

Proposed Rules

Federal Register

Vol. 83, No. 158

Wednesday, August 15, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–NCR–25928; PPNAMASO, PPMSPD1Z.YM0000]

RIN 1024–AE45

Special Regulations, Areas of the National Park System, National Capital Region, Special Events and Demonstrations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to revise special regulations related to demonstrations and special events at certain national park units in the National Capital Region. The proposed changes would modify regulations explaining how the NPS processes permit applications for demonstrations and special events. The rule would also identify locations where activities are allowed, not allowed, or allowed but subject to restrictions.

DATES: Comments must be received by October 15, 2018.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AE45 by any of the following methods:

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

- *Hardcopy:* Mail or hand deliver to National Park Service, National Mall and Memorial Parks, 900 Ohio Drive SW, Washington, DC 20024, Attn: Brian Joyner.

Instructions: All comments received must include the agency name (National Park Service) and RIN (1024–AE45) for this rulemaking. Comments will not be accepted by fax, email, or in any way other than those specified above. Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Before

including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information, we cannot guarantee that we will be able to do so. To view comments received through the Federal eRulemaking portal, go to <http://www.regulations.gov> and enter 1024–AE45 in the search box.

FOR FURTHER INFORMATION CONTACT:

Brian D. Joyner, Chief of Staff, National Park Service, National Mall and Memorial Parks, (202) 245–4468, NAMA_Superintendent@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Mall and areas surrounding the White House in Washington, DC are managed by the National Park Service (NPS) on behalf of the American people. These areas are contained within two administrative units of the National Park System: The National Mall and Memorial Parks and President's Park.

National Mall and Memorial Parks

Within the National Mall and Memorial Parks, the NPS administers more than 1,000 acres of park land within the District of Columbia, including 14 units of the national park system: Belmont-Paul Women's Equality National Monument, Constitution Gardens, Ford's Theatre National Historic Site, Franklin Delano Roosevelt Memorial, Korean War Veterans Memorial, Lincoln Memorial, Martin Luther King, Jr. Memorial, Pennsylvania Avenue National Historic Site, the Mall, Thomas Jefferson Memorial, Vietnam Veterans Memorial, Washington Monument and Plaza, World War I Memorial, and World War II Memorial. The National Mall and Memorial Parks also contains more than 150 reservations, circles, fountains, squares, triangles, and park spaces in the center of Washington, DC that were created as part of the L'Enfant plan of the city.

The National Mall is a preeminent national landscape that is home to the enduring symbols of our country including various trees and gardens that symbolize cultural and diplomatic

exchanges and gifts from other nations. It includes a combination of formally designed areas, such as the Mall and the grounds of the Washington Monument, as well as natural areas, such as the Tidal Basin and West Potomac Park. The National Mall also contains monuments, memorials, statues, and other commemorative works that honor important persons, historical events, and the ideals of democracy. The monuments, memorials, and sites in the National Mall and Memorial Parks connect visitors directly with American history and values, cultural heritage, and the sacrifices of so many, supporting our national identity as well as individual connections to the larger national and international experience. The NPS protects the valuable urban green space within the National Mall and Memorial Parks that accommodates a variety of passive and active recreational activities for a diverse population.

President's Park

President's Park comprises three distinct cultural landscapes that are each fundamental to the park and provide the setting for the "President's Park" as defined by Pierre L'Enfant in 1791. The White House is the oldest public building in the District of Columbia and has been the home and office of every president of the United States except for George Washington. The White House, including its wings, serves as the residence of the first family, offices for the president and staff, and an evolving museum. Lafayette Park to the north of the White House is a 19th-century public park redesigned in the 1960s. The park is bounded by H Street to the north, Madison Place to the east, Pennsylvania Avenue to the south, and Jackson Place to the west. Lafayette Park is an example of early American landscape design and the 19th century neighborhood of the president. The Ellipse area, or President's Park South, to the south of the White House grounds is another important cultural landscape. President's Park South consists of the elliptical park area known as the Ellipse, Sherman Park to the northeast, and the First Division Memorial Park to the northwest. Lafayette Park and the Ellipse provide a dignified transition area from an urban environment to the White House environs. They also

protect and enhance views to and from the White House and provide a setting for the public to view the White House. Many national monuments and memorials are found throughout the park, illustrating the significant role of President’s Park as a symbolic location within the urban landscape of the nation’s capital.

Demonstrations and Special Events

The buildings, structures, and grounds that compose the National Mall and Memorial Parks and President’s Park are national symbols of American democracy. Citizens from the United States and around the world come to these areas to participate in American democracy, celebrate freedom, and experience our nation’s history and culture. The NPS receives regular requests from the public to conduct demonstrations, which include various types of expressive activity such as marches and art displays, at locations within the National Mall and Memorial Parks and President’s Park. The NPS also receives requests to hold special events, such as wedding ceremonies, national celebratory events, and sporting activities, at the same locations. Each year, the NPS issues an average of 750 permits for demonstrations and 1,500 permits for special events within the NPS units subject to 36 CFR 7.96 (as explained below). Most of these activities are held within the National Mall and Memorial Parks and

President’s Park. The NPS also issues an average of 800 permits for commercial filming within these parks each year. The NPS dedicates significant resources to processing permit applications and managing permitted activities in a manner that mitigates impacts to park resources, secures sensitive locations, and keeps visitors safe.

Proposed Rule

The NPS proposes to revise the regulations applicable to demonstrations and special events that are held within the National Mall and Memorial Parks and President’s Park. The NPS intends these revisions to (i) modify regulations explaining how the NPS processes permit applications to conduct activities in these areas; and (ii) better identify locations where activities are allowed, not allowed, or allowed but subject to restrictions. The NPS intends these changes to provide greater clarity to the public about how and where demonstrations and special events may be conducted in a manner that protects and preserves the cultural and historic integrity of these areas.

The supplementary information contained below will explain the proposed changes to existing regulations in section 7.96 of Title 36, Code of Federal Regulations (36 CFR 7.96). These regulations govern activities within the National Mall and Memorial Parks, President’s Park, and other administrative units subject to section

7.96. These other units—such as portions of the Chesapeake and Ohio Canal National Historical Park, National Capital Parks-East, George Washington Memorial Parkway, and Rock Creek Park—are located nearby the National Mall and Memorial Parks and President’s Park. The NPS encounters management issues related to demonstrations and special events in these locations that are similar to those encountered in the National Mall and Memorial Parks and President’s Park. In some cases, a single event such as a foot race will cross through several of these units. The administrative benefit of having a uniform set of regulations and permit processes for units in close proximity to one another supports applying the proposed changes in this rule to all of the units that are subject to section 7.96. This will allow the NPS to better manage these events and provide service to the public. The applicability of section 7.96 to the National Mall and Memorial Parks, President’s Park, and these other units is discussed in more detail below.

A summary of the proposed changes is contained in the following table, along with a citation of the regulation that would be changed. The proposed changes are discussed below in the order they appear in the table below. In addition to the changes listed below, the proposed rule would reorganize several paragraphs in section 7.96 without changing any of the text.

No.	Proposed change	Citation
1	Remove several units from the applicability of § 7.96	7.96(a)
2	Adopt definitions of “demonstrations” and “special events” from 36 CFR part 2	7.96(g)(1)(i) and (ii)
3	Move the definition of “structure” to the definitions section in § 7.96(g)(1)	7.96(g)(1) and (5)(ix)(A)(4)
4	Consider changing the number of people that could take part in a demonstration without a permit at specific locations.	7.96(g)(2)(ii)
5	Require a permit for the erection of structures during a special event or demonstration regardless of the number of participants.	7.96(g)(2) and (g)(5)(vi)(E)
6	Consider requiring permit applicants to pay fees to allow the NPS to recover some of the costs of administering permitted activities that contain protected speech.	7.96(g)(3)
7	Establish permanent security zones at President’s Park where public access is currently prohibited	7.96(g)(3)(i)
8	Modify and establish restricted zones at memorials on the National Mall where special events and demonstrations would not be allowed in order to preserve an atmosphere of contemplation.	7.96(g)(3)(ii)
9	Modify regulations explaining how the NPS processes permit applications for demonstrations and special events.	7.96(g)(3) and (4)
10	Adopt criteria in 36 CFR part 2 for reviewing permit applications that apply to other NPS areas. Remove redundant criteria in § 7.96.	7.96(g)(4) and (5)
11	Establish a maximum permit period of 30 days, plus a reasonable amount of time needed for set up and take down of structures before and after a demonstration or special event.	7.96(g)(4)(vi)
12	Identify locations where structures may not be used, and restrict the height, weight, equipment, and materials of structures when they are permitted during special events and demonstrations.	7.96(g)(5)(vi)
13	Apply existing sign restrictions (e.g. supports, dimensions) in President’s Park to other locations within the National Mall and Memorial Parks and President’s Park.	7.96(g)(5)(vii)
14	Other minor changes to § 7.96	7.96(g)

1. Remove Several Units From the Applicability of 7.96

The National Capital Region (NCR) is an administrative grouping of National

Park System units that are located in and around metropolitan Washington, DC. NPS regulations at 36 CFR 7.96 apply to certain park units located

within the NCR. These special regulations modify the general regulations in 36 CFR part 2 that apply to all areas administered by the NPS,

but only for those parks identified in section 7.96.

Paragraph (a) of section 7.96 lists the park units in the NCR that are subject to the special regulations in that section. This rule would revise paragraph (a) to limit applicability and scope of the NCR special regulations to the following park areas:

- All park areas located in Washington, DC
- the George Washington Memorial Parkway
- all park areas located within National Capital Parks East (an administrative grouping of park units in the NCR that are generally located east of the U.S. Capitol)
- the portion of Chesapeake and Ohio Canal National Historical Park that is located in Washington, DC and Montgomery County, Maryland

The special regulations in section 7.96 exist to address unique management issues that are present in these park units in the NCR but not present in other parks in the NCR or elsewhere in the country. One of these issues—especially for park units near the National Mall and the White House—is how to manage the high volume, magnitude, and impacts of special events and demonstrations. Section 7.96 addresses this issue with special rules that govern these activities. One of these rules requires individuals and organizations to send permit applications for demonstrations and special events to a central permit office in Washington, DC, for review and processing. The NPS routes all permit

applications through this office, and then to the impacted park(s), to avoid potential confusion about where applications should be sent. It would be confusing to require the public to send permit applications directly to each park unit because there are so many areas administered by the NPS in the NCR, many of which are in close proximity to one another. Other unique management issues faced by these parks in the NCR include the Presidential Inauguration, other national celebration events, security needs associated with the White House Complex and the Executive Office Building, and the use of athletic fields near the National Mall. These activities are also addressed by special regulations in section 7.96.

Park units that are not identified in paragraph (a) of section 7.96 follow general NPS regulations in part 2. This is consistent with 36 CFR 1.2(c), which provides that the NPS general regulations in part 2 apply unless there are NPS special regulations for individual park areas. The general regulations in part 2 address special events and demonstrations in sections 2.50 and 2.51. Instead of using a central office, permit applications for these other parks are sent directly to park headquarters and processed by the administrative office at the park unit.

Section 7.96 already applies to the park units identified in this proposed rule. The proposed changes to paragraph 7.96(a) in this rule would remove the following park units from the applicability and scope of the NCR special regulations in section 7.96:

- Three parks in Virginia—Manassas National Battlefield Park, Prince William Forest Park, and Wolf Trap National Park for the Performing Arts
- The portion of Chesapeake and Ohio Canal National Historical Park that is located outside the District of Columbia and Montgomery County, Maryland

By removing these parks from scope and applicability of the NCR special regulations, they instead would be governed by the general regulations for special events and demonstrations found in sections 2.50 and 2.51. Although these parks are organized within the administrative grouping of the NCR, they are located further away from the metropolitan core of Washington, DC. This reduces any confusion about where permit applications should be sent. It is not necessary or efficient that permit applications for these outlying NCR parks be routed through the centralized permit office in Washington, DC. Allowing these outlying NCR parks to operate their own permit offices that can receive permit applications directly is consistent with how other NCR parks outside the Washington, DC, metropolitan area (*i.e.*, Antietam National Battlefield, Harpers Ferry National Historical Park, and Monocacy National Battlefield) have operated for decades. Instead of using a central permit office in Washington, DC, visitors would send permit applications for these outlying parks to the administrative offices of each park, to the attention of the superintendent:

Park unit	Mailing address
Manassas National Battlefield Park	12521 Lee Highway, Manassas, VA 20109, (703) 754–1861.
Prince William Forest Park	18100 Park Headquarters Road, Triangle, VA 22172, (703) 221–4706.
Wolf Trap National Park for the Performing Arts	1551 Trap Road, Vienna, VA 22182–1643, (703) 255–1808.
Chesapeake and Ohio Canal National Historical Park	1850 Dual Highway, Suite 100, Hagerstown, MD 21740, (301) 739–4200.

The other special regulations in section 7.96 either are not relevant to these parks (*e.g.* staging the Presidential Inauguration, organized athletic events, and taxi cab operations around National Memorials) or are addressed by NPS regulations in 36 CFR part 2 (*e.g.* fishing and camping). In order to maintain the existing prohibition on bathing, swimming or wading throughout the Chesapeake and Ohio Canal, the proposed rule would state that paragraph (e) of section 7.96 would apply to the portions of the Chesapeake and Ohio Canal National Historical Park

that are located in Maryland outside of Montgomery County.

2. *Revise Definitions of “Demonstrations” and “Special Events”*

NPS general regulations in 36 CFR part 2 define the term “demonstrations” and “special events.” These terms apply to activities that occur within all units of the National Park System except for those units identified in section 7.96 and located within the NCR. Section 7.96(g)(1) contains definitions for the terms “demonstration” and “special events” that apply only to those units identified in section 7.96 and located

within the NCR. For both sets of definitions, the term “demonstration(s)” is defined to include activities that are considered expression and speech that are protected by the First Amendment. Special events are described or defined to include other activities that do not enjoy the same heightened protection under the First Amendment. The definitions of “demonstration(s)” in section 2.51 and section 7.96(g)(1) are the same. The list of types of special events in section 2.50 and the definition in section 7.96(g)(1) are similar, but different in some ways. A comparison is displayed in the table below:

	Part 2	Section 7.96 definition
Demonstration(s)	Includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services, and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers. 36 CFR 2.51(a).	Includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers. 36 CFR 7.96(g)(1)(i).
Special Events	Sports events, pageants, regattas, public spectator attractions, entertainments, ceremonies, and similar events. 36 CFR 2.50(a).	Includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under paragraph (g)(1)(i) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers. 36 CFR 7.96(g)(1)(ii).

