

## FIGURE 8

**▲ CHOKING HAZARD (1,2). Not for under 8 yrs.**

(f) *Alternatives to cautionary statements for individual product advertisements in catalogues and other printed materials.* Multiple identical full or abbreviated cautionary statements may be replaced with a single full cautionary statement under the following circumstances:

(1) If all products available for purchase within a catalogue require the same cautionary statement, that cautionary statement, in full, may appear on the front cover, or equally conspicuous location, of the catalogue in lieu of repeating the cautionary statement within the catalogue, provided that it is communicated to consumers that the cautionary statement applies to all products in the catalogue.

(2) If all products on one catalogue page or on two facing catalogue pages require the same cautionary statement, that cautionary statement, in full, may appear at the top of the page or pages in lieu of repeating the cautionary statement in each product advertisement, provided that it is communicated to consumers that the cautionary statement applies to all products on the catalogue page or pages.

(g) *Prominence and conspicuousness of labeling statements.* The type size of abbreviated cautionary statements shall be reasonably related to the type size of any other printed matter in the product advertisement, and must be in conspicuous and legible type by typography, layout, or color with other printed matter in the advertisement and separated from other graphic matter.

(h) *Business to Business Catalogue Exception.* The requirements of section 24(c) of the Federal Hazardous Substances Act, as amended by section 105 of the CPSIA, do not apply to catalogues and other printed materials distributed solely between businesses unless the recipient business is one that could be expected to be purchasing the product for the use of children (instead of for resale, e.g.). Examples of businesses that can be expected to be purchasing products for the use of children include day care centers, schools, and churches.

**Note:** This Appendix will not appear in the Code of Federal Regulations.

#### List of Relevant Documents

1. Memorandum from Robert Franklin, Directorate for Economic Analysis, to Barbara E. Parisi, Attorney, Office of General Counsel,

"Response to Comments Raising Economic Issues Associated with Section 105 of the Consumer Product Safety Improvement Act of 2008 (Concerning the Inclusion of Cautionary Labeling for Toys and Games in Catalogues and Other Printed Materials)," October 2008.

2. Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, to Barbara Parisi, Regulatory Affairs Attorney, Office of the General Counsel, "Response to NPR Comments and Revised Requirements for the Size and Placement of Cautionary Statements Specified in Section 105, Labeling Requirement for Advertising Toys and Games, of the CPSIA," October 21, 2008.

3. Memorandum from Barbara E. Parisi, Attorney, Office of the General Counsel, to the Commission, "Response to Comments Raising Questions Regarding the Scope of the Labeling Requirements for Advertising Toys and Games," October 24, 2008.

Dated: November 7, 2008.

**Todd A. Stevenson,**

Secretary, Consumer Product Safety Commission.

[FR Doc. E8-26964 Filed 11-14-08; 8:45 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

**RIN 1024-AD71**

#### Special Regulation: Areas of the National Park System, National Capital Region

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

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is finalizing regulations governing viewing of the Inaugural Parade by the Presidential Inaugural Committee. The rule also extends the permissible duration and extent of demonstrations and special events in Washington, DC, including the Inaugural, the Lighting of the National Christmas Tree and Christmas Pathway of Peace, the Cherry Blossom Festival, the Fourth of July Celebration, and the Smithsonian Folklife Festival.

**DATES:** *Effective Date:* November 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robbin Owen, National Park Service,

National Capital Region, National Mall and Memorial Parks, Division of Park Programs, 202-619-7225.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 8, 2008, the NPS proposed a rule that applies to activities of the Presidential Inaugural Committee (PIC) for the Inaugural. The rule also proposed to clarify the application process and extend the permissible duration of demonstrations and special events in Washington, D.C., including the Inaugural, the Lighting of the National Christmas Tree and Christmas Pathway of Peace, the Cherry Blossom Festival, the Fourth of July Celebration, and the Festival of American Folklife (73 FR 46215). Persons and organizations interested in submitting comments were asked to submit them through the Federal Rulemaking Portal at <http://www.regulations.gov> or to the National Park Service's Division of Park Programs at 1100 Ohio Drive, SW., Room 128, Washington, DC 20242. NPS also issued a news release that alerted the media to the proposed rule, and copies were available at the National Capital Region's Division of Park Programs, where permit applications are submitted. Copies were also mailed to past applicants who had requested a permit to demonstrate on Federal parkland at Inaugural Parades.

As noted in the preamble to the proposed rule, Pennsylvania Avenue, is among the world's most famous streets and is located in the heart of the Nation's Capital. Americans throughout history have marched, paraded, promenaded, and protested their way up and down Pennsylvania Avenue. NPS recognizes that the Inaugural is a national celebration event for the benefit of all citizens, and that it is not a private event. Furthermore, park areas along Pennsylvania Avenue, must be available to the public as well as demonstrators for viewing the Inaugural Parade.

In recent litigation, the U.S. District Court for the District of Columbia determined that the NPS's practice and procedure of submitting a permit application on behalf of the PIC violated its regulations with respect to the duration of special events and the timing of the submission of the application (*ANSWER Coalition v. Kempthorne*, 537 F.Supp.2d 183 (D.D.C. March 20, 2008)). The Court stated,

however, that “[i]f the government thinks it appropriate to lengthen the amount of time for which permits may be granted under the regulations—perhaps even only for the Inauguration period and no other—the government may explicitly amend the regulations that apply to all permit applicants.” 537 F.Supp.2d at 203–204.

The NPS issued a proposed rule to lengthen the permissible duration of any permit associated with Inaugural Day activities from 21 days to the period of time between October 24 through April 1. It would also ensure that the majority of Pennsylvania Avenue, National Historic Site (also known and referred to in this regulation as Pennsylvania Avenue, National Historic Park) is open to the public and demonstrators for the Inaugural Parade, regardless of viewpoint or the content of any message. In addition, the proposed rule would extend from three weeks to four months the duration of time that any permit may be issued for demonstrations or special events on the Ellipse and other designated park areas.

With respect to the Inaugural, the NPS’s proposed rule would create a regulatory priority use for limited, designated park areas for the PIC, the Armed Forces Inaugural Committee, and the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies, entities whose role in the Inaugural has traditionally necessitated such use. The DC Circuit’s opinion in *A Quaker Action Group v. Morton*, 516 F.2d 717 (DC Cir. 1975), provided the legal basis for NPS’s priority use regulations. There, the Court said that “\* \* \* if the Park Service wishes to enforce the regulations regarding a permit for public gatherings in the regulated areas, it must require a permit for every public gathering in those areas. \* \* \* or, if the Park Service wishes, it could retain a system of NPS events, reserve time in, say, Lafayette Park, and even publish advance schedules.” 516 F.2d at 729 (emphasis in original).

Among the limited number of park areas impacted by the proposed rule would be portions of the National Mall and the Inaugural parade route on Pennsylvania Avenue, from 3rd to 15th Streets, as designated on the proposed rule’s maps. The designated priority-use areas along the parade route would be relatively small, leaving the majority of park areas available to the public and demonstrators regardless of viewpoint or the content of any message. The proposed rule would also extend the duration and extent of demonstrations and special events in Washington, DC, including the Inaugural, the Lighting of the National Christmas Tree and

Christmas Pathway of Peace, the Cherry Blossom Festival, the Fourth of July Celebration, and the Festival of American Folklife. Finally, the proposed rule would make explicit the long-standing NPS policy of not accepting permit applications for demonstrations and special events earlier than one year in advance of the proposed event or the beginning of the proposed event’s set-up.

The time period for the receipt of comments on the NPS’s proposed rule closed on September 22, 2008. More than 2,900 comments were received by the NPS, almost all of them directly submitted to the Federal Rulemaking Portal at <http://www.regulations.gov>. The length of the submitted comments generally ranged from several sentences to a half a page. Almost all of the comments were from individuals who resided in the United States. No comment was received from ANSWER Coalition (or their attorneys), plaintiff in the pending lawsuit *ANSWER Coalition v. Kempthorne*, Civil No. 05–0071 PLF (D.D.C.), although they were provided a copy of the proposed rule.

