

**National Park Service
U.S. Department of the Interior**



***Cost-Benefit and Regulatory Flexibility Threshold Analyses:
Special Regulations, Areas of the National Park System, National Capital
Region, Special Events and Demonstrations***

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Introduction

This report presents the cost-benefit and regulatory flexibility threshold analyses of proposed revisions to special regulations related to demonstrations and special events at certain national park units in the National Capital Region. The proposed changes would modify regulations explaining how the NPS processes permit applications for demonstrations and special events. The rule would also identify locations where activities are allowed, not allowed, or allowed but subject to restrictions. Quantitative analyses were not conducted due to a lack of available data, and because the additional cost of conducting quantitative analyses was not considered to be reasonably related to the expected increase in the quantity and/or quality of relevant information. Nevertheless, the NPS believes that these analyses provide an adequate assessment of all relevant costs and benefits associated with the regulatory action.

The results of the cost-benefit analysis indicate net benefits would be associated with the proposed regulatory action. Additionally, this proposed regulatory action will not have an annual economic effect of \$100 million, and will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This proposed regulatory action will promote economic efficiency by improving governmental functions in national parks and providing greater clarity to the public about how and where demonstrations and special events may be conducted in a manner that protects and preserves the cultural and historic integrity of these areas.

The results of the regulatory flexibility threshold analysis indicate no adverse impacts for any sector of the economy or unit of government, including small entities. Given those findings, the proposed regulatory action will not impose a significant economic impact on a substantial number of small entities.

Cost-Benefit Analysis

Background

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

Within NAMA, the NPS administers more than 1,000 acres of park land within the District of Columbia, including 14 units of the national park system: Belmont-Paul Women's Equality National Monument, Constitution Gardens, Ford's Theatre National Historic Site, Franklin Delano Roosevelt Memorial, Korean War Veterans Memorial, Lincoln Memorial, Martin Luther King, Jr. Memorial, Pennsylvania Avenue National Historic Site, the Mall, Thomas Jefferson Memorial, Vietnam Veterans Memorial, Washington Monument and Plaza, World War I Memorial, and World War II Memorial.

NAMA also contains more than 150 reservations, circles, fountains, squares, triangles, and park spaces in the center of Washington, DC that were created as part of the L'Enfant plan of the city. The NPS protects the valuable urban green space within NAMA that accommodates a variety of passive and active recreational activities for a diverse population.

The buildings, structures, and grounds that compose NAMA and WHHO are national symbols of American democracy. Citizens from the United States and around the world come to these areas to participate in American democracy, celebrate freedom, and experience our nation's history and culture. The NPS receives regular requests from the public to conduct demonstrations, which include various types of expressive activity such as marches and art displays, at locations within NAMA and WHHO. The NPS also receives requests to hold special events, such as wedding ceremonies, national celebratory events, and sporting activities, at the same locations.

Each year, the NPS issues an average of 750 permits for demonstrations and 1,500 permits for special events within the NPS units subject to 36 CFR 7.96. Most of these activities are held within NAMA and WHHO. The NPS also issues an average of 800 permits for commercial filming within these parks each year. The NPS dedicates significant resources to processing permit applications and managing permitted activities in a manner that mitigates impacts to park resources, secures sensitive locations, and keeps visitors safe.

Statement of Need for the Proposed Regulatory Action

Executive Order 12866 (58 FR 51735) directs Federal agencies to demonstrate the need for the regulations they promulgate. In general, regulations should be promulgated only when a "market failure" exists that cannot be resolved effectively through other means. A market failure exists when private markets fail to allocate resources in an economically efficient manner. Other justifications for promulgating regulations include improving governmental functions, removing distributional inequities, and promoting privacy and personal freedom (OMB 2003).

The NPS proposes to revise the regulations applicable to demonstrations and special events that are held within NAMA and WHHO. The NPS intends these revisions to (i) modify regulations explaining how the NPS processes permit applications to conduct activities in these areas; and (ii) better identify locations where activities are allowed, not allowed, or allowed but subject to restrictions. This action promotes economic efficiency by improving governmental functions in national parks and providing greater clarity to the public about how and where demonstrations and special events may be conducted in a manner that protects and preserves the cultural and historic integrity of these areas.