In order to avoid confusion that may arise from having separate but similar definitions in part 2 and section 7.96(g), the NPS proposes to remove the definition of “demonstration” in section 7.96(g)(1) and refer to the definition in section 2.51 instead. For the same reason, the NPS proposes to remove the definition of “special events” in section 7.96(g)(1) and refer to the activities listed in section 2.50(a) instead. Even though the description of special events in section 2.50(a) and the definition of “special events” in section 7.96(g)(1) are worded differently, the NPS does not regard them as substantively different. The NPS does not consider referring to the part 2 terminology as a definition in section 7.96(g)(1) to be a substantive change to the meaning of special events. The description in section 2.50(a) is broad enough to include celebrations, historical reenactments, entertainments, exhibitions, parades, fairs, and festivals, which are part of the current definition in section 7.96(g)(1) but not part of the description of special events in 2.50(a). The description in section 2.50(a) is also broad enough to include other events, such as marathons, that are common within the National Mall and Memorial Parks. The statement in the definition in section 7.96(g)(1) that special events include events presented by the NPS would be moved to a new definition of “events” that is explained below. This means that the NPS will continue to issue permits for NPS-sponsored events like the Fourth of July Celebration as a means of reserving park lands for these events.

The definition in section 7.96 states that special events are those activities that do not qualify as demonstrations. This affects how the event is managed

because certain regulations in section 7.96 treat demonstrations and special events differently. For example, demonstrations involving 25 or fewer people generally may be held without a permit. This permit exception does not apply to special events. Other provisions in section 7.96 apply to demonstrations and special events in the same manner.

The NPS proposes to streamline these regulations by defining the term “events,” which would mean both demonstrations and special events, as those terms are defined in sections 2.50 and 2.51. This definition will also include a statement that events do not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers. This caveat is included in both current definitions of “demonstration(s)” in parts 2 and 7 and in the current definition of “special event” in section 7.96. The NPS proposes to replace the existing phrase “which does not have an intent or propensity,” which is used in the definition of “special events” in section 7.96, with the phrase “that is not reasonably likely,” which is used in the definitions of “demonstration(s)” in parts 2 and 7. The NPS prefers to have one standard for determining what constitutes casual park use and believes the “reasonably likely” standard is more objective and easier to understand than a standard that requires NPS law enforcement staff to discern the intent of a person or group. This would provide greater clarity to the public about what types of activities are subject to the regulations in section 7.96. The NPS will retain use of the terms “demonstrations” and “special events” in certain locations within section 7.96

where the distinction is necessary to ensure that NPS does not overly restrict speech that enjoys heightened protections under the First Amendment.

The NPS will remove the text in the section 7.96 definition that states that special events are those activities that do not qualify as demonstrations. Experience managing events has shown that some demonstrations have elements that are special events. The NPS specifically seeks comments on how it might further differentiate between the demonstration element(s) and the special event element(s) of a single activity. What factors should the NPS consider when differentiating between the demonstration and special event elements of a single activity? How should the NPS regulate activities that have elements of demonstrations and special events? The NPS seeks comments on the definitions and treatment of demonstrations and special events. What additional factors should the NPS consider when determining whether an activity is a demonstration or a special event?

3. Move the Definition of “Structure” to the Definitions Section in 7.96(g)(1)

Section 7.96(g)(5)(ix) contains regulations that apply to Lafayette Park. These regulations prohibit the erection, placement, or use of structures of any kind except for those that are hand-carried and certain speakers’ platforms depending upon the size of the demonstration. In order to understand what is prohibited, the regulations define the term “structure” in section 7.96(g)(5)(ix)(A)(4). The definition includes most items that could be erected or placed within the park, with limited exceptions for signs, attended

bicycles and baby strollers, and wheelchairs and other similar devices.

The NPS proposes to move the definition of “structure” from section 7.96(g)(5)(ix)(A)(4), to the definitions section in 7.96(g)(1). This would clarify that the definition of the term “structure” applies anywhere that term is used in section 7.96. This includes section 7.96(g)(5)(vi), which regulates the use of structures in connection with demonstrations and special events located within any unit identified in section 7.96(a). This includes the National Mall and Memorial Parks and President’s Park. This change would reduce the potential for confusion about the meaning of the term “structure” in section 7.96. The existing definition in 7.96(g)(5)(ix)(A)(4) has proven to be workable and clearly understood. Moving the term to the definitions section would make it easier for the public to find and understand the meaning of this term. The NPS proposes to add trailers, jumbotrons, light towers, delay towers, portable restrooms, and mobile stages to the definition of a structure because these items are commonly requested as part of larger events.

4. Consider Changing the Number of People That Could Take Part in a Demonstration Without a Permit at Specific Locations

Section 7.96(g)(2) states that a demonstration or special event may be held only pursuant to a valid permit. There are some important exceptions, however, for demonstrations. Demonstrations involving 25 persons or fewer may be held without a permit. This exception in section 7.96(g)(2)(i) is known as the “small group exception.” In addition to the small group exception, section 7.96(g)(2)(ii) identifies several locations where demonstrations of larger groups may be held without a permit. Up to 500 persons may demonstrate at Franklin Park and McPherson Square without a permit, up to 100 persons may demonstrate at U.S. Reservation No. 31 without a permit, and up to 1,000 persons may demonstrate at Rock Creek and Potomac Parkway without a permit.

The NPS seeks comment on whether it should increase the maximum number of persons that may demonstrate at Franklin Park and McPherson Square without a permit. The NPS also requests comment on whether it should establish new exceptions for Farragut Square and Dupont Circle that would allow demonstrations larger than 25 persons to occur without a permit. The NPS has determined that the maximum number of persons that can participate in an

event without the need for a medical station with advanced life support is 2,500 for each location. This number represents the outer limit of how many people could demonstrate in each location without a permit in order to maintain public safety. If the NPS raises the maximum numbers of persons that may demonstrate in Franklin Park, McPherson Square, Farragut Square, or Dupont Circle without a permit, these numbers would be less than 2,500 in order to maintain public order, health, and safety, and mitigate impacts to park resources. The NPS seeks comment, however, on whether the numbers could be raised in a manner that better aligns the current limits with sizes and locations of the designated areas in order to increase opportunities for spontaneous demonstrations.

Alternatively, the NPS seeks comment on whether it should lower the numbers of persons that may demonstrate in Franklin Park, McPherson Square, U.S. Reservation No. 31, and Rock Creek and Potomac Parkway without a permit. The NPS would not lower those numbers below 25 persons which is consistent the small group exception. Lowering those numbers would allow the NPS to better manage and anticipate demonstrations occurring on NPS-administered lands.

5. Require a Permit for the Erection of Structures During a Special Event or Demonstration Regardless of the Number of Participants

The NPS proposes to require a permit in order to erect structures, other than small lecterns or speakers’ platforms, during any demonstration or special event—even those demonstrations that would not otherwise require a permit because of their small size or location. Current regulations generally require a permit to hold a demonstration or special event in the NCR. These regulations allow a permit-holder to erect structures to meet messaging and logistical needs. In some circumstances, NPS regulations allow smaller demonstrations to occur without a permit.

Demonstrations involving 25 or less participants fall under the “small group exception” and do not require a permit. Except for Lafayette Park (where only speakers’ platforms are allowed in accordance with a permit) and the White House Sidewalk (where no structures are allowed), current regulations state that demonstrations falling under the small group exception may not erect structures other than small lecterns or speakers’ platforms. This proposed rule would further define the types of structures that small groups

may erect without a permit by stating that speakers’ platforms must be no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height. This size limitation is consistent with existing regulations that allow the NPS to issue a permit for “soapbox” speakers’ platforms in Lafayette Park if the size of the demonstration is less than 100 persons. The proposed rule would also clarify that individuals and groups of less than 25 may erect other structures, including larger speakers’ platforms, if they obtain a permit.

In five park areas within the NCR, current regulations allow for larger demonstrations to occur without a permit, provided the demonstrations involve less than a maximum number of participants. These five parks are Franklin Park (500 person limit), McPherson Square (500 person limit), U.S. Reservation No. 31 at 18th Street and H Street NW (100 person limit), Rock Creek and Potomac Parkway west of 23rd Street and south of P Street NW (1,000 person limit), and U.S. Reservation No. 46 at 8th and D Streets, SE (25 person limit). Unlike the regulations for demonstrations falling under the small group exception, the regulations establishing the permit exception areas at Franklin Park, McPherson Square, U.S. Reservation No. 31, Rock Creek and Potomac Parkway, and U.S. Reservation No. 46 do not prohibit the use of structures. As a result, demonstrations involving the use of structures are allowed without a permit in these five areas if they fall under the size limits.

The NPS has determined that the absence of a permit requirement before erecting a structure in these five parks poses a negative impact to park resources and visitor safety. Without a permit, demonstrators erecting structures are not aware of the location of any underground water lines in turf areas, or when and what type of matting may be necessary to protect turf, marble, or granite, or ensure that the structure is safe.

There was a long-term demonstration at McPherson Square in 2012, where among other actions, demonstrators attempted to erect a large and unsafe barn-like structure made up of a wooden frame of boards and planks. A permit was not required because the size of the demonstration was less than 500 people. Construction was stopped when U.S. Park Police officers observed the situation and consulted local safety officials who condemned the structure as unsafe. The same demonstration involved a large number of tents of various sizes, including dome, A-frame, and outfitter tents, that covered a

majority of the Square. Demonstrators used these tents for sleeping, meetings, as a library, as temporary restroom facilities (with buckets), and as a mess hall (with propane). These tents and the individuals using them created a public health nuisance that detracted from health and well-being. NPS personnel and participants reported human waste found around tents or in trash receptacles. Rodent burrows were observed and rodents were reported seen at night. Flammable liquids were observed outside of tents. Ultimately the NPS was able to remove these structures, after receiving many complaints from surrounding residents and businesses, and documentation of unsafe and unhygienic conditions at McPherson Square. The U.S. Park Police requested and spent approximately \$480,000 for emergency operations to maintain law and order in connection with this event. This amount does not include additional funds that the NPS spent to restore and rehabilitate the condition of the park after the event. This incident revealed that requiring a permit would better protect park resources and keep visitors safe when structures are erected—no matter the size of the demonstration.

Without a permit requirement, NPS managers are less informed about the presence of structures and therefore in many cases are unable to ensure public safety, address traffic concerns, and protect park resources. Requiring a permit for structures—no matter the size of the demonstration—would allow NPS staff to work with permit applicants regarding their proposed structure and address legitimate concerns about visitor safety and resource protection. A permit would not be required for small lecterns, speakers' platforms, portable signs, or banners because these items do not raise the same concerns about public health, safety, and resource protection. A permit would not be required for individuals engaging in casual park use with objects such as small chairs, wheelchairs, picnic shelters, beach umbrellas, or small tables because this activity would not be considered an event under the regulations.

6. Consider Requiring Permit Applicants To Pay Fees To Allow the NPS To Recover Some of the Costs of Administering Permitted Activities That Contain Protected Speech

The NPS has the authority to recover all costs of providing necessary services associated with special use permits. 54 U.S.C. 103104. This authority allows the NPS to recover all costs incurred by the NPS in receiving, writing, and issuing

the permit, monitoring the permitted use, restoring park areas, or otherwise supporting a special park use. Under current NPS policy, the NPS does not charge cost recovery if the proposed activity is an exercise of a right, such as a demonstration. In current practice, the NPS recovers costs associated with special events, but not demonstrations. The NPS recovers an application processing fee and is in the process of developing a more robust cost recovery program that would allow the NPS to recover additional costs associated with special events, including administrative, equipment, and monitoring costs.

Demonstrations can have substantial impacts on resources, resulting in a financial burden to the federal government, particularly where structures are involved. The NPS specifically seeks comment on the merits of recovering costs associated with permitted demonstrations, and on how any cost recovery should be done. The NPS seeks comment on how it could establish a set of clearly defined, objective categories and criteria in advance for what costs would be recovered. These categories could include direct costs associated with event management (other than costs for law enforcement personnel and activities), set up and take down of structures; material and supply costs such as barricades and fencing needed for permitted activities; costs for the restoration, rehabilitation, and clean-up of a permitted area such as sanitation and trash removal; permit application costs; and costs associated with resource damage such as harm to turf, benches, poles, and walkways. The NPS requests comment on whether it should establish an indigency waiver for permittees who cannot afford to pay cost recovery, and how this waiver program could be implemented to safeguard the financial information of permittees. The NPS is interested only in how this waiver could be applied to permitted demonstrations, not special events. The NPS seeks comment on how it could implement protocols to ensure that costs recovered from administering permits associated with demonstrations are documented and assessed to permittees in a uniform and appropriate manner. If the NPS decides to recover some costs associated with permit applications for demonstrations, it requests comment on how it could provide reasonable advance notice to permittees about the types and amounts of costs that could be recovered.

7. Establish Permanent Security Zones at President's Park Where Public Access is Prohibited

Section 7.96(g)(3)(i) allows the NPS to issue permits for demonstrations on the White House sidewalk, Lafayette Park, and the Ellipse. Permits may not be issued for special events in these locations, except for the Ellipse and for annual commemorative wreath-laying ceremonies related to statues in Lafayette Park. Although the regulations allow for demonstrations and special events in some of these locations, the NPS has temporarily closed to general public access certain park areas in the vicinity of the south fence line of the White House and in and around First Division Memorial Park and Sherman Park. The United States Secret Service requested these closures to ensure necessary security and safety for the adjacent White House complex, its occupants, and the public. The NPS proposes to close these areas in the manner requested by the United States Secret Service by adding closure language to section 7.96.

For the areas in the vicinity of the south fence line, the Secret Service determined that their location, visibility, and public access present a significant potential area of risk for individuals attempting to penetrate the secure perimeter of the White House Complex and gain unlawful access onto the grounds of the White House. Restricting public access to the south fence line would not only serve to lessen the possibility of individuals unlawfully accessing the White House grounds, but will also create a clear visual break to enable Secret Service personnel to identify any individuals attempting to scale the White House fence. The NPS implemented this closure on a temporary basis in April 2017 under its authority in 36 CFR 1.5.

For the areas in and around the First Division Memorial Park and Sherman Park, the Secret Service determined that parts of these areas must be kept clear for security reasons. The First Division area has been subject to closures on a temporary and recurring basis since August 11, 2004. The Sherman Park area has been subject to closures on a temporary and recurring basis since December 4, 2009. Neither demonstrations nor special events are currently allowed in these areas, so this rule change would not remove these areas from the public forum. State Place and Hamilton Place have been closed to general vehicle traffic for some time. Even with these closures in place, the public can continue to see the White House's south façade from the Ellipse.

The closures would not adversely affect the park's natural, aesthetic, or cultural values given the existing and ongoing public safety and security measures and alerts in Washington, DC since the September 11, 2001, terrorist attacks.

8. Establish Additional Restricted Zones at Memorials on the National Mall Where Special Events and Demonstrations Are Not Allowed in Order To Preserve an Atmosphere of Contemplation

Memorial Restricted Areas

This rule would create restricted areas at the World War II Memorial, the Korean War Veterans Memorial, and the Martin Luther King, Jr. Memorial. Demonstrations and special events would be prohibited in these restricted areas, except for official commemorative ceremonies. These restricted areas are similar to the restricted areas at the Lincoln Memorial, the Thomas Jefferson Memorial, the Washington Monument, and the Vietnam Veterans Memorial, which were established decades ago and are intended to help maintain an appropriate atmosphere of calm, tranquility, and reverence in these memorial areas, while allowing designated official commemorative ceremonies. NPS regulations establishing the restricted area at the Thomas Jefferson Memorial were upheld in *Oberwetter v. Hilliard*, 639 F.3d 545 (D.C. Cir. 2011). This rule would also expand the restricted area at the Washington Monument to account for the area around the Monument's base that has been substantially landscaped with granite pavers and marble benches up to its circle of flags. The rule would also include clearer maps of the existing restricted areas at the White House, the Lincoln Memorial, and the Thomas Jefferson Memorial. The updated map of the restricted areas at the White House would depict the proposed security closures discussed in the prior section.

