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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[COE-2018-0008]

RIN 0710-AA90

36 CFR Part 327

Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army, through the United States Army Corps of Engineers (“Corps”), is soliciting comments on its proposed revision of its regulation that governs the possession and transportation of firearms and other weapons at Corps water resources development projects (“projects”). This proposed revision would align the Corps regulation with the regulations of the other Federal land management agencies by removing the need for an individual to obtain written permission before possessing a weapon on Corps projects.

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2018-0008, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: Firearms@usace.army.mil. Include the docket number, COE-2018-0008, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-N, Steve Austin 3F68, 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, the Corps cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2018-0008. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disc you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Stephen Austin, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4489.

SUPPLEMENTARY INFORMATION: The proposed revision would change Corps policy regarding the procedure an individual must follow to possess a weapon on Corps projects. The Corps is authorized to issue this regulation under 16 U.S.C. 460, which states “[t]he water areas of all . . . [water resources development] projects shall be open to public use . . . and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use . . . under such rules and regulations as the Secretary of the Army may deem necessary.” This authority extends to “the waters of such projects” and “any land federally owned and administered by the Chief of Engineers” at the projects. 16 U.S.C 460d; see also 36 CFR 327.0 & 327.1(c). For purposes of this regulation, this authority would cover, for example, Lake Lanier in northern Georgia, Stanislaus River Parks in central California, and Melvin Price Lock and Dam on the Mississippi River north of St. Louis, Missouri. This authority would not cover projects such as ecosystem restoration, navigation channel maintenance, or

coastal storm risk management projects even though they may have been authorized in a Water Resources Development Act.

Specifically, the proposed revision would remove the requirement that an individual obtain written permission before possessing a weapon on a Corps project, which is a requirement except when the possession occurs for certain authorized recreation purposes. In doing so, the revised regulation would permit an individual to possess a weapon and associated ammunition when the possession both complies with the Federal, state, and local law where the project is located, and the individual is not otherwise prohibited by law from possessing the weapon. This change would reduce the burden on the public by eliminating the requirement to obtain written permission before possessing a weapon, but it would not change the fact that individuals already may, at present, possess weapons on Corps projects if they receive appropriate permission.

The current Corps regulation, 36 CFR 327.13, allows visitors on Corps projects to possess weapons such as firearms only after written permission has been received from the District Commander. Law enforcement officers are excepted from this requirement, as are individuals possessing weapons when the weapon is being used for hunting or fishing, as provided in 36 CFR 327.8, or is being used at an authorized shooting range. Written permission from the District Commander is also required to possess explosives and explosive devices, including fireworks.

In proposing to revise the regulation, the Corps intends to remove the requirement that individuals must apply for written permission from the District Commander before possessing a weapon. Written permission would still be required to

possess explosives and explosive devices. Individuals possessing or transporting a weapon would need to meet the Federal, state and local requirements for doing so in the jurisdiction where the Corps project is located, such as by possessing a valid state permit or license. Individuals prohibited by any law from possessing or transporting a weapon would not be permitted to do so on a Corps project. The prohibition on firearms and dangerous weapons in Federal facilities, 18 U.S.C. 930, would continue to apply to those Corps facilities falling within the coverage of that statute.

In addition, the proposed revision would give the District Commander the discretion to modify or revoke the permissions granted under this section when issuing a special event permit under 36 CFR 327.21. Special events require written permission granted by the District Commander. Restrictions may be imposed for security, public safety, or other reasons deemed necessary by the District Commander. Conditions of the special event may include weapon restrictions, and allow the District Commander to revoke permissions upon failure to comply with the terms and conditions of the special event permit.

LEGAL AUTHORITY: The Corps is authorized to promulgate regulations pertaining to the operation of public parks and recreational facilities in the water resource development projects within Corps jurisdiction, as well as for the use, administration, and navigation of the navigable waters of the United States. 16 U.S.C. 460d; 33 U.S.C. 1, 28 Stat 362. Generally, these regulations govern the conduct of public visitors on Corps projects.

OVERVIEW: In recent years, other Federal land management agencies have amended their regulations to make them consistent with the law of the state in which the federal lands are located. See, e.g., National Park Service (36 CFR 2.4); U.S. Fish and Wildlife Service's National Wildlife Refuge System (50 CFR 27.42); Bureau of Land Management (43 CFR 8365.1-7); Bureau of Reclamation (43 CFR 423.30); U.S. Forest Service (36 CFR 261.8(b), 261.57(c)). The approach taken in this proposed rule is consistent with other Federal agencies. Following these other Federal agencies, the Corps now proposes to revise its regulations for conformity with the approach taken toward other Federally managed lands.

The written permission requirement in the current Corps regulation is inconsistent with the regulations and approach by the other Federal land management agencies, which generally authorize the possession of weapons when in accordance with state and local laws and the individual is not otherwise prohibited by law from possessing the weapon. The revision would also streamline and clarify the requirements to possess weapons on a Corps project for persons traveling to Corps projects from surrounding state areas or areas managed by other Federal agencies.

The Corps is proposing this revision in order to update the Corps regulations in a way that more appropriately reflects the current state and local regulation of the possession of weapons, and firearms in particular. The Corps believes that the current Corps regulation, by requiring individuals to obtain written permission before possessing a weapon, is burdensome on the public and the Corps without providing any corresponding benefit. The current regulation was promulgated before many of the current state laws governing the possession of weapons, in particular the possession of

firearms by private individuals for self-defense and other purposes. Following the developments in state law since that time, the Corps believes it is now appropriate to join the other Federal land management agencies in deferring to state law requirements, as the Corps already does for other land management practices. The Corps believes the proposed revision will benefit the public by eliminating the burden to apply for written permission from the Corps as well as by aligning the requirements for possessing a weapon on Corps projects lands with the requirements applicable to the areas surrounding a project.

