

HQ AR000001-HQ AR000008

DEPARTMENT OF DEFENSE**Department of the Army; Corps of Engineers****36 CFR Part 327****Public Use of Water Resources Development Projects Administered by the Chief of Engineers**

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers has amended the rules and regulations governing public use of water resources development projects administered by the Chief of Engineers. This final rulemaking supersedes the regulation dated September 3, 1985 and is designed to ensure safe, enjoyable and environmentally sound visitation on the public lands, free from unwarranted disturbances. This is accomplished by setting minimum standards of conduct for individuals using the public lands and establishing penalties that may be imposed for failure to obey the regulations.

These rules and regulations apply to water resources development projects completed or under construction, which are administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects, which are under the administrative jurisdiction of the Chief of Engineers.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Austin, Outdoor Recreation Planner, 202-761-1796.

SUPPLEMENTARY INFORMATION:**I. Comments on the Proposed Rule**

Thirteen responses were received pertaining to the following six paragraphs of the regulation:

36 CFR 327.1(e) Policy. One commentator questioned the use of the word "outgranted", stating that it should not be used since it is not included in the Webster Collegiate Dictionary.

The word outgranted is an appropriate and legally acceptable term as defined in Army Regulation 405-80 (10 October 1997) as "a legal document which conveys or grants the right to use Army-controlled real property". No changes are necessary to this paragraph.

36 CFR 327.3(k) Vessels. One commentator expressed concern as to whether the Corps would still have authority to enforce boating regulations under the proposed new language.

Enforcement responsibility will remain unchanged under the revised

regulation. The language is essentially the same as the previous edition (Sept. 3, 1985) and is exactly the same as paragraph 327.2h (Vehicles) which also specifies that the operation of a vehicle must be "in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in Sec. 327.26." No changes are necessary to this paragraph.

36 CFR 327.7(c). Camping. One commentator questioned the elimination of the "overnight occupancy" requirement, stating that the new language could allow reserved sites to be unoccupied for up to 14 days without penalty.

The intent of Corps policy is to encourage the actual occupancy of all reserved campsites. Based on this comment, the phrase "without daily occupancy" has been inserted between the words "campsite" and "for the purpose."

One commentator also questioned the use of the word "unauthorized", stating that the word could be interpreted to mean that authorized placement of equipment or personal appearance (for the purposes of reserving a campsite) is acceptable.

The term "unauthorized" acknowledges that there may be instances where there are "authorized" placement of equipment at a site depending on local management policies. For example, when an entrance station is closed, many projects place a sign in the window instructing the camper to select an unoccupied site, set up camp and report back when the entrance station reopens. Eliminating the term "unauthorized" would cause this management practice to be in violation of 36 CFR 327. The term "unauthorized" will remain in this paragraph.

36 CFR 327.7(e) Camping. One commentator suggested that the words "is posted" be removed from the paragraph, stating that this phrase could be interpreted to mean that campsites must be physically posted by a sign, site marker, etc.

For the safety and convenience of all visitors, a method of indicating that a site has been reserved (either by physical posting or by other means) is necessary to avoid possible user conflicts. As a result of this comment, the phrase "or otherwise marked or indicated" has been inserted between the phrase "is posted" and before the phrase "as reserved".

36 CFR 327.20 Unauthorized Structures. Several commentators expressed concern about adding the words "hunting stands or blinds" to the

list of items that can only be placed on project lands or waters with a prior permit or other appropriate written authorization by the District Commander.

As a result of these comments, the language has been changed to allow for the use of *portable* hunting stands or blinds without having to obtain a permit or other written approval by the District Commander. The term "non-portable" will be inserted between the words "signs" and "hunting stands". A second sentence will be added to state, "Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of the day's hunt may be used".

36 CFR 327.21(a). Special Events. Several commentators expressed concern over adding "fishing tournaments" to the list of special events items that are prohibited unless written permission has been granted by the District Commander. Some of these commentators requested that a size limit be set, allowing tournaments under 30 boats to be conducted without a permit. Upon further review, fishing tournaments will remain in the regulation as stated due to the size and other variations of Corps projects nationwide. However, to increase flexibility, the following sentence has been added after the first sentence of the paragraph: "Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects".

II. Amendments

The following amendments to 36 CFR Chapter III Part 327, as further revised based on the comments received through the Proposed Rule process, are necessary to clarify and strengthen selected regulations for more effective management and to enhance public safety and enjoyment of Corps water resource development projects. Some of the sections have been reworded and/or have had information added or deleted to clarify the regulations. These minor changes are editorial in nature and have been made to express the intent of the regulation more concisely, and to maintain consistency with existing Public Laws.

Discussion of Specific Rule Changes

In Part 327, Secs. 327.1 through 327.26, all references to "District Engineer" have been changed to read "District Commander."

36 CFR 327.0 Applicability

Section 327.0 is republished with no changes.

36 CFR 327.1 Policy

Section 327.1, paragraph (h), is revised to better define the responsibility of an operator or owner of any vehicle, vessel, or aircraft. Paragraph (i) is added to define the responsibility of a registered user of a campsite, picnic area, or other facility.

36 CFR 327.2 Vehicles

Section 327.2, paragraphs (b) and (d), is edited for consistency. A portion of a sentence has been moved from paragraph (d) into a new paragraph (h) to emphasize the laws and regulating authority for the operation of vehicles. Paragraph (e) is revised by removing the word "project" and paragraph (f) is revised by using the word "designated" to define the recreation area.

36 CFR 327.3 Vessels

Section 327.3, paragraph (a), is revised to substitute the term "personal watercraft" for "jetskis" and to add navigation on ice. A portion of a sentence has been moved from paragraph (c) into a new paragraph (k) to emphasize the laws and regulating authority for the operation of vessels. Paragraph (d) is rewritten for ease of readability and to include environmental features. Paragraph (e) has been edited for clarity and to include requirements of enforcement for non-compliance. Paragraph (h) has been modified to include a restriction about mooring vessels to project structures.

36 CFR 327.4 Aircraft

Section 327.4 is revised to include environmental features in paragraph (c), and the retrieval of person or material or equipment from project lands, and the use of balloons in paragraph (e). Paragraph (f)(3) is revised to be consistent with other sections, and to more concisely define navigation rules. Paragraph (f)(6) is revised to remove repetitiveness.

36 CFR 327.5 Swimming

Section 327.5, paragraph (a), is updated to include wading and public docks, and the last sentence is removed to eliminate repetitiveness with paragraph (c) of this section. Paragraph (b) is revised to include appropriate terminology. Paragraph (c) is revised to include the activity of swinging, and to include trees and structures which are adjacent to project waters.

36 CFR 327.6 Picnicking

Section 327.6 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.7 Camping

Section 327.7 is revised to comply with the National Recreation Reservation Service.

36 CFR 327.8 Hunting, Fishing, and Trapping

Section 327.8 is revised by breaking out each activity into separate paragraphs for better clarification.

36 CFR 327.9 Sanitation

Section 327.9, paragraph (a), is revised to include gray water. Paragraph (b) is revised to clarify the responsibility of the owner of garbage as defined in this section. Paragraph (c) is revised to include disposal of wastes for consistency with other paragraphs in this section.

36 CFR 327.10 Fires

Section 327.10, paragraph (b), is revised to include floatation materials and to clarify the regulation of open burnings for environmental considerations.

36 CFR 327.11 Control of Animals

Section 327.11, paragraph (a), is revised to include waters adjacent to developed recreation areas; to include a sentence which provides enforcement for animals which unreasonably disturb other people; to include the prohibition of animals and pets on playgrounds; and to include a sentence on the prohibition of abandoning any animal on project lands or waters. Paragraph (b) is revised to remove the words, "in sanitary facilities". The word "trails" is added to paragraph (c) for clarification on the types of recreation areas at Corps projects. Paragraph (g) is added to this section to restrict the presence of wild or exotic pets and animals, or any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance on project lands and waters unless authorized by the District Commander.

36 CFR 327.12 Restrictions

Section 327.12 is revised by adding resource protection to the list of reasons that a District Commander may close or restrict the use of a project or portion of a project. Paragraph (c) has been modified by changing the phrase "the safety of another person" to "the safety of any person". The list of audio producing devices has been removed in paragraph (d) and is now generalized to

read as a "sound producing device" and generators have been added to the examples of motorized equipment. Paragraph (e) is added to clarify the potential prohibition of alcohol on project lands. Paragraph (f) is added to reflect requirements in E.O. 13058, August 9, 1997.

36 CFR 327.13 Explosives, Firearms, Other Weapons and Fireworks

Section 327.13 is revised by adding the words "other weapons" to paragraph (a). Information on explosives and fireworks is moved from paragraph (a) into a new paragraph (b) for clarification purposes.

36 CFR 327.14 Public Property

Section 327.14 is revised to include paleontological resources, and boundary monumentation or markers in paragraph (a). Paragraph (c) is revised to include clarification on site specific prohibitions. Paragraph (d) is added for clarification on metal detectors and is in conformance with existing Corps regulations.

36 CFR 327.15 Abandonment and Impoundment of Personal Property

Section 327.15, paragraph (a), is revised to include public safety or resource protection to the reasons for closure of a public use area. Paragraphs (b) and (c) are switched for better readability. Paragraph (b) is revised to include private facilities, and to include the impoundment of property for consistency with paragraph (c). Paragraph (c) is revised to increase the fair market value of property which may be disposed of after 90 days, and to correct the word "covered" to "conveyed."

36 CFR 327.16 Lost and Found Articles

Section 327.16 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.17 Advertisement

Section 327.17 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.18 Commercial Activities

Section 327.18 is revised by adding the words "project lands or waters", to clarify where the solicitation of business is prohibited.

36 CFR 327.19 Permits

Section 327.19, paragraph (b), is revised for consistency with current Corps of Engineers terminology. The words "Rivers and Harbors" are added to paragraph (c) for clarification of the

referenced Act. The words “Water Quality” are added to paragraph (d) for clarification on the type of required certification.

36 CFR 327.20 Unauthorized Structures

Section 327.20 is revised to include non-portable hunting stands or blinds, buoys, and docks in the list of structures for purposes of clarification. The section is also revised by changing the word “agreement” to “authorization” for consistency within the document.

36 CFR 327.21 Special Events

Section 327.21, paragraph (a), is revised to include fishing tournaments in the list of special events. The following sentence has been added to the paragraph: “Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects”. Paragraph (b) is revised to include the restoration of an area to pre-event conditions for consistency with Corps of Engineers regulations.

36 CFR 327.22 Unauthorized Occupation

Section 327.22 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.23 Recreation Use Fees

Section 327.22 is revised by removing paragraph (b) and incorporating the information contained in this paragraph into paragraph (a) for better readability. Paragraph (c) is redesignated as paragraph (b) and a new paragraph (c) is added to include a prohibition on the failure to pay day use fees and to properly display the day use pass. A prohibition about the fraudulent use of a Golden Age or Golden Access Passports is added to paragraph (d). Paragraph (e) is removed for consistency with the National Recreation Reservation Service.

36 CFR 327.24 Interference With Government Employees

Section 327.24, paragraph (a), is revised to include the words “attempt to kill, or kill,” for consistency with Title 18, United States Code. Paragraph (b) is revised to include the words “information deemed necessary for,” to provide clarification on type of other identification which may be required by a Federal employee in the performance of issuing citations.

36 CFR 327.25 Violations of Rules and Regulations

Section 327.25 is revised to increase the amount of the maximum fine in accordance with 18 USC, section 3571, and to remove duplicate words.

36 CFR 327.26 State and Local Laws

Section 327.26 is revised to include the “possession” of firearms or other weapons, and “alcohol or other controlled substances” to the list of examples which are governed by state and local laws and ordinances. The paragraphs in this section have been renumbered for consistency and better readability.

36 CFR 327.30 and 327.31

These sections are not amended in this proposed rule.

III. Required Determinations

Executive Order 12291

This final rule is not a major rule as defined by Executive Order 12291.

Regulatory Flexibility Act Determination (5 U.S.C. 601 et seq.)

As required by the Regulatory Flexibility Act, the U.S. Army Corps of Engineers certifies that these regulatory amendments will not have a significant impact on small business entities. This rule is an update to the current regulations governing public use on Corps of Engineers Water Resources Development Projects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.)

This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more on State, local, or tribal governments or private entities.

Dated: February 3, 2000.

Approved:

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director for Civil Works.

List of Subjects in 36 CFR Part 327

Natural resources, Penalties, Public lands, Recreation and recreation areas, Resource management, Water resources.

For the reasons set forth in the preamble, amend Part 327 of Title 36 of the Code of Federal Regulations as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for Part 327 is revised to read as follows:

Authority: 16 U.S.C. 460d; 16 U.S.C. 4601–6a; Sec. 210, Pub. L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.

2. Sections 327.0 through 327.26 are revised to read as follows:

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, state and local laws and regulations remain in full force and effect where applicable to those water resources development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated in this part, the term “District Commander” shall include the authorized representatives of the District Commander.

(c) The term “project” or “water resources development project” refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.

(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal,

state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Commander by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the operator of any vehicle, vessel or aircraft as described in this part, shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel, or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25.

(i) For the purposes of this part 327, the registered user of a campsite, picnic area, or other facility shall be presumed to be responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such facilities as provided for in § 327.25.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, and trailers, campers, bicycles, or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Commander. Taking any vehicle through, around or beyond a restrictive sign, recognizable

barricade, fence, or traffic control barrier is prohibited.

(d) Vehicles shall be operated in accordance with posted restrictions and regulations.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(f) At designated recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Commander, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(h) Vehicles shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, personal watercraft, and any other such equipment capable of navigation on water or ice, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations and restrictions, including buoys. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is on project waters.

(d) No person shall operate any vessel or other watercraft in a careless, negligent, or reckless manner so as to endanger any person, property, or environmental feature.

(e) All vessels, when on project waters, shall have safety equipment, including personal flotation devices, on

board in compliance with U.S. Coast Guard boating safety requirements and in compliance with boating safety laws issued and enforced by the state in which the vessel is located. Owners or operators of vessels not in compliance with this section may be requested to remove the vessel immediately from project waters until such time as items of non-compliance are corrected.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any person, property or environmental feature.