These restrictions further the NPS's interest in securing these memorials and maintaining the intended atmosphere of calm, tranquility, and reverence, and in providing the contemplative visitor experience intended for the memorials. The restrictions in this rule are limited and apply only to those areas necessary to further the interests identified above. At each location, there are several other nearby areas available for a more full range of free expression, including demonstrations and special events. Maps showing the location of restricted areas would be available online at <https://home.nps.gov/nama/learn/management/index.htm> and at National

Mall and Memorial Parks headquarters at 900 Ohio Drive SW, Washington, DC 20024.

The rule would make slight modifications to the restricted area at the Vietnam Veterans Memorial in order to help the NPS manage events. These modifications would slightly scale back the areas where sound and stage equipment are currently not allowed. This would allow for other groups to walk on the exterior pathways and place equipment along the reflecting pool for larger events. In addition, the striped restricted areas—where demonstrations and special events are currently prohibited—would be scaled back to the inside of the north and west sidewalks on the top of the wall.

World War II Memorial

Authorized by an Act of Congress at 107 Stat. 90 (1993), the World War II Memorial honors the service of sixteen million members of the Armed Forces of the United States of America, the support of millions of others on the homefront, and the ultimate sacrifice of more than 400,000 Americans. Dedicated on May 29, 2004, the World War II Memorial serves as a tribute to the legacy of "The Greatest Generation." The granite, bronze, and water elements of the Memorial harmoniously blend with the lawns, trees, and shrubbery of the surrounding landscape on the National Mall.

The 24 bronze bas-relief panels that flank the Memorial's Ceremonial Entrance offer glimpses into the human experience at home and at war. Fifty-six granite columns, split between two half-circles framing the rebuilt Rainbow Pool with its celebratory fountains, symbolize the unprecedented wartime unity among the forty-eight states, seven federal territories, and the District of Columbia. Bronze ropes tie the columns together, while bronze oak and wheat wreaths represent the nation's industrial and agricultural strengths. Two 43-foot tall pavilions proclaim American victory on the Atlantic and Pacific fronts.

At the center of the World War II Memorial is the Freedom Wall Plaza. The Freedom Wall is located on the west side of the Plaza. The Wall contains 4,048 Gold Stars, each of which represents 100 American military deaths. During World War II, when a man or woman went off to serve in the war, his or her family often displayed a blue star on a white field with a red border in their window. If the family member died in the war effort, the family would replace the blue star with a gold star that revealed that family's sacrifice. Beneath the gold stars on the

Freedom Wall appears the simple but poignant engraved message: "Here We Mark the Price of Freedom," which pays silent and solemn tribute to those who paid the ultimate sacrifice. Much like a formal gathering where the guest of honor is at center, the Freedom Wall with its gold stars is the Memorial's place of honor, which symbolizes the number of American dead and missing from World War II. The restricted area would be located in front of the Freedom Wall and extend to the western edge of the Rainbow Pool.

Korean War Veterans Memorial

Authorized by an Act of Congress at 110 Stat. 3226 (1986), the Korean War Veterans Memorial honors members of the Armed Forces of the United States who served in the Korean War. Dedicated on July 27, 1995, the Memorial is located on the National Mall just south of the Lincoln Reflecting Pool. Viewed from above, the Korean War Veterans Memorial is a circle intersected by a triangle. Visitors approaching from the east first come to the triangular Field of Service, where a group of 19 stainless-steel statues depicts a squad on patrol. Strips of granite and scrubby juniper bushes suggest the rugged Korean terrain, while the statues' windblown ponchos recall the harsh weather. This symbolic patrol represents soldiers from a variety of ethnic backgrounds in the U.S. Air Force, Army, Coast Guard, Navy, and Marines.

On the north side of the statues is a granite curb which lists the 22 countries that sent troops or gave medical support in defense of South Korea. On the south side is a black granite wall, whose polished surface mirrors the statues, intermingling the reflected images with faces etched into the granite. The mural is based on actual photographs of unidentified American soldiers, sailors, airmen, and marines. Walking past the Field of Service, visitors approach the circular Pool of Remembrance. The Pool is encircled by a grove of trees and provides a quiet setting for contemplation. The numbers of those killed, wounded, missing in action, and held prisoner-of-war are etched nearby in stone. Opposite this counting of the war's toll is another granite wall which bears a simple but poignant engraved message inlaid in silver: "Freedom Is Not Free." The restricted area would encompass most of the Memorial. The perimeter of the restricted area would be marked by the exterior walkways and by the placement of ground-level markers to mark its eastern boundary, similar to markers identifying the eastern

boundary of the restricted areas at the Vietnam Veterans Memorial.

Martin Luther King, Jr. Memorial

Authorized by an Act of Congress at 110 Stat. 4157 (1986), the Martin Luther King, Jr. Memorial was dedicated on October 16, 2011. The Memorial helps preserve the memory of Dr. King as a visionary, a faith leader and public intellectual, an unwavering advocate of social justice, and a martyr to peace, equality, and justice. On the steps of the nearby Lincoln Memorial, a clear symbol of freedom, Dr. King delivered his first national address, "Give Us the Ballot" in 1957. He returned to the Lincoln Memorial as a key figure supporting the 1963 March on Washington. There, in the defining moment of his leadership in the movement for civil rights, Dr. King delivered his immortal "I Have a Dream" speech.

The Memorial is located on the banks of the Tidal Basin between the Lincoln and Thomas Jefferson Memorials and accentuates Dr. King's story within the larger narrative of the nation. The Memorial encompasses four acres, and comprises elements of architecture, water features, sculpture and inscriptions, that together create a sense of place and a setting for remembrance and celebration. At the north entry portal, the Mountain of Despair's two stones are parted and the Stone of Hope is pushed forward toward the horizon; the missing piece of what was once a single boulder. The emergent Stone of Hope represents the struggle felt by Dr. King whose image is carved in it and gazes over the Tidal Basin toward a future society of justice and equality.

The quotations chosen for the plaza's Inscription Walls represent Dr. King's messages of justice, democracy, hope, and love. Fourteen of Dr. King's quotes are engraved on a 450-foot crescent shaped granite wall. These quotes span his involvement with the Montgomery bus boycotts in Alabama in 1955 to his last sermon delivered at the National Cathedral in Washington, DC, in 1968, four days before his assassination. The restricted area would encompass almost all of the plaza in the Memorial that begins when the visitor emerges from the portal through the Mountain of Despair.

Washington Monument

The Washington Monument honors both the nation's first President and his legacy. Built between 1848 and 1884, the Monument is the nation's foremost memorial to President Washington and the tallest masonry structure in the world at approximately 555 feet tall.

Dedicated in 1884, the Washington Monument shows the enduring gratitude and respect held by the citizens of the United States for President Washington and his contributions to the fight for independence and founding of our Nation. The Washington Monument is surrounded by a circular colonnade of 50 aluminum flagpoles that display American flags. These flags represent the 50 states and are displayed at all times during the day and night to symbolize our enduring freedom.

In 2014, the Washington Monument plaza and its marble benches were rehabilitated with the installation of granite pavers that extend from the Monument to the circle of flags. From the Washington Monument plaza, visitors can also see grand vistas south to the Thomas Jefferson Memorial, east to the Capitol, north to the White House, and west to the Lincoln Memorial.

When the current restricted area for the Washington Monument was established, there was an inner circle surrounding the base of the Monument that was encircled by a roadway. The restricted area included the inner circle and extended to the roadway. This took advantage of an obvious physical boundary to mark the edge of the restricted area. The roadway was removed in 2001 and is now covered by the granite plaza that was completed in 2014. This granite plaza extends from the Monument beyond the old location of the roadway out to the circle of flags. In order to provide certainty to the public about the extent of the restricted area, and to allow more visitors to experience the grand vistas south to the Thomas Jefferson Memorial, east to the Capitol, north to the White House, and west to the Lincoln Memorial, the NPS proposes to expand the restricted area outward approximately 48 feet to include the entire granite plaza that surrounds the Monument out to the circle of flags. Visitors would thus be able to readily identify the expanded restricted area because it is delineated by the circle of flags which is marked by a post and chain fence that surrounds the plaza. The granite plaza is also a different material than the concrete sidewalks that lead to it. The NPS believes it is important to reserve the entire granite plaza as a place where an atmosphere of calm, tranquility and reverence is maintained, so that visitors may contemplate the meaning of the Monument and of George Washington, while leaving ample space nearby for demonstrations and special events. For many people, standing in the granite plaza or sitting on one of its marble benches will be as close as they get to

the Monument because of the obelisk's limited occupant capacity and hours of operation.

9. Modify Regulations Explaining How the NPS Processes Permit Applications for Demonstrations and Special Events

Sections 7.96(g)(3) and (4) describe how the public can submit a permit application to the NPS for a demonstration or special event, and how the NPS will process that application. The NPS proposes to make several changes to these regulations in order to provide greater clarity and certainty to the public about how the NPS processes permit applications. Applying for a commercial filming permit at the National Mall and Memorial Parks and President's Park is governed by regulations in 43 CFR part 5, which are not affected by this proposed rule.

Waiver of 48-Hour Permit Application Deadline

Section 7.96(g)(3) requires that applicants submit permit applications at least 48 hours in advance of any demonstration or special event. Under existing regulations, this requirement can be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The NPS proposes to replace this waiver language by stating that notwithstanding the 48-hour requirement, the Regional Director will reasonably seek to accommodate spontaneous demonstrations, subject to all limitations and restrictions applicable to the requested location, provided such demonstrations do not include structures and provided the NPS has the resources and personnel available to manage the activity. Reactions to specific or imminent occurrences, including but not limited to a presidential action, congressional vote, or Supreme Court decision, often result in requests for spontaneous demonstrations. Adding this statement would provide more flexibility for spontaneous demonstrations, while allowing the Regional Director to ensure that the NPS and the U.S. Park Police have the law enforcement capacity to safely manage events that are requested with less than 48-hours notice. The proposed language would clarify for the public that structures may not be used for events that are not requested at least 48 hours in advance. This is the minimum amount of time the NPS needs to evaluate the safety concerns

and resource impacts associated with the use of structures.

Removal of 24-Hour Deemed Granted Status for Demonstrations

Section 7.96(g)(3) states that applications for demonstrations are deemed granted, subject to all limitations and restrictions applicable to the park area, unless denied within 24 hours of receipt. Permit applications that are “deemed granted” after this 24-hour period remain subject to terms and conditions that are negotiated between the applicant and the NPS. This negotiation can result in the permit application being denied, partially denied, or modified by the NPS as it receives more information from the permittee about the requested event. This is particularly the case when applicants request permits for large and complex demonstrations with structures that raise resource and public safety concerns. In some cases, the NPS receives information from the applicant in the weeks or days before the event begins. This can result in the NPS imposing permit terms and conditions just before the event in order to mitigate concerns related to park resources and public order and safety. The result is that permit applications that have been “deemed granted” are often times subject to a lengthy review process that can be confusing for permit applicants. The NPS proposes to remove the “deemed granted” language in section 7.96(g)(3) and replace it with language in section 7.96(g)(4) that better reflects how the NPS processes permit applications. These changes are discussed below.

Timeline To Respond to an Application

Section 7.96(g)(4)(1) states that the NPS processes permit applications for demonstrations and special events in order of receipt. This regulation also states that the NPS will not accept applications more than one year in advance of a proposed event (including set-up time). An application is considered received at the time and date stamped on the application by a staff member of the NPS Permits Management Division. Applications are only stamped if they contain basic information about the requested event. At minimum, an application must provide the location, purpose and plan for the event, time and date, number of people who will participate, and contact information. Instead of the 24-hour “deemed granted” provision, the NPS proposes that it will provide an initial response for all permit applications for demonstrations within three business days of receipt. Within that time frame,

the NPS would notify the applicant that the permit application has been characterized in one of three ways: Approved, Provisionally Reserved, or Denied. The NPS anticipates that this notification will be in the form of an electronic communication (e.g. text message, email) indicating the category of disposition and—if the application is provisionally reserved—stating that the NPS will follow-up with the applicant for more information. If the NPS fails to send the electronic communication to the permit applicant within three business days of receiving the application, then the permit application will be approved. The NPS anticipates that it will use electronic communication with applicants in order to provide more rapid and timely information. The NPS proposes to clarify in the regulations that only those applications that contain basic information about the event (location, time and date, purpose and plan for the event, number of people who will participate, and contact information) will be subject to the three-business day initial response period. Applications that do not contain this information prevent the NPS from making an initial determination about their status. The NPS would notify applicants if their applications do not contain enough information to make an initial determination and would identify the information that must be provided.

Applications for special events will not be subject to this requirement and therefore will not be considered approved after any specified period of time. The NPS will respond to applications for special events as soon as practicable given the workload and available resources in the Division of Permits Management when the application is received. The NPS will provide an opportunity for the applicant to characterize the event as either a demonstration or a special event. The NPS, however, will apply the definitions of demonstration and special event to determine the type of activity requested by a permit application for purposes of whether an initial response must be provided within three business days. For events that contain elements of both demonstrations and special events, only the demonstration elements will be approved if the NPS fails to notify the applicant that those elements are either provisionally reserved or denied within three business days.

The NPS believes that the increased volume and complexity of applications for events necessitates an increase in the amount of time it has to provide information back to the applicant about the status of a particular request. Under

existing regulations, an application for a demonstration is deemed granted, based on language in the decision in Quaker Action IV, 516 F.2d 717 (1975), unless the NPS denies the application within 24 hours. In this way, permit applicants can understand the status of their application for a demonstration within 24 hours, although applications that are deemed granted remain “subject to all limitations and restrictions applicable to said park area.” The NPS proposes to extend the timeframe for either denying an application for a demonstration or providing an applicant a reservation of space from 24 hours to three business days. This would account for the substantial increase in the volume and complexity of permit applications over time. In 1975, for example, the NPS processed 705 permit applications for demonstrations and events located within NPS units subject to section 7.96. In 1976, the NPS processed 876 applications. By comparison, the NPS processed 2,986 permit applications in 2016, plus an additional 800 commercial filming permits for television and motion pictures. In 2017, the NPS processed 4,658 permit applications for demonstrations, special events, and commercial filming. In the last ten years, the NPS processed an average of almost 3,000 permits per year, including demonstrations, special events, and commercial filming. Requested events have become more complex with advancements in staging, structures, and audio-visual technology. The increased complexity of events is reflected in the personnel services costs necessary to manage them. On average, permit processing activities require more than five full time employees at a cost of \$700,000 per year. Events such as running and bicycle races cost the United States Park Police an average of \$40,000 per event. More complex events are much more expensive. For example, the United States Park Police spent approximately \$500,000 to manage the opening of the National Museum of African American History and Culture. The United States Park Police and the National Mall and Memorial Parks staff spent approximately \$730,000 to manage the HBO Concert for Valor in November 2014 and approximately \$350,000 to manage the Landmark Music Festival in September 2015.