Baseline Conditions

The costs and benefits of a regulatory action are measured with respect to its baseline conditions. Baseline conditions describe the state of the world that would exist without the regulatory action. Therefore, all costs and benefits that are included in this analysis are incremental to the baseline conditions. That is, any future impacts that would occur without the proposed action, as well as any past impacts that have already occurred, are not included in this analysis. For this proposed regulatory action, the baseline conditions are described by the current regulations for the National Capital Region 36 CFR 7.96.

Baseline conditions also include the temporary closures to general public access for certain park areas in the vicinity of the south fence line of the White House and in and around First Division Monument and Sherman Park. The NPS implemented the south fence line closure on a temporary basis in April 2017 under its authority in 36 CFR 1.5. The First Division area has been subject to closures on a temporary and recurring basis since August 11, 2004. The Sherman Park area has been subject to closures on a temporary and recurring basis since December 4, 2009.

Benefits and Costs

This section describes the expected benefits and costs associated with the proposed regulation compared to the current baseline conditions. Quantitative analyses were not conducted due to lack of available data, and because the additional cost of conducting quantitative analyses was not considered to be reasonably related to the expected increase in the quantity and/or quality of relevant information. Nevertheless, NPS believes this approach provides an appropriate means to characterize the relevant benefits and costs associated with this proposed regulatory action.

The proposed regulatory action involves revisions to the current regulations for National Capital Region 36 CFR 7.96. Table 1 presents a summary of the proposed revisions along with a citation of the regulation that would be changed. Several of these revisions are considered administrative or procedural in nature with the intent to streamline or provide clarification to existing regulations. These revisions (numbers 1, 2, 3, 10, and 14) are not considered in this analysis because they would have de minimis economic effects. With respect to two of the proposed revisions, the NPS is seeking public input at this stage but has not proposed actual changes to its regulations. These proposed revisions could change the number of people that can take part in a demonstration at certain sites without a permit (number 4) and could allow the NPS to recover costs associated with permitted demonstrations (number 6). These proposed revisions are not considered in this analysis but will be included in a revised analysis if the changes are made after the NPS considers public input. For remaining proposed revisions (numbers 5, 7, 8, 9, 11, 12, and 13), the change and resulting costs and benefits are discussed below. The overall costs and benefits of the proposed revisions are summarized at the end of this section.

Table 1. Proposed regulation revisions.

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

5) Require a permit for the erection of structures during a special event or demonstration regardless of the number of participants.

The NPS proposes to require a permit in order to erect structures, other than small lecterns or speakers' platforms, during any demonstration or special event – even those demonstrations that would not otherwise require a permit because of their small size or location. Current regulations generally require a permit to hold a demonstration or special event in the National Capital Region. This proposed rule would make one change to the structures that small groups may erect without a permit by stating that speakers' platforms must be no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height. This size limitation is consistent with existing regulations that allow the NPS to issue a permit for “soapbox” speakers' platforms in Lafayette Park if the size of the demonstration is less than 100 persons. The proposed rule would also clarify that individuals and groups of less than 25 may erect other structures, including larger speakers' platforms, if they obtain a permit.

The proposed rule would also require groups demonstrating under the large group permit exceptions at the five locations identified in paragraph 36 CFR 7.96 (g)(2)(ii) to obtain a permit for erecting structures other than small lecterns or speakers' platforms. These locations are Franklin Park, McPherson Square, U.S. Reservation No. 31, Rock Creek and Potomac Parkway, and U.S. Reservation No. 46. It is anticipated that groups affected by this requirement would only incur minimal costs associated with the time required to obtain a permit.¹

The proposed permit requirement would allow park managers to work with the applicant regarding their proposed structure to address legitimate concerns about visitor safety and resource protection. This would benefit the public by increasing visitor safety and resource protection at the five locations identified in paragraph 36 CFR 7.96 (g)(2)(ii).

7) Establish permanent security zones at WHHO where public access is currently prohibited.

