

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
HORACE M. ALBRIGHT TRAINING CENTER
Grand Canyon, Arizona

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RULES AND REGULATIONS

I. Introduction

All rules and regulations of our society which can be enforced by proper authority must be issued with the approval of the legislative branch of the Government, in this instance, the Congress. In the case of the United States vs. Grimaud, 220 US 506, the following decision is quite important:

"Rules and regulations which are issued under the authority of law have the force of law."

II. Authority for National Park Service Rules and Regulations

A. The principal authority for NPS rules and regulations stems from:

1. The organic act establishing the National Park Service on August 25, 1916 (39 Stat. 535).
2. Antiquities Act of June 8, 1906 (34 Stat. 225).
3. Historic Sites Act of August 21, 1935 (49 Stat. 666).

B. The principal authority for the issuance of rules and regulations applicable to areas under the administrative jurisdiction of the National Park Service is contained in the Act of August 25, 1916. Section 3 of this Act gives the Secretary of the Interior authority to:

" . . . make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violations of the rules and regulations authorized by the Act shall be punished as provided for in Section 50 of the Act entitled 'An Act to Codify and Amend the Penal Laws of the United States,' approved March 4, 1909, and as amended by Section 6 of the Act of June 25, 1910."

The penalty provision of the Act of 1916 was amended by an Act of June 2, 1920, to read as follows:

"And any violation of any of the rules and regulations authorized by this Act shall be punished by a fine of not more than \$500 or imprisonment for not exceeding six months or both, and be adjudged to pay all costs of the proceedings."

C. Earlier, the Antiquities Act had provided for a fine of not more than \$500 or imprisonment for a period of not more than ninety days or both of any person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument or any object of antiquity situated on lands owned or controlled by the United States Government, without permission of the Secretary of the Department having jurisdiction over the lands on which said antiquities are situated. (Areas established under the authority of this Act were to be designated National Monuments, and thus this penalty clause applied to these monuments so established.)

D. Later the Historic Sites Act provided for the national historic sites, which could be set apart by the Secretary of the Interior who was also given the authority to:

". . . make such rules and regulations not inconsistent with this Act as may be necessary and proper to carry out the provisions thereof. Any person violating any of the rules and regulations authorized by this Act shall be punished by a fine of not more than \$500 and be adjudged to pay all costs of the proceedings."

E. Some parks are affected by specific regulations that are incorporated in the acts of establishment; i.e., the act establishing Mount McKinley National Park, approved February 26, 1917, permits:

". . . prospectors and miners engaged in prospecting or mining in said park may take and kill therein so much game or birds as may be needed for their actual necessities when short of food; but in no case shall animals or birds be killed in said park for sale or removal therefrom, or wantonly."

F. Furthermore, Section 16 of the Act of March 3, 1933, provided for the reorganization within the Executive Branch of

the Government. This was accomplished by:

1. Executive Order No. 6166 - June 10, 1933, and interpreted by Executive Order No. 6228 - July 28, 1933.
2. These orders transferred to the National Park Service certain military parks, parks, battlefield sites, monuments, cemeteries and miscellaneous memorials from the War Department.
3. In connection with this transfer, the authority formerly vested in the Secretary of War to make regulations for these areas was transferred to the Secretary of the Interior.
 - a. However, the provision for penalties stood as: A fine of not more than \$100 or by imprisonment for not more than three months or by both fine and imprisonment.

G. Thus the three basic pieces of legislation plus the specific acts relating to individual areas form the legal basis for our rules and regulations.

III. Purpose of the Rules and Regulations

A. The purpose of rules and regulations is to prescribe the proper use, management, government and protection of, and the maintenance of good order in those areas they are to regulate.

B. Furthermore, regulations are the media through which policies are put into force.

1. There must first be the policy which has been adopted as a guidepost on the path to reaching the organization's goal.
2. In most instances policy is couched in broad terminology while rules and regulations must be spelled out in greater detail. We frequently speak of the intent of law and regulations and its existence cannot be denied, however, regulations should be clearly written to avoid ambiguity and the necessity to rely on intent!
3. Rules and regulations must meet the test of reasonableness in order to be valid.

IV. The Source Book for the Rules and Regulations

A. Development of the Code of Federal Regulations (CFR)

Essentially the source book for rules and regulations is the Code of Federal Regulations plus reference to an area's specific acts. The Code of Federal Regulations traces its origin back to the Federal Register Act of July 26, 1935.

The men who sponsored the Federal Register Act were fighting "government in ignorance of the law." They believed formal publication of rules and regulations having the force of law -- with centralized responsibility for editing -- was essential. Prior to the passage of the Act the doctrine of "promulgation" (proposed law) required no more than a deposit of the regulatory document with the Department of State. From the time of deposit it had the force of law and ignorance of its contents was no excuse.

Following passage of the Federal Register Act in 1935 the first issue of the Federal Register was printed on March 14, 1936. Then by virtue of amendments to the Federal Register Act, the Code of Federal Regulations appeared in its first edition in 1938. The Federal Register has now become in effect a daily supplement to the Code of Federal Regulations.

