

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–068 to read as follows:

**§ 100.35–T05–068 John H. Kerr Reservoir, Clarksville, Virginia.**

(a) *Regulated area.* The regulated area is established for the waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37'14" N, longitude 078°32'46.5" W, thence to latitude 36°37'39.2" N, longitude 078°32'08.8" W, and bounded on the north by the State Route 15 Highway Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Clarksville Hydroplane Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. on October 7 to 6:30 p.m. on October 8, 2006.

Dated: September 8, 2006.

**Larry L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### RIN 1024–AC99

### Curecanti National Recreation Area, Personal Watercraft Use

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule designates areas where personal watercraft (PWC) may be used in Curecanti National Recreation Area, Colorado. This final rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. Individual parks must determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

**DATES:** *Effective Date:* This rule is effective September 21, 2006.

**ADDRESSES:** Mail inquiries to Superintendent, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230 or e-mail NPS at [CURE\\_Superintendent@nps.gov](mailto:CURE_Superintendent@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: [jerry\\_case@nps.gov](mailto:jerry_case@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Personal Watercraft Regulation*

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). The regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation

prohibited PWC use in all park units effective April 20, 2000, except 21 preserves, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed. On November 7, 2002 PWC use was discontinued at Curecanti National Recreation Area.

##### *Description of Curecanti National Recreation Area*

Curecanti National Recreation Area (Curecanti) was established in 1965 to provide for conservation of scenic, natural, historic, archeological, and wildlife values. The goal of the National Recreation Area is to provide for public use and enjoyment while ensuring visitor safety, resource preservation, and conservation. Curecanti is located along U.S. Highway 50 (U.S. 50) west of Gunnison, Colorado.

Three reservoirs, named for corresponding dams on the Gunnison River, form the heart of Curecanti. The three reservoirs are Blue Mesa Reservoir, Morrow Point Reservoir, and Crystal Reservoir. Blue Mesa Reservoir is Colorado's largest body of water and is home to the biggest Kokanee Salmon fishery in the United States. Morrow Point Reservoir is the beginning of the Black Canyon of the Gunnison. Crystal Reservoir is the site of the Gunnison Diversion Tunnel, a National Historic Civil Engineering Landmark. In addition to the three reservoirs, recently discovered dinosaur fossils, a 5,000 acre archeological district, a narrow gauge train, and traces of 6,000 year old dwellings further enhance the significance of Curecanti.

##### *Purpose of Curecanti National Recreation Area*

The purpose and significance statements listed below are from Curecanti's *Strategic Plan and General Management Plan*. Curecanti National Recreation Area was established for the following purposes:

1. Conserve the scenery, natural, historic, and archeological resources, and wildlife of Curecanti.
2. Provide for public use and enjoyment in such a way as to ensure visitor safety and resource preservation or conservation by establishing and maintaining facilities and providing protection and interpretive services.
3. Manage the lands, waters, and activities of Curecanti in such a way that it does not interfere with the purposes of the Colorado River Storage Project Act and other Bureau of

Reclamation agreements affecting the operation of the Aspinall Unit.

4. Mitigate the loss of fish and wildlife resources as a result of the Colorado River Storage Project.

#### *Significance of Curecanti National Recreation Area*

The following statements summarize the significance of Curecanti:

1. Blue Mesa Reservoir is one of the largest high-altitude bodies of water in the United States. It provides an exciting diversity of water recreation opportunities for windsurfers, sail boaters, and water skiers.

2. The scenic values of the canyon, the needles, the pinnacles, and the reservoirs provide dramatic contrast, which causes visitors to slow down, pause, and reflect on the diversity of the landscape and its spaciousness.

3. Curecanti provides one of the best cold-water fishing opportunities in the nation. This is due primarily to the Kokanee salmon run occurring in Blue Mesa. The Morrow Point and Crystal Reservoirs' trout fisheries routinely attract fishing enthusiasts from throughout the nation because of the high-quality trout fishing and uniqueness of the canyon environment.

4. The prehistoric and historic stories of human culture in the Curecanti area are recorded in the traces and tracks left by Native Americans, miners, railroaders, and ranchers. The cultural history of this area documents not only the human struggles to survive but also how changing human value systems; economic, social, and technological changes; and the importance of water have shaped the use and character of the land and its people. Cultural history contains archeological examples of some of the oldest villages found in North America, predating the building of the pyramids.