(h) Vessels shall not be attached or anchored to structures such as locks, dams, buoys or other structures unless authorized by the District Commander. All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Commander. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92-75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Commander, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(k) All vessels or other watercraft shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultra-light aircraft, motorized hang gliders, hot air

balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Commander is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Commander or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(d) Nothing in this section bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means onto or from project lands or waters without written permission of the District Commander is prohibited.

(f) In addition to the provisions in paragraphs (a) through (e) of this section, seaplanes are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, in this part called seaplanes, at the risk of owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Commander (pursuant to part 328 of this title) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with U.S. Coast Guard navigation rules for powerboats or vessels and § 327.3.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Commander. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Commander, for periods less than 24 hours providing:

(i) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public, and

(ii) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Commander following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless approved by the District Commander.

§ 327.5 Swimming.

(a) Swimming, wading, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and public docks, or other areas so designated by the District Commander.

(b) An international diver down, or inland diving flag must be displayed during underwater activities.

(c) Diving, jumping or swinging from trees, bridges or other structures which cross or are adjacent to project waters is prohibited.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Commander.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Commander.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Commander.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite without daily occupancy for the purpose of reserving that campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Commander is prohibited.

(e) Occupying or placement of any camping equipment at a campsite which is posted or otherwise marked or indicated as "reserved" without an authorized reservation for that site is prohibited.

§ 327.8 Hunting, fishing, and trapping.

(a) Hunting is permitted except in areas and during periods where prohibited by the District Commander.

(b) Trapping is permitted except in areas and during periods where prohibited by the District Commander.

(c) Fishing is permitted except in swimming areas, on boat ramps or other areas designated by the District Commander.

(d) Additional restrictions pertaining to these activities may be established by the District Commander.

(e) All applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, gray water, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Commander. For the purposes of this section, the owner of any garbage, trash, rubbish, debris, dead animals or litter of any kind shall be presumed to be responsible for proper disposal. Such presumption will be sufficient to issue a citation for violation.

(c) The spilling, pumping, discharge or disposal of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resources development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping

equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Commander.

(b) Fires shall be confined to those areas designated by the District Commander, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic and other floatation materials or treated wood products is prohibited. The District Commander may prohibit open burning of any type for environmental considerations.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas or adjacent waters unless penned, caged, on a leash under six feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. No person shall allow animals to bark or emit other noise which unreasonably disturbs other people. Animals and pets, except properly trained animals assisting those with disabilities (such as seeing-eye dogs), are prohibited in sanitary facilities, playgrounds, swimming beaches and any other areas so designated by the District Commander. Abandonment of any animal on project lands or waters is prohibited. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas or on trails except in areas designated by the District Commander.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Commander.

(e) Unauthorized livestock are subject to impoundment and removal in

accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Commander, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

(g) Wild or exotic pets and animals (including but not limited to cougars, lions, bears, bobcats, wolves, and snakes), or any pets or animals displaying vicious or aggressive behavior or otherwise posing a threat to public safety or deemed a public nuisance, are prohibited from project lands and waters unless authorized by the District Commander, and are subject to removal in accordance with Federal, state and local laws.

§ 327.12 Restrictions.

(a) The District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Commander may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, resource protection or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Commander. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of any person is prohibited. Individuals who are boisterous, rowdy, disorderly, or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any sound producing or motorized equipment, including but not limited to generators, vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) The possession and/or consumption of alcoholic beverages on any portion of the project land or waters, or the entire project, may be prohibited when designated and posted by the District Commander.

(f) Unless authorized by the District Commander, smoking is prohibited in

Visitor Centers, enclosed park buildings and in areas posted to restrict smoking.

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:

(1) In the possession of a Federal, state or local law enforcement officer;

(2) Being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(3) Being used at authorized shooting ranges; or

(4) Written permission has been received from the District Commander.

(b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with §§ 327.15 and 327.16 except for non-identifiable items such as coins of value less than \$25.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or

waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area or for the purpose of providing public safety or resource protection, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Commander, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) Personal property placed on Federal lands or waters adjacent to a private residence, facility and/or developments of any private nature for more than 24 hours without permission of the District Commander shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to impound the property and/or issue a citation as provided for in § 327.25.

(c) The District Commander shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of \$100 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Commander. The net proceeds from the sale of property shall be conveyed into the Treasury of the United States as miscellaneous receipts.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Commander. Vessels and vehicles with

semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

(a) The engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited.

(b) It shall be a violation of this part to refuse to or fail to comply with any terms, clauses or conditions of any lease, license or agreements issued by the District Commander.

§ 327.19 Permits.

(a) It shall be a violation of this part to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Commander under the authority of this section. District Commanders will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Manager's office.

(c) Permits for non-floating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resources development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR parts 320 through 330.)

(d) Permits for non-floating structures (issued under the authority of § 327.30) of any kind in waters of water resources development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States, shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under section 404 of the Clean Water Act (33

U.S.C. 1344) (See 33 CFR parts 320 through 330). Water quality certification may be required pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).

(e) Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of § 327.30) may be issued in accordance with the project Shoreline Management Plan. Failure to comply with the permit conditions issued under § 327.30 is prohibited.

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs, non-portable hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit, lease, license or other appropriate written authorization has been issued by the District Commander. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license, or other written authorization is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Commander. Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of a day's hunt may be used.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Commander has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Commander shall have authority to revoke permission, require removal of any equipment, and require restoration of an area to pre-event condition, upon failure of the sponsor to comply with terms and conditions of the permit/

permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full-or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 460l-6a), is prohibited and is punishable by a fine of not more than \$100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas. Fraudulent use of a Golden Age or Golden Access Passport is prohibited.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference

directed against a Federal employee while carrying out the regulations in this part are violation of such regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to the regulations in this part shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.

§ 327.25 Violations of rules and regulations.

(a) Any person who violates the provisions of the regulations in this part, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than \$5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of the regulations in this part, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.

§ 327.26 State and local laws.

(a) Except as otherwise provided in this part or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

- (1) Operation and use of motor vehicles, vessels, and aircraft;
- (2) Hunting, fishing and trapping;
- (3) Use or possession of firearms or other weapons;
- (4) Civil disobedience and criminal acts;
- (5) Littering, sanitation and pollution; and

(6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

[FR Doc. 00-3185 Filed 2-10-00; 8:45 am]

BILLING CODE 3710-41-P

POSTAL SERVICE

39 CFR Part 111

Substantially Related Eligibility Requirements for Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to clarify "substantially related" eligibility requirements for mail matter entered by authorized nonprofit customers.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202)268-5188.

SUPPLEMENTARY INFORMATION: On May 5, 1995, the Postal Service published a final rule in the **Federal Register** (60 FR 22270-22274) implementing provisions of Public Laws 103-123 and 103-329. Those laws restrict the eligibility of certain mailings for the Nonprofit Standard Mail rates to those containing advertisements for products and services that are substantially related to the nonprofit customer's qualifying purpose.

On two occasions in the early 1990s, Congress enacted laws that place limitations on the content of advertising matter eligible for the nonprofit rates. The first of these, codified to a large extent as 39 U.S.C. 3626(j)(1)(A-C), limited solicitations for credit cards and similar financial instruments, insurance, and travel. The second, codified as 39 U.S.C. 3626(j)(1)(D), limited solicitations for all other products and services. This notice concerns the second limitation, specifically the standards regarding substantially related advertisements.

The standards implementing 39 U.S.C. 3626(j)(1)(D) are contained in Domestic Mail Manual (DMM) section E670. Section E670.5.4d provides that the Nonprofit Standard Mail rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends,

HQ AR000009-HQ AR000016

Title 36 Comments from the Federal Register - A Summary

Total Number of Responses: 13

Total # of Issues: 6

Issues:

- Requiring permits/charging for fishing tournaments - 327.21(a) Special Events**
- Prohibiting hunting stands and blinds - 327.20 Unauthorized Structures**
- Elimination of overnight occupancy requirement - 327.7 (c) Camping**
- Illegally occupying a posted reserved site - 327.7 (e) Camping**
- Enforcing boating regulations by Corps rangers - 327.3(k) Vessels**
- Eliminating the word "outgranted" - 321.1(e) Policy**

See attached matrix

36 CFR Part 327 Paragraph #	Person	Comment	USACE Response
<p>327.21(a) <u>Special Events.</u></p> <p>Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. An appropriate fee may be charged under the authority of Sec. 327.23</p>	<p>Bruce Shupp, National Conservation Director, B.A.S.S Inc</p>	<p>“Specifically we are concerned with the broad inclusion of “fishing tournaments in the special events category. We agree that larger fishing tournaments requiring significant use of launch, parking, restroom and picnic facilities could be permitted so that the facility administrators can insure equitable public use of facilities, guarantee safety and charge permit fees commensurate with increased Corps staff involvement with the permitted activity.</p> <p>The challenge for you is to set a size-limit for these tournament events that will cover your management goals while not placing unnecessary and annoying administrative burdens on facility staff or on the fishing tournament participants.</p> <p>B.A.S.S has over 2,800 affiliated clubs with membership consisting of from 6 to over 100 anglers. Most club tournaments involve less than 20 boats. Some clubs will organize charity tournaments that attract many more competitors. These charity events could involve 100 or more boats. State B.A.S.S Federation (the umbrella organization of all B.A.S.S. clubs in a given state) tournaments may also exceed 100 boats. Thus, open charity events, larger B.A.S.S. club tournaments or B.A.S.S. federation events will require significant use of facilities and could be required to obtain a permit so the event can be properly planned and coordinated by the Corps facility administrators.</p> <p>However, small informal weekday, evening or even weekend tournaments place no burdens on either resources, facilities or Corps staff. It is unnecessary to burden either the users of Corps staff with permitting these small events.</p> <p>We therefore recommend that you change the wording in Section 327.21 to read: (a) Special events including, but not limited to water carnivals, boat regattas, fishing tournaments <u>requiring launch and/or parking facilities for more than 30 boats, cars and trailers</u>, music festivals . . .”</p>	<p>BASS has presented a good case about the requirement for having written permission for <u>all</u> fishing tournaments (including small and informal ones).</p> <p>CECW-ON proposes the following change:</p> <p><i>Special events including, but not limited to water carnivals, boat regattas, fishing tournaments with 30 or more boats, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. An appropriate fee may be charged under the authority of Sec. 327.23.</i></p>

<p>327.21(a) <u>Special Events.</u> (same as the above text)</p>	<p>Jim Summers, Conservation Director, WV Bass Federation</p>	<p>"I strongly feel that fishing tournaments should be eliminated from the wording of this proposal. The state of West Virginia DNR has a permit system in effect statewide. 95% of the water we use in our state is controlled by the COE. We have over 300 tournaments that would need permits each year. There are 3 districts in WV, that will be a full time job for someone to keep up with. We already pay \$2 for every boat that is in our tournaments on COE property. Also 95% of our tournaments are in the spring and fall and don't conflict with anyone else.</p> <p>I sincerely hope you will drop the words fishing tournaments out of the proposed regulation."</p>	<p>"</p>
<p>327.21(a) <u>Special Events.</u> (same as the above text)</p>	<p>USACE Huntington District</p>	<p>"Remove "Fishing Tournaments" from the list of activities that must have written permission granted by the District Commander. The management/permitting of fishing tournaments across the country varies tremendously. Until more specific guidance can be obtained from the special events task force, including fishing tournaments is premature. Including fishing tournaments in the CFR will require an action by each project/district. There are still a number of unresolved issues involved with permitting these tournaments, especially with enforcement. We understand that the reason fishing tournaments were added to the list is because at least one federal magistrate (or several?), wanted it clearly stated in these CFR in order for violation notices issued to be honored in their court(s). However, when weighed against the potential problems with administering the nationally by including tournaments in the CFR at this time, these problems far out weights losing a few cases in federal court. Education of the magistrate(s) may be the answer in the interim.</p>	<p>"</p>
<p>327.21(a) <u>Special Events.</u> (same as the above text)</p>	<p>Bernard F. Dowler, Chief, Wildlife Resources Section, WV Department of Natural Resources</p>	<p>"The WVDNR strongly recommends that "fishing tournaments" be deleted from the list of Special Events that would be prohibited without permission by the District Commander.</p> <p>The WVDNR is responsible for fisheries and their management on public waters in West Virginia. Fishing tournaments are regulated by the WVDNR and close coordination is maintained with Corps of Engineers (COE) resource managers at their respective projects.</p> <p>All fishing tournament participants pay a boat launching fee at COE projects. Additional fees are unwarranted."</p>	<p>"</p>

<p>327.20 <u>Unauthorized Structures</u></p> <p>The construction, placement, or existence of any structure (including, but not limited to roads, trails, signs, hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit lease, license, or other appropriate written authorization has been issue by the District Commander.</p>	<p>Bill Daniel West Virginia DNR Law Enforcement Section</p>	<p>"I wish to offer the following comments on a proposed change to 36 CFR Part 327, in the federal register, Volume 64, Number 138.</p> <p>In section 327.20, "hunting stands or blinds" are listed as now requiring a permit from the Corps. I feel that this is an infringement on States Rights to regulate hunting and its methods. In West Virginia there is already a rule on the books that says that only portable tree stands may be used on public lands. To further require an individual to obtain a permit from the corps is further restricting a permitted practice on Corps properties.</p> <p>In section 327.21, would further restrict States Rights for an activity already regulated by the State of West Virginia. West Virginia issues permits for "fishing Tournaments" and the Corps should not further burden the fishing public by requiring yet another permit. West Virginia issues their permit free of charge.</p> <p>Three different Corps of Engineers Districts have projects within the borders of West Virginia. We are requesting the above items be stricken from the proposal so that uniform administration of all projects will be assured for the citizens of this state."</p>	<p>The State of West Virginia has presented a good case about allowing the use of portable hunting stands.</p> <p>CECW-ON proposes the following change:</p> <p><i>The construction, placement, or existence of any structure (including, but not limited to roads, trails, signs, non-portable hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit lease, license, or other appropriate written authorization has been issued by the District Commander. Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of a day's hunt may be used.</i></p>
<p>327.20 <u>Unauthorized Structures</u></p>	<p>Bernard F. Dowler Chief, Wildlife</p>	<p>"The wording in this section should be modified to allow for the use of portable or temporary hunting stands or blinds that are not permanent and do not damage the resource.</p>	<p>"</p>