The NPS appreciates the time and effort expended by those who submitted comments. The NPS has reviewed the comments, and provides responses to the issues raised in the following section. The NPS also explains the basis for the final rule, which contains three clarifications as well as minor adjustments of the regulatory maps’ legends to make them more readable in the Code of Federal Regulations.

#### **Response to Comments and Explanation of the Final Regulations**

The vast majority of comments received focused on the Inaugural Parade and took issue with the NPS’s designation of specific park areas for PIC bleachers along Pennsylvania Avenue, between 7th Street and 15th Streets. Almost 1,700 comments said that the proposed regulations would improperly “privatize” the parade route; interfere with, distance, or limit the public’s ability to view the Inaugural Parade; or prevent demonstrators from exercising their First Amendment rights. Some complained that these parade route sidewalks should not be reserved for “the elite few,” or “the exclusive use of privileged elite and Wall Street donors,” while others stated that the rule established a “discriminatory reservation of spectator space.”

A few comments stated that the PIC should not receive any special assistance from the NPS in securing permits. More than 200 comments said that the NPS should not allow the PIC to have any designated bleacher areas.

Approximately 570 comments said that the PIC should only have the existing areas around the White House and Lafayette Park, or the area around the Capitol for the Inaugural swearing-in ceremony, and one comment said that the number of PIC bleachers around the White House was excessive. Twenty comments said Freedom Plaza should be available for public viewing of the Inaugural Parade. Some comments said the proposed rule contradicts NPS policy. Others said that the public should have total and unrestricted access to Federal Parkland.

After careful review of the issues raised, the NPS believes that the rule’s allocation of space and time for set-up and take-down of necessary structures is a fair and equitable distribution of park areas, and is consistent with the First Amendment, the Presidential Inaugural Ceremonies Act, and NPS policy expressed in its existing regulations and Management Policies ¶ 8.6 (2006).

The Supreme Court has long recognized that government may constitutionally require reasonable time, place and manner restrictions on expressive activity, and that the NPS is responsible for the management, maintenance, and regulation of the National Parks under 16 U.S.C. 1, 1a–1, and 3. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 289–90, 293 (1983). Furthermore, “[r]egulations of the use of a public forum are not ‘inconsistent with civil liberties’ but \* \* \* [are] one of the means of safeguarding the good order upon which [civil liberties] ultimately depend.” *Thomas v. Chicago Park District*, 534 U.S. 316, 323 (2002), quoting *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941).

The allocations in the final rule comport with the Court of Appeal’s opinion in *A Quaker Action Group v. Morton*. The final rule also fulfills the Department of the Interior’s obligations under the Presidential Inaugural Ceremonies Act to provide areas on Federal Parkland for use by the Inaugural Committee for Inaugural activities and still provide access for the conduct of demonstrations. Section 501(1) of the Act expressly designates the Inaugural Committee as “the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities associated with the ceremony” (36 U.S.C. 501(1)). Section 503(a) of the Act provides that the “Secretary of the Interior may grant to the Inaugural Committee a permit to use the reservations or grounds during the Inaugural period, including a reasonable

time before and after the Inaugural period” (*Id.* § 503(a)).

The final rule does not “privatize” the parade route, is not discriminatory, and does not interfere with, distance, or limit the public’s ability to view the Inaugural Parade. Nor does it prevent the exercise of First Amendment rights. Rather, as the attached maps of the parade viewing area detail, the final rule ensures that the majority of Pennsylvania Avenue, National Historic Park is open to the public. Consistent with the First Amendment and other long-standing NPS regulations, the majority of Pennsylvania Avenue, National Historic Park is open to demonstrators regardless of viewpoint or the content of message. The allocations in the final rule respond to the question on this subject posed by the District Court in *A.N.S.W.E.R. Coalition v. Kempthorne*, 537 F.Supp.2d at 205–206.

Neither the proposed nor final rule alters the existing, twenty-eight year old regulatory preference for the PIC for the White House sidewalk and all but the northeast quadrant of Lafayette Park for Inaugural Day, which NPS believes is still reasonable and necessary. Adopted in 1980 in accordance with the Presidential Inaugural Ceremonies Act (45 FR 84997), this regulatory preference continues to provide these areas for use by the Inaugural Committee for Inaugural activities, while also providing access for demonstration conduct in the vicinity of the White House. As the NPS explained in adopting this provision, access to the PIC area is controlled by the Inaugural Committee through a reserved ticket system, and the northeast quadrant of Lafayette Park and other park areas in the White House area and elsewhere are available for demonstration activity under the NPS’s regular demonstration permit system (45 FR at 84998).

Besides the northeast quadrant of Lafayette Park, other park areas in the White House area and elsewhere remain available for demonstration activity under today’s final rule. These open park areas include areas just north of the White House such as Farragut and McPherson Squares, Franklin Park, and most of Pennsylvania Avenue, National Historic Park. Pennsylvania Avenue, National Historic Park, which became Federal Parkland in 1995, begins near the Capitol and runs between 3rd and 15th Streets. While Americans have historically marched, paraded, promenaded, and protested up and down Pennsylvania Avenue, it has also been the site where PIC has traditionally located bleachers for the Inaugural Parade.

For example, on Federal Parkland adjacent to Pennsylvania Avenue, between 3rd and 15th Streets, there were 49 PIC bleachers for the 2005 Inaugural; 45 PIC bleachers for the 2001 Inaugural; and 36 PIC bleachers for the 1997 Inaugural. Under this final rule, most of Pennsylvania Avenue, National Historic Park is allocated to the public and demonstrators. Specifically, 7,024 linear feet or 70 percent of Pennsylvania Avenue, National Historic Park that abuts the parade route, which also comprises 625,882 square feet or 84 percent of Pennsylvania Avenue, National Historic Park, is open to the public and demonstrators regardless of viewpoint or the content of any message. These are expansive areas that fully allow the public and demonstrators to observe the Inaugural Parade, and the parade participants to see them.

One comment complained that the proposed rule was an attempt by the current “Administration to co-opt the inaugural parade route for use by its own constituents.” This comment is obviously inaccurate because the current administration is leaving office. A few comments inaccurately complained that the regulations “set aside prime swaths of the Inaugural route” for PIC. As depicted in the rule’s block-by-block maps of Pennsylvania Avenue, National Historic Park, there are many open and expansive areas along the Inaugural route which are not designated for PIC bleachers and which provide prime venues to observe the Parade. These open areas include the north and south sides between 3rd and 4th Streets, John Marshall Park (located on the north side and between the Canadian Embassy and the United States Courthouse, and, at 446 feet by 210 feet, one of the largest park areas that make up Pennsylvania Avenue, National Historic Park), most of the north side between 4th and 6th Streets, most of the north and south sides between 6th and 7th Streets, most of the north and south sides between 7th and 9th Streets, all of the north and south sides between 9th and 10th Streets, most of the north and south sides between 10th and 12th Streets, all of the north side between 12th and 13th Streets, most of the south side between 13th and 14th Streets, the western edge of Freedom Plaza, and most of the north and south sides between 14th and 15th Streets. The final rule’s maps also designate five areas that are open to members of the public who have disabilities: Portions of the north and south sides between 4th and 6th Streets, a portion of the north side between 7th

and 9th Streets, and portions of the Freedom Plaza and Pershing Park sidewalks between 13th and 15th Streets.

The rule also substantially reduces the area that in the past has been designated for the PIC’s bleachers. Under the rule, PIC bleacher areas along the parade route have now been reduced to 1,284 linear feet or 13 percent of Pennsylvania Avenue, National Historic Park that abuts the street, which also comprises 63,936 square feet or 9 percent of Pennsylvania Avenue, National Historic Park. These designated areas for PIC could accommodate 24 bleachers and 8,790 ticket holders, based on the PIC’s 2005 set-up.