5. The narrow-gauge railroad exhibit in Cimarron graphically portrays the story of technology's effects of shaping people and using land; the agony and difficulties of building track in narrow canyons in the winter where the sun seldom shined; and of taking the hard way instead of the easy trail. Examples of a locomotive, tender, and caboose used on the railroad are on exhibit at Cimarron.

The park's mission statement is as follows: "Curecanti National Recreational Area will preserve, protect, and interpret the tremendous collection of nationally significant, diverse natural and cultural resources balanced with the provision of outstanding recreational opportunities."

#### *Authority and Jurisdiction*

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) authorizes the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks \* \* \*

16 U.S.C. 1a-1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established \* \* \*

As with the United States Coast Guard, NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, derives from the U.S. Constitution. In regard to the NPS, based upon the Property and Commerce Clauses, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States \* \* \*" (16 U.S.C. 1a-2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

#### *PWC Use at Curecanti National Recreation Area*

Curecanti National Recreation Area includes Blue Mesa Reservoir, which was created with the completion of the Blue Mesa Dam. Blue Mesa Reservoir is comprised of three basins: Sapinero, Cebolla, and Iola as well as various arms. The basins are often referred to as the main body of the reservoir to distinguish activities there from activities in the arms.

Approximately 1 million visitors use Curecanti's facilities annually. This figure includes visitors who pursue water-based recreation activities on the reservoir and those who engage in other recreation opportunities. Motorboats and other watercraft have been used in Curecanti since 1975. Personal watercraft have emerged at Curecanti only since their introduction in the 1980s, and particularly since the summer of 1995 when personal

watercraft were available for rent from a park concessioner. Park staff believes PWC use has increased since 1995, and a registration survey mailed to vessel users requesting an annual permit revealed that in 2000, 0.69% of over 400 respondents were PWC users. The annual use is estimated to have been 792 PWC in 2002, and is predicted to increase at approximately 2% annually to 965 PWC in 2012. Based on ranger observation, most PWC users are from Colorado, they limit their PWC use to approximately 2 hours, and they wear a wetsuit because of cold-water temperatures and high afternoon winds. In addition, PWC use has conflicted with both bank and boat fishermen from Dry Creek to Bay of Chickens. Before the prohibition on PWC use, the General Management Plan and Superintendent's Compendium allowed personal watercraft and other watercraft to operate only on the main body of the Blue Mesa Reservoir and lake arms with speed and zone restrictions. PWC use was prohibited in all other areas of the park through restrictions on horsepower and restrictions on motorized vessels. Personal watercraft generally did not operate at the extreme ends of lake arms because the arms are narrow in width. On the main body of the reservoir, personal watercraft were widely distributed. In addition to the main body, high-use areas include the Iola Basin and Colorado State Highway 149 (Highway 149) areas. Other locations with limited use include Stevens Creek, Cebolla Basin, Soap Creek Arm, Bay of Chickens, and the main marina at Elk Creek.

This rulemaking is focusing exclusively on PWC use at the park. The park also intends to develop a water/vessel management plan for the use of other vessels.

#### **NPRM and Environmental Assessment**

On March 17, 2006, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Curecanti (71 FR 13792). The proposed rule for PWC use was based on alternative A (one of three alternatives considered) in the Environmental Assessment (EA) prepared by NPS for Curecanti. The EA was open for public review and comment from June 11, 2003 until July 13, 2003. The EA is available at [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm).

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Curecanti to ensure the protection of park resources and values while offering recreational

opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The assessment assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012. The assessment also compared each alternative to PWC use before November 7, 2002, when the prohibition took effect.

The environmental assessment evaluated three alternatives addressing the use of personal watercraft at Curecanti:

**Alternative A**—By using a special regulation, the park would reinstate PWC use as previously managed prior to November 7, 2002, and would add one buffer zone as described below. Under this alternative, PWC use would occur in areas of Blue Mesa Reservoir and portions of the lake arms. Areas appropriate for PWC use would include Sapinero, Cebolla, and Iola Basins; Bay of Chickens; Dry Creek; Elk Creek; the Highway 149 area; and Lake Fork, Soap Creek, and West Elk arms. Operation of all motorized watercraft would continue to be prohibited in areas east of Beaver Creek within the Gunnison River Canyon and in the area downstream from the East Portal diversion dam. All designated launch areas on Blue Mesa Reservoir (developed and unimproved) would remain open to PWC use. Personal watercraft would be allowed to land on any shoreline at Blue Mesa Reservoir.