(same as the above text)	Resources Section; WV Department of Natural Resources	Suggested wording include the following: "Only portable tree stands or blinds may be used on project lands."	
327.20 <u>Unauthorized Structures</u> (same as the above text)	USACE Huntington District	<p>"The use of portable hunting stands on public lands both federal and state, is commonly acceptable throughout the country, as long as, these stands (and steps) are belted, chained or roped to the trees. The proposed paragraph insinuates that portable stands are not allowed. Suggest adding the following statement to clarify the use of portable stands and blinds. "Portable hunting stands, climbing devices, steps, or blinds, that are not screwed or nailed into trees may be used." Adding this wording will do the following:</p> <ol style="list-style-type: none"> 1) Eliminate confusion for the public in understanding the difference in the proposed CFR which prohibits the use or placement of and the regulations of state agencies who lease lands on Corps property that clearly state the allowable use of portable stands. 2) Eliminate the need to issue written permission to leasing state agencies and/or individual hunters. 3) Eliminate the need to post signs, modify or create brochures or handouts or otherwise notify the public that portable hunting stands are allowable even though the CFR prohibits there use." 	"
327.20 <u>Unauthorized Structures</u> (same as the above text)	Roy Grimes	<p>"Today I was handed a note by Kentucky's Conservation Law Enforcement Division. I was advised the COE is proposing to change Title 36 Regulations regarding tree stand use by deer hunters. According to the information I've been provided, tree stands would be prohibited on COE property if this regulation change is made. I am advised the comment period expires on Aug. 19th."</p> <p>Surely I have bad information? Portable tree stand use by deer hunters is the preferred method of hunting by a majority of our hunters. Both KY and the COE currently prohibit the use of permanent tree stands or the use of nails, screws, or any other device that penetrates the outer bark of a tree. Additionally, we require the name and address of the portable tree stand owner be affixed to the stand.</p> <p>Please let me know the COE's proposed intentions regarding this matter. If the COE indeed proposes to prohibit tree stand use (even portable, non-tree harming types) on COE property consider this e-mail a comment against the action."</p>	"

<p>327.7 (c) Camping</p> <p>The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite for the purpose of reserving a campsite for future occupancy is prohibited.</p>	<p>USACE Huntington District</p>	<p>“It is our understanding that the NRRS has prompted the elimination of the overnight occupancy requirement. When taking a close look at the situation, the only modification to the current occupancy requirements in paragraph (c), that would need to be made to satisfy the needs of the NRRS, is to allow a camper with an advanced reservation not to occupy their reserved site on the first night of their stay. With this being the case, dropping the overnight occupancy requirement for the rest of the reserved camper’s stay, all nights of a non reservable camper’s stay and all nights of campers in non NRRS campgrounds, seems unnecessary. One might say that it is the same as the hotel/motel industry and we should not care if the site is occupied as long as we have the revenue. However, it is not the same and we are not strictly in the business of maximizing our revenues (that has been made quite evident lately). What we are in the business of is providing quality outdoor recreation experiences for our visitors in a safe, accessible and healthful environment, with the reservation system acting only as a tool to help us do that. We should not let the NRRS drive the train. There are a number of managers and campers, at least in this district, that find it unacceptable to allow prime campsites to sit vacant, especially on a weekends, with no one else being allowed to use those sites. In theory, by dropping the occupancy requirement a camper could register for a site and not occupy it for 14 days. Granted this is the extreme case, but it is very frustrating for campers to see the most desirable sites unoccupied on weekends or holidays, especially when it is for two days or more. This will happen and has already happened some this year with the confusion the NRRS has brought. Suggest keeping the overnight occupancy requirement as a separate paragraph (f), with the exception of the first night of an advanced reservation, which would satisfy the needs of the NRRS. As a minimum, and probably the best solution for all, is to require overnight occupancy on weekend nights and holidays with the first night of an advance reservation being the only exception. This would solve three problems 1) accommodate the NRRS 2) require campers to occupy their sites on weekends and holidays when there is the highest demand for our sites which will help elevate problems and be better PR for the agency 3) eliminate the concern of campers registering for non reservable or non NRRS sites in the middle of the week and not returning until Friday in order to hold a site for the weekend. Also, requiring campers to have their primary camping equipment with them when they register and set it up would also be helpful in that it makes all sites appear to be at least occupied instead of nothing at</p>	<p>Huntington District has presented a good case about the impact of removing “without overnight occupancy” between the words “appearance” and “at”.</p> <p>Greg Webb has also presented a good argument about his recommendation to remove the second word (“unauthorized”) from the paragraph (see next page).</p> <p>CECW-ON proposes the following change:</p> <p><i>The placement of camping equipment or other items on a campsite and/or personal appearance at a campsite without daily occupancy is prohibited.</i></p>
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		all on the site. This can be easily enforced for the most part right at the entrance station. It has been used in this district for a number of years and has worked well. Including this requirement in the CFR would let other districts benefit from it as well especially if the occupancy requirement is totally eliminated. “	
327.7 (c) Camping (same as the above text)	Greg Webb, USACE Ft. Worth District	“Subsection (c) states that “...unauthorized ... for purposes of reserving...is prohibited.” This could be interpreted to mean that authorized placement of equipment or personal appearance is okay. “Unauthorized” could also be interpreted to mean that once a walk-in pays for a site they are “authorized” and can then place equipment on the site for future occupancy. If we removed the word “unauthorized”, this statement would then restrict the placement of equipment or personal appearance for the purpose of future occupancy for everyone, period. This should not restrict reservation customers unless a customer reserves a site, shows up and then places equipment on the site for future occupancy. I personally don’t see why a reservation customer would want to do this.”	“
327.7 (e) Camping Occupying or placement of any camping equipment at a campsite which is posted as “reserved” without an authorized reservation for that site is prohibited.	Greg Webb, USACE Ft. Worth District	“Subsection (e) states ““...at campsites <u>posted</u> as “reserved”...””. This could be interpreted to mean that sites must be posted by sign, site marker, etc., at the campsite. I suggest the words “is posted’ be dropped. Subsection (e) could also be interpreted to mean that an authorized reservation customer could place equipment on a site for the purpose of future occupancy.”	<p>Greg Webb has presented an acceptable case regarding his recommendation to remove the word “posted”. However, for the protection of the visitor, some physical indication that the site has been reserved is necessary.</p> <p>CECW-ON proposes the following change: Occupying or placement of any camping equipment at a campsite which is posted or otherwise marked or indicated as reserved without an authorized reservation for that site is prohibited.</p>

<p>327.3 (k) Vessels</p> <p>All vessels or other watercraft shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in Sec. 327.26.</p>	<p>unknown</p>	<p>“Will the Corps of Engineers still have the authority to enforce boating regulations? Section .3 is very ambiguous.</p> <p>If the Corps won't, consider the following. Without the authority to enforce boating regulations, it's likely that many projects will discontinue patrolling by boat. With this in mind consider the following: 1) Corps posted regulations having to do with boating can't be enforced by other agencies. (They won't be enforced). 2) Other agencies often don't have the staffing to adequately enforce boating regulations at Corps lakes on their own. (Enforcement of boating regulations will be inadequate.) 3) On hot afternoons, almost all visitors to Corps Lakes are in, on, or near the water. Many are in boats. Doesn't it make sense top allow Corps Rangers to enforce boating regulations at Corps lakes. Is there a more worthwhile way to utilize Corps Rangers during these periods?</p> <p>I've never heard of another agency in this area deciding not to patrol a Corps lake just because the Corps was authorized to enforce boating regulations”.</p>	<p>A viable justification has not been presented. The proposed language is essentially the same as the existing Title 36 and is exactly the same as 327.2 (Vehicles). Enforcement responsibility remains the same.</p> <p>CECW-ON proposes no change to this paragraph.</p>
<p>327.1 (e) Policy</p> <p>In addition to these regulations in this part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are ourgranted by the District Commander by lease, license or other written agreement</p>	<p>Ronald Berry</p>	<p>“I have a comment about the proposed update to Title 36. My comment relates to paragraph 327.1(e).</p> <p>Note the word "outgranted" in the paragraph. Does Webster recognize the word?</p> <p>The word is not in my desk copy of the Webster Collegiate Dictionary. Therefore "outgranted" should not be in the new Title 36.”</p> <p>Just a thought to make Section 327.1(e) of Title 36 more understandable to the general public.</p>	<p>Although “outgranted” is not in the Webster Collegiate Dictionary it is a legally acceptable term in Army Regulation 405-80 (10 October 1997) and is defined as “a legal document which conveys or grants the right to use Army-controlled real property”.</p> <p>CECW-ON proposes no change to this paragraph.</p>

HQ AR000017-HQ AR000024

1-800-635-5065 or (202) 484-1000; FAX (202) 863-4497 (With the exception of the "800" telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT:

William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

On April 26, 1999 (64 FR 20234), HUD announced in the **Federal Register** the establishment of the Negotiated Rulemaking Advisory Committee on Capital Fund Allocation. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the allocation of capital funds to public housing agencies (PHAs).

This document announces two meetings of the Negotiated Rulemaking Committee on Capital Fund Allocation. The meetings of the negotiated rulemaking committee will take place as described in the "DATES" and **ADDRESSES** section of this document.

The agenda planned for the committee meetings includes: (1) Discussion of issues related to the development of a Capital Fund formula; (2) development of draft regulatory language; (3) development of agenda for future meetings; and (4) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting announcement at least 15 calendar days before the date of an advisory committee meeting. The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting announcement. (See 41 CFR 101-6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during July, 1999, it has not been possible for HUD to announce the date and location of the July 26 and July 27, 1999 committee meeting before today. Given the October 1, 1999 statutory deadline for implementation of the Capital Fund

formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Capital Fund final rule on a timely basis will delay the provision of capital subsidies to PHAs.

Accordingly, rather than defer the negotiations, HUD has decided to proceed with the committee meeting on July 26 and July 27, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: July 16, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-18593 Filed 7-19-99; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

36 CFR Part 327

Public Use of Water Resources Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers proposes to amend the rules and regulations governing public use of water resources development projects administered by the Chief of Engineers. The regulations contained in this proposed rule are designed to ensure safe, enjoyable, and environmentally sound visitation on the public lands, free from unwarranted disturbances. The regulations accomplish this by setting minimum standards of conduct for individuals using the public lands, and establishing penalties that may be imposed for failure to obey the regulations.

These rules and regulations apply to water resources development projects completed and under construction, which are administered by the Chief of Engineers, and to those portions of

jointly administered water resources development projects, which are under the administrative jurisdiction of the Chief of Engineers.

DATES: Comments must be received by August 19, 1999.

ADDRESSES: Submit comments to U.S. Army Corps of Engineers, ATTN: CECW-ON, 20 Massachusetts Avenue, NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Austin, Outdoor Recreation Planner, 202-761-1796.

SUPPLEMENTARY INFORMATION:

Required Determinations

Executive Order 12291

This proposed rule is not a major rule as defined by Executive Order 12291.

Regulatory Flexibility Act Determination (5 U.S.C. 601 et seq.)

As required by the Regulatory Flexibility Act, the U.S. Army Corps of Engineers certifies that these regulatory amendments will not have a significant impact on small business entities. This rule is an update to the current regulations governing public use on Corps of Engineers Water Resources Development Projects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.)

This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more on State, local, or tribal governments or private entities.

The amendments to 36 CFR Chapter III Part 327 are necessary to clarify and strengthen selected regulations for more effective management and to enhance public safety and enjoyment of Corps water resource development projects. Some of the sections have been reworded and/or have had information added or deleted to clarify the regulations. These minor changes are editorial in nature and have been made to express the intent of the regulation more concisely, and to maintain consistency with existing Public Laws.

Discussion of Specific Rule Changes:

In Part 327, §§ 327.1 through 327.26, revise all references to "District Engineer" to read "District Commander."

36 CFR 327.0 Applicability

Section 327.0 is republished with no changes.

36 CFR 327.1 Policy

Section 327.1, paragraph (h), is revised to better define the responsibility of an operator or owner of any vehicle, vessel, or aircraft. Paragraph (i) is added to define the responsibility of a registered user of a campsite, picnic area, or other facility.

36 CFR 327.2 Vehicles

Section 327.2, paragraphs (b) and (d), is edited for consistency. A portion of a sentence has been moved from paragraph (d) into a new paragraph (h) to emphasize the laws and regulating authority for the operation of vehicles. Paragraph (e) is revised by removing the word "project" and paragraph (f) is revised by using the word "designated" to define the recreation area.

36 CFR 327.3 Vessels

Section 327.3, paragraph (a), is revised to substitute the term "personal watercraft" for "jetskis" and to add navigation on ice. A portion of a sentence has been moved from paragraph (c) into a new paragraph (k) to emphasize the laws and regulating authority for the operation of vessels. Paragraph (d) is rewritten for ease of readability and to include environmental features. Paragraph (e) has been edited for clarity and to include requirements of enforcement for non-compliance. Paragraph (h) has been modified to include a restriction about mooring vessels to project structures.

36 CFR 327.4 Aircraft

Section 327.4 is revised to include environmental features in paragraph (c), and the retrieval of person or material or equipment from project lands, and the use of balloons in paragraph (e). Paragraph (f)(3) is revised to be consistent with other sections, and to more concisely define navigation rules. Paragraph (f)(6) is revised to remove repetitiveness.

36 CFR 327.5 Swimming

Section 327.5, paragraph (a), is updated to include wading and public docks, and the last sentence is removed to eliminate repetitiveness with paragraph (c) of this section. Paragraph (b) is revised to include appropriate terminology. Paragraph (c) is revised to include the activity of swinging, and to include trees and structures which are adjacent to project waters.