Categories for the Disposition of Permit Applications

The NPS proposes that applications for demonstrations and special events would be initially categorized in one of three ways: Approved, Provisionally Reserved, or Denied. The NPS proposes to process applications in each category

differently, as described below. The NPS believes that these categories will provide more information to the public about the status of their applications than is provided by the existing regulations.

If the NPS approves a permit application, the NPS would send a permit to the applicant for the specific event requested as soon as practicable. The permit would contain terms and conditions that would not be subject to change or negotiation. The permit could contain conditions reasonably consistent with the requirements of public health and safety and protection of park resources. The permit could also contain reasonable limitations on the equipment used and the time and area within which the event is allowed. A permit for a special event could also require the applicant to file a cost recovery deposit in an amount adequate to cover costs such as restoration, rehabilitation, and clean-up of the area used, and other costs resulting from the event. In addition, a permit for a special event may require the acquisition of liability insurance in which the United States is named as co-insured in an amount necessary to protect the United States. The NPS would reasonably seek to accommodate requests from the applicant for changes to the permitted event after the permit application has been approved. Minor changes may not require the establishment of new permit conditions. The NPS may require the applicant to agree to new permit conditions in order to accommodate material changes such as changes to the nature and purpose of the event, the location of the event, the type and number of structures involved, or the number or notoriety of participants.

Existing regulations allow the ranking U.S. Park Police supervisory official in charge to revoke a permit or part of a permit for a demonstration if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. Existing regulations allow the Regional Director to exercise reasonable discretion to revoke a permit for a special event at any time. The NPS is replacing these two standards of revocation with one, uniform standard that applies to both demonstrations and special events. This will give permit holders more certainty about the validity of their permit and the conditions that could result in its revocation. The NPS proposes to allow the Regional Director or the ranking U.S.

Park Police supervisory official in charge to revoke a permit or part of a permit for any violation of its terms or conditions, or if the event presents a clear and present danger to the public safety, good order, or health, or for any violation of applicable law or regulation. Any such revocation shall be in writing. The NPS exercises discretion when faced with minor violations of permit conditions and seeks to work with permittees to resolve such violations prior to revoking a permit. The NPS seeks comment on whether the regulations should state that it may only revoke a permit for "material" violations of permit conditions.

If the NPS categorizes a permit application as provisionally reserved, the NPS would reserve the requested location, date, and time for the applicant, but would not approve the application and issue a permit until it receives additional information. During the provisionally reserved stage, the NPS would work diligently to resolve all outstanding questions in order to determine whether the request can be approved or denied. If the NPS receives an application more than 60 days prior to the requested event, the NPS would provide the applicant with an initial, comprehensive list of outstanding issues and requested information no later than 40 days prior to the requested event. If not provided on the initial application, the NPS would likely ask for information about equipment and facilities to be used, and whether there is any reason to believe that there will be an attempt to disrupt, protest, or prevent the event. The NPS could request additional information from the applicant based upon the applicant's response to the initial list. This exchange of information could occur through written correspondence, or through one or more logistical meetings among the NPS and the applicant. The NPS would make all reasonable efforts to approve or deny a permit application at least 30 days in advance of a requested event. Permit applicants would be required to provide the NPS with all requested information before the NPS approves or denies an application.

If the NPS denies a permit application, it would notify the applicant in writing that it is unable to accommodate the requested event. The NPS would notify the applicant if the application could be approved or provisionally reserved if certain aspects of the request are modified. If the applicant notifies the NPS that it would

consider modifying its application for the requested event, the NPS would work with the applicant to modify the application in a manner that it could be approved or provisionally reserved. Modifications could include fewer participants, less staging, a different footprint for the event, different structures incident to it, a different date or time of day or the order of the event, or an alternative location that could accommodate the requested event. In this case, the applicant would not be required to submit a new application. The modified application would be processed based upon the date it was initially received by the NPS. If the applicant is not willing to modify its application in a manner and with enough advance notice that would allow the NPS to accommodate the event, the application would be denied.

10. Adopt Criteria in 36 CFR Part 2 for Reviewing Permit Applications That Apply to Other NPS Areas. Remove Redundant Criteria in 7.96

Sections 7.96(g)(4)(vii) and (5)(v) contain criteria that the Regional Director can use to approve or deny permit applications for events within the NCR. Sections 2.50(a) and 2.51(f) contain criteria that park superintendents can use to approve or deny permit applications for events in other units of the National Park System. Several of the criteria in parts 2 and 7 are similar to each other. In order to simplify and streamline its regulations, the NPS proposes to remove criteria from section 7.96 and instead refer to similar criteria stated in sections 2.50 and 2.51. In some circumstances, however, the NPS would maintain the criteria in section 7.96 if those criteria address particular management issues associated with the NCR. The rule would clarify that even where the criteria in section 2.50 and 2.51 are adopted in section 7.96, the Regional Director—not the park superintendent—has the authority to approve or deny permit applications for units that are subject to section 7.96. This authority is currently delegated to the Permits Management Division at the National Mall and Memorial Parks. The table below indicates the criteria that would apply to special events and demonstrations within the NCR and the citation where those criteria are located in existing regulations. These criteria help the NPS address the management issues indicated in the table.

Criterion	Existing citation	Management issue
Demonstrations and Special Events		
A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area.	7.96(g)(4)(vii)(A)	Multiple Occupancy.
The event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.	7.96(g)(4)(vii)(C)	Site Capacity and Suitability.
The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.	7.96(g)(4)(vii)(D)	Conformity with Laws and Regulations.
Present a clear and present danger to the public health and safety	2.50(a)(5)	Public Health and Safety.
Special Events Only		
Cause injury or damage to park resources	2.50(a)(1)	Resource Impairment.
Be contrary to the purposes for which the natural, historic, development and special use zones were established; or unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones.	2.50(a)(2)	Value Impairment.
Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the NPS.	2.50(a)(3)	Conflict with Park Operations.
Substantially impair the operation of public use facilities or services of NPS concessioners or contractors.	2.50(a)(4)	Conflict with Concessionaire or Contractor Operations.
Result in significant conflict with other existing uses	2.50(a)(6)	Conflict with Other Uses.
Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.	7.96(g)(5)(v)(A)	Mission Alignment.
Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed event.	7.96(g)(5)(v)(B)	Site Capability and Suitability.

The NPS proposes to remove two criteria in section 7.96 that apply only to special events and are no longer

needed for the reasons stated in the table below.

SPECIAL EVENTS ONLY

Criterion	Existing citation	Reason for removal
Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.	7.96(g)(5)(v)(C)	The NPS seeks full cost recovery for special events and should not bear costs associated with permitting, monitoring, and supporting special event activities, other than those sponsored by the NPS.
Whether the proposed event is duplicative of events previously offered in National Capital Region or elsewhere in or about Washington, DC.	7.96(g)(5)(v)(D)	The described area is too broad to consider when determining whether an event is duplicative of another event. This criteria does not account for events that are similar but held at different times. Applicants may request to have separate events in different locations with the NCR that commemorate the same figure or occasion.

11. Establish a Maximum Permit Period of 30 Days, Plus a Reasonable Amount of Time Needed for Set Up and Take Down of Structures Before and After the Event

Section 7.96(g)(4)(vi) states that the NPS will issue permits authorizing demonstrations or special events for seven days in the White House area (except the Ellipse) and for four months in the Ellipse and all other park areas. The permit validity period is different for activities related to inaugural events. In the White House area (except the Ellipse), the permit validity period for inaugural activities is October 24 through April 1 for reasonable and necessary set-up and take-down

activities for the White House Sidewalk and Lafayette Park. In the Ellipse and all other park areas, the permit validity period for inaugural activities is December 7–February 10 for reasonable and necessary set up and take down activities for Pennsylvania Avenue National Historic Site and Sherman Park.

The NPS proposes to adjust the permit validity period to an amount of time not to exceed 30 days, plus a reasonable amount of time necessary for set-up and take down of structures associated with an event. The NPS will determine a reasonable amount of time for set-up and take down of structures based upon information provided by the permit applicant. If a permit application

requests the use of structures such as tents or stages, the NPS would consult the Turf Management and Event Operations Guide for the Mall, Lincoln Memorial, Washington Monument, and Thomas Jefferson Memorial to assess potential impacts to park resources. The NPS could limit the amount of time a structure may be allowed on turf to a period less than maximum period duration, including for events presented by the NPS, in order to mitigate adverse impacts to the resources identified in the Guide. Upon request, the Regional Director could renew a permit for additional, consecutive periods of 30 days or less. Permittees would be required to submit requests for renewals to the NPS at least 10 days prior to the

expiration of an existing permit. This would provide enough time for the NPS to check the availability of the location and issue the permit. Consistent with the applicable resource management policies, the NPS proposes to require events with structures to move to a different location after the expiration of a permit in order to mitigate impacts to resources such as turf and irrigation systems and historic and cultural vistas within the NCR. The NPS could require, in its discretion, events without structures to be moved to a different location if necessary to mitigate the same impacts.

The proposed change to the maximum permit duration would establish a uniform regulatory scheme for all park areas subject to section 7.96. The 30 day permit duration period would apply to all events, even those that do not have structures. This would simplify the regulatory framework and provide greater clarity to the public about the duration of permits. Reducing the maximum permit duration period from four months to 30 days (plus time needed to setup and breakdown structures) would also create more opportunities for applicants to apply for certain dates and locations within the National Mall and Memorial Parks and President's Park. The NPS expects the number of permit applications to continue to increase over time. The proposed change in maximum period duration would increase opportunities for a variety of groups and individuals to use the areas within the National Mall and Memorial Parks and President's Park for demonstrations and special events.

Section 7.96(g)(5)(vi)(D) states that any structures used in a demonstration extending beyond the maximum duration of a permit must be capable of being removed upon 24 hours notice and the site restored, or, the structure shall be secured in a fashion so as not to interfere unreasonably with the use of the park area by other permittees. The NPS proposes to remove this paragraph because it would no longer be necessary if the maximum permit duration period is revised to include time for take down of structures. If a structure poses a safety risk during a permitted event, the NPS would have the authority to revoke the portion of the permit allowing for the structure under paragraph (g)(6).

12. Identify Locations Where Structures May Not Be Used, and Restrict the Height, Weight, Equipment, and Materials of Structures When They Are Permitted During Special Events and Demonstrations

Significance of the Viewshed

The NPS administers some of the most spectacular and historically significant landscapes in the country. Visual characteristics are often central to a park area's management and visitor experience, and visitors consistently identify scenic views as major reason for visiting parks. The National Mall Historic District and the Washington Monument and Grounds Historic District are both listed in the National Register of Historic Places at the national level of significance. The nominations for these Districts emphasize how scenic views and vistas contribute to the significance of these historic properties. These include planned views along the principal north-south and east-west axes of the National Mall, reciprocal views between major memorial sites, extended views along contributing streets and avenues, multidirectional views across component landscapes, and periodic views of resources from circulation routes, among others.

Pierre Charles L'Enfant developed his 1791 plan for the city of Washington with keen attention to visual relationships among the sites he dedicated to public buildings and monuments. Nowhere was that concept more important than along the National Mall, where views west from the U.S. Capitol and south from the White House intersected at a proposed equestrian statue of George Washington. The primary vista west from the U.S. Capitol along L'Enfant's "Grand Avenue" to the site for a proposed equestrian statue of George Washington intersected with views south from the White House. L'Enfant's planned views also extended beyond the statue to the Potomac River. The L'Enfant Plan is itself listed in the National Register of Historic Places.

The McMillan (Senate Park) Commission Plan of 1901–02 also focused on visual relationships, adapting L'Enfant's visual corridor as the basis for their planning for the Mall and advancing it to take in new memorial sites. The McMillan Commission conceived of sites ultimately occupied by the Lincoln and Thomas Jefferson Memorials as the termination of principal views from the U.S. Capitol and the White House, respectively—creating the great cross axis of today's National Mall. The McMillan Plan also established a

setback for new buildings to ensure that views along the east-west axis remained unimpeded, and subsequent development honored the National Mall's principal views.

The construction of the Washington Monument itself established significant new views across the Mall, the city of Washington, and the developing region, and became the focus of important views from beyond the Mall. Other significant views were established as the landscape developed and incorporated into the principal view sheds or developed as new monuments, memorials, and buildings were constructed.

Congress has recognized the significance of the viewshed within the National Mall and Memorial Parks and President's Park. The Commemorative Works Act of 1986 (CWA) prohibits the construction of commemorative works within an areas designated as the "Reserve" unless they are approved by the National Capital Memorial Advisory Commission. The "Reserve includes the great cross-axis of the National Mall, extending from the United States Capitol to the Lincoln Memorial, and from the White House to the Thomas Jefferson Memorial. In 2003, Congress amended the CWA and stated as one of its findings that the Reserve "is a substantially completed work of civic art" and that its integrity should be preserved.

In 2018, the NPS conducted a visual impact analysis to assess the visual impacts of structures in various locations within the National Mall and Memorial Parks and President's Park. The purpose of the study was to better understand the impact of structures associated with demonstrations and events have upon the historical and significant viewshed within the National Mall and Memorial Parks and President's Park. Visual impacts were assessed using Geographic Information Systems (GIS) and were depicted in both map form (viewshed analysis) and ground-level scenes (3D visualizations) that included a simple block, virtual structure at specified locations and standing heights. The viewshed analysis was used to demonstrate on maps certain visitor view points from which a proposed structure may be seen. The 3D visualizations simulated potential observable, actual surroundings with a proposed structure included. The goal of the visual impact analysis was to better understand how structures associated with demonstrations and special events within the National Mall and Memorial Parks and President's Park could adversely impact the historic and cultural viewshed. The NPS made

the following key conclusions from the study:

- The map analysis reinforces the linear (north-south and east-west) nature of the dominant views within and through the National Mall.
- The map analysis demonstrates how topography and vegetation influence visibility.
- There is a limited correlation between visual impacts and selected viewing points and structure points.
- Viewable area maps reveal local versus broad/diffuse impacts to views.
- Analysis reveals that structures close to memorials and within primary view corridors detract from the visitor experience and alter the perception of the historically significant characteristics of the landscapes of the National Mall and President's Park.
- Structures set back from major Memorials and substantially offset from primary views and vistas are less disruptive to the characteristics that make the National Mall and individual memorials significant.

The study suggests that locations that are especially vulnerable to impacts from the introduction of structures include (1) locations in close proximity to major monuments and memorials; (2) locations directly aligned with either of the two primary east-west and north-south axes; and (3) elevated and open locations. The study suggests that there are a number of potential structure locations that would result in only limited localized impacts. These include (1) the area south of the Reflecting Pool and its associated elm walks; (2) select locations within Constitution Gardens; and (3) the quadrants of the Ellipse outside of the 150-foot north-south vista between the White House and the Thomas Jefferson Memorial. The proposed height restrictions for structures in this rule are based upon the NPS's evaluation of the visual impact analysis and are intended to allow the public to use these open forums in a manner that mitigates impacts to the significant viewsheds.