B. Organization of the Code of Federal Regulations

1. The basic division of the Code is the 50 functional titles arranged in alphabetical order except for the first three titles, viz:

- Title 1 - General Provisions
- Title 2 - The Congress (Table of statutory authorities and statutes interpreted or applied)
- Title 3 - The President (Proclamations, Executive orders and Presidential documents other than proclamations and Executive orders)

2. Chapters are the normal divisions of Titles. A chapter is usually assigned to and designated by the name of the agency issuing the regulation. Chapters are then divided into parts and sections.

3. Parts are the first normal subdivision of a chapter. A part should consist of a unified body of rules and regulations applying to a specific function of the issuing agency or devoted to specific subject matter under control of the issuing agency.

4. Sections are the normal divisions of parts. The section is the basic unit of the Code. It should consist of a short, simple presentation of one thought. The sections in a properly drafted rule usually do not require further subdivisions. The number of each section includes to the left of a decimal point the number of the part in which it occurs. The section number then becomes unique within any given title.

5. Whenever internal divisions of sections cannot be avoided they will be subdivided into paragraphs, denoted by small letters in parentheses, from paragraphs to subparagraphs denoted by numbers in parentheses and finally, from subparagraphs to subdivisions denoted by small Roman numerals in parentheses.

6. Example: 36 CFR 1

Title 36	- Parks, Forests, and Memorials
Chapter 1	- National Park Service
Part 1	- General Rules and Regulations
Section 1	- Definitions
Paragraph (a)	- "The term 'Secretary' . . ."

C. Title 36 of the Code of Federal Regulations as shown in the example above deals with regulations applying to parks, forests, and memorials.

1. Five chapters occur in this title, namely:

Chapter 1	- National Park Service
Chapter 2	- Forest Service
Chapter 3	- Corps of Engineers
Chapter 4	- American Battle Monuments Commission
Chapter 5	- National Zoological Park, Smithsonian Institution

2. Chapter 1 - National Park Service - is further broken down into the following parts:

Part 1	- General Rules and Regulations
Part 2	- General Rules and Regulations, National Recreation Areas
Part 3	- National Capital Parks Regulations
Part 4	- National Cemetery Regulations
Part 5	- Private Lands subject to exclusive jurisdiction

- Part 6 - Vehicle guide, admission and miscellaneous fees
- Part 7 - Special regulations relating to parks
- Part 8 - Labor standards applicable to Park Service concessioners
- Part 9 - Procedure and Business of the National Park Trust Fund Board
- Part 10 - Disposal of Certain Wild Animals
- Part 20 - Isle Royale National Park; commercial fishing
- Part 21 - Hot Springs National Park; bathhouse regulations
- Part 22 - Glacier National Park; timber disposal regulations
- Part 25 - National Military Parks; licensed guide service regulations
- Part 26 - Olympic and Mount Rainier National Parks; timber disposal regulations

3. Title 36 is kept current by:

a. An annual pocket supplement that is published as of January 1 each year. This is an accumulative supplement and each issue will carry all new material from the last revision of the Title to the date of the current supplement.

b. Daily issues of the Federal Register will contain the day-to-day changes in regulations and must be referred to until the material is published in the cumulative supplement.

D. Title 43 of the Code of Federal Regulations deals with regulations applying to public lands: Interior.

1. Those regulations of concern to us are found under Subtitle A, Office of the Secretary of the Interior.

Part 3 contains rules relating to the Antiquities Act of 1906.

Part 5 refers to the filming of motion pictures as referred to in Section 1.29 under General Rules and Regulations.

E. Specific acts relative to certain areas may also contain special provisions and here a reference to laws relating to

the National Park Service of the United States Code is an important reference. However, by and large, most regulations that rangers will be concerned with will be found in the Code of Federal Regulations.

V. Promulgation of Rules and Regulations

A. Procedure to be followed for adopting new regulations in Chapter 1, General Rules and Regulations.

1. The Proposal. It may come from the Washington Office or from a field source through delegation of authority. In most cases, however, it will be the Washington Office that will make the formal proposal.

2. Review and Concurrence. Review by the Department of the Interior is generally the responsibility of the Solicitor.

3. First Publication. The proposed rule or regulation will be initially published in the Federal Register as Proposed Rule-Making.

a. The publication of this regulation as Proposed Rule-Making does not carry with it the force of law.

b. Generally this publication gives the public an opportunity to express itself on this proposal. Normally a period of 30 days is given the public to submit their comments to an office made known in this proposal.

c. When any notice of proposed rule-making is submitted to Washington, it should now be accompanied by a draft of a news release describing the need for such a regulation, the effects and anticipated controversial points, if any, and any other pertinent information relative to this regulation. Since the Federal Register is read by relatively few people, the Washington Office may deem it advisable in some instances to reissue a news release. An informative news release may well preclude any letters of protest from people who do read but fail to appreciate the proper significance of the notice, such as the many protests received when notices forbidding motorboats on lakes were published when actually motorboats had always been prohibited but by office orders.

d. Public Hearing. This is an infrequent occurrence, but it may be provided for in the announcement of the Proposed Rule-Making, and if sufficient public sentiment is voiced, a hearing will be scheduled. The outcome of such a public hearing, of course, results in the continuance of the regulation as proposed in the first publication, revision as a more acceptable regulation and then publication as Proposed Rule-Making or rejection of the proposal in its entirety.

