

Guidance, Implementation of P.L. 111-24, Section 512

2-4-10

Section 512 of the Credit Card Accountability Responsibility and Disclosure Act of 2009, P.L. 111-24, 123 Stat. 1764-65, allows persons to possess firearms while in units of the National Park and National Wildlife Refuge Systems if they are in compliance with applicable federal and state law. Specifically, Section 512(b) states:

The Secretary of the Interior shall not promulgate or enforce any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if--

- (1) the individual is not otherwise prohibited by law from possessing the firearm; and
- (2) the possession of the firearm is in compliance with the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located.

Section 512 becomes effective on February 22, 2010. As with previous changes in the regulations pertaining to enforcement of firearms in the national parks, good judgment and discretion in the enforcement of this legislation are called for. Initial enforcement should include an emphasis on public education, to ensure that we provide visitors with ample opportunity to understand and comply with the applicable provisions of federal and state law.

Congress was clear that its intent was to permit firearms in national parks in the circumstances outlined in the legislation and we have an obligation to implement the laws enacted by Congress. Unlike the regulatory provisions in the previous Administration that were subsequently judicially vacated, **the statute is not limited to the possession of only concealed firearms, but generally looks to applicable state law to control the possession of both concealed firearms as well as “open” carry.**

One effect of Section 512 is that it supersedes the uniform treatment of firearm possession in the National Park System outside Alaska under the regulations found at 36 C.F.R. § 2.4, and will require the Service to consider federal and state laws that are applicable to such possession. This document is intended to provide general guidance on the nationwide effects of Section 512. By necessity, it does not provide comprehensive guidance on all of the state laws that will now be applicable to NPS units. State-specific interpretations of applicable law must be developed by regional offices and park units. Regional chief rangers should also work with the Office of the Solicitor as needed to interpret specific provisions of applicable state law. Regional offices and parks will also need to coordinate at a state-wide level to ensure that state firearm laws are applied consistently and uniformly throughout all park units in each state.

I. Impact of Section 512

General

Section 512 does not require that existing NPS regulations be modified, although it will affect the provisions of any future rulemakings concerning the possession of firearms within the National Park System. The existing regulatory provisions of 36 C.F.R. § 2.4 remain unchanged

and are enforceable when a person possesses a firearm within the National Park System and is not in compliance with either applicable federal law (see discussion in III below) or the law of the state in which that park is located. When a park is located in more than one state, the laws of the state in which the relevant portion of the unit is located should be applied. In addition, Section 512 does not affect the enforcement of the regulatory prohibition on the use of firearms within the National Park System, see 36 C.F.R. § 2.4(a)(1)(iii), which should continue to be enforced as appropriate.

Although the term “State” is not defined in Section 512, it is defined under the Gun Control Act, 18 U.S.C. § 921(a)(2), to include the District of Columbia, Commonwealth of Puerto Rico and the possessions of the United States. This is the same result as the NPS regulatory definition set forth at 36 C.F.R. § 1.4 (states, territories, or possessions). Applying the term “law of the State” in Section 512 requires that NPS look to the provisions of applicable state law, which includes local and county laws and ordinances that may derive from state law. Insofar as Section 512 refers to “an assembled and functional firearm,” we interpret that phrase to include loaded firearms.

Section 512 affects implementation of the existing NPS regulations regarding the possession of firearms in national parks, by now allowing individuals to possess firearms if (1) they are not otherwise prohibited by law from possessing the firearm and (2) such possession is in compliance with the law of the state in which the park unit or that portion of the unit is located. Section 512 applies to possession of firearms within the National Park System regardless of the jurisdictional status of the unit—exclusive, concurrent or proprietary.

Restrictions imposed through the Superintendent’s Compendium are “public use limits” based on the regulatory authority at 36 C.F.R. § 1.5. As such, to be enforced, any existing compendium prohibitions—and any future ones—that apply to the possession of firearms must also be consistent with the above-requirements of Section 512. As a general matter, if the possession is consistent with applicable state and federal law, it is likely that a compendium provision prohibiting such possession could not be enforced. Any such decisions will need to be made on a case-by-case basis after appropriate review and considering the specific facts involved to ensure that NPS is in compliance with all applicable laws.

The NPS may also legally implement a United States Secret Service Presidential or dignitary security-based firearms prohibition request, which is based on the Secret Service’s statutory authority at 18 U.S.C. §§ 3056, 1752, and 3 U.S.C. § 202. Such Secret Service requests should be in writing and in a publicly-releasable format so that they can be shared with the public.