Certain park areas in the vicinity of the south fence line of the White House and in and around First Division Monument and Sherman Park are temporarily closed to general public access. The United States Secret Service requested these closures to ensure necessary security and safety for the adjacent White House complex, its occupants, and the public. The NPS proposes to close these areas in the manner requested by the United States Secret Service in section 7.96. For the areas in the vicinity of the south fence line, the Secret Service determined that their location, visibility, and public access present a significant potential area of risk for individuals attempting to penetrate the secure perimeter of the White House Complex and gain unlawful access onto the grounds of the White House. Restricting public access to the south fence line would not only serve to

¹The following Information Collection Request includes additional information regarding the time burden associated with the completion of permit applications for demonstrations and special events:
<https://www.gpo.gov/fdsys/pkg/FR-2017-05-26/pdf/2017-10831.pdf>

lessen the possibility of individuals unlawfully accessing the White House grounds, but will also create a clear visual break to enable Secret Service personnel to identify any individuals attempting to scale the White House fence. The NPS implemented this closure on a temporary basis in April 2017 under its authority in 36 CFR 1.5. For the areas in and around the First Division Monument and Sherman Park, the Secret Service determined that these areas must be kept clear for security reasons. The First Division area has been closed on a temporary and recurring basis since August 11, 2004. The Sherman Park area has been closed on a temporary and recurring basis since December 4, 2009.

Under baseline conditions, these areas are closed to public access. Demonstrations and special events are currently not allowed in these areas, so this rule change would not remove these areas from the public forum. Even with these closures in place, the public can continue to see the White House's south façade from the Ellipse. The closures do not adversely affect the park's natural, aesthetic, or cultural values given the existing and ongoing public safety and security measures and alerts in Washington, DC since the September 11, 2001, terrorist attacks. Therefore, changes to economic costs or benefits are not anticipated compared to baseline conditions.

8) Modify and establish restricted zones at memorials on the National Mall where special events and demonstrations would not be allowed in order to preserve an atmosphere of contemplation.

Under the proposed rule, demonstrations and special events would not be allowed at established restricted areas at the World War II Memorial Freedom Wall Plaza, the Korean War Veterans Memorial, and the Martin Luther King Jr. Memorial, or at the proposed expanded Washington Monument restricted area. These areas will function like the current NPS regulatory restricted areas at the Lincoln Memorial, the Thomas Jefferson Memorial, the Washington Monument and the Vietnam Veterans Memorial. Demonstrations and special events would still be allowed at all non-restricted areas at the National Mall. The NPS has a substantial interest in securing these memorials and maintaining an atmosphere of calm, tranquility, and reverence to substantially enhance the visitor's experience.

The combined total of all proposed restricted areas is 3.75 acres which represents approximately 1% of the total National Mall acreage. The restrictions in this rule, would not place an unreasonable burden on the exercise of First Amendment activities. At each location, there are several other nearby areas available for a more full range of free expression, including demonstrations and special events.

Establishing restricted areas at these memorials would provide significant benefits to the public by preserving these special areas for contemplative and commemorative purpose and maintaining an atmosphere of calm, tranquility and reverence, while still allowing for designated official commemorative ceremonies. It is anticipated that maintenance of such an atmosphere at these memorials will substantially enhance the visitor's experience.

9) Modify regulations explaining how the NPS processes permit applications for demonstrations and special events.

The NPS proposes to make several changes to regulations in sections 7.96(g)(3) and (4) in order to provide greater clarity and certainty to the public about how the NPS processes permit applications for a demonstration or special event.

Section 7.96(g)(3) requires that applicants submit permit applications at least 48 hours in advance of any demonstration or special event. Under existing regulations, this requirement can be waived by the Regional Director. The NPS proposes to replace this waiver language by stating that notwithstanding the 48-hour requirement, the Regional Director will reasonably seek to accommodate spontaneous demonstrations, subject to all limitations and restrictions applicable to the requested location, provided such demonstrations do not include structures and provided the NPS has the resources and personnel available to manage the activity.

The NPS also proposes to revise sections 7.96(g)(3) and (4) to better reflect how the NPS processes permit applications. Under existing regulations, permit applications for demonstrations are “deemed granted” unless denied within 24 hours of receipt. Applications that are “deemed granted” are often times subject to a lengthy review process that can be confusing for permit applicants and can result in the application being denied, partially denied, or modified by the NPS. Instead of the 24-hour “deemed granted” provision, the NPS proposes that it will provide an initial response for all permit applications for demonstrations containing basic information about the requested event within three business days of receipt. Within that time frame, the NPS would notify the applicant by electronic communication that the permit application has been characterized in one of three ways: Approved, Provisionally Reserved, or Denied. If the NPS fails to send the electronic communication to the permit applicant within three business days of receiving the application, then the permit application will be approved.