Proposed Height Restrictions

Section 7.96(g)(5)(vi) contains limitations regarding the use of structures in connection with permitted demonstrations and special events. As discussed above, the NPS proposes to require a permit in order to erect structures, other than small lecterns or speakers' platforms that would be allowed without a permit in most locations, during any demonstration or special event—even if those demonstrations would not otherwise require a permit because of their small size.

The NPS also proposes to establish areas where structures would not be allowed and other areas where structures would be allowed but subject to maximum height restrictions. These proposed restrictions are based upon an evaluation of the visual impact analysis explained above. This evaluation and the visual impact analysis are available online at <https://home.nps.gov/nama/learn/management/index.htm>. A table explaining the proposed restrictions and a map identifying the restricted areas are found in the proposed rule. This table relates solely to the use of structures at locations and times where events may be permitted under section 7.96. Structures are not allowed at any location if the requested event is not allowed at that location.

In addition to the restrictions in the table, the rule would prohibit the use of structures within the drip line of any tree located in Lafayette Park or the Ellipse. This restriction is a long-standing administrative practice of the NPS and is designed to protect the trees in these locations, which have cultural and historic value. The drip line of a tree indicates the outer extent of the tree root system.

The Turf Resource at the National Mall and Memorial Parks

On January 24, 2013, Secretary of the Interior Salazar issued Secretarial Order 3326, "Management and Protection of the National Mall and its Historic Landscape." Order 3326 recognizes the National Mall as one of the most important landscapes in the United States and acknowledges that it experiences extreme and increasing levels of use. The Order sets forth a strategy for maintaining sustainable use of the National Mall in lights of the volume of requests to use this area. Part of this strategy prioritizes (1) increasing non-turf areas to better accommodate the use of temporary structures for appropriate permitted activities; (2) developing a professional turf management staff to identify and implement best practices for turf management and to develop permits that take those turf management concerns into consideration; and (3) updating permit conditions to require the use of best practices that ensure resource protection by addressing permit conditions for the expected level of attendance, duration of events, use of turf areas, the size and layout of temporary structures, and the location of structures on durable non-turf areas.

As part of the NPS's implementation of the Order, the NPS completed a Turf Management and Event Operations Guide for the Mall, Lincoln Memorial,

Washington Monument, and Thomas Jefferson Memorial in 2015. This Guide is used by the NPS when it considers the potential impacts of tents or temporary structures on turf areas within the National Mall and Memorial Parks. The Guide identifies non-turf areas such as walkways and hardscape panels as the preferred location for events of all types, particularly events using structures. The Guide allows the NPS to permit structures on turf panels, but subject to limitations stated in the Guide to protect the turf and promote public safety. Limitations include restrictions about duration, weight, equipment (e.g. stakes), and materials used for structures. The NPS consults the Guide and implements appropriate limitations on structures in the conditions of a permit.

Existing NPS regulations in section 7.96(g)(5)(vi)(C) allow the Regional Director to impose reasonable restrictions upon the use of temporary structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns. In order to provide more clarity to the public about the types of restrictions that may be imposed, the proposed rule would state that these restrictions may include permit conditions regarding structures that are consistent with the turf management and event operations guidance related to duration, weight, equipment, and materials used.

13. Apply Existing Sign Restrictions (e.g. Supports, Dimensions) in President's Park to Other Locations Within the National Mall and Memorial Parks and President's Park

Sections 7.96(g)(5)(vii) and (ix) contain restrictions on the use of signs or placards on the White House Sidewalk and in Lafayette Park. These restrictions promote public safety, help secure sensitive locations, and mitigate adverse impacts to cultural and historical resources. The NPS proposes to apply these restrictions to events that plan to move from any location that is subject to the regulations in this section 7.96 to the White House Sidewalk or Lafayette Park, and events that plan to move or do in fact move from the White House Sidewalk or Lafayette Park to another location that is subject to the regulations in this section 7.96, even when those events are located outside of the White House Sidewalk or Lafayette Park. Applying these restrictions outside of the White House sidewalk and Lafayette Park in these circumstances would create a more uniform regulatory scheme for the public that will promote public safety

and simplify event planning. People participating in demonstrations often begin in one park area where their signs are compliant with existing regulations and then move onto the White House sidewalk or into Lafayette Park where their signs are no longer compliant. This often results in negative interactions with law enforcement, who are then required to enforce regulations that were not applicable earlier in the event. These restrictions would apply to all groups participating in a demonstration or special event, including those who are not required to obtain a permit based upon their group size and/or location.

14. Minor Changes to 36 CFR 7.96

This rule would make a minor change to paragraph (e) in Section 7.96 to clarify the circumstances under which bathing, swimming, or wading is allowed. This provision clarifies that bathing, swimming, or wading in any fountain, pool, the Tidal Basin, the Chesapeake and Ohio Canal, Rock Creek, or Constitution Gardens Pond is prohibited except where officially authorized or for the purpose of saving a drowning person. This rule would replace all references to the "Jefferson Memorial" in section 7.96 with the phrase "Thomas Jefferson Memorial" which is the actual name of the memorial. This rule would reorganize the defined terms in section 7.96(g)(1) in alphabetical order and remove the paragraph designations (i) through (x), in conformance with the **Federal Register** Document Drafting Handbook.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. It directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that

regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in a report entitled "Cost-Benefit and Regulatory Flexibility Analyses: Special Regulations, Areas of the National Park System, National Capital Region, Special Events and Demonstrations" that is available online at <https://home.nps.gov/nama/learn/management/index.htm>.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) of the SBREFA. 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 (UMRA)

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. This rule will not result in direct expenditure by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have

taking implications under Executive Order 12630. This rule does not regulate uses of private property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

*Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024-0021 (expires 08/31/20). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA)

The NPS does not expect this rule to constitute a major Federal action significantly affecting the quality of the human environment. The NPS does not expect that a detailed statement under the NEPA would be required because the rule would likely be covered by a categorical exclusion. Categorical exclusion A.8 of Section 3.3 of the National Park Service NEPA Handbook (2015) would likely apply because the rule would modify an existing regulation in a manner that does not "increase public use to the extent of compromising the nature and character of the area or causing physical damage to it, introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it, conflict with adjacent ownerships or land uses, or cause a nuisance to adjacent owners or occupants." The NPS also expects that the rule would not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

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

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

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

List of Subjects in 36 CFR Part 7

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

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

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

1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

- 2. Amend § 7.96 by:
a. Removing the phrase "Jefferson Memorial" where it appears and adding, in its place, the phrase "Thomas Jefferson Memorial".
b. Revising paragraphs (a), (e), and (g)(1), (g)(2) introductory text, (g)(3) introductory text, (g)(3)(i), (g)(3)(ii) introductory text, (g)(3)(ii)(A) through (C), (g)(3)(ii)(E) through (H), (g)(4)(i), (g)(4)(iv).
c. Removing and reserving paragraph (g)(4)(v).
d. Revising paragraphs (g)(4)(vi), (g)(4)(vii) introductory text, (g)(4)(vii)(A) and (B), (g)(5), and (g)(6).

The revisions to read as follows:

§ 7.96 National Capital Region.

(a) Applicability of regulations. (1) This section applies to all park areas administered by the National Park Service located in the District of Columbia, the portion of the George Washington Memorial Parkway located in the Commonwealth of Virginia, the portion of the National Capital Parks-East located in the State of Maryland, the portion of Chesapeake and Ohio Canal National Historical Park located in Montgomery County, and to other federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the act of March 17, 1948 (62 Stat. 81).

(2) Paragraph (e) of this section also applies to the portion of Chesapeake and Ohio Canal National Historical Park located in Maryland outside of Montgomery County.

* * * * *

(e) Bathing, Swimming, Wading—(1) Bathing, swimming, or wading in the following locations, except where officially authorized or for the purpose of saving a drowning person, is prohibited: Any fountain or pool, the Tidal Basin, the Chesapeake and Ohio Canal, Rock Creek, and Constitution Gardens Pond.

(2) Entering the Potomac River, the Anacostia River, the Washington Channel, or the Georgetown Channel

from any park area identified in paragraph (a) of this section, except for the purpose of saving a drowning person, is prohibited.

* * * * *

(g) Demonstrations and special events—(1) Definitions.

Attended means that a responsible individual remains within three feet of an object.

Demonstration has the meaning given in § 2.51(a) of this chapter.

Ellipse means the park areas, including sidewalks adjacent thereto, within these bounds: On the south, Constitution Avenue NW; on the north, E Street NW; on the west, 17th Street NW; and on the east, 15th Street NW.

Event means a demonstration or special event, including events presented by the National Park Service. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.

Korean War Veterans Memorial means the area within the plaza's exterior sidewalks.

Lafayette Park means the park areas, including sidewalks adjacent thereto, within these bounds: On the south, Pennsylvania Avenue NW; on the north, H Street NW; on the east, Madison Place NW; and on the west, Jackson Place NW.

Lincoln Memorial means that portion of the park area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level.

Martin Luther King, Jr. Memorial means most of the interior plaza facing the Inscription Wall, Mountain of Despair and Stone of Hope.

National celebration event means an annual recurring special event regularly scheduled by the National Capital Region, which are listed in paragraph (g)(4)(ii) of this section.

Other park areas means all areas, including sidewalks adjacent thereto, other than the White House area, administered by the National Capital Region.

Regional Director means the official in charge of the National Capital Region, National Park Service, U.S. Department of the Interior, or an authorized representative thereof.

Special event means the activities listed in section 2.50(a) of this chapter before the text "are allowed . . .".

Structure means:

- (i) Except as discussed in paragraph (ii) of this definition, a structure is any object that is not intended to be carried

by permittees including, but not limited to:

(A) Props and displays, such as coffins, crates, crosses, theaters, cages, and statues;

(B) Furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums, and lecterns;

(C) Shelters, such as tents, boxes, trailers, and other enclosures;

(D) Wagons and carts;

(E) Jumbotrons, light towers, delay towers, portable restrooms, mobile stages; and

(F) All other similar types of property that may tend to harm park resources, including aesthetic interests.

(ii) It does not include hand-carried signs; bicycles, baby carriages and baby strollers lawfully in a park area that are temporarily placed in, or are being moved across, the park area, and that are attended at all times while in the park area; and wheelchairs and other devices in use by individuals with a disability.

Thomas Jefferson Memorial means the circular portion of the Thomas Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns.

Vietnam Veterans Memorial means the East and West Walls, Three Servicemen Statue, Vietnam Veterans Women's Memorial, Agent Orange Plaque and adjacent areas extending to and bounded by the furthest curved pedestrian walkways on the north, west, and south, and a line drawn perpendicular to Constitution Avenue one hundred seventy-five (175) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

Washington Monument and Plaza means the granite plaza from the circle of flags to the Monument and its interior.

White House area means all park areas, including sidewalks adjacent thereto, within these bounds; on the south, Constitution Avenue NW; on the north, H Street NW; on the east, 15th Street, NW; and on the west, 17th Street NW.

White House sidewalk means the south sidewalk of Pennsylvania Avenue NW, between East and West Executive Avenues NW.

World War II Memorial Freedom Wall Plaza means the area from the Field of Stars to the Rainbow Pool.

(2) *Permit requirements.* Events may be held only pursuant to a permit issued in accordance with the provisions of this section. The following exceptions apply unless the demonstration involves the use of a structure, other than small lecterns or speakers' platforms that are no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, in which case a permit is required:

* * * * *

(3) *Permit applications.* Permit applications may be obtained at the Division of Permits Management, National Mall and Memorial Parks, or online at www.nps.gov/nama. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at the Division of Permits Management at least 48 business hours in advance of any proposed event. Notwithstanding the 48-business hours requirement, the Regional Director will reasonably seek to accommodate spontaneous demonstrations, subject to all limitations and restrictions applicable to the requested location, provided such demonstrations do not include structures and provided the NPS has the resources and personnel available to manage the activity. The Regional Director will accept permit applications only during the hours of 8 a.m.–4 p.m., Monday through Friday, holidays excepted.

(i) *White House area.* No permit may be issued authorizing demonstrations in the White House area, except for locations at the White House sidewalk, Lafayette Park and the Ellipse that are not closed to public access under paragraphs (g)(3)(i)(A)–(D) of this section. No permit may be issued authorizing special events, except for locations at the Ellipse and except for annual commemorative wreath-laying ceremonies relating to the statues in Lafayette Park that are not closed to public access under paragraphs (g)(3)(i)(A)–(D) of this section.

(A) Public access is not allowed on the north and east exterior portions of First Division Memorial Park, including West Executive Avenue and State Place NW with adjacent roadways and sidewalks: from northwest corner of State Place and 17th Street NW; to include all areas of West Executive Avenue along the South fence Line of the White House Complex and across E Street, NW; to include the south sidewalk adjacent to the First Division Memorial Park; and all of E Street NW, from 17th Street NW east to the pedestrian walkway through First

Division Memorial Park, except that the pedestrian walkway through First Division Memorial Park and the north sidewalk of E Street NW to the west pedestrian crosswalk on E Street NW will be accessible to pedestrians, unless protective measures or special events dictate otherwise.

(B) Public access is not allowed on the north, south, and west exterior portions of the William T. Sherman Monument and Park, including East Executive Avenue and Alexander Hamilton Place NW, with adjacent roadways and sidewalks: From northeast corner of the park at Alexander Hamilton Place and 15th Street NW, running west on Alexander Hamilton Place NW to East Executive Avenue NW; to include all of Alexander Hamilton Place NW with adjacent north and south sidewalks; from southwest corner of E Street NW and East Executive Avenue NW running to the corner of E and 15th Streets NW; to include all of E Street NW, with the adjacent north sidewalk; from northwest corner of the park at Alexander Hamilton Place and East Executive Avenue NW running to the southwest corner of East Executive Avenue NW and across E Street NW; this includes all areas of East Executive Avenue along the south fence line and across E Street to the east pedestrian crosswalk. Notwithstanding the preceding closures, the center monument area and the sole pedestrian walkway between the northeast and southwest corners of the park and the north sidewalk of E Street NW to the east pedestrian crosswalk on E Street NW will be accessible to the public from 7:00 a.m. to 7:00 p.m., unless protective measures or special events dictate otherwise.

(C) Public access is not allowed on E Street NW from the west crosswalk just east of West Executive Avenue NW to the east crosswalk just west East Executive Avenue NW, including the sidewalk and all areas adjacent to the South Fence Line of the White House Complex.

(D) Public access is not allowed on the south sidewalk of Pennsylvania Avenue NW, adjacent to the North Fence Line of the White House Complex, from the security post located just north of West Executive Avenue NW to the security post located just north of East Executive Avenue NW. The area of sidewalk to be closed shall consist of a twenty (20') foot portion of the sidewalk, extending out from the North Fence Line, leaving a five (5') foot portion of the sidewalk for pedestrian access.