36 CFR 327.6 Picnicking

Section 327.6 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.7 Camping

Section 327.7 is revised to comply with the National Recreation Reservation Service.

36 CFR 327.8 Hunting, Fishing, and Trapping

Section 327.8 is revised by breaking out each activity into separate paragraphs for better clarification.

36 CFR 327.9 Sanitation

Section 327.9, paragraph (a), is revised to include gray water. Paragraph (b) is revised to clarify the responsibility of the owner of garbage as defined in this section. Paragraph (c) is revised to include disposal of wastes for consistency with other paragraphs in this section.

36 CFR 327.10 Fires

Section 327.10, paragraph (b), is revised to include floatation materials and to clarify the regulation of open burnings for environmental considerations.

36 CFR 327.11 Control of Animals

Section 327.11, paragraph (a), is revised to include waters adjacent to developed recreation areas; to include a sentence which provides enforcement for animals which unreasonably disturb other people; to include the prohibition of animals and pets on playgrounds; and to include a sentence on the prohibition of abandoning any animal on project lands or waters. Paragraph (b) is revised to remove the words, "in sanitary facilities". The word "trails" is added to paragraph (c) for clarification on the types of recreation areas at Corps projects. Paragraph (g) is added to this section to restrict the presence of wild or exotic pets and animals, or any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance on project lands and waters unless authorized by the District Commander.

36 CFR 327.12 Restrictions

Section 327.12 is revised by adding resource protection to the list of reasons that a District Commander may close or restrict the use of a project or portion of a project. Paragraph (c) has been modified by changing the phrase "the safety of another person" to "the safety of any person." The list of audio producing devices has been removed in paragraph (d) and is now generalized to

read as a "sound producing device" and generators have been added to the examples of motorized equipment. Paragraph (e) is added to clarify the potential prohibition of alcohol on project lands. Paragraph (f) is added to reflect requirements in E.O. 13058, August 9, 1997.

36 CFR 327.13 Explosives, Firearms, Other Weapons and Fireworks

Section 327.13 is revised by adding the words "other weapons" to paragraph (a). Information on explosives and fireworks is moved from paragraph (a) into a new paragraph (b) for clarification purposes.

36 CFR 327.14 Public Property

Section 327.14 is revised to include paleontological resources, and boundary monumentation or markers in paragraph (a). Paragraph (c) is revised to include clarification on site specific prohibitions. Paragraph (d) is added for clarification on metal detectors and is in conformance with existing Corps regulations.

36 CFR 327.15 Abandonment and Impoundment of Personal Property

Section 327.15, paragraph (a), is revised to include public safety or resource protection to the reasons for closure of a public use area. Paragraphs (b) and (c) are switched for better readability. Paragraph (b) is revised to include private facilities, and to include the impoundment of property for consistency with paragraph (c). Paragraph (c) is revised to increase the fair market value of property which may be disposed of after 90 days, and to correct the word "covered" to "conveyed."

36 CFR 327.16 Lost and Found Articles

Section 327.16 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.17 Advertisement

Section 327.17 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.18 Commercial Activities

Section 327.18 is revised by adding the words "project lands or waters", to clarify where the solicitation of business is prohibited.

36 CFR 327.19 Permits

Section 327.19, paragraph (b), is revised for consistency with current Corps of Engineers terminology. The words "Rivers and Harbors" are added to paragraph (c) for clarification of the referenced Act. The words "Water

Quality” are added to paragraph (d) for clarification on the type of required certification.

36 CFR 327.20 Unauthorized Structures

Section 327.20 is revised to include hunting stands or blinds, buoys, and docks in the list of structures for purposes of clarification. The section is also revised by changing the word “agreement” to “authorization” for consistency within the document.

36 CFR 327.21 Special Events

Section 327.21, paragraph (a), is revised to include fishing tournaments in the list of special events. Paragraph (b) is revised to include the restoration of an area to pre-event conditions for consistency with Corps of Engineers regulations.

36 CFR 327.22 Unauthorized Occupation

Section 327.22 is revised for consistency with current Corps of Engineers terminology.

36 CFR 327.23 Recreation Use Fees

Section 327.22 is revised by removing paragraph (b) and incorporating the information contained in this paragraph into paragraph (a) for better readability. Paragraph (c) is redesignated as paragraph (b) and a new paragraph (c) is added to include a prohibition on the failure to pay day use fees and to properly display the day use pass. A prohibition about the fraudulent use of a Golden Age or Golden Access Passports is added to paragraph (d). Paragraph (e) is removed for consistency with the National Recreation Reservation Service.

36 CFR 327.24 Interference with Government Employees

Section 327.24, paragraph (a), is revised to include the words “attempt to kill, or kill,” for consistency with Title 18, United States Code. Paragraph (b) is revised to include the words “information deemed necessary for,” to provide clarification on type of other identification which may be required by a Federal employee in the performance of issuing citations.

36 CFR 327.25 Violations of Rules and Regulations

Section 327.25 is revised to increase the amount of the maximum fine in accordance with 18 USC, section 3571, and to remove duplicate words.

36 CFR 327.26 State and Local Laws

Section 327.26 is revised to include the “possession” of firearms or other weapons, and “alcohol or other

controlled substances” to the list of examples which are governed by state and local laws and ordinances. The paragraphs in this section have been renumbered for consistency and better readability.

36 CFR 327.30 and 327.31

These sections are not amended in this proposed rule.

List of Subjects for 36 CFR Chapter III Part 327

Natural Resources, Penalties, Public Lands, Recreation and Recreation Areas, Resource Management, Water Resources.

Dated: July 13, 1999.

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director of Civil Works.

For the reasons set forth in the preamble, amend Part 327 of Title 327 of the Code of Federal Regulations as follows:

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for Part 327 is revised to read as follows:

Authority: 16 U.S.C. 460d; 16 U.S.C. 4601–6a; and Sec. 210, Pub. L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.

2. Sections 327.0 through 327.26 are revised to read as follows:

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, state and local laws and regulations remain in full force and effect where applicable to those water resources development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term “District Commander” shall

include the authorized representatives of the District Commander.

(c) The term “project” or “water resources development project” refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.

(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Commander by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the operator of any vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel, or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25.

(i) For the purposes of this part 327, the registered user of a campsite, picnic area, or other facility shall be presumed to be responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to

the use of such facilities as provided for in § 327.25.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, and trailers, campers, bicycles, or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Commander. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier is prohibited.

(d) Vehicles shall be operated in accordance with posted restrictions and regulations.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(f) At designated recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Commander, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(h) Vehicles shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, personal watercraft, and any other such equipment capable of navigation on water or ice, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession

contract with the Department of the Army. This paragraph shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations and restrictions, including buoys. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is on project waters.

(d) No person shall operate any vessel or other watercraft in a careless, negligent, or reckless manner so as to endanger any person, property, or environmental feature.

(e) All vessels, when on project waters, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with boating safety laws issued and enforced by the state in which the vessel is located. Owners or operators of vessels not in compliance with this section may be requested to remove the vessel immediately from project waters until such time as items of non-compliance are corrected.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any person, property or environmental feature.

(h) Vessels shall not be attached or anchored to structures such as locks, dams, buoys or other structures unless authorized by the District Commander. All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Commander. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in

compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92-75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Commander, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

(k) All vessels or other watercraft shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.4 Aircraft.

(a) This Section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultra-light aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Commander is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Commander or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(d) Nothing in this section bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means onto or from project lands or waters without written permission of the District Commander is prohibited.

(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff,

herein called seaplanes, at the risk of owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Commander (pursuant to part 328 of this Title) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with U.S. Coast Guard navigation rules for power boats or vessels and § 327.3.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Commander. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Commander, for periods less than 24 hours providing:

(i) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and

(ii) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Commander following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless approved by the District Commander.

§ 327.5 Swimming.

(a) Swimming, wading, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and public docks, or other areas so designated by the District Commander.

(b) An international diver down, or inland diving flag must be displayed during underwater activities.

(c) Diving, jumping or swinging from trees, bridges or other structures which cross or are adjacent to project waters is prohibited.

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Commander.

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Commander.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Commander.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite for the purpose of reserving a campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Commander is prohibited.

(e) Occupying or placement of any camping equipment at a campsite which is posted as "reserved" without an authorized reservation for that site is prohibited.

§ 327.8 Hunting, fishing, and trapping.

(a) Hunting is permitted except in areas and during periods where prohibited by the District Commander.

(b) Trapping is permitted except in areas and during periods where prohibited by the District Commander.

(c) Fishing is permitted except in swimming areas, on boat ramps or other areas designated by the District Commander.

(d) Additional restrictions pertaining to these activities may be established by the District Commander.

(e) All applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in § 327.26.

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, gray water, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Commander. For the purposes of this regulation, the owner of any garbage, trash, rubbish, debris, dead animals or litter of any kind shall be presumed to be responsible for proper disposal. Such

presumption will be sufficient to issue a citation for violation.

(c) The spilling, pumping, discharge or disposal of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resources development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Commander.

(b) Fires shall be confined to those areas designated by the District Commander, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic and other flotation materials or treated wood products is prohibited. The District Commander may prohibit open burning of any type for environmental considerations.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas or adjacent waters unless penned, caged, on a leash under six feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. No person shall allow animals to bark or emit other noise which unreasonably disturbs other people. Animals and pets, except properly trained animals assisting those with disabilities (such as seeing-eye dogs), are prohibited in sanitary facilities, playgrounds, swimming beaches and any other areas so designated by the District

Commander. Abandonment of any animal on project lands or waters is prohibited. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas or on trails except in areas designated by the District Commander.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Commander.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Commander, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

(g) Wild or exotic pets and animals (including but not limited to cougars, lions, bears, bobcats, wolves, and snakes), or any pets or animals displaying vicious or aggressive behavior or otherwise posing a threat to public safety or deemed a public nuisance, are prohibited from project lands and waters unless authorized by the District Commander, and are subject to removal in accordance with Federal, state and local laws.

§ 327.12 Restrictions.

(a) The District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Commander may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, resource protection or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Commander. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of any person is prohibited. Individuals who are boisterous, rowdy, disorderly, or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any sound producing or motorized equipment, including but not limited to generators, vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) The possession and/or consumption of alcoholic beverages on any portion of the project land or waters, or the entire project, may be prohibited when designated and posted by the District Commander.

(f) Unless authorized by the District Commander, smoking is prohibited in Visitor Centers, enclosed park buildings and in areas posted to restrict smoking.

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:

(1) In the possession of a Federal, state or local law enforcement officer;

(2) Being used for hunting or fishing as permitted under Section 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(3) Being used at authorized shooting ranges; or

(4) Written permission has been received from the District Commander.

(b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander.

§ 327.14 Public Property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation

areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with Part 327.15 and Part 327.16 except for non-identifiable items such as coins of value less than \$25.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area or for the purpose of providing public safety or resource protection, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Commander, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) Personal property placed on Federal lands or waters adjacent to a private residence, facility and/or developments of any private nature for more than 24 hours without permission of the District Commander shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to impound the property and/or issue a citation as provided for in § 327.25.

(c) The District Commander shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if

it has a fair market value of \$100 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Commander. The net proceeds from the sale of property shall be conveyed into the Treasury of the United States as miscellaneous receipts.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Commander. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial Activities.

(a) The engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited.

(b) It shall be a violation of these regulations to refuse to or fail to comply with any terms, clauses or conditions of any lease, license or agreements issued by the District Commander.

§ 327.19 Permits.

(a) It shall be a violation of these regulations to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Commander under the authority of this regulation. District Commanders will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Manager's office.

(c) Permits for non-floating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resources development projects where such

waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 USC 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under Section 404 of the Clean Water Act (33 USC 1344). (See 33 CFR parts 320–330.)

(d) Permits for non-floating structures (issued under the authority of § 327.30) of any kind in waters of water resources development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States, shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under section 404 of the Clean Water Act (33 USC 1344) (See CFR parts 320–330). Water quality certification may be required pursuant to Section 401 of the Clean Water Act (33 USC 1341).

(e) Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of Section § 327.30) may be issued in accordance with the project Shoreline Management Plan. Failure to comply with the permit conditions issued under Section 327.30 is prohibited.

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs, hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit, lease, license or other appropriate written authorization has been issued by the District Commander. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license, or other written authorization is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Commander.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. An

appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Commander has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Commander shall have authority to revoke permission, require removal of any equipment, and require restoration of an area to pre-event condition, upon failure of the sponsor to comply with terms and conditions of the permit/permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full- or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 USC 4601) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88–578, 78 Stat. 897, as amended (16 USC 4601–6a), is prohibited and is punishable by a fine of not more than \$100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas.

Fraudulent use of a Golden Age or Golden Access Passport is prohibited.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out these regulations are also a violation of these regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to these regulations shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.

§ 327.25 Violations of Rules and Regulations.

(a) Any person who violates the provisions of these regulations, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than \$5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of these regulations, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 USC 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.

§ 327.26 State and local laws.

(a) Except as otherwise provided herein or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

- (1) Operation and use of motor vehicles, vessels, and aircraft;
- (2) Hunting, fishing and trapping;
- (3) Use or possession of firearms or other weapons;
- (4) Civil disobedience and criminal acts;
- (5) Littering, sanitation and pollution; and
- (6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

[FR Doc. 99-18426 Filed 7-19-99; 8:45 am]

BILLING CODE 3710-92-U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 99-4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of initiation of negotiation period.

SUMMARY: The Copyright Office of the Library of Congress is announcing the initiation of the negotiation period for determining reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery for the period commencing January 1, 2001. This negotiation period is intended to promote an industry-wide agreement as to the rates and terms for digital phonorecord deliveries.

DATES: The negotiation period begins on July 20, 1999, and ends on December 31, 1999. Petitions for an arbitration for rate adjustment must be filed during the year 2000.

ADDRESSES: If sent by mail, an original and five copies of the petition should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of the petition should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First

and Independence Avenue, SE, Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380 or Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 ("Digital Performance Right Act"), Pub. L. 104-39, 109 Stat. 336. Among other things, it confirms and clarifies that the scope of the statutory license to make and distribute phonorecords of nondramatic musical compositions, 17 U.S.C. 115, includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a "digital phonorecord delivery." 17 U.S.C. 115(c)(3)(A). A "digital phonorecord delivery" is defined as "each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording * * * ." 17 U.S.C. 115(d).