Historic weapons demonstrations

These will continue to be managed in accordance with NPS Management Policies 2006 § 7.5.7 and NPS Director's Order 6. Managed or sponsored by the NPS, they remain subject to conditions set by park staff. Possession or use should be governed by the context of the event or situation, and the park’s management objectives for such activities.

Non-Authorized NPS Employees; Volunteers in the Parks

Under 43 C.F.R. § 20.511, Departmental employees in the course of their official duties (except those specifically designated to perform law enforcement, police or other duties requiring the use of firearms) are prohibited from possessing firearms on property under control of the Department. Because of the stated purpose of the sponsors of Section 512 to provide uniformity under applicable state law from bureau-to-bureau, the potential liability issues that could result, and the absence of any criminal penalties applicable to this regulation, this Departmental policy continues to apply to all NPS employees during their official duties. Employees who are not on official duty may possess firearms on Departmental lands under the same conditions applicable to members of the general public. For this purpose, persons who are Volunteers in the Parks (VIPs) are considered the same as other employees when engaged in their official activities.

For members of the public as well as off-duty employees, provisions of federal law at 18 U.S.C. § 926A generally allow persons not otherwise prohibited from possessing firearms to transport firearms interstate without regard to contrary state law, provided the firearms are unloaded and inaccessible. Moreover, existing NPS regulations also state that unloaded weapons may be possessed within a “mechanical mode of conveyance” when they are rendered temporarily inoperable or are packed, cased, or stored in a manner that will prevent their ready use. These provisions apply to both the general public as well as NPS employees when not on official duty within park units. However, they do not relieve off-duty employees from their responsibilities under applicable laws to safeguard their firearms, nor do they allow off-duty employees who are not authorized to possess a firearm as part of their official duties to possess a firearm within a federal building.

Commercial Use Authorizations, Concession Contracts, other Agreements, and Permits

The NPS may control firearms possession by on-duty employees through contracts, agreements, or permits. In those cases, the provisions in those documents will be applicable to individuals, employees, and entities that are recipients or parties to such agreements and contracts. While the terms of such written instruments will control, the expectation in general is that on-duty employees of concessioners, contractors, and permittees will operate under the same policies as those for NPS employees on duty. For on-duty concession employees, park managers must use concession operating plans to direct concessioners to operate under the same policies as those for NPS employees on official duty. However, concessioners and commercial use authorization holders are responsible for determining how state and federal firearms possession laws apply to their customers.

II. Communication, the Role of Other Federal and State Firearms Laws, and Enforcement of Section 512

"Ignorance of the law is no defense," and this applies whether the law be a federal or state statute or a published regulation. Nonetheless, our objective is to clearly communicate to visitors desiring to bring firearms into a park that they must know and follow applicable federal firearms laws as well as the firearms laws of the state in which the park or that portion of the park is located. For example, someone who wishes to travel through Yellowstone National Park will be subject to any applicable federal firearms laws as well as the respective firearms laws of

Wyoming, Montana, or Idaho, depending on which part of the park they are in at any given point in time. The laws of the states in which they reside, or from which they may have received firearms permits, do not apply when they are away from those states, although some states offer reciprocity and allow possession based on another state's permits.

Superintendents must ensure that law enforcement employees are familiar with the federal and state firearms laws, and that other visitor contact personnel and volunteers are familiar with or have access to appropriate information concerning the federal and state laws.

If the laws are not clearly understandable, park law enforcement staff should consult the State Attorney General regarding state firearms laws, and when appropriate, the local prosecutor's office regarding the applicability and interpretation of any state-based local firearms laws. Parks should consult their regional chief ranger as needed; regional chiefs should consult with regional counsels for Bureau of Alcohol, Tobacco, Firearms, and Explosives, regarding federal firearms laws. They will also need to coordinate at a state-wide level to ensure that state firearm laws are interpreted consistently and uniformly throughout each state.

As stated above, Section 512 prohibits the enforcement of NPS firearm possession regulations within parks only if the possession is in compliance with state law and is not otherwise prohibited by firearms laws. Accordingly, if federal or state law prohibits the possession in question, the prohibitions under NPS regulations at 36 C.F.R. § 2.4 (a)(1)(i) continue to apply. NPS may also seek to enforce any underlying federal law that is violated, and depending on the park's jurisdictional status and any agreements with that state, may also seek to enforce state laws that are violated.