If finalized, the Corps' policies relating to the possession of firearms on their projects would be substantively the same as the policies of other Federal land management agencies. The Corps believes that such conformity is important for reducing confusion among the public. The Corps is soliciting comments on all aspects of this proposal but are particularly interested in knowing whether, in the interest of further conformity, it should consider additional revisions to further align with the regulations of other land management agencies. The Corps is also interested in whether the impacts of the proposal estimated below are accurate.

IMPACTS:

Individuals are required under the current regulation to submit a letter to the District Commander requesting approval to carry a weapon. If finalized, this proposal would remove that requirement. One of the benefits of this rule would thus be the savings associated with that removal. The Corps estimates these savings to be \$2,340. If finalized, this rule would also make the Corps policy on carrying a weapon consistent

with the policies of other Federal agencies. Another benefit of this rule would thus be improved clarity for the public resulting from that conformity. The Corps is not able to quantify the benefits associated from that improved clarity.

The Corps current regulations at 36 CFR 327.13 do not identify the specific information that individuals must include in their written request to the Corps to carry a firearm at Corps projects. However, based on the written requests the Corps has received in the past, we estimate that it takes approximately one hour for an individual to complete and mail to the District Commander the request. Based on a current Federal minimum wage of \$7.25 per hour and the cost of a first class stamp being \$0.55, we estimate the cost associated with each request to be \$7.80. Based on the number of requests the Corps received during the period of 15 May 2018 through 15 May 2019, we estimate that individuals submit approximately 300 letters per year. That results in the application cost associated with the current requirements being approximately \$2,340 per year. A benefit of this rule is the removal of that transaction cost.

In addition, removing the requirement that an individual obtain written permission from the District Commander, and instead requiring compliance with the laws otherwise applicable where the Corps project is located, would reduce confusion by further aligning the land management practices of the Corps with the practices of the National Park Service, Bureau of Reclamation, Bureau of Land Management, and U.S. Forest Service.

The Corps is not aware of any costs that would result from this rule if it were finalized but solicits comment from the public on the matter.

ALTERNATIVES:

In proposing this revision to 36 CFR 327.13, the Corps considered three alternatives: the proposed regulation revision (“Preferred Alternative”); no action (“No Action Alternative”); and, revising the regulation to permit the possession of weapons when consistent with Federal, state, and local laws so long as the weapon is carried either unloaded or concealed on the person, or is being used for hunting, fishing, or target shooting (“Concealed Carry Alternative”). When the Corps evaluated these alternatives, we found that the No Action Alternative would result in continued inconsistencies between the Corps regulation and the regulations of the other Federal land management agencies, as well as inconsistencies in the requirements for possessing a weapon on Corps project lands as compared to the surrounding areas. The Concealed Carry Alternative would revise the current Corps regulation to be more consistent with the regulations of other Federal agencies, but it also would create potentially confusing differences between the Corps regulation and the others by establishing its own rules on how weapons must be carried. It would place an unacceptable level of enforcement responsibility on Corps park rangers, who are unarmed and have limited law enforcement authority. The Preferred Alternative is this proposed action, which is the promulgation of a rule that revises the Corps regulation for consistency with the other Federal land management agencies and to defer to state and local requirements. The Corps consideration of these alternatives is further discussed in the Environmental Assessment included as a supporting document in the docket for this action. The Corps has not identified any other reasonable alternatives that warrant consideration.

EXECUTIVE ORDERS:

a. Review under Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule has been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB).

b. Review under Executive Order 13771

This proposed rule is not expected to be subject to the requirements of Executive Order 13771 because it is expected to impose de minimis impacts.

c. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

I certify that this action will not have a significant impact on a substantial number of small entities.

d. Review under the National Environmental Policy Act

Due to the procedural nature of this action and because there is no intended change in the use of the areas subject to this regulation, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human

environment. Therefore, preparation of an environmental impact statement will not be required. A draft environmental assessment has been prepared for publication in conjunction with the public notice period and is included as a supporting document in the docket for this action.

e. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

f. Paperwork Reduction Act

The information collection activities in this proposal have not been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). However, if finalized, this rule would remove the requirement for that collection of information by eliminating the need to submit a letter to the District Commander asking for approval to possess weapon.

List of Subjects in 36 CFR Part 327

Penalties, Recreation and recreation areas, Water resources.

For the reasons set out in the preamble, the Corps proposes to amend 36 CFR part 327 as follows:

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

1. The authority citation for part 327 continues 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. In § 327.13:

- a. Revise paragraph (a);
- b. Redesignate paragraph (b) as paragraph (d); and
- c. Add new paragraphs (b) and (c).

The revision and additions read as follows:

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) An individual may possess or transport a weapon on any project provided that:

(1) The individual is not otherwise prohibited by Federal, state, or local law from possessing or transporting such weapon; and

(2) The possession or transportation of such weapon is in compliance with applicable Federal, state, and local law.

(b) As used in this section, “weapon” includes any firearm as defined in 18 U.S.C. 921(a)(3)(A), bow and arrow, crossbow, or other projectile firing device.

(c) The District Commander may modify or revoke the permissions granted by this section when issuing a special event permit under § 327.21.

(d) 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.

R.D. James
Assistant Secretary of the Army
(Civil Works)

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