The Digital Performance Right Act established that the rate for all digital phonorecord deliveries ("DPDs") made or authorized under a compulsory license on or before December 31, 1997, was the same as the rate in effect for the making and distribution of physical phonorecords for that period. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a two-step process for determining the terms and rates: either the copyright owners of nondramatic musical works and those persons entitled to obtain a license may negotiate the rates and terms for the statutory license, or they may participate in a Copyright Arbitration Royalty Panel ("CARP") proceeding. 17 U.S.C. 115(c)(3)(A)-(D). Such rates and terms, whether negotiated by the parties or determined by a CARP, are to distinguish between "digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general." 17 U.S.C. 115(c)(2)(C)-(D). This two-step process is to be repeated "in each fifth calendar year after 1997," 17 U.S.C. 115(c)(3)(F), unless the parties agree to different years for the repeating

HQ AR000025-HQ AR000026

Notes from Title 36 Task Force Review and Update
14 October 1998

NOTE: Electronic copies of this information do not include Attachment 1

Attendees:	Peg O'Bryan, CENWD-MR-ET-O	Lt. Col. Rick Miller, CEP-M-ZA
	Phil Parsley, CESAS-OP-S	Steve Austin, CECW-ON
	Dave LaRue, CESWF-OD-SR	Kevin Paff, CECW-ON
	Darrell Lewis, CECW-ON	Karlissa Krombein, CECC-K
	Frank Trent, CESO-O	Lacy Evans, CECW-ON

Comments: Notes are listed according to the ~~Briefing~~ Handout (Attachment 1). Not all points from handout have notes. Taskers are **bolded** with responsible parties identified. The Task Force (Task Force) will coordinate with Karlissa and then present the final decisions to the Steering Committee (date: 13 November 1998). Timeline/suspense dates are included on the last page of the handout. Information marked with an asterisk (*) identifies "teaching points," as noted in the meeting.

INTRODUCTION:

Task Force Charter – provide full review of Title 36 and make changes and recommendations

In Progress Review – Teleconference with HQ (Steering Committee) on 15 Dec 97; discussed comments from the field and direction of the Task Force

Visitor/Ranger Safety – approx. 20 recommendations from field to Title 36. Task Force used approx. 50% of these recommendations (see Administrative Record)

Role of Ranger – Task Force noticed confusion with the role of the ranger through comments submitted. Task Force took the view that Title 36 is for the public's information on the rules at COE projects. The role of the ranger should be defined in VA Training course(s).

Administrative Record – Last update to Title 36 was in 1986. Current Task Force could not find any rationale of why comments were/were not adopted in 1986 – had to do some investigating to find answers. Current Task Force has record of comments and their response to comment – 2 rounds of comments (one on 1986 version of Title 36 and one on the 1997 draft version). **Copies of the FULL Administrative Record should be kept on file (electronic and hardcopy at HQ) – Task Force to provide Administrative Record and HQ to keep the file.**

REVIEW AND PROCESS:

(See Attachment 1 for complete list of steps)

Used 3 rangers from different sized projects to assist with 1st revision.

KEY PROPOSED CHANGES:

(See Attachment 1 for complete list of steps)

✓ 327.1 Policy – Make operator and registered camper accountable

327.2 Vehicles* – Limit careless behavior, that may incidentally damage property. Are NOT protecting private property

327.3 Vessels* - Use common sense, if no one on boat, then don't need lifejackets

327.8 Hunting, Fishing & Trapping* – Entire section changed

✓ 327.11 Control of Animals – Peg to Review wording of “Nuisance Pet” para.

✓ 327.12 Restrictions – Lewd Behavior removed. Karlissa and Task Force to review

✓ 327.13 Explosives, Firearms, Fireworks* – Loaded v. Unloaded guns. Karlissa and Task Force to review

327.14 Public Property* – Statement on use of metal detectors is consistent with existing policy.

✓ 327.15 Abandonment & Impoundment* – 41 CFR allowed increase in market value. Task Force to make (b) last in section. *-bold*

→ 327.18 Commercial Activities – HQ need to check with Real Estate on how this will affect Real Estate actions (check Chapter 8). Possible add-in...“every day shall constitute an additional violation” (something to that effect).

→ 327.19 Permits* – the addition in this section identifies an intermediate step to rescinding the permit.

327.20 change agreement to authorization

✓ 327.24 Interference – the wording “attempt to kill or kill” is directly from title 18 USC.

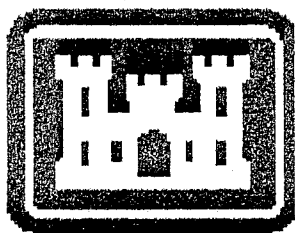
- “Information deemed necessary” – Karlissa to review section.

Steve to call LTC Miller to find out if citation forms have been revised (*DONE – see e-mail entitled DD FORM 1805 UPDATE – FYI on 15 October 1998, sent to Districts and Divisions.*)

✓ 327.25 Violations of Rules – the wording “increase fine to \$5,000” from title 18 USC. Task Force to ask Karlissa to double check.

327.26 State and Local Laws* - Task Force to give thought to moving last para. in section to first para. in section.

HQ AR000027-HQ AR000038



US Army Corps
of Engineers

Title 36 Review and Update

HQUSACE Briefing

14 October 1998

Title 36 Review & Update

BRIEFING OVERVIEW

- Introduction
- Review Process
- Key Proposed Changes
- Recommendations - timeframe, process
proposed schedule
- Proposed Schedule



US Army Corps
of Engineers

Title 36 Review & Update

INTRODUCTION

- Task Force Charter
- In Progress Review
- Visitor/Ranger Safety
- Role of the Ranger
- Administrative Record

Recommend

Rec 50% of Pos's Reports

CONFUSION - NOT Clear with MSP FOR STATE LMS

MANUAL Historic Record

HOW Electronic / Hand Copy



US Army Corps
of Engineers

Title 36 Review & Update

REVIEW PROCESS

- Initial Field Review & Comment
 - Oct-Nov 1997
- Task Force Review & Consolidation
 - 3 Smart Rangers
- First Revision
 - May 1998
- Field Review of Proposed Changes
 - June-July 1998
- Second Revision
 - September 1998

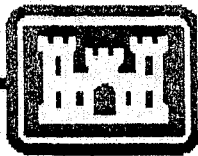


US Army Corps
of Engineers

Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.1 Policy
 - “Operator vs.. Owner”
 - “Registered User of Campsite”
- 327.2 Vehicles
 - “Any Property”
- 327.3 Vessels
 - “On Project Waters”
- 327.5 Swimming
 - “Cliff Diving”
 - “Separate Section for Bridge Diving/Jumping”
- 327.7 Camping
 - “Overnight Occupancy”
 - “Reservations”



US Army Corps
of Engineers

Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.8 Hunting, Fishing & Trapping
 - “Separate Sections for Each”
 - “Clarified Role of the Ranger”
- 327.9b Sanitation
 - “Identification of Owner”
- 327.11g Control of Animals
 - “Nuisance Pets”
 - “Exotic Pets”



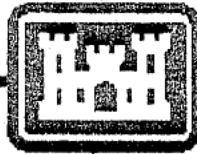
US Army Corps
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Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.12 Restrictions 87%
 - “Lewd Behavior”
 - “Alcohol”
 - “Smoking”
- 327.13 Explosives, Firearms, Fireworks
 - “State Gun Laws”
 - “Loaded vs.. Unloaded”
 - “Separated Fireworks”

25



US Army Corps
of Engineers

Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.14 Public Property
 - “Paleontological Resources”
 - “Use of Metal Detectors”
- 327.15b Abandonment & Impoundment
 - “Increase Market Value to \$100”
 - “Impound Property”
- 327.18 Commercial Activities
 - “Compliance of Lease, License, Agreements”

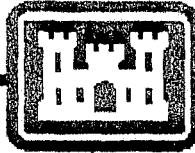


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Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.19 Permits
 - “Compliance with Shoreline Use Permits”
- 327.20 Unauthorized Structures
 - “Hunting Blinds”
- 327.21 Special Events
 - “Fishing Tournaments”



US Army Corps
of Engineers

Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.23 Recreation Use Fees
 - “Delete Justification for Fees”
 - “Day Use Fees”
 - “Delete Free Camping”
- 327.24 Interference
 - “Attempt to Kill or Kill”
 - “Information Deemed Necessary”
- 327.25 Violations of Rules
 - “Increase Fine to \$5000”

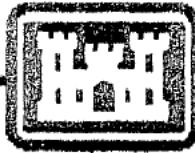


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Title 36 Review & Update

KEY PROPOSED CHANGES

- 327.26 State and Local Laws
 - “Clarification of Role of Ranger”
 - Vehicles
 - Vessels
 - Hunting, Fishing, Trapping
 - Control of Animals
 - Explosives, Firearms, Fireworks
 - “Possession of Firearms”
 - “Alcohol and Controlled Substances”



US Army Corps
of Engineers

Title 36 Review & Update

RECOMMENDATIONS

- HQUSACE Review & Approval Dec 1998
RE, OC, OP
- Post Changes in Federal Register Feb 1999
 - Notice of Proposed Changes Only
- Implementation Guidance May 1999
 - Training
 - Coordination with Magistrates
- Reprint EP1162-316 June 1999

Distribution

HQ AR000039-HQ AR000154

Title 36--Parks, Forests, and Public Property

CHAPTER III--U.S. ARMY CORPS OF ENGINEERS

PART 327--RULES AND REGULATIONS GOVERNING PUBLIC USE OF
WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY
THE CHIEF OF ENGINEERS

Section

- 327.0 Applicability.
- 327.1 Policy.
- 327.2 Vehicles.
- 327.3 Vessels.
- 327.4 Aircraft.
- 327.5 Swimming.
- 327.6 Picnicking.
- 327.7 Camping.
- 327.8 Hunting, Fishing and Trapping.
- 327.9 Sanitation.
- 327.10 Fires.
- 327.11 Control of Animals.
- 327.12 Restrictions.
- 327.13 Explosives, Firearms, Other Weapons and Fireworks.
- 327.14 Public Property.
- 327.15 Abandonment and Impoundment of Personal Property.
- 327.16 Lost and Found Articles.
- 327.17 Advertisement.
- 327.18 Commercial Activities.
- 327.19 Permits.
- 327.20 Unauthorized Structures.
- 327.21 Special Events.
- 327.22 Unauthorized Occupation.
- 327.23 Recreation Use Fees.
- 327.24 Interference with Government Employees.
- 327.25 Violations of Rules and Regulations.
- 327.26 State and Local Laws.
- 327.27 (Reserved).
- 327.28 (Reserved).
- 327.29 (Reserved).
- 327.30 Lakeshore Management on Civil Works Projects.

Authority: Section 4, Act of December 22, 1944, 58 Stat. 889, as amended (16 U.S.C. 460d); Section 210 of Public Law 90-483, 82 Stat. 746; and Public Law 88-578, 78 Stat. 897, as amended (16 U.S.C. 460l-6a).

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
	327.0 Applicability.											
SWL	Move paragraph 327.1(c). to 327.0(b). To better clarify the applicability of T36 to the pools of the navigation systems. (Do not see any real clarification - difficult to see value in moving text. Appears to be semantic only.)							XX			XX	
	The regulations covered in this Part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. ALL OTHER FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS REMAIN IN FULL FORCE AND EFFECT WHERE APPLICABLE TO THOSE WATER RESOURCES DEVELOPMENT PROJECTS.											
	327.1 Policy.											
SWT	A new section should be added stating "The parent or legal guardian of any juvenile violating regulations herein shall be considered responsible for the actions of the juvenile, and may be issued a citation for the violation committed. (Juveniles are becoming an increasing problem, and magistrates typically will not hear juvenile cases of a non-violent nature. However, this proposal raises Constitutional issues. We have no legal authority at this time to propose or enforce such a regulation.)										XX	
	(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.											
	(b) Unless otherwise indicated herein, the term "District Engineer" shall include the authorized representatives of the District Engineer.											

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
	(c) The term "project" or "water resources development project" refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.											
CENWO-OD-TN	Regarding facilities, does this apply to all facilities on project lands or just facilities owned by the Federal Government? For instance, concession facilities are owned by private individuals but are on project lands and waters. (Per Real Estate: T36 does now apply if they are violating specifics of the code. We can cite for illegal camping, fires, destruction, etc on Corps land under lease when needed. We do not manage them through T36, but can enforce when necessary.)											
	(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place or origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place or origin in the conduct of the operations under the lease, license or concession contract.											
CEMVN	All water resource development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality, place of origin or handicap. {"Disability" is the preferred term. Adopt as modified.}									XX		
NAP	second sentence. Add the word "disability" after the word "age" so as to read: "No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, disability, nationality or place of origin in the conduct of the operations under the lease, license or concession contract." (Adopt as modified.)									XX		

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
LRD	This paragraph should include persons with physical and developmental disabilities among those protected from discrimination and both contractors and volunteers should be listed among those who shall not discriminate. (Already included in contracts, should be in volunteer agreements as well.)									XX		
CENWK-CO-TR	Add "permittee" to the list of those who shall not discriminate. (Already covered under special event permits - no need to add to T36. Can cite under 327.19.)										XX	
	(e) In addition to the regulations in this Part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Engineer by lease, license or other written agreement.											
SWL	Should be reworded to read: "In addition to the regulations in this Part 327, all applicable Federal, state, and local laws and regulations remain in full force and effect on project lands and waters, including those lands and waters, which are outgranted by the District Engineer by lease, license, or other written agreement." (Already covered under 327.0, Applicability, emphasized with all capital letters, and also under 327.1(c). While addition might clarify somewhat, it would be repetitive.)							XX			XX	
	(f) The regulations in this Part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this Part 327 are not inconsistent with such treaties and Federal laws and regulations.											
	(g) Any violation of any section of this Part 327 shall constitute a separate violation for each calendar day in which it occurs.											