Because the final rule does not allocate to the PIC certain park areas that have been allocated to PIC in past Inaugural Parades, the final rule substantially increases the park areas available to the public and demonstrators. In 2005, these no-longer-allocated areas contained 25 PIC bleachers that could accommodate 11,344 PIC ticket-holders.

At least one comment noted that many PIC bleacher seats on Pennsylvania Avenue, National Historic Park during the last Inaugural Parade were empty because ticket-holders elected not to use their seats. The final rule includes a “10-minute parade rule” to address such concerns: If a PIC bleacher seat in Pennsylvania Avenue, National Historic Park or Sherman Park has not been claimed by the ticket-holder ten minutes before the Inaugural Parade is scheduled to pass the bleacher’s block, then any member of the public, without regard to viewpoint or content of the message, may at that time occupy the unclaimed seat. The NPS will require PIC to notify ticket-holders (and include a statement on each ticket) when they need to be in the bleacher to avoid losing their seats. The NPS will also require that PIC place marshals at PIC bleachers to assist ticket-holders and inform the NPS or the United States Park Police (Park Police) of any unclaimed seats under the 10-minute parade rule. Should the NPS or Park Police determine that PIC is not in compliance, appropriate action will be taken.

Some comments raised concerns about improving movement through any future Inaugural access points, so that people can reach park areas along the parade route more easily. Past Inaugural access points for Pennsylvania Avenue, National Historic Park have not been located on Federal Parkland nor operated by Park Police personnel. They have been based upon a security

determination by the United States Secret Service. As in the past, however, once the NPS obtains information about access points, it will immediately inform the media and all permit-holders, so that ticket-holders, the public, and demonstrators might better understand where access points are located and how people can get to the various park areas along the parade route.

Traditionally, each PIC decides how, and to whom, to distribute PIC bleacher seat tickets. In any event, 36 U.S.C. 510 of the Presidential Inaugural Ceremonies Act requires that the Inaugural Committee report to the Federal Elections Commission any donation of aggregate value greater than \$200, including the donation's amount, date received, and the name and address of the donor.

The final rule is both fair and reasonable. At any Inaugural Parade, there will be people lawfully standing or sitting next to one another who may have and express different viewpoints and messages. In this country, expression of views and messages is what the First Amendment protects. "It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." *Street v. New York*, 394 U.S. 576, 592 (1969). And courts have properly identified the Federal Parkland in Washington D.C.'s monumental core as a "location in the heart of our nation's capital [which] makes it a prime location for demonstrations. It is here where Martin Luther King, Jr. delivered his famous 'I Have a Dream' speech, where both sides of the abortion debate have staged their passionate demonstrations, and where on any given day one may witness people gathering to voice their public concerns." *Friends of the Vietnam Memorial v. Kennedy*, 116 F.3d 495, 496 (DC Cir. 1997). NPS encourages all Inaugural parade viewers to understand and respect the exercise of First Amendment rights by others, and the Park Police will take enforcement action only when there is a violation of the law.

The final rule allows the PIC to place portable public bathrooms at designated areas along the parade route. In addition, the final rule designates the traditional areas necessary for the television, radio and other media for broadcasting and reporting on the parade and related activities, as well as the traditional areas necessary for the Armed Forces Inaugural Committee for parade support structures for monitoring and managing the parade

itself. And the final rule designates an area in front of the John A. Wilson Building for the District of Columbia's reviewing stand, and other areas for individuals with disabilities to view the parade.

None of the comments took issue with the necessity for, or size of, these areas. The modest allocations include 23,764 square feet, or 3 percent of the Pennsylvania Avenue, National Historic Park, for the Armed Forces Inaugural Committee parade control area; 1,346 square feet, or less than 1 percent of the park, for the District of Columbia's reviewing stand; 7,907 square feet, or 1 percent of the park, for the media area; and 456 square feet, or less than 1 percent of the park, for the parade announcer stands.

While a few comments said that designations on the National Mall infringe on the public's right of access and free speech, the final rule designates appropriate areas on the National Mall not only for ticketed guests for the Inaugural swearing-in ceremony, but also for members of the general public, the placement of media stands, and the assembly and staging of parade units. These designated areas support traditionally necessary Inaugural activities. The Armed Forces Inaugural Committee needs to assemble, stage, secure, and weather-protect the pre-Inaugural Parade components and floats on the National Mall between 14th and 1st Streets. And the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies needs to site jumbotrons and sound towers so that the Joint Congressional Committee's standing room ticket-holders can observe the Inaugural ceremony between 4th and 1st Streets, and members of the general public can observe it between 7th and 4th Streets. In response to one comment, the NPS will work with the PIC and others on the supply and placement of jumbotrons on the National Mall for better viewing by members of the general public. In response to another comment, the final rule corrects a typographical error in the text of the proposed rule at (g)(4)(iii)(C)(2), in order to place the 150-foot by 200-foot media area in its traditional location east of 7th Street on the National Mall.

One comment suggested that the text identifying the Inaugural set-up and take-down locations in the proposed rule was broader than shown on the maps that are part of the proposed rule. The maps were intended to focus only on Pennsylvania Avenue, National Historic Park and Sherman Park, because of their depiction of the placement of assorted structures. Some

comments indicated that the lengthened set-up and take-down timeframe was excessive, and would therefore limit free speech and assembly.

The NPS respectfully disagrees, especially because NPS is unaware of instances in the past where set-up and take-down activity has interfered with First Amendment rights. Inaugural-related construction is complex and extensive, and requires a reasonably adequate time period. Traditionally, set-ups and take-downs are done in stages, and an entire designated area may not be needed throughout the designated period. Accordingly, consistent with public safety, the portions of designated areas that are not immediately needed for set-up and take-down will remain open to the public and for demonstration and special event activity.

The final rule sets specific set-up and take-down times that the NPS has determined are reasonably necessary for the erection and removal of the stands, bleachers, media and parade support structures in the various designated park areas. The set-up and take-down times determined necessary under the rule are from November 1 through March 1 for the White House sidewalk and Lafayette Park, December 7 through February 10 for Pennsylvania Avenue, National Historic Park and Sherman Park, and January 6 through January 30 for the National Mall between 14th and 1st Streets.

Some comments stated that Pennsylvania Avenue, should stay open to the driving and walking public at all times. One comment requested that the rule not restrict "reasonable signage" on the parade route. Some comments objected to any restrictions on public access to the Inaugural Parade, recommending instead cancellation of the parade in the face of a security threat. Some comments assumed that the proposed rule would limit public access to the parade in order to provide an appropriate level of security for the President, and then suggested alternative approaches to protecting the President (e.g., improving motorcade vehicles, adding additional escorts, letting Secret Service manage security.) One comment said that the rule needs to weigh safety against the "needs for freedom in a democracy," while another comment said that officials should not employ additional security measures. One comment suggested that logjams at public access security access points could be reduced by establishing more access points to the entire parade route.

The issues raised by these comments are outside the jurisdiction of the NPS and beyond this regulatory effort.

Pennsylvania Avenue, itself is under the jurisdiction of the District of Columbia, and issues related to Inaugural Parade security and access points are a matter for the United States Secret Service, who makes the security-based determinations such as what may be allowed on the Inaugural Parade sidewalks and the number and locations of access points.

The Smithsonian Institution requests that the final rule use the name "Smithsonian Folklife Festival" instead of "Festival of American Folklife," and clarify the chart at 36 CFR 7.96(g)(4)(ii)(D) to indicate a 10-week time period for this event as intended by the proposed rule. NPS has included these changes in the final rule. One comment expressed confusion regarding whether the Cherry Blossom Festival's two-week set-up and take-down time period is in addition to the two weeks designated for the event itself. It is, and the final rule contains clarifying changes.