Applications in each of the three categories would be processed differently. If the NPS approves a permit application, the NPS would send a permit to the applicant for the specific event requested as soon as practicable. Under existing regulations, there are two separate standards for revoking a permit for a demonstration and revoking a permit for a special event. Under the proposed rule, these two separate standards would be replaced with one uniform standard applied to both demonstrations and special events. If the NPS receives an application more than 60 days prior to the requested event and categorizes it as provisionally reserved, the NPS would provide the applicant with an initial, comprehensive list of outstanding issues and requested information no later than 40 days prior to the requested event. The NPS would make all reasonable efforts to approve or deny a permit application at least 30 days in advance of a requested event. If the NPS denies a permit application, it would notify the applicant in writing that it is unable to accommodate the requested event. The NPS would notify the applicant if the application could be approved or provisionally reserved if certain aspects of the request are modified.

Compared to baseline conditions, these proposed changes would improve governmental functions and would generate benefits by providing more flexibility for spontaneous demonstrations, providing greater clarity and additional information to the public regarding the status of their permit applications, and giving permit holders more certainty about the validity of their permit and the circumstances that could result in its revocation. There are no anticipated economic costs associated with these proposed changes.

11) Establish a maximum permit period of 30 days, plus a reasonable amount of time needed for set up and take down of structures before and after a demonstration or special event.

Section 7.96(g)(4)(vi) states that the NPS will issue permits authorizing demonstrations or special events for seven days in the White House area (except the Ellipse) and for four months in the Ellipse and all other park areas. The permit validity period is different for activities related to inaugural events. The NPS proposes to adjust the permit validity period to an amount of time not to exceed 30 days, plus a reasonable amount of time necessary for set-up and take down of structures associated with an event. The NPS will determine a reasonable amount of time for set-up and take down of structures based upon information provided by the permit applicant.

The proposed change to the maximum permit duration would establish a uniform regulatory scheme for all park areas subject to section 7.96 and for all events. The 30 day permit duration period would apply to all events, even those that do not have structures. It is anticipated that this change would reduce benefits to a limited number of permit applicants interested in a longer duration. Upon request, the Regional Director could renew a permit for additional, consecutive periods of 30 days or less. Permittees would be required to submit requests for renewals to the NPS at least 10 days prior to the expiration of an existing permit.

This proposed change would generate economic benefits by simplifying the regulatory framework, providing greater clarity to the public about the duration of permits, and creating more opportunities for applicants to apply for certain dates and locations within NAMA and WHHO. The proposed change in maximum period duration would increase opportunities for a variety of groups and individuals to use the areas within NAMA and WHHO for demonstrations and special events.

12) Identify locations where structures may not be used, and restrict the height, weight, equipment, and materials of structures when they are permitted during special events and demonstrations.

Section 7.96(g)(5)(vi) contains limitations regarding the use of structures in connection with permitted demonstrations and special events. The NPS proposes to establish areas where structures would not be allowed and other areas where structures would be allowed but subject to maximum height restrictions. These proposed restrictions are based upon

an evaluation of the 2018 visual impact analysis conducted by the NPS to assess the visual impacts of structures in various locations within NAMA and WHHO.

The proposed restrictions on structures could reduce benefits to a limited number of permit applicants interested in erecting a structure where structures would not be allowed or having a structure taller than maximum height restrictions.

This change would generate economic benefits by protecting the visitor's visual experience. Visual characteristics are often central to a park area's management and visitor experience, and visitors consistently identify scenic views as a major reason for visiting parks.

13) Apply existing sign restrictions (e.g. supports, dimensions) in President's Park to other locations within NAMA and WHHO.

Sections 7.96(g)(5)(vii) and (ix) contain restrictions on the use of signs or placards on the White House Sidewalk and in Lafayette Park. The NPS proposes to apply these restrictions to events that plan to move from any location that is subject to the regulations in this section 7.96 to the White House Sidewalk or Lafayette Park, and events that plan to move or do in fact move from the White House Sidewalk or Lafayette Park to another location that is subject to the regulations in this section 7.96, even when those events are located outside of the White House Sidewalk or Lafayette Park.