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
SAD	<p>Add a new sentence to read - "Furthermore, individuals responsible for separate and distinguishable acts prohibited in this regulation may be cited for each act, regardless of its time in relation to another like or similar prohibited act."</p> <p>{See below}</p>										XX	
LRD	<p>Suggest adding the following statement, "Furthermore, individuals responsible for separate and distinguishable acts prohibited in this regulation may be cited for each act, regardless of its time frame to another like or similar prohibited act.</p> <p>{Existing reg. Intended to cover illegal grazing, illegal occupancy type violations, where each day constitutes a separate violation. Adding to this tends to compromise the intent of the "each calendar day" verbiage, creating other problems. It is true magistrates may tend to dismiss duplicate tickets, however, issuing duplicate tickets appears to be an infrequent occurrence, and it works in some regions. If such an incorrigible person is in the park, rangers should probably get law enforcement help to have the person(s) removed from the park, rather than risk escalating the situation, possibly placing the ranger at risk.}</p>										XX	
	<p>(h) For the purposes of this Part 327, the owner of any unattended vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in Section 327.25, Violations of Rules and Regulations.</p>											

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
CEMVK	<p>If it is legally possible, remove the word "unattended" from this clause. As written, the owner is only responsible for "unattended" vehicles. Unauthorized operation of a vehicle (in a reckless manner, off roadways, etc.) is an enforcement problem; on rare occasions, a ranger happens upon a violation as it occurs or shortly thereafter and can obtain a license plate number. A citation may be issued; however, unless a ranger can prove who was driving a vehicle, this "unattended" aspect introduces a loophole as it only applies to parked vehicles in interpretation of most magistrates. Consequently, even if we discover the owner of the vehicle through the registration, no conviction is made due to absence of a positively identifiable operator.</p> <p>(Adopt as modified - see below.)</p>					+				XX		
CENWK-CO-TR	<p>Delete the word "unattended". Sometimes no one in a group with a vehicle will claim it when it is involved in a disciplinary action. However, it is attended. Technically, we cannot cite the registered owner.</p> <p>(Agree - modification can also cover situations where a violation occurs, several people are around the vehicle, and none will claim to be the operator. The owner could then be held responsible, whether the vehicle is attended or not.)</p> <p>Suggested modification, 327.1(h). For the purpose of this Part 327, the owner operator of any unattended vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption shall..."</p>					+				XX		

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
LRD	SEC. 327.1 (I) Policy (add this item) - Suggest adding the following section (I), "Corps personnel authorized by the District Engineer may stop and/or temporarily detain individuals for the purpose of identifying them, determining their compliance with regulations in this Part 327, and for issuing appropriate warnings, citations, and lawful orders". (While many desire this authority, the reality is that under current administration, rangers, by design, do not have the authority to detain. Authority to detain indicates you have authority to back up that demand, which means the ability to arrest. This would require certified peace officer authority. This is not likely to happen, and attempting to add it to T36 will not pass. "Asking" someone to remain while checking out the details is different from the authority sought in this suggestion.)			XX	XX	?			XX		XX	
CEMVROD-T	327.1 (I) – Add this section: "For the purposes of this part 327, the registered user of a campsite, picnic area or other facility shall be presumed responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such facilities as provided for in Section 327.25, Violation of Rules and Regulations." This would place the responsibility for use of the facility on the registered camper or the person who reserved the picnic shelter and give us more control over vandalism and rowdiness at these sites. (Agreed would be a significant assistance to enforcement without creating safety issues. Legal application may differ from privately owned vehicles (327.1(h)) where this was lifted. Adopt as suggested, add as new subsection, 327.1(I). Suggested new 327.1(i): (I) – Add this section: "For the purposes of this part 327, the registered user of a campsite, picnic area or other facility shall be presumed responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such facilities as provided for in Section 327.25, Violation of Rules and Regulations."					+				XX		
	327.2 Vehicles.											

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/Semantic	Policy Chgs	Yes	No	No Consensus
CEMVK	<p>There is a growing problem with the public operating minibikes, motorcycles, and ATV's on Government property without wearing suitable safety headgear. Although state laws exist in some locations which require headgear, they are often inadequately enforced by local and state law enforcement agencies on Government lands due to priorities and limited resources. Suggest this article be revised to require that the operator and all passengers wear the reference headgear while operating such vehicles on Government land.</p> <p>{Unlike PFD's (327.3(e)), where specific regulations are cited granting us authority, we do not specify safety gear required except under lease or special event agreements, or perhaps posted in designated areas. In areas where a significant problem exists, it should be covered under posted restrictions. We do not have authority to enforce local laws and regs.}</p>						XX				XX	
	(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles and trailers, campers, bicycles or any other such equipment.											
CEMVK	<p>Add the term <u>all terrain cycles</u> to the list of vehicles in this section.</p> <p>{Not a widely recognized term, already covered by ATV phrase.}</p>							XX			XX	
SAD	<p>Add "golf carts, mopeds, skateboards, roller skates, in-line skates" to the list of vehicles to which this section pertains.</p> <p>{See below. Golf carts and mopeds can be street-legal in some states.}</p>										XX	
SPA	<p>Need to include a broader definition so that anything ridden without regard to the power source, ie., "4-wheelers; mopeds; electric cars, carts; solar equipment; etc.</p> <p>{Covered under "any other such equipment."}</p>										XX	

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LRD	<p>The words, "skateboards, roller skates, roller blades, and horse drawn equipment" should be added to the list of things covered by this section.</p> <p>{Much discussed issue, Conclusion is skates & skateboards do not fall under the typical definition of a vehicle, and difficulties arise attempting to address them here. Not aware of any jurisdictions that consider skates to be vehicles. (Bicycles are recognized as legitimate vehicles.) Naming "skates or skateboards" may change in several years as the technology changes. May also have problems restricting a legitimate recreation format within the confines of T36. Possibly the best approach would be to address under 327.12, Posted Restriction, in areas where significant problems exists.</p> <p>Horse drawn equipment is considered a legal vehicle in some areas (such as Amish), DE has authority to authorize these in certain areas as necessary. Would appear that livestock regs would be adequate to handle most other instances. May be some other concerns we are not aware of.)</p>										XX	
	(b) Vehicles shall not be parked in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, project property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.											
SAD	<p>Replace the phrase "...endanger any person, project property or environmental..." with "...endanger any property or person, or environmental..." This will be consistent with wording in Section 327.3(d).</p> <p>{A question arises as to how a vehicle parked on Corps property can endanger private property. Endangering a person by how the vehicle is parked is covered. If grass, shrubs, etc. on Corps land are endangered by parked vehicles, it could be handled by locally posted restrictions. However, it is intended to make 2(b), 2(e), 3(d) and 4(c) as consistent as possible. See additional rationale under those subsections.)</p>									XX		

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
NAB	<p>ADD - "Parking is permitted only in designated areas. Vehicles will be parked in such a manner as to only occupy one designated space". (cont)</p> <p>{Adding "designated areas only" would likely be too restrictive, especially rural areas. 2(b) already includes power to cite vehicles impeding traffic (roadside parking) and impede/obstruct parking of other vehicles (parking lot, taking four spaces). The problem can be handled with existing reg.}</p> <p>Add Section - "Persons involved in vehicle accidents occurring on Corps property and resulting in personal injury or damage to private or Government property will report same to the Park Manager within 24 hours. (cont)</p> <p>{While we would like to know this info, how could we make it known to the public, and how would we enforce it? Even with law enforcement contracts, there is no possible way to determine if all incidents are reported. Impossible to enforce.}</p> <p>Add Section - "No vehicle operator shall allow a person to ride in a towed trailer (boat or camper) (cont)</p> <p>{Covered under 2(e).}</p> <p>Add Section - "No person shall leave a motor vehicle unattended with the motor running". This presents a clear and present danger to those around the vehicle.</p> <p>{Noise, noxious fumes can be handled under other sections. Not a widespread problem.}</p> <p>Add Section - "No person shall leave a vehicle unattended when occupied only by a child or children under 10 years of age. (cont)</p> <p>{Did not receive all of this suggestion-assume "use of reasonable means," trying to clarify how far we can go to effect a rescue. Lack of law enforcement support is problem in rural areas. Does not always create immediate danger. T36 probably not best vehicle for addressing.} Pets? Can they be covered?</p>										XX	
											XX	
											XX	
						XX					XX	
											XX	

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
LRD	SEC 327.2 (b) Vehicles and (e) - Remove the word "project" from the sentence and replace with "any/all property", as shown in the Vessels Section 327.3 (d). (See modification)									XX		
SWF	"Vehicles shall not be parked . . . or the parking of other vehicles, to create a safety hazard, or to endanger any person, project property or environmental feature. Vehicles so parked are subject to citation and/or removal and impoundment at the owner's expense." The twice-added "to" seems to be a grammatical necessity. The added phrase concerning citations clarifies that removal is not the only enforcement option for illegally parked vehicles. (Examined by English major - second "to" not necessary, don't see any improvement by adding. As per citations, the whole purpose of T36 is authority to issue citations-covered already.)										XX	
CENWK-CO-TR	Change the phrase "project property" to "any property" as in .3(d) and .3(g).									XX		
CENWK-CO-TR	Should read "removal and impoundment" to conform with .11(a). (327.11(a) references state & local laws, while Corps has their own restrictions concerning parking-state/local not apply, as they would under 11(a).)										XX	

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CENWO-OD-TN	<p>Recommend adding some language stating that parking in a handicap space requires a handicap permit to be displayed.</p> <p>{Use of a handicap parking space requires display of a valid permit. It is a violation to fail to display the permit when parking in a handicap spot. Existing reg covers.}</p> <p>Change (b) and (d) to be consistent - one has "regulations," other has "restrictions." {Agree}</p> <p>Suggested modification, 327.2(b):</p> <p>(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, project property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.</p>									XX		
	(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Engineer. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier is prohibited.											
SAD	<p>Add a sentence or insert a new paragraph which restricts vehicles and ATVs from driving on the shoreline and on Government property unless written permission has been obtained from the District Engineer.</p> <p>{Don't see where suggested change is any different from existing regulation.}</p>										XX	
NAB	<p>Add - "Parking off roadway" - in second sentence.</p> <p>{Already covered in first sentence. No need to repeat.}</p>										XX	

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SPA	<p>Need to add wording that would include "berms," "rock barriers," Some 4-Wheeler's just do not understand "authorized roadways."</p> <p>{ "Berms" and "rock barriers" are not widely understood terms, not present at many projects. Existing reg is actually specific enough. }</p>										XX	
LRD	<p>Suggest that wording be added which would allow Corps Rangers to enforce prohibitions on the use of off-road vehicles on project roads where such prohibitions exist - current paragraph only allows enforcement by authorized law enforcement officials. The following wording is suggested, "Operation of vehicles on public roadways requires a licensed vehicle and a licensed operator. Vehicles not licensed.</p> <p>{ We again face a state law (licensed vehicle/operators) where we have been given no authority. Only if the specific restriction is physically posted as per this reg, can we actually enforce. If a sign prohibiting ATV's on park roads is present, we can enforce. We have no authority to determine the legality of a vehicle or operator. We may not like it, but we have to live with it at this time. Under 24(b) we have authority to request proper ID, but we have not been allowed to request ID to prove legality, such as a drivers license. As more and more licenses are required (PWC, Hunter Ed, etc), it is possible we may one day need authority to request to see them. This authority would have to be granted prior to incorporation into T36. }</p>			XX						XX		
POD	<p>Strike "authorized" from the first sentence. Change the second sentence to read "Motorized entry onto any part of a Corps project other than via an open, public roadway is prohibited."</p> <p>{ Seems covered under existing reg. Don't see how this would improve the reg, could confuse what constitutes a roadway. }</p>										XX	
	(d) Vehicles shall be operated only in accordance with posted regulations and applicable Federal, state and local laws, which shall be enforced by authorized enforcement officials.											

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CENWK-CO-TR	Replace the word "regulations" with "restrictions", to conform with language in .2(b). {Change both 2(b) and 2(d) to "restrictions and regulations."}									XX		
SWT	The following sentence should be added: "Vehicles operated in park areas shall be only those which can be legally operated on public roadways in accordance with state law." {Wanted to adopt, but still face the lack of authority to enforce. We do not have authority to determine what is/is not a street-legal vehicle. }			XX							XX	
SWL	Should be revised and clarified by adding the words (Federal, state, county, or city) after the phrase "authorized enforcement officials." {Unnecessary - already covered.} Suggested modification, 327.2(d): (d) Vehicles shall be operated only in accordance with posted <i>restrictions and</i> regulations and applicable Federal, state and local laws, which shall be enforced by authorized enforcement officials.										XX	
	(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, project property or environmental feature.											
CEMVK	This article should be revised as follows: "No person shall operate any vehicle in an <u>unsafe</u> , careless, negligent, or reckless manner as to endanger any person, <u>personal property</u> , project property or environmental feature." {Same situation with private vs project property. Negligent: disregard, take no care of. Careless seems to be contained in negligent. Careless: disregard for liking, no charge, no oversight. Reckless: heedless, careless. Unsafe: endanger, involving risk, not cautious, untrustworthy. Legal needs to define difference. "Unsafe" is understood by each of the three terms.}											

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
SAD	Replace the phrase "...endanger any person, project property or environmental..." with "...endanger any property or person, or environmental..." This will be consistent with wording in Section 327.3(d).									XX		
NAP	change to read: No person shall operate any vehicle in a careless negligent or reckless manner so as to endanger any property or person (including the operator and/or occupants) or any environmental feature. RATIONALE: Previous court hearings of violators charged under this section for reckless operation of a vehicle have argued before a judge that their actions were not a threat to anyone because there were no park visitors nearby whom they could endanger. In so arguing, they gave no thought to the safety of other occupants in their vehicle. (Existing already lists "any person," which should include passengers. Apparently, negligent and reckless are hard to prove in court -careless should be used most.)							XX			XX	
NAB	Add - Operator/user as in 327.3(d) (see above)							XX			XX	
CENWK-CO-TR	Change the phrase "project property" to "any property" as in .3(d) and .3(g). (The intent of T36 is a focus on safety and resource protection. We are not in the business of protecting personal property. The intent of this subsection, however, is to control <i>operation</i> of vehicles, regardless of what is endangered by that act of operation. Since "all property" has been covered under vessels and aircraft for years, making this change should not change our liability or authority, but would allow rangers greater discretion in handling legitimate vehicle operation risks.									XX		