There were no comments regarding the proposed rule's incorporation of the long-standing NPS written policy not to accept permit applications for demonstrations and special events earlier than one year in advance of the proposed event, or the beginning of the event set-up if it is earlier. Thus, the final rule requires applications to be submitted no more than one-year before the date of the event including its set-up and take-down time. For example, the NPS would accept on January 1, 2009 an application for January 1, 2010, but would not accept on January 1, 2009 an application for January 1 for the next three years, or for January 1 and February 1, 2010.

#### *Effective Date*

Pursuant to 5 U.S.C. 553(d)(3) and 318 DM 4.7 B(1)(ii), the rule is effective immediately so that the NPS may effectively perform its duties under the Presidential Inaugural Ceremonies Act, manage activities on Federal Parkland associated with the upcoming 2009 Inaugural, and allow for any judicial challenge to occur in a timely manner. In addition, the rule is not a "major rule" for purposes of the Congressional Review Act, 5 U.S.C. Chapter 8, because it does not meet the Act's definition of a "major rule" at 5 U.S.C. 804(2).

#### **Compliance With Other Laws**

##### *Regulatory Planning and Review* (Executive Order 12866)

This document is a significant rule and is subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

1. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

4. OMB has determined that this rule raises novel legal or policy issues.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications.

#### *Federalism (Executive Order 13132)*

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

#### *Civil Justice Reform (Executive Order 12988)*

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

#### *Paperwork Reduction Act*

This regulation requires information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of special park uses permits.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) according to Departmental guidelines in 516 DM 6 (49 FR 21438), to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. We have determined that the proposed rule is categorically excluded under 516 DM 6, Appendix 7.4(10), insofar as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it, or introduce incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it, or cause conflict with adjacent ownerships or land uses, or cause a nuisance to adjacent owners or occupants.

#### *Government-to-Government Relationship With Tribes*

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22961), and 512 DM 2, the Department will consult with federally recognized tribal governments throughout the development of the regulation to jointly evaluate and address the potential effects, if any, of the proposed regulatory action.

#### **List of Subjects in 36 CFR Part 7**

National Parks, Special events.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set forth below:

#### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

■ 1. The authority citation for part 7 is revised to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under 36 U.S.C.

501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201.07 (2001)

■ 2. Revise § 7.96 (g)(4) to read as follows:

**§ 7.96 National Capital Region.**

\* \* \* \* \*

(g) \* \* \*

(4) *Permit processing.* (i) NPS processes permit applications for demonstrations and special events in order of receipt. NPS will not accept applications more than one year in advance of a proposed continuous event (including set-up time, if any). Use of a

particular area is allocated in order of receipt of fully executed applications, subject to the limitations in this section.

(ii) Specific national celebration events have priority use of particular park areas as shown in the following table:

The following event . . .	Has priority use of the following area . . .	At the following time . . .
(A) Lighting of the National Christmas Tree and Christmas Pathway of Peace.	Northern half of the oval portion of the Ellipse	The last four weeks in December as well as necessary set-up and take-down between October 1 through February 1.
(B) Cherry Blossom Festival .....	Park areas adjacent to the Tidal Basin and the sidewalk areas adjacent to Constitution Avenue, between 15th & 17th Streets NW.	Two weeks usually in late March or early April as well as the an additional two weeks for the necessary set-up and take-down.
(C) Fourth of July Celebration .....	Washington Monument Grounds and the Lincoln Memorial Reflecting Pool area.	Time required for necessary staging and fireworks set-up and take-down, totaling three weeks in late June and early July.
(D) Smithsonian Folklife Festival .....	The area bounded on the south by Jefferson Drive NW; on the north by Madison Drive, NW; on the east by 7th Street, NW; on the west by 14th Street, NW.	For a two-week period in approximately late June and early July and an additional eight weeks for the necessary set-up and take-down.
(E) Columbus Day Commemorative Wreath-Laying.	At the Columbus statue on the Union Plaza ...	On Columbus Day.
(F) Presidential Inaugural Ceremonies .....	See paragraph (g)(4)(iii) of this section .....	See paragraph (g)(4)(iii) of this section.

(iii) In connection with Presidential Inaugural Ceremonies the following areas are reserved for priority use as set forth in this paragraph.

(A) The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant for the exclusive use of the Presidential Inaugural Committee on Inaugural Day.

(B) Portions of Pennsylvania Avenue, National Historic Park and Sherman Park, as designated in the maps included in paragraph (g)(4)(iii)(E) of this section, for the exclusive use of the Presidential Inaugural Committee on Inaugural Day for:

(1) Ticketed bleachers viewing and access areas, except that members of the public may use a ticketed bleacher seat that has not been claimed by the ticket holder 10 minutes before the Inaugural Parade is scheduled to pass the bleacher's block;

(2) Portable toilets, except that they will be available to the public;

(3) Television and radio media and Armed Forces Inaugural Committee parade support structures;

(4) The area in front of the John A. Wilson Building for the District of Columbia reviewing stand;

(5) Viewing areas designated for individuals with disabilities, except that they will be available to any disabled persons.

(C) The area of the National Mall between 14th and 1st Streets, for the exclusive use of the Armed Forces Inaugural Committee on Inaugural Day for the assembly, staging, security and weather protection of the pre-Inaugural parade components and floats on Inaugural Day, except for:

(1) The placement of jumbotrons and sound towers by the Architect of the Capitol or the Joint Congressional

Committee on Inaugural Ceremonies so that the Inaugural ceremony may be observed by the Joint Congressional Committee's ticketed standing room ticket holders between 4th and 1st Streets and the general public between 7th and 4th Streets; and

(2) A 150-foot-by-200-foot area on the National Mall just east of 7th Street, for the exclusive use of the Presidential Inaugural Committee for television and radio media broadcasts on Inaugural Day.