The following areas would remain closed to all boating, including personal watercraft, and shoreline entry: Blue Mesa Dam downstream for 225 yards, Morrow Point Dam downstream for 130 yards, Crystal Dam downstream for 700 yards, and East Portal diversion dam upstream for 60 yards. In addition, the following areas would be zoned as flat wake speed areas: The area upstream from Lake City Bridge to Beaver Creek; the area within the arms of Blue Mesa Reservoir that is less than 1,000 feet from shore to shore at full pool level. These areas will be marked by designated buoys. These arms include Soap Creek Arm, West Elk Arm, Lake Fork Arm, and Cebolla Arm; narrow waterways off the Bay of Chickens and Dry Creek; Elk Creek and Lake Fork Marinas; and Iola and Stevens Creek boat launch areas.

In addition to the areas outlined above, a 100-foot buffer zone from the shoreline would be established at the Stevens Creek campground, as marked by buoys. The buffer area would be zoned as a flat wake speed area. A buffer zone will provide for the protection of an active Gunnison sage grouse lek and nesting area, and would mitigate

potential noise impacts from PWC use and associated shoreline use during the lek and nesting season (mid-March–July).

**Alternative B**—Same as alternative A, with the following additional restrictions. This alternative would establish a 100-foot buffer zone along the south shore of Blue Mesa Reservoir from 0.5 mile west of Iola to 0.5 mile east of Middle Bridge for soundscape, cultural resource, and wildlife protection as well as to prevent erosion.

**Alternative B** includes further speed restrictions. Under this alternative, the additional speed restrictions would apply to PWC use in each of the lake arms on Blue Mesa Reservoir from the mouth of each lake arm upriver to the flat wake areas. In these restricted areas PWC use would need to operate at flat wake speeds when within 150 feet of another boat, a person in or floating on the water, shore fisherman, a launching ramp, a dock, or a designated swimming area.

**No-Action Alternative**—The park would continue the PWC prohibition. PWC use would not be reinstated and the National Park Service would not take action to draft a special regulation to reinstate PWC use.

**Alternative A** is the park's preferred alternative because it best fulfills the park responsibilities as trustee of the sensitive habitat; ensures safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attains a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

This final rule contains regulations to implement alternative A at Curecanti.

### Summary of Comments

A proposed rule on PWC use in the Curecanti National Recreation Area was published in the **Federal Register** for public comment on March 17, 2006, with the comment period lasting until May 16, 2006 (71 FR 13792). The National Park Service (NPS) received 2,325 timely written comments regarding the EA and proposed regulation. Of the comments, 1,935 were form letters in 10 different formats, 345 were on a petition, and 45 were separate letters. Of the 45 separate letters, 37 were from individuals, 7 from organizations, and 1 from a public agency. Within the following discussion, the term "commenter" refers to an individual, organization, or public agency that responded. The term "comments" refers to statements made by a commenter.

### General Comments

1. Several commenters, including Bluewater Network and the American Canoe Association, stated that the EA failed to use the best data available and picked alternative A without adequate scientific justification.

*NPS Response:* The EA analyzed every applicable impact topic with the best available data, as required by Council on Environmental Quality regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff.

2. Several commenters stated that allowing PWC use with additional restrictions violates the park's enabling legislation and NPS mandate to protect resources from harm.

*NPS Response:* The NPS analysis of PWC use specifically considered the requirements of Curecanti National Recreation Area's enabling legislation. The authorizing legislation for Curecanti was carefully considered when developing alternatives for the EA. The objective of the EA, as described in the "Purpose and Need" Chapter of the EA, was derived from the enabling legislation for Curecanti. As a result, the alternatives presented in the EA were developed to protect resources and values while providing recreational opportunities at Curecanti. As required by NPS policies, the impacts associated with PWC and other recreational uses are evaluated under each alternative to determine the potential for impairment to park resources. NPS has concluded that alternative A would not result in impairment of park resources and values for which the Curecanti was established. The recreation area's enabling legislation also states that the "Secretary shall administer Curecanti National Recreation Area for general purposes of public outdoor recreation." The goal of the national recreation area is to provide each visitor with an educational, enjoyable, safe and memorable experience.