III. Federal Laws Pertaining to the Possession of Firearms

Section 512 only applies to the enforcement or promulgation of certain regulations issued by the Secretary of the Interior (or those operating under his delegated authority), and makes no changes in the applicability or enforcement of any federal statute pertaining to firearms. There are various federal statutes which will continue to apply and may need to be considered in applying Section 512 to persons within the National Park System. These statutes include:

A. The Gun Control Act of 1968, as amended, 18 U.S.C. § 921, et seq., includes restrictions on the shipment, transportation, receipt or possession of firearms by certain classes of persons. Certain types of firearms also may not be lawfully possessed by any person. For a more detailed explanation of the persons prohibited from possessing, shipping, transporting or receiving firearms, see "Federal Prohibitors" on Inside NPS at [Firearms Law Implementation and Information](#).

B. Federal Facilities

The federal statute of primary importance to most parks in this regard is found at 18 U.S.C. § 930 and generally prohibits the knowing possession of a firearm in a "Federal facility." NPS is bound by the statutory definition of this term--a "building or part thereof owned or leased by the federal government, where federal employees are regularly present for the purpose of performing

their official duties.” While the specific facts on which to base a decision whether a particular NPS used building is in fact a “Federal facility” may vary, for this purpose, the objective is to apply the definition consistently throughout the National Park System.

One court decision, which arose in the context of whether a Postal Service parking lot was covered by this prohibition, helps to better understand how courts will likely interpret the term “Federal facility”:

The plain and ordinary meaning of the word "building" does not include a parking lot. This is not only the common understanding of the term but is also the dictionary definition. Black's Law Dictionary defines a building as "[a] **structure with walls and a roof**, esp. a permanent structure." *Black's Law Dictionary, 8th ed.* (2004). *Webster's Third New International Dictionary of the English Language, Unabridged* (1981) defines a building as "a thing built... **a constructed edifice designed to stand more or less permanently**, covering a space of land, usu[ally] covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure -- distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy" **Decisions defining "building" for the purpose of criminal statutes commonly include the elements of walls and a roof and/or enclosure...** Although some civil decisions have interpreted "building" broadly, recognizing that the word has varied definitions depending on the statutory context and purpose at issue, and even have found the term ambiguous no cases were found -- and none were presented by the parties -- defining the word in a criminal statute so broadly as to include a parking lot. [Emphasis added]

From this, key factors to consider include whether the facility in question is constructed, whether it is in whole or in part enclosed by walls and/or a roof, whether it is intended to be occupied by persons, and whether it is to be occupied by federal employees “regularly present for the purpose of performing their official duties.” In addition, the statute requires that in order to enforce this prohibition, notice of the provisions of the law “be posted conspicuously at each public entrance to each Federal facility,” and that no person shall be convicted of an offense under 18 U.S.C. § 930(a) if such notice is not so posted, unless the person had actual notice of the law.

Accordingly, parks should ensure that a notice is clearly posted at public entrances to such buildings. GSA-administered buildings, for example, already have such notices included as part of the applicable rules governing use of those buildings.

To ensure consistency throughout the system and compliance with this statutory notice requirement, the following wording should be used for such postings: (see sign design on Inside NPS at [Firearms Law Implementation and Information](#)):

WARNING: FIREARMS PROHIBITED

Federal law prohibits the possession of a firearm or other dangerous weapon in this Federal facility unless specifically authorized. 18 USC 930(a) possession violations are subject to fine and/or imprisonment up to one year, while 18 USC 930(b)

possession violations with an intent to commit a crime are punishable by a fine and imprisonment up to five years.

It is expected that superintendents will ensure that all public entrances to park buildings where federal employees are regularly present to perform their official duties be posted with the above notice. The examples below should facilitate identification in each park of what facilities are subject and not subject to this prohibition. (Also see “Identifying a ‘federal facility’” on Inside NPS at [Firearms Law Implementation and Information](#))

Examples of federal facilities are: visitor centers, park administrative office buildings, park maintenance offices and workshops, backcountry offices, ranger stations, lifeguard kiosks, and fee collection stations.

Structures such as covered parking garages and covered amphitheaters may qualify as federal facilities, whereas a campfire ring open to the sky, with several benches that is used for evening interpretive talks, would not.

C. 18 U.S.C. § 2277 generally prohibits possession of a firearm onboard any vessel registered, enrolled, or licensed under the laws of the United States, or any vessel purchased, requisitioned or chartered by the United States without previously obtaining the permission of the owner or the master of such vessel. This prohibition applies to not only vessels owned and operated by the National Park Service, but also to those operated by our concessioners.

IV. Conclusion

This guidance is not intended to answer all possible questions, or cover all situations that may occur in your region or park, especially since much will depend on the factual situation and the applicable federal and state firearms possession laws.

Please do not hesitate to contact your regional chief rangers with any questions and concerns. They will be able to work through Lane Baker, Chief, OLSES, Phil Selleck, Chief, Regulations and Special Park Uses, and the Office of the Solicitor on issues where additional assistance is required.