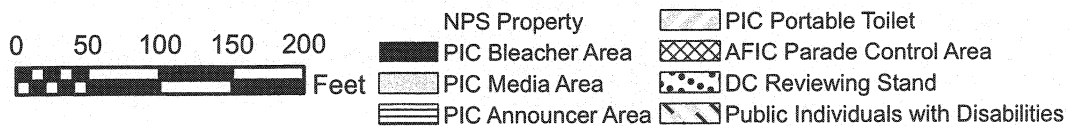
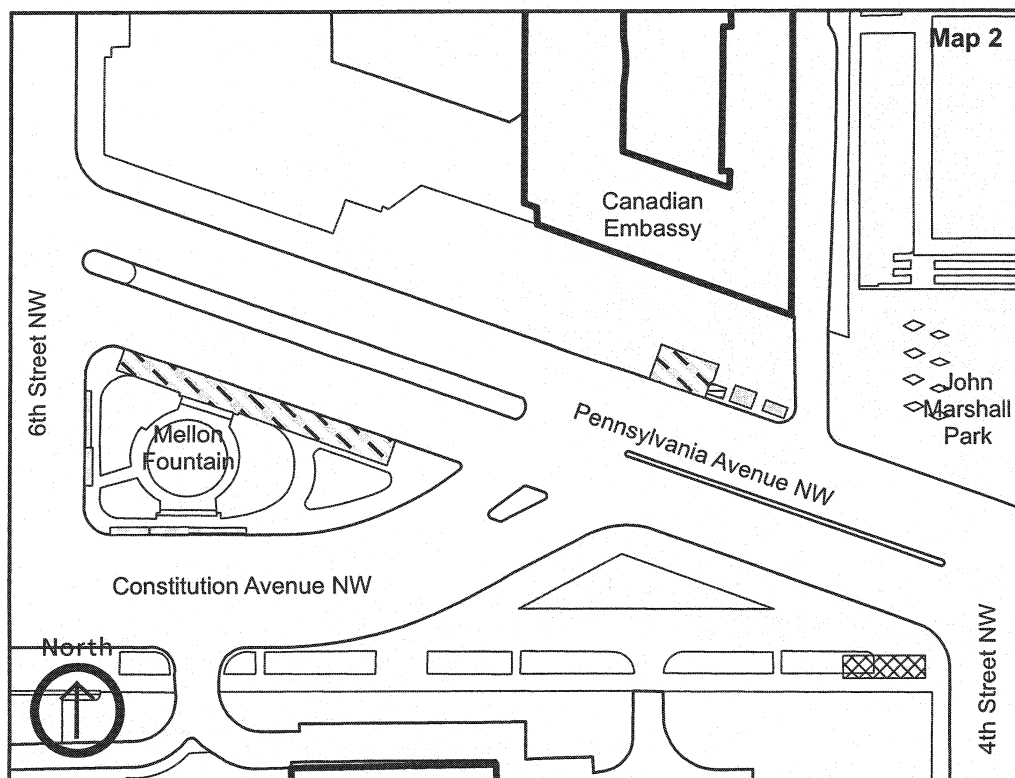
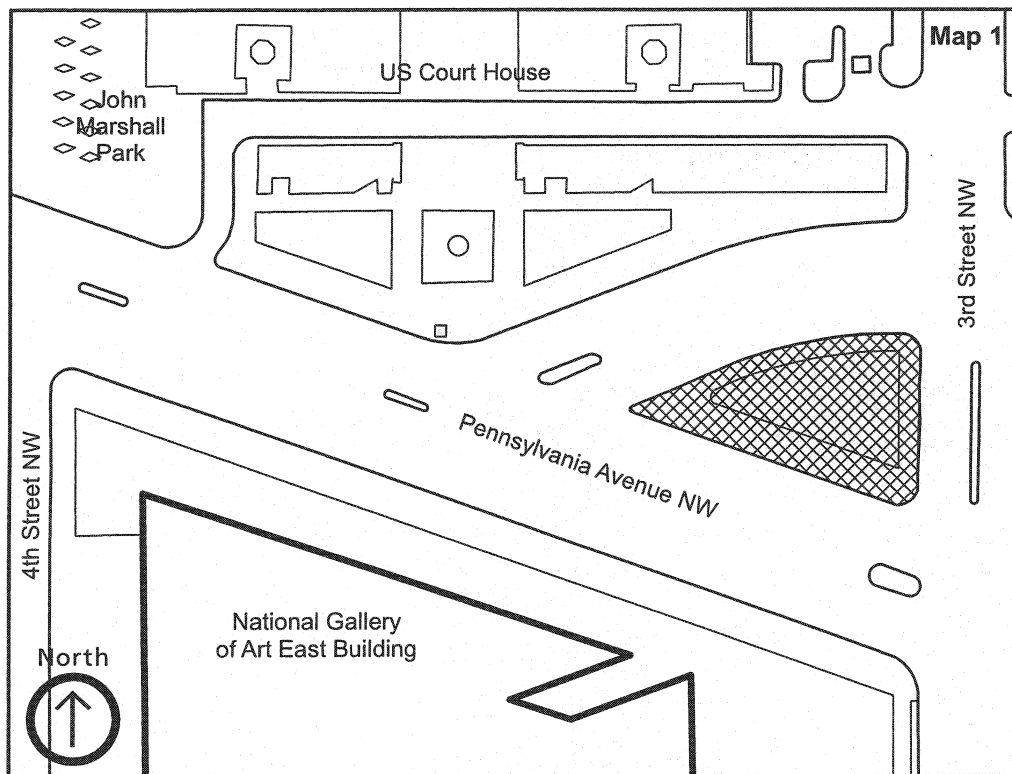
(D) The Presidential Inaugural Committee may also use portions of its designated areas reasonably necessary for setting up and taking down stands, bleachers, media and parade support structures as shown in the following table:

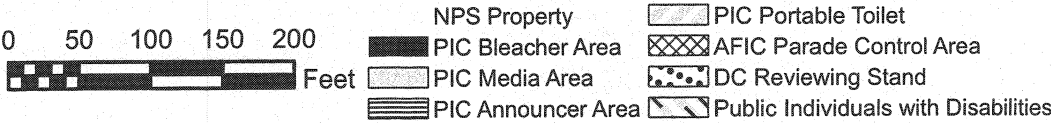
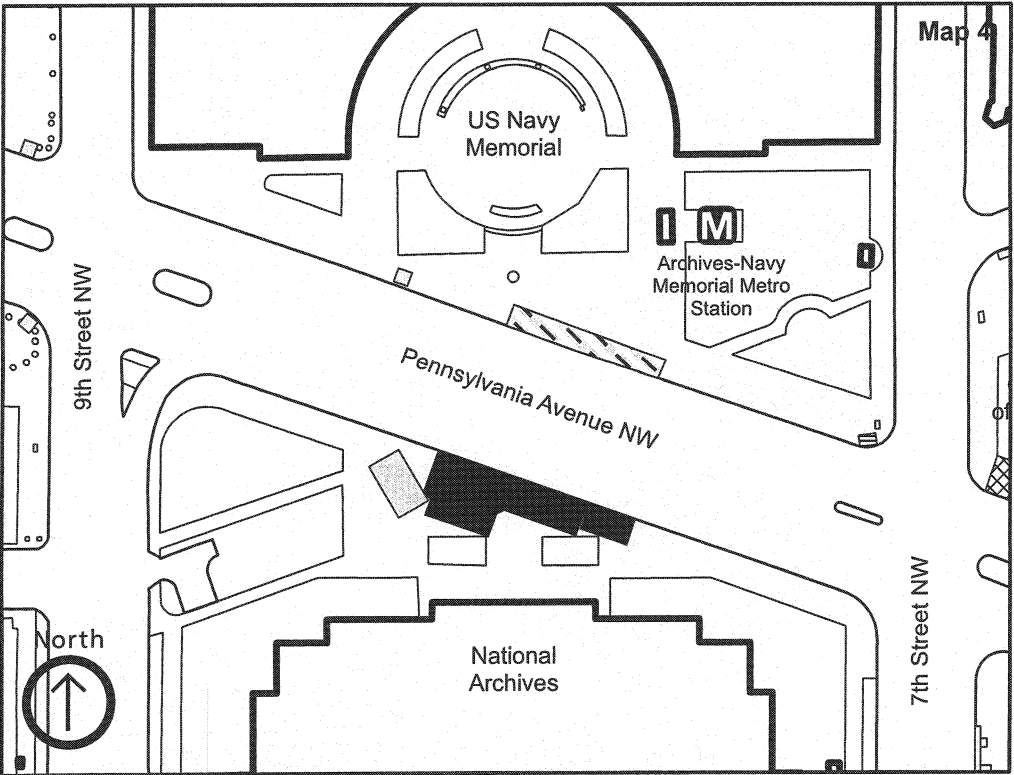
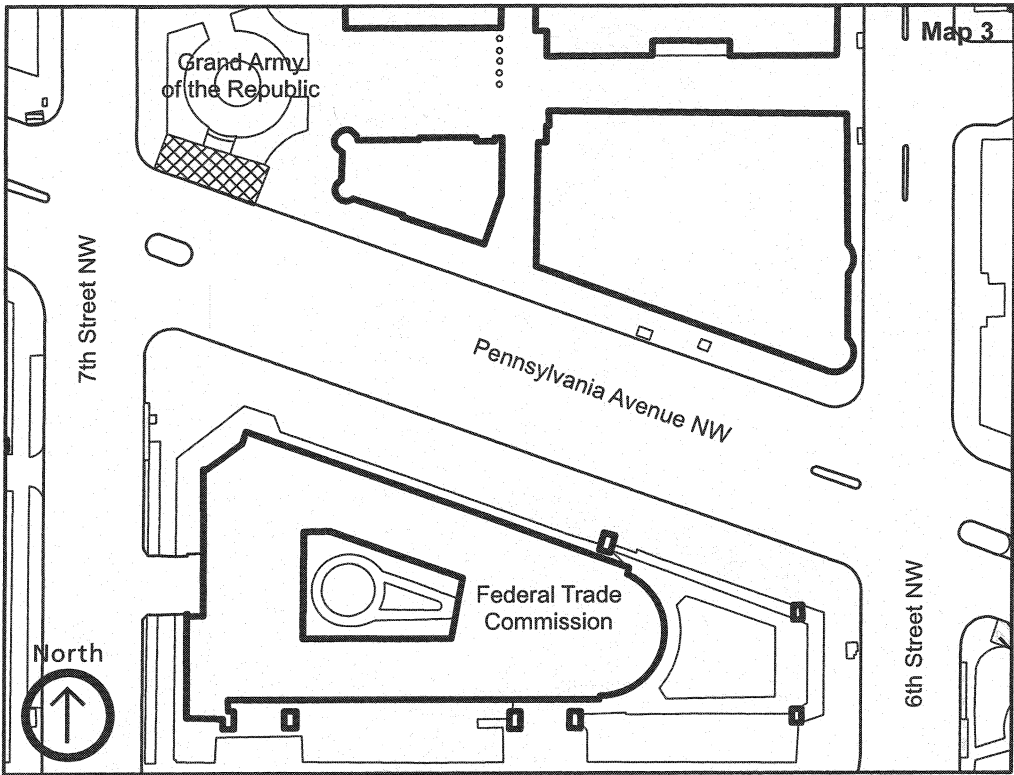
The Presidential Inaugural Committee may use the following area . . .	During the following period . . .
(1) The White House sidewalk and Lafayette Park .....	November 1 through March 1.
(2) Pennsylvania Avenue, National Historic Park and Sherman Park .....	December 7 through February 10.
(3) The National Mall between 14th and 1st Streets .....	January 6 through January 30.