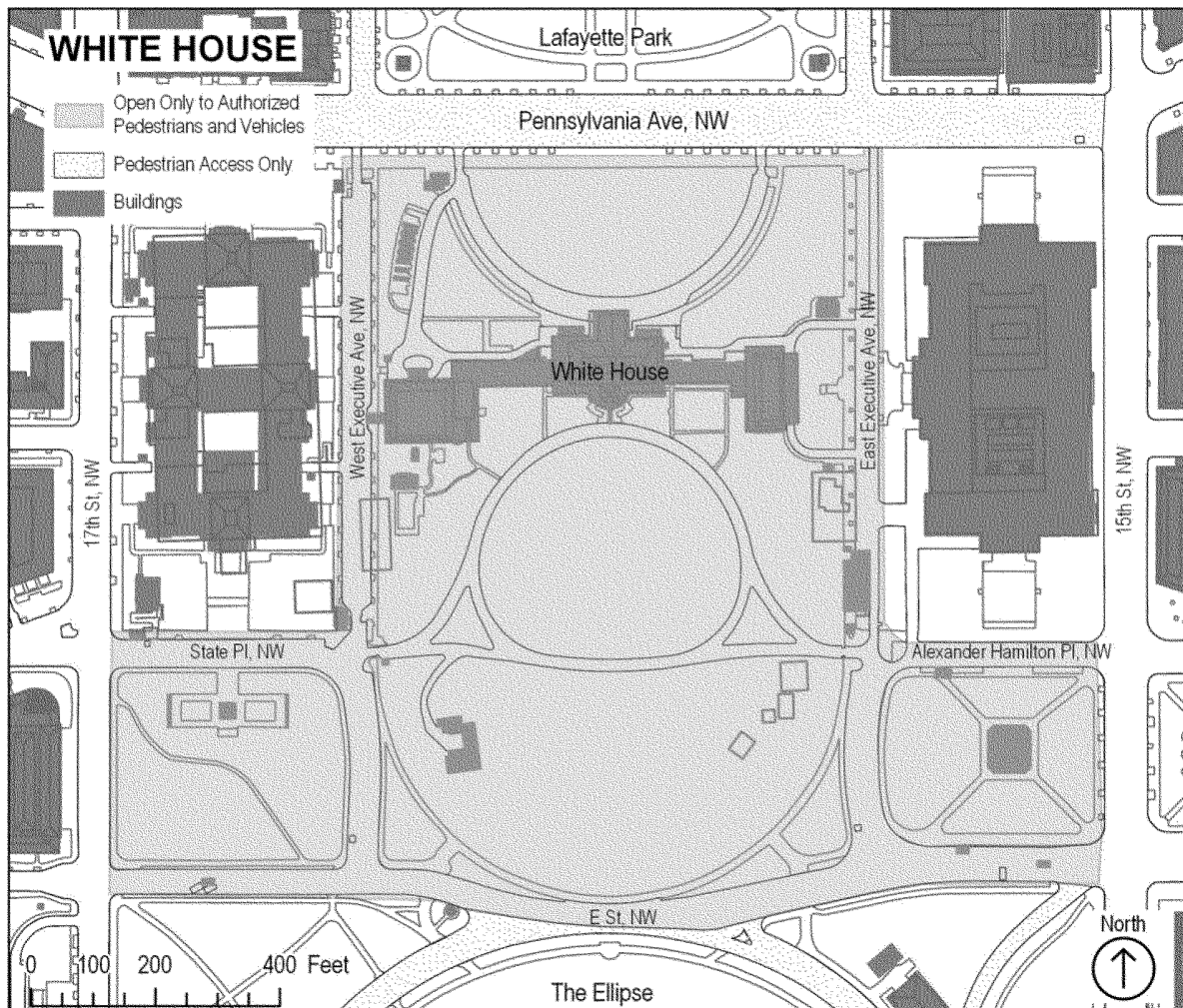
(E) The closures described in paragraphs (g)(3)(i)(A)–(D) of this section are identified in the following

map and as further delineated with fencing in the park areas themselves. Exceptions for the pedestrian walkway at First Division Memorial Park and the

center monument area and pedestrian walkway at William T. Sherman Monument and Park are not displayed in the map because they are subject to

closure at any time for protective measures or special events.

BILLING CODE 4312-52-P



(ii) *Other park areas.* Events are not allowed in the following other park areas:

(A) The Washington Monument and Plaza, except for the official annual commemorative Washington birthday ceremony.

(B) The Lincoln Memorial, except for the official annual commemorative Lincoln birthday ceremony.

(C) The Thomas Jefferson Memorial, except for the official annual

commemorative Thomas Jefferson birthday ceremony.

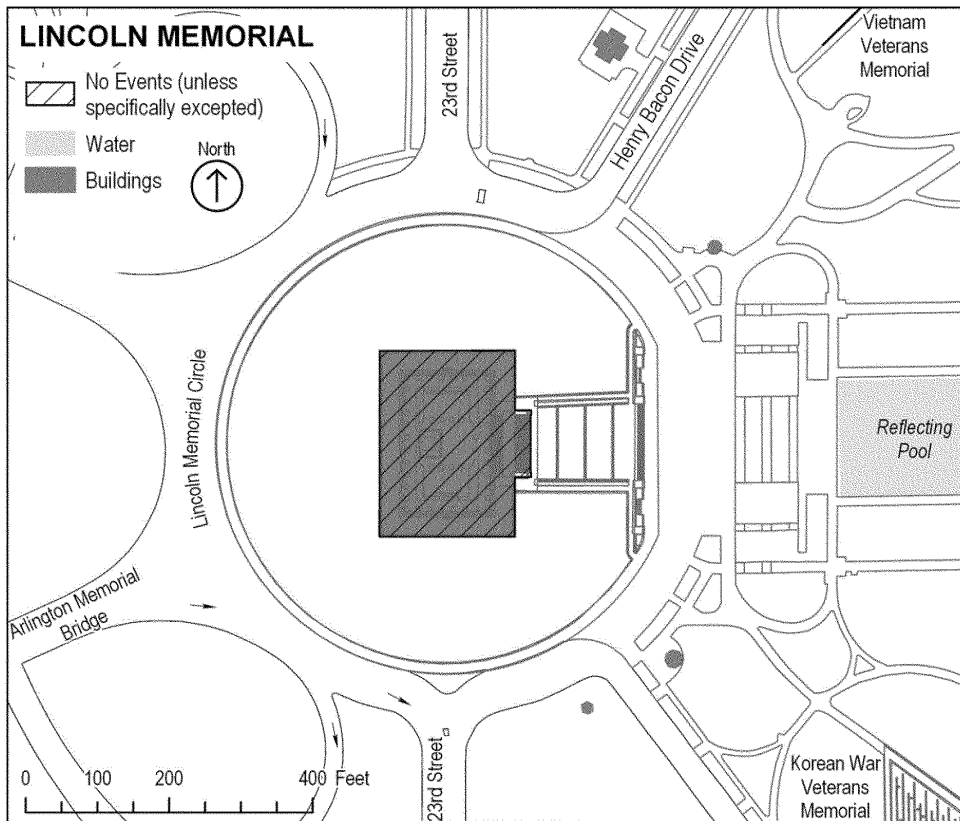
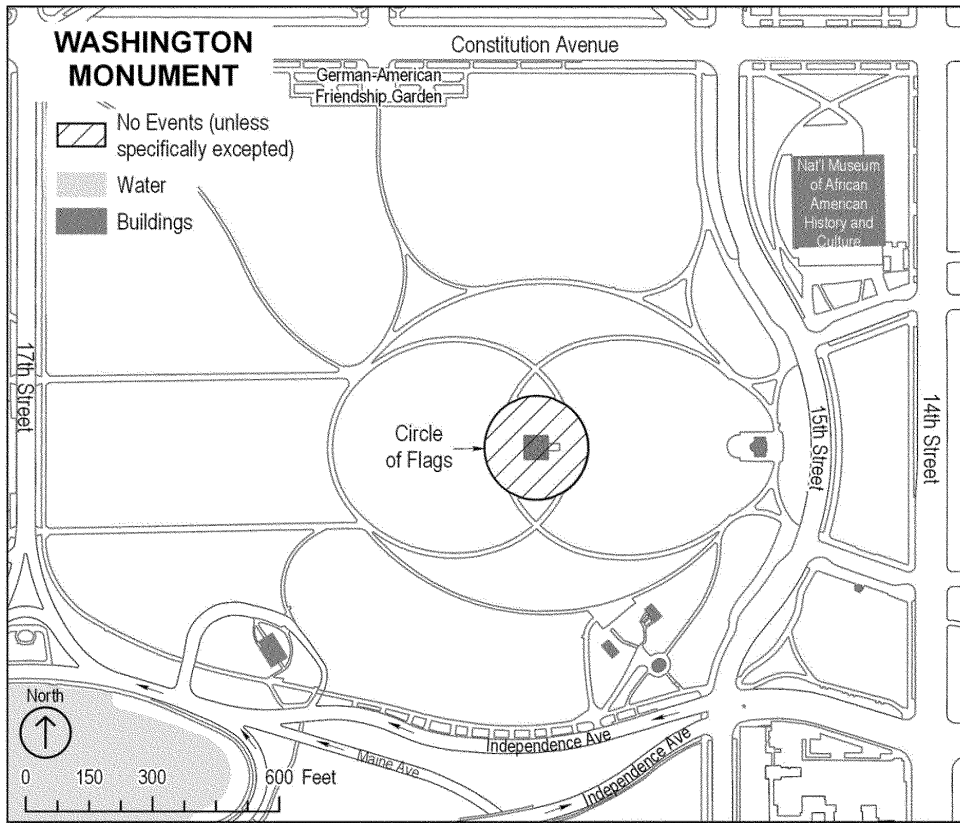
* * * * *

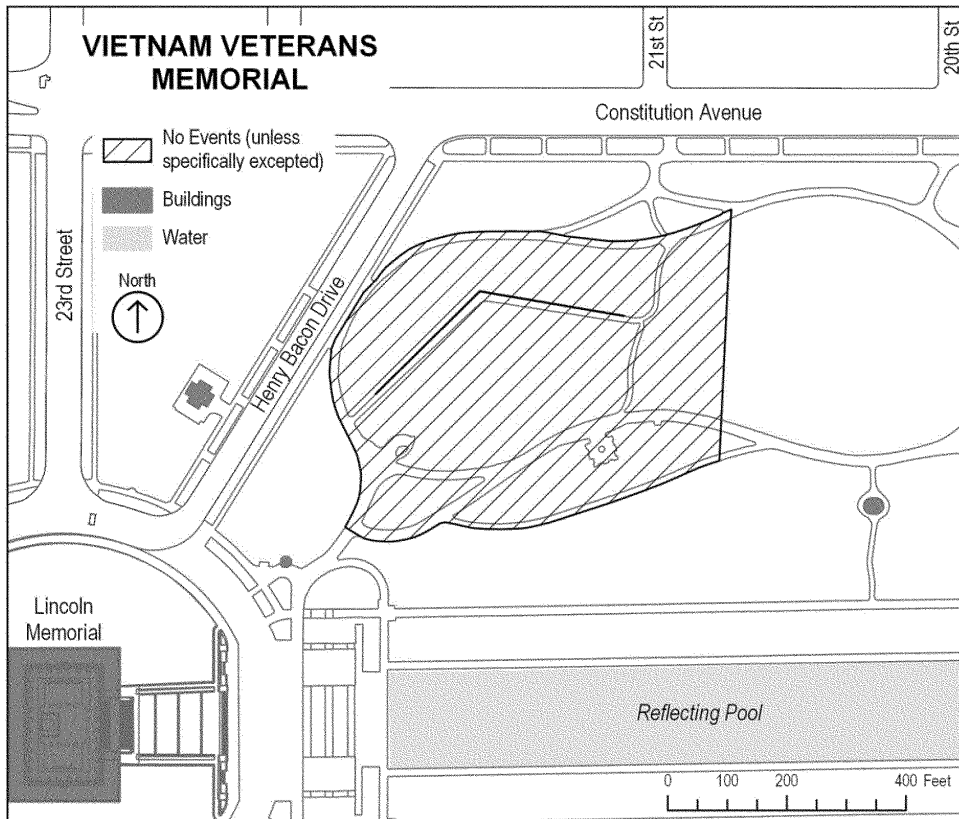
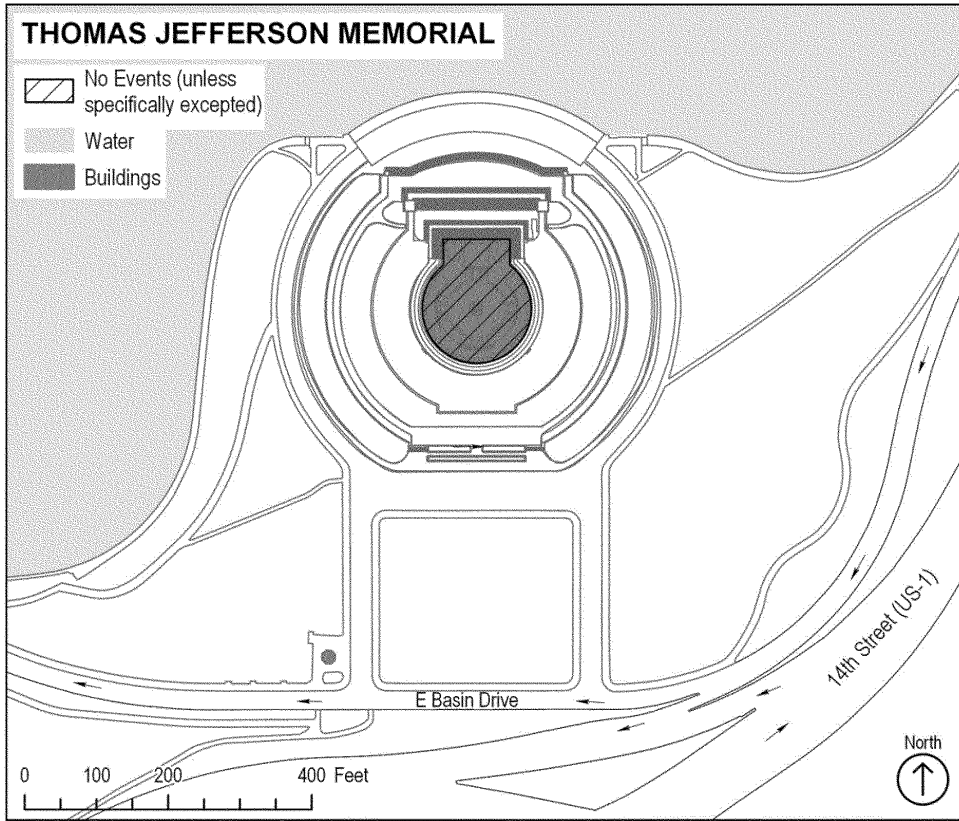
(E) The World War II Memorial Freedom Wall Plaza, except for official annual commemorative ceremonies on Memorial Day, Veterans Day, Pearl Harbor Day, Victory over Europe Day, and Victory over Japan Day.