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
SWL	<p>This section should state "any person including the operator" to make it consistent with similar verbiage in 327.3(d). under vessels.</p> <p>{see above}</p> <p>Suggested modification 327.2(e): (e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, project property or environmental feature.</p>							XX			XX	
	(f) At developed recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.											
CENWK-CO-TR	<p>Delete in entirety.</p> <p>{Field input indicates this is needed in a number of areas to deal with cruising, unauthorized gatherings, etc.}</p>										XX	
CENWO-OD-TN	<p>The intent of this section is unclear; it either needs to be worded better or removed. If kept, and applicable to all recreation areas, suggest changing the word "developed" to "designated."</p> <p>{The term designated allows more flexibility to restrict over primitive camping, designated but undeveloped park areas, etc. Adopt, see modification below.}</p>									XX		
SWL	<p>Should be expanded to specifically prohibit joy riding, cruising, etc. and to provide for expulsion from the project.</p> <p>{Cruising and joyriding are "slang," not legally recognized terms in magistrate courts. Best mod to date below:</p> <p>Suggested modification, 327.2(f): At developed <i>designated</i> recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted. <i>Repetitive entry and exit is prohibited.</i></p>							XX		XX		

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
	(g) Except as authorized by the District Engineer, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.											
SAD	Delete the phrase "...as defined by state and local laws,..." This still provides a means to deal with excessive muffler noise from vehicles or vessels without the predicament of having to know and/or "enforce" state and local laws in this regard. (Can really only enforce with a decibel meter or other such device. However, some areas may be able to enforce, or at least run a bluff. To remove the state and local laws would remove any standards that exist. For real problems, may need to borrow decibel meter from law enforcement agency. Leave as is.)										XX	
SWL	Section 327.2(h). Operation of skate boards, roller blades, go carts, kiddie electric carts, all terrain vehicles (ATVs), golf carts, dirt bikes, and other vehicles not designed and intended for legal road use is prohibited in parks. (Too restrictive-some less densely used parks may not have problems with such operation. Allow local control, posting to designated areas only.)										XX	
CENWK-CO-TR	Delete in entirety. (Some may be able to enforce, leave the ability to do so.)										XX	
	327.3 Vessels.											

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CEMVK	<p>There is a growing problem with the public operating boats in an unsafe manner. One example is the pulling of a skier without an observer on board the boat (i.e., the boat operator is the observer). There are state laws concerning this in some cases but they are inadequately enforced. Suggest the referenced article require the presence of separate observers in these boats. This would include a boat pulling a skier, surfboard, floats, tow ropes, or similar device capable of carrying a person.</p> <p>{Regulations vary from state to state (some require observer, some allow no observer if a mirror is present). No one reg can cover all under our authority. Current reg is adequate. }</p>										XX	
NAB	<p>Add Section - "Vessels using project waters for overnight occupancy shall be equipped with factory installed, Coast Guard approved sanitation systems." This has become a greater problem at Raystown Lake and probably at other projects. By making this a requirement, the problem of illegal discharge of waste can be eliminated or reduced.</p> <p>{Would change Ranger role to one of "head inspector." States already monitoring, we do have authority under 9(c). }</p>			XX							XX	
LRD	<p>Suggest that a subsection be added which prohibits the operation of a vessel from sunset to sunrise while it is pulling a skier, or any other type of ski or aquaplane type device. Boaters should also not be permitted to pull such devices through designated areas such as "No Wake Zones" and areas of heavy traffic congestion such as launch ramps, bridges, or railroad trestles.</p> <p>{State laws vary, in most these are already covered. Local posted restrictions can handle most exceptions. PWC regs are in a state of flux, getting more specific in T36 would likely be self-defeating down the road. }</p>							XX			XX	
	(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, jetskis and any other such equipment capable of navigation on water, whether in motion or at rest.											
CEMVROD-T	Add "personal watercraft" to the list of vessels.									XX		

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MVP	The reference to "jetskis" needs to be changed to "personal watercraft." Jetskis is a brand/model name. {Agree to replace "jetski" with "personal watercraft."}									XX		
CEMVK	The separate section to address operation and safety for personal water craft should be added under the vessels section. {Not needed. Would have to duplicate much of what is already in vessels section, would require new forfeiture schedule, would not account for state variations. Existing regs adequate, as they are vessels.}										XX	
SAD	Revise to read - "personal or jet-propelled watercraft" in lieu of "jetskis" which is a trade name.									XX		
NAP	change the word "jetskis" to "personal watercraft." Also, add the words "or ice" after the word "water" so as to read "capable of navigation on water or ice whether in motion or at rest." RATIONALE: the term "personal watercraft" is more encompassing of the variety of vessels on the market today. Adding the word "ice" will enable enforcement of applicable regulations for winter usage of lakes by iceboats. {Agree on "jetski" issue. Not sure T36 is appropriate vehicle to address iceboats, which appear to be geographically limited.}									XX jet ski	XX ice bo at	
SPA	that windsurfers be named and included in all aspects of vessels. {Coast Guard does not classify sailboards as vessels (that's why they don't have to wear PFD's while in use), difficult to address under vessel section. }										XX	
LRD	Add the words Personal Water Craft or PWC since this is the common language now used - eliminate the term "jetski". {Agree}									XX		
SPD	"jetski" is a brand name. Change to "personal watercraft". {Agree}									XX		
SWF	Replace "jetskis" with "personal watercraft." This is the correct industry term. {Agree}									XX		

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
CENWK-CO-TR	<p>Add "...personal watercraft...". {Agree}</p> <p>Suggested modification, 327.3(a): (a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, jetskis personal watercraft and any other such equipment capable of navigation on water, whether in motion or at rest.</p>									XX		
	<p>(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph (327.3(b)) shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.</p>											
LRD	<p>Add marine sanitation devices into the Vessels Section.</p> <p>{Covered in 9(c). Again, adding this would make us boat inspectors. We are authorized to check only for safety gear at this time. Outside our role. Many boats have heads, people still choose to dump in lake when unobserved. Requiring proper equipment does not guarantee proper use. Boarding enclosed boats for inspections could endanger rangers in some instances.}</p>			XX	XX more risk						XX	
	<p>(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations, including buoys, and applicable Federal, state and local laws, as regulated by authorized enforcement officials. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is operated on project waters.</p>											

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NAP	<p>last sentence, add the word "placed" so as to read: All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is placed and/or operated on project waters. RATIONALE: violators of registration requirements are often caught while sitting in their vessels along the shoreline. When approached about the violation they claim that they were not operating their vessel at the time, thus using this loophole to avoid a citation.</p> <p>(Better solution, delete "operating." Eliminates questions about operating, placing, etc. If it's there, its covered.)</p> <p>Suggested modification, 327.3(c): (c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations, including buoys, and applicable Federal, state and local laws, as regulated by authorized enforcement officials. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is operated on project waters.</p>											

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LRD	<p>Add, "Vessels shall not be tied off or permanently anchored to structures such as the lock, dam, buoys or other structures unless authorized for lockage, etc."</p> <p>{Neither 3(c) nor 3(h). address vessels mooring to buoys, dams, etc. 1st half of 3(h). may not be adequate, as seldom are signs posted anywhere near buoys. Address at 3(h). This would then address mooring both boats in use and not in use.}</p> <p>The phrase, "as regulated by authorized enforcement officials," needs clarification. Does this phrase imply that because Corps of Engineer projects are located throughout the United States and that state boating (fish and game laws) vary from state to state, that Corps rangers are to enforce boating and fish & game laws and regulations in the same manner as the states; or, are these laws and regulations the exclusive domain of state law and regulatory officials? If the latter is true, the phrase, "as regulated", needs to be replaced with, "which shall be enforced by authorized enforcement officials", as stated in Section 327.2 (d).</p> <p>{HQ directive-except for safety issues, these are pretty much the domain of state and local officials. }</p>					XX				XX		
SWF	<p>The second sentence, concerning registration on board, should be moved to the end of subsection (e), since registration is an equipment requirement, rather than an operational requirement.</p> <p>{Since registration is a state requirement, feel it fits better under 3(c) than 3(e), which is primarily a safety equipment reg.}</p> <p>Add as last sentence, "Operating a vessel within 50 feet of a diver's marker, downed skier, swimmer, wader, or person in or on a floating toy or sailboard is prohibited at greater than no-wake (headway) speed."</p> <p>{State regs vary (50ft in TX, 100ft in GA). Need to allow for these variations. Attempting to post and enforce something different than the state law would create a major headache, and because it would be our reg, we would not have the assistance of state & local law enforcement personnel, who would continue to enforce only the state reg.}</p>										XX	
											XX	

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SWL	Should have the phrase (Federal, state, county, or city) included after "authorized enforcement officials." {Semantic - existing does allow some flexibility.}										XX	
	(d) The operation of vessels or other watercraft in a careless, negligent or reckless manner so as to endanger any property or person (including the operator and/or user(s) of the vessel or watercraft) is prohibited.											
CEMVROD-T	Add "Careless, reckless or negligent operation includes but is not limited to operating a boat in a swimming area, excessive speed in the vicinity of other boats, bow riding, and riding on seat backs, gunwale or transoms." {Including too many specifics can cause problems, limiting what we can actually call careless, etc. Ranger should be able to justify the ticket based on what they saw, and should be familiar with applicable state laws.}										XX	
CEMVK	This article should be revised as follows: "The operation of vessels or other watercraft in an <u>unsafe</u> , careless, negligent or reckless manner as to endanger any property, person or <u>environmental feature</u> is prohibited. <u>This includes the operator and/or users of the vessel or watercraft, persons in other watercraft, and persons on the shoreline.</u> " { Legal definition of "careless, negligent or reckless" includes "unsafe," would be redundant to add. Recommend adding "environmental feature" as it could allow additional protection of shoreline (ie. erosion from wakes), protection of certain aquatic plants, etc).}							XX			XX	
NAP	add the words "or environmental feature" before "is prohibited" at the end of the sentence. RATIONALE: To provide a means of enforcing restrictions in wildlife habitat and nesting areas. {Accept. See above.}									XX		

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LRD	<p>Wording in this section should be made compatible with verbiage contained in the "Locking Through" brochure.</p> <p>{Brochures can change readily. Any major differences can be handled under posted restrictions.}</p> <p>When issuing a violation notice under this subsection, the probable cause is usually a violation of state boating regulations. How should Corps Rangers write these violations without referring to state boating regulations?</p> <p>{State regs are referred in the subsections of T36. Rangers do not need to actually refer to the state regs. We must be able to legally justify that what we observed was careless, negligent or reckless, and the action did pose a potential endangerment. Again, our focus is safety.}</p> <p>The terms "careless, negligent and reckless" need to be defined. The U.S. Coast Guard defines negligent operation as the failure to exercise that degree of care which a reasonable person, under like circumstances, would demonstrate in order to prevent the endangering of the life, limb, or property of a person (s) including the operator and/or users of the vessel or watercraft. We have also been told that the difference between negligent and reckless operation is that negligence is the result of ignorance of rules, regulations or laws, while reckless operation is the result of knowingly violating the rules, regulations, or laws governing the operation of a vessel.</p> <p>{All three listed, Ranger has discretion to use whichever is applicable. Defining terms in T36 would be cumbersome and self defeating. Rangers should know the difference between the three terms, touch base with legal or magistrate where there is a local problem.}</p>										XX	
											XX	

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SPD	<p>Add "Watercraft capacity ratings include persons being towed behind the vessel."</p> <p>{This would be covered under 3(g). Not widespread problem.}</p> <p>Suggested modification, 327.3(d): (d) The operation of vessels or other watercraft in a careless, negligent or reckless manner so as to endanger any person, property or person (including the operator and/or user(s) of the vessel or watercraft) or environmental feature is prohibited.</p>										XX	
	(e) All vessels, when in use, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements (Coast Guard Pamphlet CG-290; 46 CFR Parts 25, 30; 33 CFR Part 175) and in compliance with boating safety laws issued and enforced by the state in which the vessel is being operated.											
SAD	<p>Add a new sentence to read - "Operators of vessels not in compliance with this section may be required to remove the vessel immediately from project waters."</p> <p>{Within visitor assistance, we have authority to request visitors to leave project land. Also under 12(c). We must get law enforcement help if they refuse, but we can make the request. Same should apply with a vessel. Change "required" to "request," as per 12(c), and add "until such time as items of non-compliance are corrected."}</p>									XX		
NAP	<p>make sure Coast Guard Pamphlet CG-290 46 CFR parts referenced in this section are currently applicable. RATIONALE: The pamphlet appears to have changed over the years and some of the parts do not relate to this section.</p> <p>{CG-290 no longer exists, will be deleted. Only portions of the other references (those dealing with safety) directly apply.}</p>									XX		
SPA	<p>specific guidance needs to be given that will include windsurfers and the type of PFD that will be worn.</p> <p>{This is determined by Coast Guard and state regs, not T36.}</p>										XX	