(E) Maps of designated portions of Pennsylvania Avenue, National Historic Park and Sherman Park referred to in

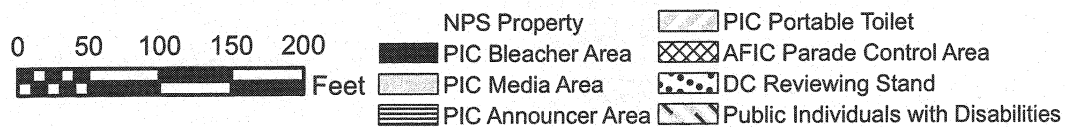
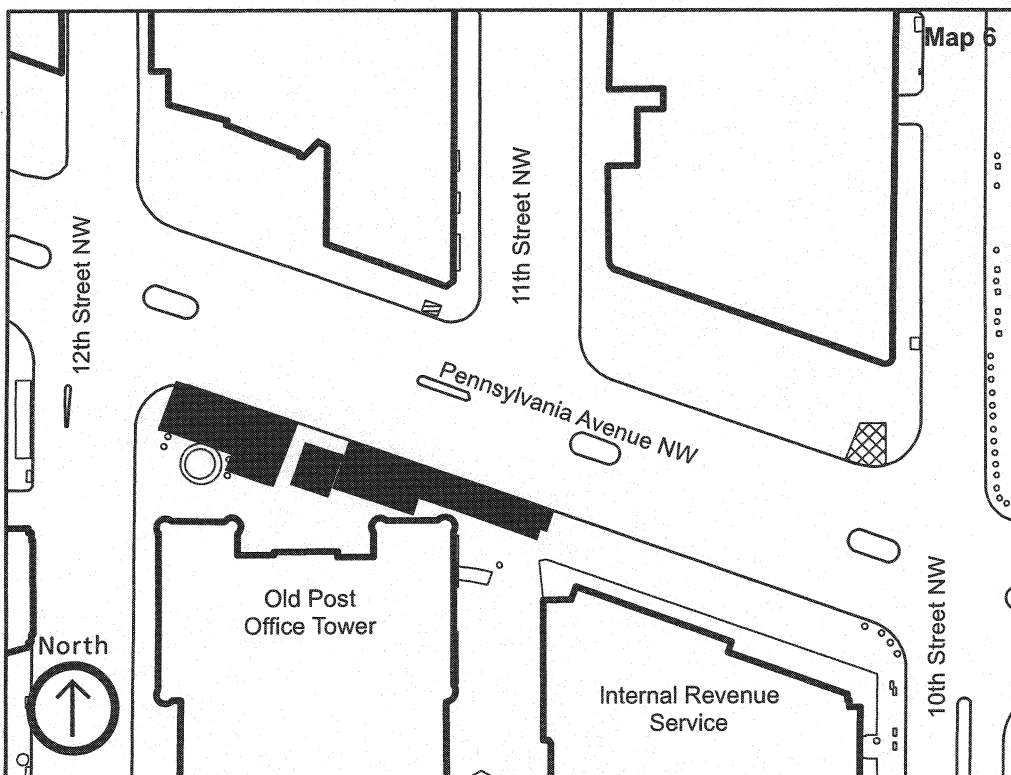
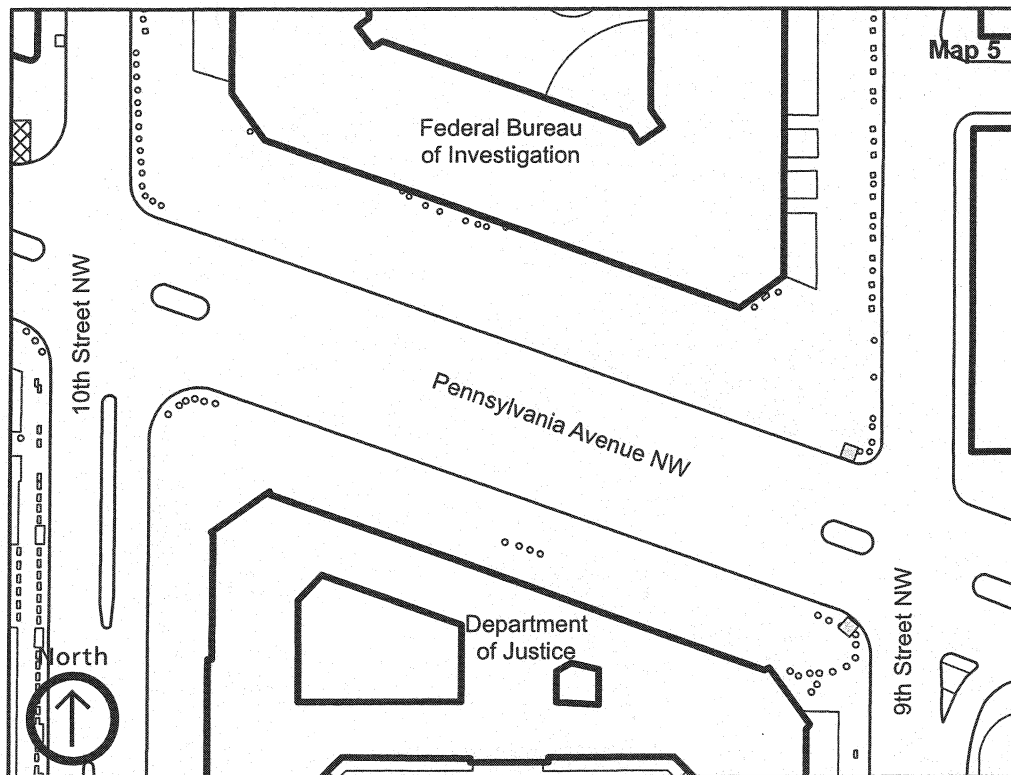
paragraph (g)(4)(iii)(B) of this section are as follows:

