clean Air Act. As stated previously in the notice of proposed rulemaking, EPA agrees with the policies embodied in section 51.110(g). For that reason, EPA has decided to retain the provision in the CFR.

40 CFR 51.101 Stipulations

Section 51.101 states that nothing in part 51 should be construed to encourage states: to adopt implementation plans that do not protect the environment; to adopt plans that do not take into consideration cost-effectiveness and social and economic impact; to limit appropriate techniques for estimating air quality or demonstrating adequacy of control strategies; and otherwise to limit state flexibility to adopt appropriate control strategies or to attain and maintain air quality better than that required by a national standard. EPA proposed to delete this provision and rely on Clean Air Act sections 110(a)(2)(A) and 101(a)(3), as well as *Train* v. *NRDC*, 421 U.S. 60, 78–79 (1975) and *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–57 (1976), which make clear that a state is free to consider a broad range of factors in constructing its attainment plans.

Commenters suggested that section 51.101 should remain in the CFR because the flexibility available to States may not be clear if this section were removed. As stated previously in the notice of proposed rulemaking, EPA agrees with the policies embodied in section 51.101. For that reason, EPA has decided to retain the provision in the CFR.

40 CFR 51.100(o)

Section 51.100(o) defines reasonably available control technology (''RACT'') for the purpose of implementing secondary national ambient air quality standards (''NAAQS''). This definition is only used in the establishment of secondary NAAQS attainment dates and in the evaluation of State requests for extensions of state implementation plan submittals for secondary NAAQS.

Section 51.110(c) requires plans to provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and for maintenance of the standard after it has been attained.

Under the Clean Air Act of 1977, the test for approval of the attainment date in a SIP implementing a secondary