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LRD	<p>Recommend that the words, "when in use" be deleted. This verbiage can be interpreted to mean simply "not in operation" or "at anchor".</p> <p>{Change to "All vessels, when on project waters, shall have safety equipment..." As more states enforce regs whether or not vessel is actually under way or in use (only has to be present on the lake or at mooring facility), we should modify to avoid conflict with state laws.}</p> <p>Recommend adding this sentence to section, "Operators not in compliance with section may be required to remove the vessel immediately from project waters".</p> <p>{Cannot "require," but we may "request." Adopt/modify}</p> <p>Recommend a more specific statement in this section regarding the wearing of PFDs - or the addition of another section. Recommended wording is, "All persons on board canoes, personal watercraft, sailboards, kayaks, or any other type of ski or aquaplane device are required to wear a properly fitted, Coast Guard approved personal flotation device (PFD)".</p> <p>{outside our authority at this time. We are dependant on CG regs for our authority.}</p> <p>This section references another agency's regulations, CG-290; 46 CFR Parts 25, 30; and 33 CFR Part 175. Corps rangers have no authority to cite these regulations. The referenced regulations should be either incorporated into Title 36 as specific subsections or a more specific statement should be made to cover the intent of the current subsection.</p> <p>{We do not write citations on CG regs. We have adopted what these CG regs refer as our minimum standards under T36. Our tickets are written on T36, not a CG reg. Much like Corps adoption of Natl Electric Code standards.}</p> <p>Change the wording of the last sentence to, "The tying of a boat or placing of stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited". The sentence needs to specifically prohibit the tying of boats to non-mooring</p>									XX		
										XX		
											XX	
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SWF	<p>"All vessels, when in use, shall have and utilize safety equipment . . . in compliance with U.S. Coast Guard boating safety requirements (Coast Guard Pamphlet CG-290; 46 CFR Parts 25, 30; 33 CFR part 175) and in compliance . . . "</p> <p>The "and utilize" was added to clarify that failure to <i>display</i> navigation lights after sunset is a violation. The listed USCG requirements need to be reviewed; during a recent call to the USCG Boating Safety Hotline, that office could not determine which of their publications was referred to as "CG-290." Moreover, that office identified a 50-page pamphlet as being the current "Federal Requirements for Recreation Boats," whereas the version which we currently distribute to the public (and use as the basis for our enforcement) is an undated 28-page edition.</p> <p>Corps rangers should be able to enforce all USCG regs pertaining to equipment and operation of recreational vessels on inland waters (minus, of course, provisions regarding law enforcement activities such as arrests and BWI testing). It would seem logical for our CFR to cite those portions of the USCG's CFRs governing equipment and operation which we may enforce, such as parts of 33 CFR (sub-chapter S), portions of the USCG Navigation Rules which contain lighting requirements, etc. In order to make Title 36 more user-friendly, we should list not only the applicable rule number or CFR, but also identify what the cited CFR refers to (for example, "marine sanitation devices").</p> <p>This may take a little legwork. If uncorrected, the inaccuracy of the present wording will eventually cause water safety citations to be dismissed.</p> <p>{T36 does not inform the public on what safety equipment is required. We are not authorized to enforce CG regs outside safety regs. CG regs are also prone to change, and T36 can be quickly outdated if tied too closely.}</p>									XX		
											XX	

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SWL	<p>Should be changed to read "All vessels when in use shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements ... and in compliance with boating safety laws of the state in which the vessel is being operated."</p> <p>(Add "as amended" after US Coast Guard does provide flexibility, remain current as CG regs evolve. However, deleting the references altogether would leave even more flexibility. Rangers would have to be kept current on CG and state regs.)</p> <p>Suggested Modification, 327.2(e): (e) All vessels, when in use on project waters, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements, (Coast Guard Pamphlet CG-290; 46 CFR Parts 25, 30, 33 GFR Part 475) and in compliance with boating safety laws issued and enforced by the state in which the vessel is being operated. Owners or operators of vessels not in compliance with this section may be requested to remove the vessel immediately from project waters until such time as items of non-compliance are corrected.</p>									XX		
	(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are not to be used as a place of habitation or residence.											
SAD	<p>Delete as this section can be enforced under Section 327.22(a).</p> <p>(May be a viable alternative-if appears that 22(a) would cover if "residence" would apply to someone out on a boat. Currently have a camping limit (14 days) but beyond that may be considered setting up a residence. May be useful to some. Leave intact.)</p>										XX	

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SWF	<p>" Unless otherwise permitted . . . vessels or other watercraft, while including those moored in . . ." After " . . . incidental to recreational boating.", add " Overnight occupancy of a vessel at any water resource project in excess of 14 days during any 30-consecutive day period is prohibited without the written permission of the District Engineer."</p> <p>This revision would clarify that houseboat users on the lake <u>not</u> in mooring facilities may be used only for recreational overnight occupancy, and further defines a time limit (comparable to that of recreational camping) for all boaters. As presently written, this subsection addresses only overnight occupancy of moored boats, not those in use on the lake. We need to set a limit for occupancy of all vessels in order for use to remain recreational and not residential.</p> <p>{Changing reg may worsen problem. We must be careful not to get into "bed checks."}</p>											XX
SWL	<p>A clarification of the phrase "incidental to recreational boating" is needed. This violation is unenforceable as written. The following phraseology is suggested: "The overnight occupancy of a vessel is prohibited unless the boat is removed from its mooring or marina stall and operated on the waters of a project for recreational purposes during the period of use."</p> <p>{Occupancy while moored has been legitimized, at least in a number of Districts. Would create even more problems for many projects.}</p>										XX	
	<p>(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any property or person (including the user and/or operator of the towing vessel).</p>											
NAP	<p>add: "In accordance with posted regulations" before the start of the sentence, water skis, parasails, ...etc. RATIONALE: When these items are not restricted, regulations vary from state to state on the use of these items.</p> <p>{DE has authority to post restrictions under 327.12. No need to duplicate here.}</p>									XX		

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SPD	<p>Add "Vessels towing water skis, parasails, ski-kites and similar devices shall have an observer on board in addition to the operator."</p> <p>{Still subject to 3(c), state laws and restrictions. If state does not require observer, we have no real authority to require one.}</p>										XX	
SWF	<p>Add final sentence: "The District Engineer may establish restrictions governing locations and times for use of these devices."</p> <p>This clause would clarify that the Corps can designate zones and restrictions for use of these devices, similar to the subsection governing use of seaplanes. In actual practice, some districts have already established such restrictions.</p> <p>{DE has this authority under 327.12, does allow for local control over this activity. No need to add here.}</p>										XX	
SWF	<p>Suggest that personal watercraft such as jet skis be added to the list of craft covered.</p> <p>{PWC is more of a boat-looks adding here would be trying to ban PWC from lakes.}</p>										XX	
	(h) All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Engineer. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.											
SAD	<p>Revise the last sentence to read "Interfering or tying to a buoy..."</p> <p>{Adopt as modified below. Existing does not address this issue, which does cause damage to buoys, etc.}</p>					XX				XX		

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LRD	<p>There seems to be confusion regarding the meaning of this section in the field. The section has been interpreted to mean that boaters cannot use their vessels for overnight occupancy unless they are moored at commercial facilities, community or corporate docks, or at a designated mooring point. Recommend that a clear statement be made regarding this issue. Mooring should be allowed as long as the vessel out of the flow of lake traffic, safely and securely anchored at a set minimum distance from shoreline, properly illuminated, and the activity itself is incidental to recreational boating (not residency). This could be further enhanced with a statement that the District Engineer may designate specific areas of a lake as designated anchorages, such as small coves, areas buoyed as no wake zones, etc. Vessels capable of overnight occupancy should not be moored in waters of developed recreation areas or be permanently moored along shorelines. This practice blocks the views of shoreline campers and the noise originating from such vessels often disrupts and disturbs shoreline campers.</p> <p>(Except for residence issue, this can be handled under 327.12, Posted Restrictions.)</p>						XX					
SWF	<p>Change final sentence to, "The placing of vessels or stationary mooring facilities on, adjacent to, or interfering with a buoy . . ."</p> <p>This wording would make it an offense to tie a vessel to a navigational or swim beach buoy. This action is a violation of Coast Guard regulations, but not of Title 36, as presently written. This is not only a safety hazard, but also requires that project employees continually readjust buoys dragged out of position by moored vessels.</p> <p>(Adopt as modified.)</p>									XX		

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SWL	<p>Should be reworded "All vessels when not in actual use shall be removed from project lands and waters unless securely moored or otherwise stored at designated areas approved by the District Engineer. No vessel shall be allowed to be tied up, moored, or stored at any other location on project lands or waters."</p> <p>{Sounds like if vessel is not in active use, get it out of the water. This is a local call, would fall under authority of DE. DE should be allowed to designate where mooring is allowed, and enforce violations of the local policy. Lakes can prohibit shoreline mooring, as long as it is clearly posted and known (although the perpetrator always says "I didn't know!!) Covered under modified reg below.)</p> <p>Suggested modification, 327.3(h): (h) <i>Vessels shall not be attached or anchored to structures such as locks, dams, buoys or other structures unless authorized by the District Engineer. All vessels when not in actual use shall be removed from project lands and waters unless securely moored or stored at designated areas approved by the District Engineer. The placing of floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.</i></p>									XX		
	(l) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Public Law 92-75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.											

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SWF	<p>This subsection is little understood by rangers or the public, and is therefore of little or no use to either. It needs to either be better explained and made more user-friendly, or dropped. Perhaps a separate brochure/flier could be published as an explanatory companion to this regulation, which rangers could hand to the owner/operator of a substandard or homemade boat, summarizing applicable manufacturing standards. Have any other districts been able to successfully utilize this subsection as presently written?</p> <p>{Surveys indicate very little use for this subsection today. Relatively few homemade boats being built today, FSBA 1971 seems almost impossible to find for field offices. On most boats, problems could be addressed under safety, 3(c). Recommend deletion of 327.3(l).}</p>									XX		
	(j) Except as authorized by the District Engineer, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.											
SAD	<p>Delete the phrase "...as defined by state and local laws,..." This still provides a means to deal with excessive muffler noise from vehicles or vessels without the predicament of having to know and/or "enforce" state and local laws in this regard.</p> <p>{See comments 327. 2(g)-decibel meter, leave in for flexibility, change this to 327.3(l) if previous is deleted.</p>										XX	
CENWK-CO-TR	Delete in entirety. {See above}										XX	
SAD	<p>Section 327.3(k): Make this a new section to read "No vessel may be moored or operated on project waters unless it is in full compliance with all Federal, state, and local laws regulations and requirements for marine sanitation equipment and sewage holding devices."</p> <p>{Already addressed-we don't want to become "potty inspectors."}</p> <p>{Recommend this subsection become 327.3(i)}</p>			XX							XX	
	327.4 Aircraft.											

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	(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultra-light aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.											
	(b) The operation of aircraft on project lands at locations other than those designated by the District Engineer is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Engineer or aircraft forced to land due to circumstances beyond the control of the operator.											
GENWK-CO-TR	Add a comma after "Engineer". {Did not specify which "Engineer" within the text. No comma needed after first Engineer reference. Second reference could possibly use a comma, yet we received conflicting recommendations from "English experts" on the need for a comma. Would not change meaning or interpretation of reg either way.}											XX
	(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person or property.											
NAB	Add - Operator/user as in 327.3(d) {Not really necessary, covered by "any person."} Suggested Modification 327.5(c): (c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, or property or environmental feature. {Above added for consistency, also to address possible abuse of shorelines, wildlife management areas, etc.}										XX	

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	(d) Nothing in this section (327.4) bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.											
	(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person, material or equipment by parachute, helicopter or other means onto project lands or waters without written permission of the District Engineer is prohibited.											
SWF	<p>Add to the sentence, "Except on extreme emergencies . . . the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means . . ."</p> <p>These additions parallel the corresponding NPS subsection in their CFR. They apparently had problems with hot-air balloons, which we are also seeing more of.</p> <p>{Appears to correct a problem that seems to be growing- reword as suggested, except use "in extreme emergencies" rather than "on" as suggested (probably a typo.) Add balloons and retrieval as suggested.}</p> <p>Suggested modification, 327.4(e): (e) Except in extreme emergencies threatening human life or serious property loss, the air delivery <i>or retrieval</i> of any person, material or equipment by parachute, <i>balloon</i>, helicopter or other means onto project lands or waters without written permission of the District Engineer is prohibited.</p>									XX		
	(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:											
	(1) Such use is limited to aircraft utilized for water landings and takeoff, herein called seaplanes, at the risk of owner, operator and passenger(s).											

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	(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Engineer (pursuant to Part 328 of Title 36) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.											
	(3) All operations of seaplanes while upon project waters shall be in accordance with marine rules of the road for power boats or vessels and Section 327.3 Vessels.											
	(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Engineer. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Engineer, for periods less than 24 hours providing (i) the mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and (ii) the operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.											
	(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Engineer following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.											
	(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless adequate lighting and supervision approved by the District Engineer are available.											
	327.5 Swimming.											

SOURCE	REVIEW	Significant Resource Protection	Forfeiture Schedule Adjust	Not Consistent with Ranger Role	Significant Safety Issue	Ease of Enforc.	Local Issue	Cosmetic/ Semantic	Policy Chgs	Yes	No	No Consensus
✓ CEMVN	Diving or jumping from bridges or other objects which cross or are adjacent to project waters is prohibited. {Legitimate problem, has lead to deaths and injuries over the years. See suggested modification. Must take care not to overstate our limits (such as prohibiting jumping off a boat in the middle of the lake, or a private dock). Some features, such as cliffs, could be handled with local posted restrictions, but a wider interpretation would help, so long as it remains within our authority.}					XX				XX		
✓ NAB	Add - "The placement and use of rope swings attached to trees, bridges and other structures is prohibited." This is an ongoing safety hazard. Rangers spend a lot of boat patrol time removing rope swings and telling the visitor about the danger of their use knowing that without teeth the swing will go back up when he leaves. {See modification}					XX				XX		
SPA	Swimming to be prohibited also in marinas and non swimming boat handling docks. {5(a) change to "designated mooring points and docks..."}									XX		
LRD	Suggest adding a subsection which prohibits swimming after sunset unless the area is lighted or a designated swimming area provided with properly buoyed areas to restrict boat traffic. It is very difficult for a boater, even at slow speed, to spot a swimmer in the water after sunset. {Unenforceable at most projects, most areas allow swimming after dark. Impact on adjacent landowners, Congressional input, etc. }					—				XX		
SWF	Suggest prohibiting glass containers on swimming beaches. {Should be handled locally under posted restrictions-new glass technology may soon obsolete this change.}						XX			XX		
NWO	A regulation is needed to address the practice of diving off of high cliffs. Currently, the only way to prohibit this is to close the entire area. Also, it would help if rope swings are prohibited. {Address under modification 5(c).}									XX		