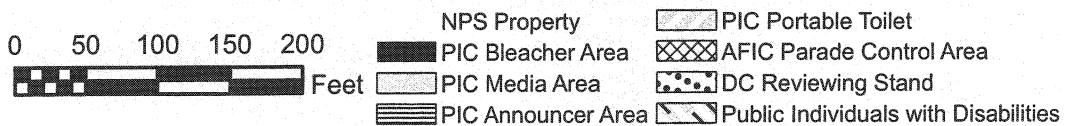
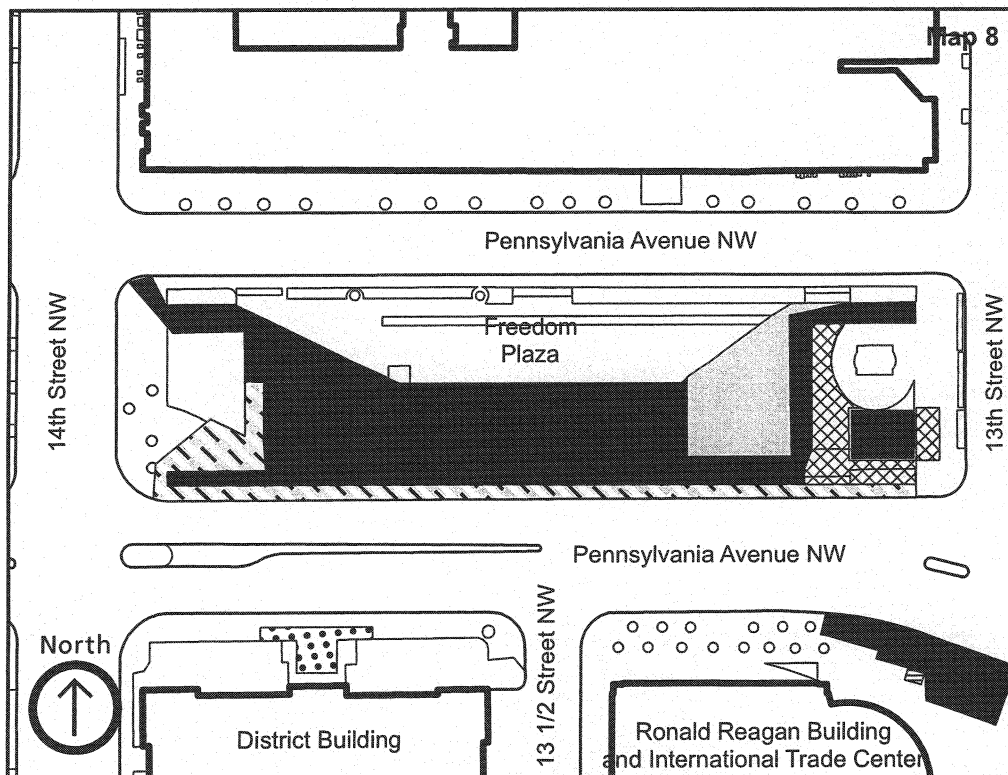
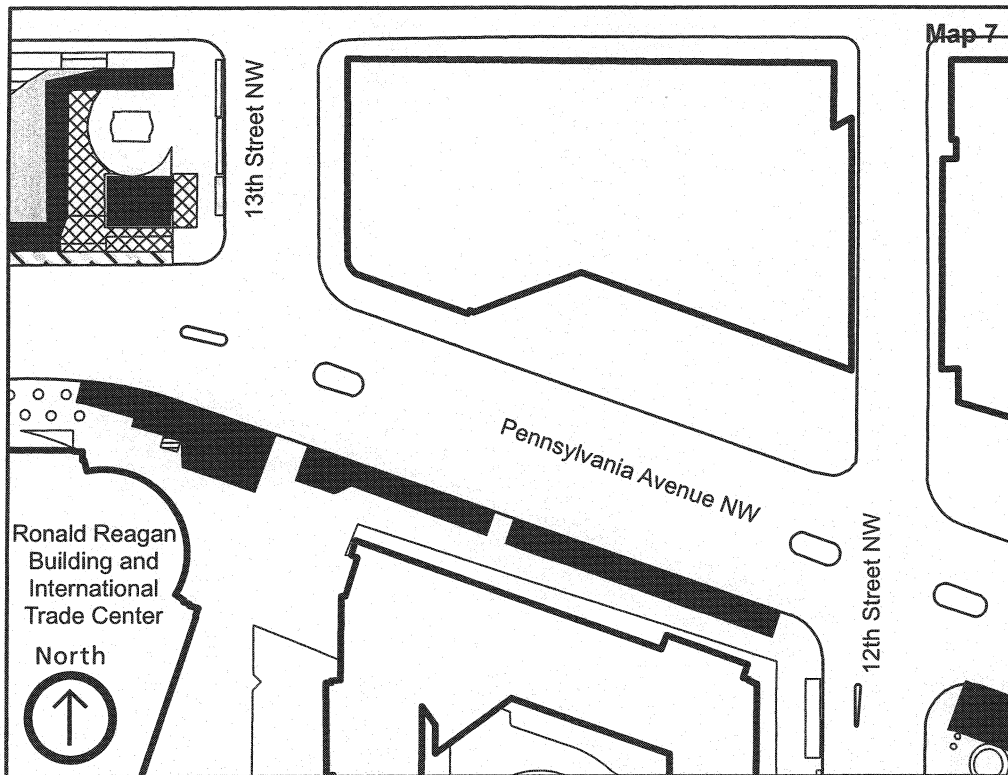
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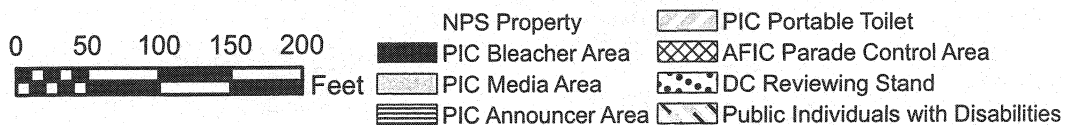
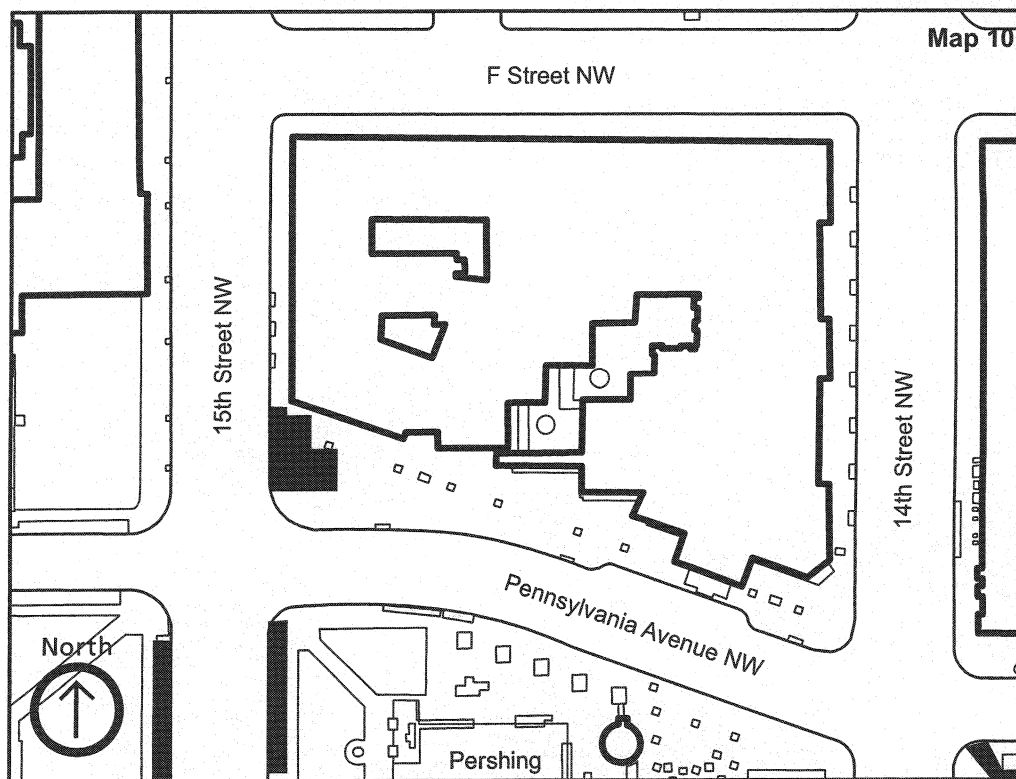
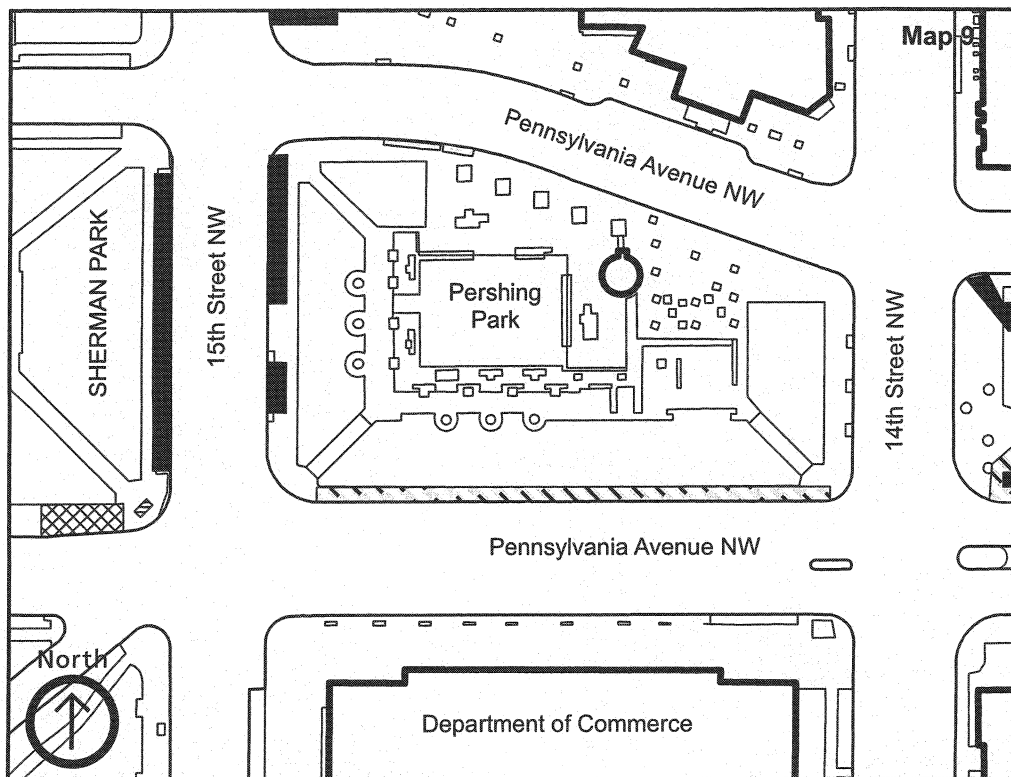