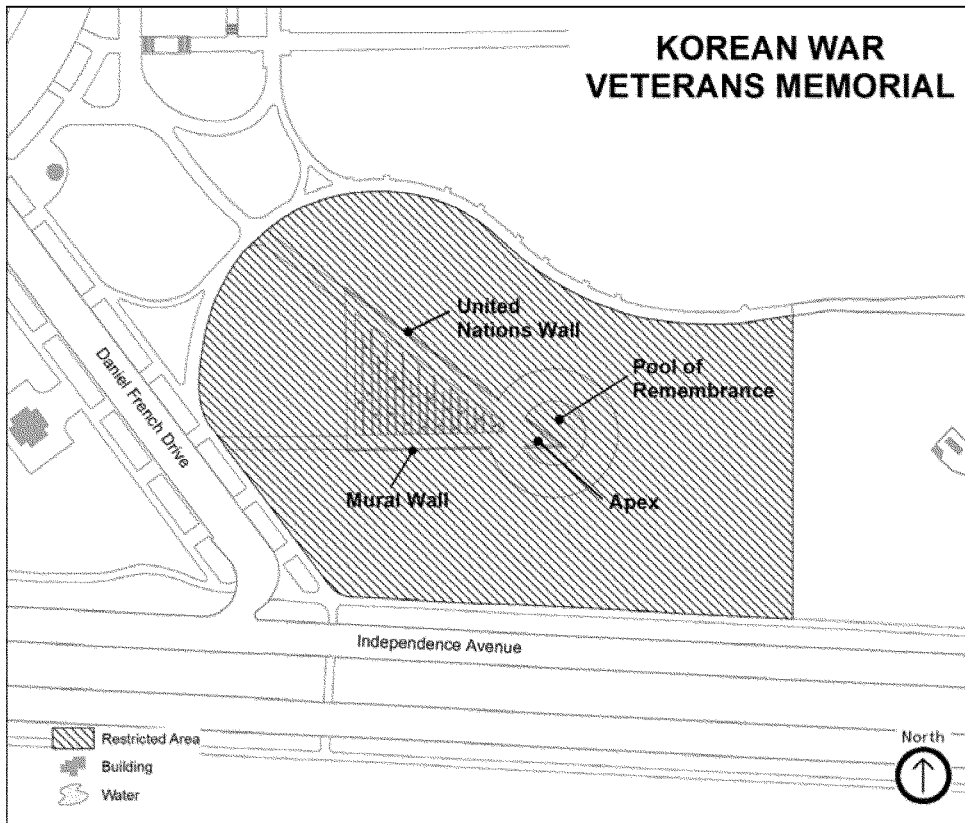
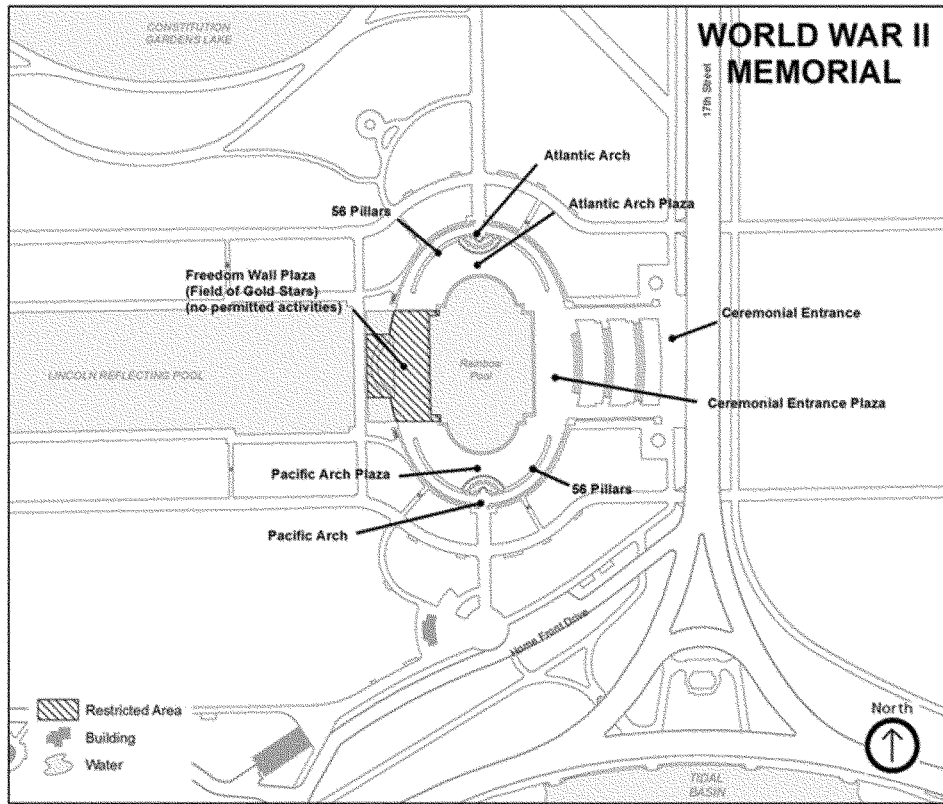
(F) The Korean War Veterans Memorial, except for official annual commemorative ceremonies on Memorial Day, Veterans Day, Invasion Day, and Armistice Day.

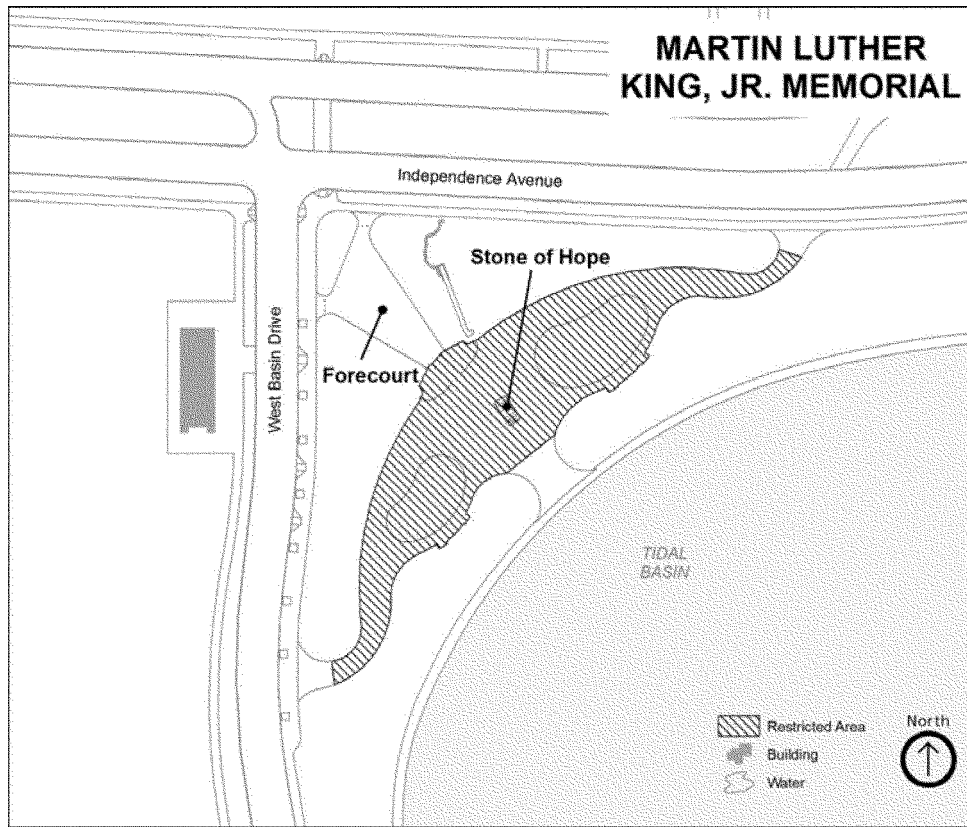
(G) The Martin Luther King Jr. Memorial, except for the Forecourt area and except for official annual commemorative ceremonies for Dr. King's birthday and death, and the March On Washington for Jobs and Freedom.

(H) Maps of the restricted areas designated in this paragraph (g)(3)(ii) of this section are as follows. The diagonal-lined portions of the maps show the areas where events are prohibited unless specifically excepted by this rule.









BILLING CODE 4312-52-C

(4) *Permit processing.* (i) NPS processes permit applications for events in order of receipt, subject to the exceptions for priority use in paragraphs (g)(4)(ii) and (iii) of this section. The use of a particular area is allocated in order of receipt of the permit application. NPS will not accept applications more than one year in advance of a proposed event (including set-up time, if any). NPS will categorize permit applications in one of three ways: Approved, Provisionally Reserved, or Denied. Permit applications for demonstrations that are not acted on in the manner described above within three business days from the date of receipt by the NPS are approved, except those seeking waiver of numerical limitations applicable to Lafayette Park (paragraph (g)(5)(ii) of this section). NPS will consider an application to be received if it contains the following basic information about the proposed event: Location, purpose and plan for the event, time and date, estimated number of participants, and contact information. For purposes of this paragraph, NPS will have acted upon a permit application as of the time and date an electronic communication is sent to the applicant.

(A) *Approved permit applications.* If the NPS is able to accommodate the requested event without receiving additional information, it will notify the

applicant that the application is approved. Within a reasonable time after the initial notice of approval, the NPS will send a permit to the applicant for the requested event. The permit may contain conditions reasonably consistent with the requirements of public health and safety, protection of park resources, and the use of the park area. The permit may also contain reasonable limitations on the structures and equipment used and the time and area where the event is allowed. The NPS may revoke a permit only for the reasons stated in paragraph (g)(6) of this section.

(B) *Provisionally reserved permit applications.* The NPS may notify the applicant that the NPS has reserved the requested location, date, and time, but that it will not approve the application and issue a permit until it receives additional information. During this approval stage, the NPS will work diligently to resolve all outstanding questions in order to determine whether the request can be approved or denied. If the NPS receives an application more than 60 days prior to the requested event, the NPS will provide the applicant with an initial,

comprehensive list of outstanding issues and requested information no later than 40 days prior to the requested event. The NPS will make all reasonable efforts

to approve or deny a permit application at least 30 days in advance of a requested event. Permit applicants must provide the NPS with all requested information before the NPS will approve or deny an application.

(C) *Denied permit application.* The NPS will notify the applicant in writing if it is unable to accommodate the requested event. This notice will state that the applicant may inform the NPS that it would consider modifying its application for the requested event. If the NPS receives notice from the applicant that it is willing to modify its application, the NPS will work with the applicant to modify the application in a manner that it could be approved or provisionally reserved. If the applicant and the NPS cannot agree on modifications to the application that would allow it to be approved or provisionally reserved, or if the applicant does not inform the NPS that it is willing to modify its application with enough advance notice prior to the event, then the NPS will notify the applicant in writing that the application has been denied.

* * * * *

(iv) Other 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.

(v) [Reserved]

(vi) The Regional Director may issue permits for a maximum duration of 30 days. For an event that includes structures, the Regional Director may extend the maximum permit duration by an amount of time that may be needed for setup and breakdown of the structures. Upon request, the Regional Director may renew a permit for additional, consecutive periods of 30 days or less. Requests for renewals must be submitted to the NPS at least 10 days prior to the expiration of an existing permit. The Regional Director may deny a request for a permit renewal if another applicant has requested use of the same location and the location cannot reasonably accommodate multiple occupancy. As a condition of renewing a permit, the Regional Director shall require events with structures to move to a different location. The Regional Director may require events without structures to be moved to a different

location if necessary to protect park resources and values.

(vii) A permit for an event may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area.

(B) The proposed event will present a clear and present danger to the public health and safety.

* * * * *

(5) *Permit limitations.* The issuance of a permit is subject to the following limitations:

(i) The Regional Director may restrict events on weekdays (except holidays) between the hours of 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(ii) Special events are not permitted unless approved by the Regional Director. In determining whether to approve a proposed special event, the

Regional Director will consider and base the determination upon the criteria in § 2.50(a)(1)–(6) of this chapter and the following criteria:

(A) Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.

(B) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(iii) Prior notice must be provided to the Regional Director before erecting any structure. Structures are allowed in connection with permitted events for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas, or the provision of shelter for electrical and other sensitive equipment or displays, provided that:

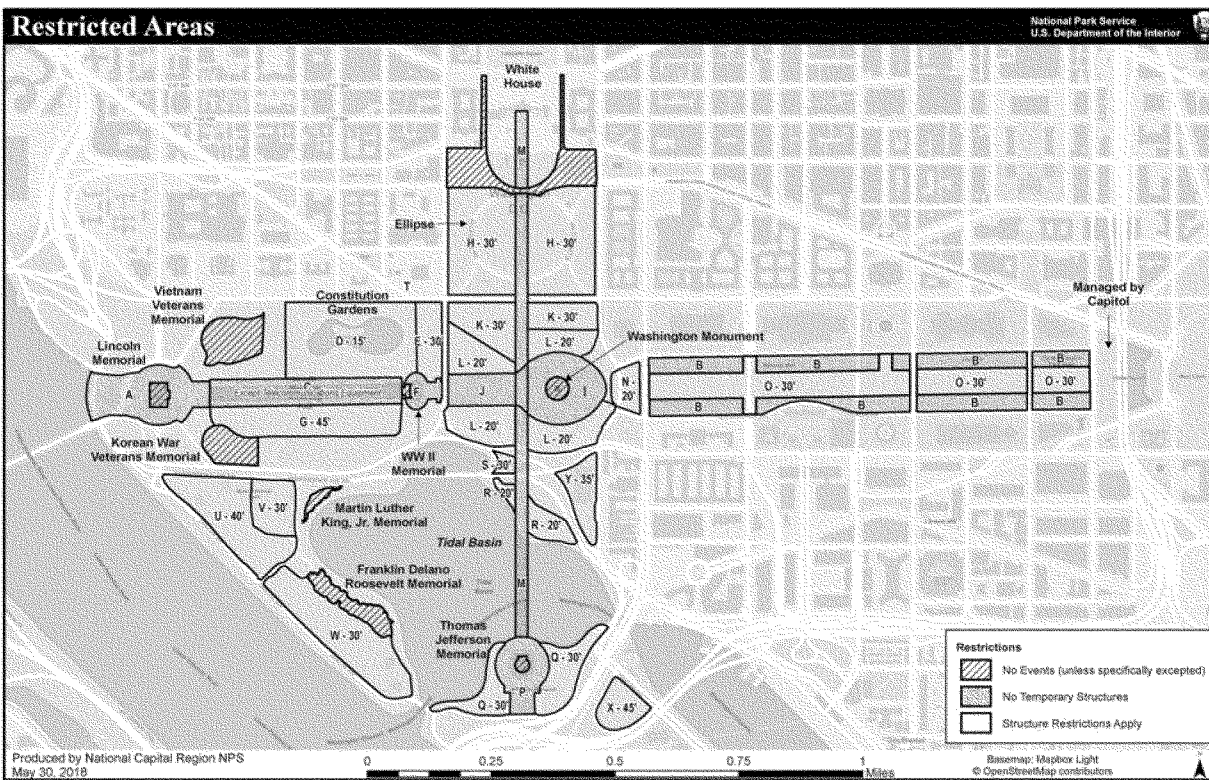
(A) Structures are subject to the restrictions listed in the table below. Maps of the restricted areas follow the table.