4. Second Publication in the Federal Register. This publication will be as Rules and Regulations and now the regulation will have the full force of law when it reaches the effective date. Frequently this effective date is 30 days following its publication.

B. Procedure to follow for new Special Rules and Regulations.

1. The Proposal. This proposal may come from the Washington Office, Regional Office, or in some cases, field areas. The authority for issuance of such special rules and regulations comes from Secretary of the Interior Order No. 2640, Amendment 8, dated January 24, 1955, which provides:

"Section 37, Authority to issue special rules and regulations. The Director is authorized to issue such rules and regulations as would amend, by additions, revisions, or revocation special rules and regulations contained in Part 7, Chapter 1, Title 36, Code of Federal Regulations."

National Park Service Order No. 14, Amendment 1, dated August 31, 1955, authorized Regional Directors "to exercise all the authority now or hereinafter vested to the Director except with respect to the following matters:" This authority has been redelegated to senior superintendents in parks, and as a result, some local areas may now formulate special rules and regulations to govern their areas.

2. Review and Concurrence. This is accomplished in the regional office, often by the Field Solicitor when the regulation was initiated by a field area. From review in the regional office, they travel to the Director's Office for review and finally to the Solicitor's Office in the Office of the Secretary.

3. First Publication. Comes as Proposed Rule-Making in the Federal Register as discussed earlier.

a. Waiting Period. Again the opportunity is given the public to make comment and public hearings may be heard in the case of controversial matters.

4. Second publication is as Rules and Regulations in the Federal Register. Initiation of this action must come from the originating office; i.e., if the proposal came from a field area, then they must initiate action for second publication. When it is published, again attention must be paid to the effective date the regulation will carry the full force of law.

C. Publication in the Code of Federal Regulations

1. Once a regulation appears in the Federal Register as Rules and Regulations, inclusion in the next pocket supplement of the CFR and the ultimate publication in the Code of Federal Regulations will follow without action by the National Park Service.

2. The Code of Federal Regulations and the Federal Register are published by the Office of the Federal Register, National Archives and Records Service, General Services Administration. The Federal Register is published daily, except Sunday and Monday, and days following Federal holidays. The order of arrangement in the Federal Register is as follows:

a. Contents and Codification Guide occupies the cover and necessary succeeding pages.

b. Presidential Documents. Under this heading will be found all Executive orders and proclamations in the numbered series as well as all other Presidential documents which the President submits for publication or orders to be published.

c. Rules and Regulations. All documents subject to codification.

d. Proposed Rule-Making.

e. Notices. These are miscellaneous documents not

subject to codification, such as delegations of authority. The Notice becomes effective upon publication.

f. The month's Cumulative Codification Guide which enables you at a glance to determine what parts of each title have been affected by documents published so far that month. In addition, each month an index and a Codification Guide are published. In March, June, September and December a cumulative index and codification guides are published. These are aids in checking for changes that may have occurred since the last pocket supplement was issued.

3. An entire chapter (i.e., National Park Service) may be revised. This will generally be done in the National Park Service or Department of the Interior Washington Office and when accomplished follows a similar procedure as new rules and regulations.

VI. The Practical and Daily Application of Rules and Regulations

A. Law enforcement is now a primary duty in the successful operation of the areas administered by the National Park Service. In order to perform this duty efficiently, it is desirable for a law enforcement officer of this Service to familiarize himself with the laws and regulations covering the area to which he is assigned. Upon reporting to an area for duty, it is suggested that enforcement personnel read and study the following essential material:

1. The general legislation relating to the National Park Service, as found in the 1933 and 1944 compilation of Laws Relating to the National Park Service, and as further supplemented in pamphlet form.

2. The general rules and regulations, 36 CFR, relating to National Park Service areas.

3. The special rules and regulations in 36 CFR, Part 7. In addition, it would be well for personnel in reporting to an area for duty to check with the Superintendent's Office to ascertain whether there are additional special regulations applicable to his area which may not yet have been published in the bound volume of Title 36, Code of Federal Regulations, or its pocket supplement.

4. . A further source of important material to a law enforcement office of this Service are Titles 18 and 28 of the United States Code concerning Crimes and Criminal Procedure, and the Judiciary and Judicial Procedure. While these titles are somewhat lengthy and in part may seem quite technical, it would be desirable to read the titles from time to time so as to be generally familiar with their contents.

5. Reference to and study of the National Park Service Law Enforcement Manual is a necessity to draw all of these authorities and responsibilities together.

In the final analysis, the law enforcement officer of an agency cannot hope to be efficient and effective in the performance of their duties if they do not possess a well grounded understanding of the laws and regulations applying to the area or areas to which they are assigned.