(iv) Other demonstrations or special events are permitted in park areas under permit for the National Celebration Events listed in paragraph (g)(4)(ii) of this section to the extent that they do not significantly interfere with the National Celebration Events. Except for Inaugural ceremony activities, no activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(v) NPS will issue a permit for a demonstration on the White House sidewalk and in Lafayette Park at the same time only if the requirements of this paragraph are met. The organization, group, or other sponsor of the demonstration must undertake in good faith all reasonable action, including the provision of sufficient marshals, to ensure that the sponsor: (A) Maintains good order and self-discipline in conducting the demonstration and any necessary movement of persons; and

(B) Observes the numerical limitations and waiver provisions described in paragraphs (g)(5)(i) and (ii) of this section.

(vi) NPS will issue permits authorizing demonstrations or special events for the periods shown in the following table. NPS may extend these periods for demonstrations only, unless another application requests use of the particular area and that application precludes double occupancy.

Park area	Permit validity period	Permit validity period for inaugural activities
(A) White House area, except the Ellipse.	7 days .....	Between October 24 through April 1 for reasonable and necessary set-up and take-down activities for the White House Sidewalk and Lafayette Park.
(B) The Ellipse and all other park areas.	4 months .....	Between December 7 through February 10 for reasonable and necessary set-up and take-down activities for Pennsylvania Avenue, National Historic Park and Sherman Park.

\* \* \* \* \*

Dated: October 31, 2008.

**Lyle Lavery,**

*Assistant Secretary of the Interior for Fish and Wildlife and Parks.*

[FR Doc. E8-27047 Filed 11-14-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 11

[Docket No.: PTO-C-2005-0013]

RIN 0651-AB55

#### Changes to Representation of Others Before the United States Patent and Trademark Office

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is adopting new rules governing the conduct of individuals registered to practice before the Office. The Office is adopting a new rule that provides for an annual practitioner maintenance fee for those recognized to practice before the Office in patent cases. These changes will enable the Office to maintain a roster of registered practitioners and, consequently, better protect the public from unqualified practitioners. The Office is also making conforming amendments to 37 CFR 1.21.

**DATES:** *Effective Date:* December 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Harry I. Moatz, Director of Enrollment

and Discipline (OED Director), directly by phone at (571) 272-6069; by facsimile to (571) 273-6069 marked to the attention of Mr. Moatz; or by mail addressed to: Mail Stop OED-Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

**SUPPLEMENTARY INFORMATION:** Congress granted express authority to the Office to “establish regulations, not inconsistent with law, which \* \* \* may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office.” 35 U.S.C. 2(b)(2)(D). Congress also provided that the “Director may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, \* \* \* any person, agent, or attorney \* \* \* who does not comply with the regulations established under section 2(b)(2)(D) of this title. \* \* \* The reasons for any such suspension or exclusion shall be duly recorded.” 35 U.S.C. 32. In so doing, Congress vested express and implied authority with the Office to prescribe rules of procedure that are applicable to practitioners recognized to practice before the Office. Section 41(d) of Title 35, United States Code, authorizes the establishment of fees for services related to patents and not otherwise specified.

On December 12, 2003, the Office published *Changes to Representation of Others Before the United States Patent and Trademark Office*, a Notice of Proposed Rule Making in the **Federal Register** (68 FR 69441), 1278 *Off. Gaz. Pat. Office* 22 (Jan. 6, 2004), proposing to amend parts 1 and 2 of the rules and

procedures governing patent and trademark prosecution (Title 37 of the Code of Federal Regulations), reserving part 10 and introducing part 11. Included in the proposed rules for part 11 were rules governing, *inter alia*, an annual fee for practitioners and procedures for both collecting the fee and informing practitioners who do not pay the fee of their situation—principally rules 1.21, 11.8 and 11.11. One hundred sixty-three written comments were received. Ninety of these written comments addressed the proposed annual practitioner fee requirement.

Following receipt and consideration of the comments to the proposed rules in the December 12, 2003 Notice regarding an annual fee and procedures for both collecting the fee and informing practitioners who do not pay the fee of their situation, the Office is prepared to proceed to final rule making. The fee in the final rules is referenced as the annual practitioner maintenance fee. The primary purposes for adopting a fee and procedures for both collecting the fee and informing practitioners who do not pay the fee of their situation is to maintain a roster of registered practitioners, including affording practitioners due process, protecting the public, preserving the integrity of the Office, and maintaining high professional standards.

A registered practitioner in active status is one who is able to represent clients and conduct business before the USPTO in patent cases. To maintain active status, the practitioner would pay the annual practitioner maintenance fee required under §§ 1.21(a)(7)(i) and 11.8(d).