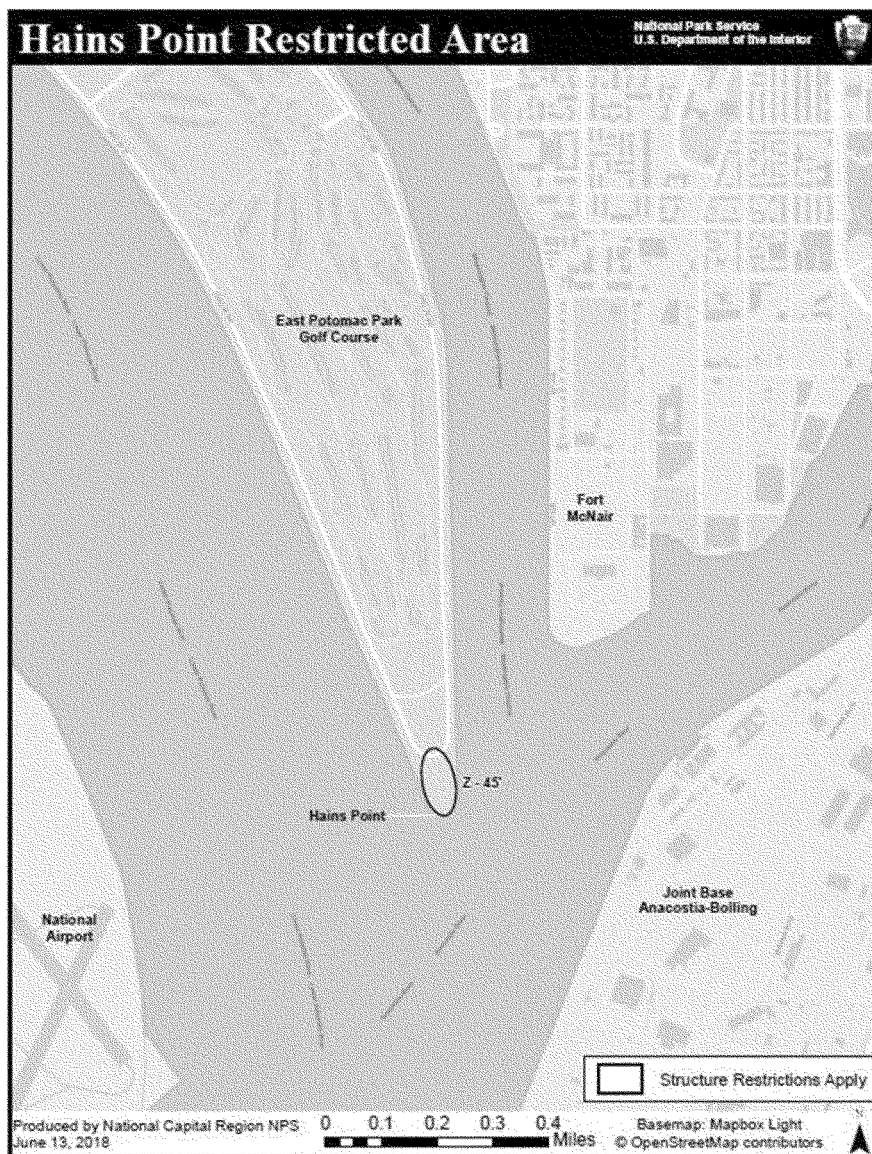
STRUCTURE RESTRICTIONS

Map area	Location	Restriction	Exceptions
A	Lincoln Memorial	Structures are prohibited	Podiums, tables, chairs, lighting and sound equipment.
B	Elm Trees Panels—3rd Street to 14th Street.	Structures are prohibited	None.
C	Reflecting Pool and Walks on North and South.	Structures are prohibited	Telecommunications equipment.
D	Constitution Gardens—West	Structures may not exceed 15 feet in height.	None.
E	Constitution Gardens—East	Structures may not exceed 30 feet in height and may not disrupt the viewshed from Virginia Ave NW to the Washington Monument.	None.
F	World War II Memorial	Structures are prohibited	Podiums, tables, chairs, sound equipment, and shade tents.
G	JFK Hockey Fields	Structures may not exceed 45 feet in height.	None.
H	Ellipse	Structures may not exceed 30 feet in height.	Stages, bleachers, and telecommunications equipment during the National Christmas Tree Lighting Ceremony may exceed 30 feet in height.
I	Washington Monument—Security Perimeter.	Structures are prohibited	None.
J	Washington Monument Grounds—Central Panel West.	Structures are prohibited	None.
K	Washington Monument Grounds—Northwest and Northeast Corners.	Structures may not exceed 30 feet in height.	None.
L	Washington Monument Grounds—First Tier Outside Restricted Area.	Structures may not exceed 20 feet in height.	None.
M	North-South 150-foot-wide Corridor	Structures are prohibited	None.
N	East of Washington Monument Grounds—Central East.	Structures may not exceed 20 feet in height.	None.
O	National Mall—3rd St. to 14th St. and Hardscape Between Elm Tree Panels.	Structures may not exceed 30 feet in height.	No height restriction for telecommunications equipment.
P	Thomas Jefferson Memorial	Structures are prohibited	Podiums, chairs, and sound equipment.
Q	Thomas Jefferson Memorial—East and West Precincts.	Structures may not exceed 30 feet in height.	None.
R	Tidal Basin	Structures may not exceed 20 feet in height.	None.

STRUCTURE RESTRICTIONS—Continued

Map area	Location	Restriction	Exceptions
S	Independence Ave. Staging Area	Structures may not exceed 30 feet in height.	None.
T	Virginia Ave. (View to Washington Monument).	Structures are prohibited	None.
U	Polo Fields—near Ohio Drive	Structures may not exceed 40 feet in height.	None.
V	Polo Fields—near West Basin Drive	Structures may not exceed 30 feet in height.	None.
W	Ohio Drive—Ballfields between West Basin Drive and Inlet Bridge.	Structures may not exceed 30 feet in height.	None.
X	Ohio Drive—Ballfield near National Mall and Memorial Park Headquarters.	Structures may not exceed 45 feet in height.	None.
Y	Recreation Field South of Washington Monument; West of Holocaust Museum.	Structures may not exceed 35 feet in height.	None.
Z	Hains Point—Southernmost Point within East Potomac Park.	Structures may not exceed 45 feet in height.	None.





(B) All such structures shall be erected in such a manner so as not to harm park resources unreasonably and shall be removed as soon as practicable after the conclusion of the permitted event.

(C) The Regional Director may impose reasonable restrictions upon the use of structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns. These restrictions may include limitations consistent with turf management and event operations guidance related to duration, weight, equipment, and materials used.

(D) Structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or

storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

(E) Individuals or groups of 25 persons or fewer demonstrating under the small group permit exception of paragraph (g)(2)(i) of this section, or individuals or groups demonstrating under the large group permit exceptions at the five parks designated in paragraph (g)(2)(ii) of this section, are not allowed to use structures other than small lecterns or speakers' platforms, except

for Lafayette Park (where only speakers' platforms are allowed in accordance with a permit) and the White House Sidewalk (where no structures are allowed). This provision does not restrict the use of portable signs or banners or preclude such individuals or groups from obtaining a permit in order to erect structures.

(F) Structures are not permitted within the drip line of trees located within the White House area.

(iv) Sound amplification equipment is allowed in connection with permitted demonstrations or special events, provided prior notice has been given to the Regional Director, except that the Regional Director reserves the right to limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

(v) Events that plan to move from any location that is subject to the regulations in this section 7.96 to the White House Sidewalk or Lafayette Park, and events that plan to move from the White House Sidewalk or Lafayette Park to another location that is subject to the regulations in this section 7.96, must comply with the restrictions on signs placards set forth in paragraphs (g)(5)(ix)(C) and (g)(5)(x)(C) of this section for the duration of the event, even when it is located outside of the White House Sidewalk or Lafayette Park.

(vi) A permit may contain additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources, the use of nearby areas by other persons, and other legitimate park value concerns.

(vii) A permit issued under this section does not authorize activities outside of areas administered by the National Park Service. Applicants may also be required to obtain a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in areas not administered by the National Park Service.

(viii) The activities contemplated for the proposed event must conform with all applicable laws and regulations.

(ix) In addition to the general limitations in this paragraph (g)(5), the following restrictions apply to the White House Sidewalk:

(A) No more than 750 persons are permitted to conduct a demonstration on the White House sidewalk at any one time. The Regional Director may waive the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence. In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (g)(3) of this section.

(B) Structures are not permitted.

(C) No signs or placards shall be permitted on the White House sidewalk except those made of cardboard, posterboard or cloth having dimensions no greater than three feet in width, twenty feet in length, and one-quarter

inch in thickness. No supports shall be permitted for signs or placards except those made of wood having cross-sectional dimensions no greater than three-quarter of an inch by three-quarter of an inch. Stationary signs or placards shall be no closer than three feet from the White House sidewalk fence. All signs and placards shall be attended at all times that they remain on the White House sidewalk. Signs or placards shall be considered to be attended only when they are in physical contact with a person. No signs or placards shall be tied, fastened, or otherwise attached to or leaned against the White House fence, lamp posts or other structures on the White House sidewalk. No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however*, that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

(D) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue NW, between Pennsylvania Avenue NW, and E Street NW, or on the north sidewalk of E Street NW, between East and West Executive Avenues NW; *Provided, however*, that such property, except structures, may be momentarily placed or set down in the immediate presence of the owner on those sidewalks.

(E) Sound amplification equipment may not be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Regional Director determines is necessary for crowd-control purposes.

(x) In addition to the general limitations in this paragraph (g)(5), the following restrictions apply to Lafayette Park:

(A) No more than 3,000 persons are permitted to conduct a demonstration in Lafayette Park at any one time. The Regional Director may waive the 3,000 person limitation for Lafayette Park upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence. In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each

other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (g)(3) of this section.

(B) The erection, placement or use of structures of any kind are prohibited except for the following:

(1) When one hundred (100) or more persons are participating in a demonstration in the Park, a speakers' platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, provided that only one speakers' platform is allowed per demonstrating group, and provided further that such speakers' platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(2) When less than one hundred (100) persons are participating in a demonstration in the Park, a "soapbox" speakers' platform is allowed as long as such platform is being erected, dismantled or used, providing that only one speakers' platform is allowed per demonstrating group, and provided further that the speakers' platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and provided further that such speakers' platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(C) The use of signs is prohibited except for the following:

(1) Hand-carried signs are allowed regardless of size.

(2) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter (¼) inch in thickness (exclusive of braces that are reasonably required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, provided that no individual may have more than two (2) such signs in the Park at any one time, and provided further that such signs must be attended at all times, and provided further that such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-feet by four-feet signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or

otherwise placed together so as to form an enclosure of two or more sides, etc.

(xi) No permit will be issued for a demonstration on the White House Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration undertakes in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in paragraphs (g)(5)(ix) and (x) of this section are observed.

(xii) In addition to the general limitations in this paragraph (g)(5), sound systems shall be directed away from the Vietnam Veterans Memorial at all times.

(6) *Permit revocation.* The Regional Director or the ranking U.S. Park Police supervisory official in charge may revoke a permit or part of a permit for any violation of its terms or conditions, or if the event presents a clear and present danger to the public safety, good order, or health, or for any violation of applicable law or regulation. Any such revocation shall be in writing.

* * * * *

David L. Bernhardt,

Deputy Secretary.

[FR Doc. 2018-17386 Filed 8-14-18; 8:45 am]

BILLING CODE 4312-52-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2018-11; Order No. 4750]

Mail Preparation Changes

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review to determine when a mail preparation change is a rate change. This document informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES: *Comments are due on or before* October 15, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Background
- III. Request for Comments

I. Introduction

The Commission initiates this advance notice of proposed rulemaking (ANPR) to seek proposals for a standard and process to determine when a mail preparation change is a "changes in rates" under 39 U.S.C. 3622 in accordance with the recent decision in *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018) (*IMb Opinion*).

II. Background

The Commission continues to maintain that certain mail preparation changes are rate changes, and those changes should be regulated under 39 U.S.C. 3622. As participants in past associated dockets are aware, the issues involved in regulating mail preparation changes as "changes in rates" under 39 U.S.C. 3622 are varied and complex. The process involved in crafting a workable standard for regulating mail preparation changes under the price cap has been difficult and time-consuming. However, this difficulty does not necessarily render the efforts to create a standard futile. Accordingly, the Commission issues this ANPR requesting proposals from commenters for a standard and process to determine when an individual mail preparation change is a "change in rates" under 39 U.S.C. 3622 that is consistent with the recent guidance set forth in the *IMb Opinion*.

In Docket No. R2013-10R, the Commission determined that a change to the Intelligent Mail barcoding (IMb) requirements was a rate change requiring compliance with the price cap under 39 U.S.C. 3622.¹ The Postal Service appealed the Commission's determination to the United States Court of Appeals for the District of Columbia (the Court). In *United States Postal Serv.*

¹ Docket No. R2013-10, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 21, 2013, at 5-35 (Order No. 1890). In this docket, the Commission briefly sets out the relevant history supporting the request for comment. For a complete history of the Commission proceedings leading up to this docket, please see Order No. 1890; Docket No. R2013-10R, Order Resolving Issues on Remand, January 22, 2016 (Order No. 3047); Docket No. R2013-10R, Order Resolving Motion for Reconsideration of Commission Order No. 3047, July 20, 2016 (Order No. 3441).

v. Postal Reg. Comm'n, 785 F.3d 740, 751 (D.C. Cir. 2015), the Court affirmed the Commission's conclusion that "changes in rates" under 39 U.S.C. 3622 could include changes to mail preparation requirements and were not limited to "only changes to the official posted prices of each product." However, the Court remanded the matter to the Commission so that it could articulate an intelligible standard to determine when a mail preparation change was a "change in rates" subject to the price cap. *Id.* at 744.

In response to the Court's remand, the Commission initiated proceedings to establish a standard to be used for the regulation of mail preparation changes as "changes in rates."² As a result of those proceedings, the Commission issued Order No. 3047, which set forth a standard to determine when a mail preparation change requires compliance with the price cap. The standard established in Order No. 3047 provided that a mail preparation change could have a rate effect when it resulted in the deletion or redefinition of rate cells as set forth by § 3010.23(d)(2).

In establishing the standard set forth in Order No. 3047, the Commission used its regulation, § 3010.23(d)(2), to provide the framework. Section 3010.23(d)(2) provides that a classification change will have a rate effect when it results in the introduction, deletion, or redefinition of a rate cell. Under the Commission's rules, the Postal Service must include the effects of those classification changes in its calculation of the percentage change in rates under the price cap. 39 CFR 3010.23(d)(2). The standard in Order No. 3047 defined when a mail preparation change would be considered a classification change with rate effects under § 3010.23(d)(2). The standard set forth that deletion of a rate cell occurs when a mail preparation change caused the elimination of a rate, or the functional equivalent of an elimination of a rate by making the rate cell inaccessible to mailers. Order No. 3047 at 15. The standard defined redefinition of a rate cell to occur when a mail preparation change caused a significant change to a basic characteristic of a mailing, effectively changing the nature of the rate cell. For redefinition, the Commission stated that it would apply a significance analysis to determine at what point on the spectrum a mail preparation change caused a rate cell to be redefined under § 3010.23(d)(2). *Id.*

² Docket No. R2013-10R, Order Establishing Procedures on Remand and Requesting Public Comment, July 15, 2015 (Order No. 2586).