Participants in demonstrations beginning in one park area with signs that are compliant with existing regulations that then move onto the White House sidewalk or into Lafayette Park where their signs are no longer compliant could be negatively affected by this restriction because a new regulatory requirement would apply to their activity while they are outside of the White House sidewalk or Lafayette Park. However, this situation often results in negative interactions with law enforcement which would be eliminated by this change. Applying these restrictions outside of the White House sidewalk and Lafayette Park in these circumstances would provide overall public benefits by creating a more uniform regulatory scheme that will promote public safety and simplify event planning.

Summary of Costs and Benefits

It is anticipated that most groups affected by changes to permit requirements would only incur minimal costs associated with the time required to obtain a permit. Proposed changes to the permit validity period and restrictions on certain permits could also reduce benefits to a limited number of permit applicants interested in longer permit durations, or permit applicants interested in erecting a structure where structures would not be allowed or having a structure taller than maximum height restrictions. Applying existing sign restrictions in President's Park to other locations within NAMA and WHHO for those groups that move to and from these locations would remove the possibility of negative interactions with law enforcement.

Given the relatively small size of the proposed restricted areas at NAMA memorials compared to available nearby opportunities for demonstrations and special events elsewhere on the National Mall, this rule is not anticipated to place unreasonable limitations on First Amendment activity. Overall, negligible costs are anticipated to a limited number of individuals by the proposed revisions.

The proposed revisions to permit requirements, processing of permit applications, and sign restrictions would generate economic benefits by increasing visitor safety and resource protection, simplifying the regulatory framework, providing more flexibility for spontaneous demonstrations, providing greater clarity to the public about park regulations and the status of permit applications, and creating more opportunities for applicants to apply for certain dates and locations within NAMA and WHHO. The proposed memorial restricted areas would provide significant benefits to the public by preserving these special areas for contemplative and commemorative purpose and maintaining an atmosphere of calm, tranquility and reverence, while still allowing for designated official commemorative ceremonies. The proposed change associated with structure restrictions would generate economic benefits by protecting the visitor's visual experience. Overall, the proposed changes are anticipated to enhance visitor experience.

This action will not impose any additional fees, restrictions, or other management measures that would increase costs to landowners, businesses, or communities. Since this action will generate positive benefits and is anticipated to impose minimal costs, NPS concludes that positive net benefits would be generated by the proposed revisions to special regulations related to demonstrations and special events at certain national park units in the National Capital Region.

Uncertainty

The costs and benefits associated with proposed revisions to the current regulations for the National Capital Region were not quantified. Therefore, the total costs and benefits generated by this action cannot be estimated. Nevertheless, it is anticipated that positive net benefits would be associated with the proposed regulatory action. Any uncertainty involved in this analysis is associated only with the magnitude of those benefits. NPS is not aware of any other sources of uncertainty.

Conclusions

The results of this cost-benefit analysis indicate that positive benefits and negligible costs will be generated by the proposed regulatory action. Given that, NPS concludes that the proposed regulatory action will generate net benefits. Further, this proposed regulatory action is not expected to have an annual economic effect of \$100 million, or to adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This proposed regulatory action will improve governmental functions.

Regulatory Flexibility Threshold Analysis

The Regulatory Flexibility Act, as amended, requires agencies to analyze impacts of regulatory actions on small entities (businesses, nonprofit organizations, and governments), and to consider alternatives that minimize such impacts while achieving regulatory objectives (SBA 2012). Agencies must first conduct a threshold analysis to determine whether regulatory actions are expected to have a significant economic impact on a substantial number of small entities. If the threshold analysis indicates a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be produced and made available for public review and comment along with the proposed regulatory action. A final regulatory flexibility analysis that considers public comments must then be produced and made publicly available with the final regulatory action. Agencies must publish a certification of no significant impact on a substantial number of small entities if the threshold analysis does not indicate such impacts.

This threshold analysis relies on the associated cost-benefit analysis, which concludes that this proposed regulatory action will generate positive benefits and negligible anticipated costs. In addition to that conclusion, this action will not impose restrictions on small businesses, governments, or non-profit organizations in the form of fees, training, record keeping, or other measures that would increase costs. Rather, this action will improve governmental functions in national parks and provide greater clarity to the public about how and where demonstrations and special events may be conducted. Given those findings, this proposed regulatory action will not impose significant economic impacts on a substantial number of small entities.

References

Office of Management and Budget (OMB). Circular A-4: guidance for developing regulatory analyses. September 17, 2003.

Small Business Administration (SBA). “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.” May 2012.