3. One commenter suggested clarifying the language in the proposed rule about landing restrictions near the dam.

*NPS Response:* We agree and text has been added to the rule to address the buoyed barricaded sections in the vicinity of the dams, where boats are not allowed.

4. One commenter stated the analysis did not adequately consult with and seek the expertise of various agencies,

which appears to violate the NPS PWC regulations.

*NPS Response:* The final PWC regulation published by the NPS in March 2000 indicates that we intend to seek the expertise of the U.S. Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) and other relevant agencies and literature when deciding whether to allow continued PWC use in units of the National Park System. The EA references EPA and OSHA regulations and studies throughout the document.

5. Several commenters stated that the decision violates the Organic Act and will result in the impairment of resources.

*NPS Response:* The "Summary of Laws and Policies" section in the "Environmental Consequences" chapter of the EA summarizes the three overarching laws that guide the NPS in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. An explanation of how the NPS applied these laws and policies to analyze the effects of personal watercraft on Curecanti resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

Under the EA's methodology, an impairment to a particular park resource or park value is indicated when the impact reaches the magnitude of "major," as defined by its context, duration, and intensity and must also affect the ability of the National Park Service to meet its mandates as established by Congress in the park's enabling legislation. For each impact topic, the EA establishes thresholds or indicators of magnitude of impact. For each impact topic, when the intensity approached "major," the park would consider mitigation measures to reduce the potential for "major" impacts, thus reducing the potential for impairment. The NPS has determined that the preferred alternative would not result in impairment of park resources or values.

6. One commenter is concerned about PWC use conflicting with swimmers and anglers at Curecanti.

*NPS Response:* Additional management restrictions have been put into effect in the regulation to prevent conflicts with swimmers, shore anglers and watercraft. The popular day use areas, such as Dry Creek and Bay of Chickens, have flat wake buoys in place to keep vessels at flat wake speeds in congested areas until they are out into open water. The preferred alternative would keep this restriction in place.

7. One commenter is concerned that the assumption of PWC growth at Curecanti may be underanalyzed, and instead of using a 2 percent growth rate in the analysis, a 5 percent growth rate would more accurately reflect the conditions in Colorado.

*NPS Response:* The estimated annual increase in PWC use of 2% appears justified in light of several lines of evidence. While the overall increase in PWC use from 1994 to 2002 is over 300%, the majority of that increase occurred through 1997. Since then, the increases decreased every year to the point where there was a net decrease of 1% between 2001 and 2002. This decrease in PWC use in Colorado parallels the decrease in nationwide PWC use and the decrease in visitors to the park between 1999 and 2001. The projected annual growth in population in the region and the state is 1.7 to 2.0%. For this combination of reasons, the projected increase in PWC use at the park is reasonable.

#### Comments Regarding Water Quality

8. Several commenters stated that research indicated that direct-injection 2-stroke engines are dirtier than 4-stroke engines.

*NPS Response:* Total hydrocarbons (THC) emissions factors for 2-stroke carbureted PWC engines are approximately 13 times greater than for 4-stroke PWC engines. This is a major factor in the EPA rule requiring the phase out of carbureted 2-stroke engines. However, the two-stroke direct injection engines are almost as clean burning as the four-stroke.

9. One commenter stated that the analysis disregarded or overlooked relevant research regarding impacts to water quality from PWC use as well as the impact to downstream resources and long-term site specific water quality data on PWC pollutants.

*NPS Response:* The EA states that in 2002 impacts to water quality from PWC on a high-use day would be negligible for all chemicals evaluated based on ecological and human health benchmarks and for benzo(a)pyrene based on human health benchmarks.

10. One commenter stated that the assumption that there is enough water in the lake to dilute PWC pollutants to levels that do not violate state and Federal standards is incorrect, and that the concentration of PWC operation in certain areas of the lake means that there is less water available for mixing.

*NPS Response:* As described on pages 51 and 52 of the EA, the effective mixing zone volume of 52,433 acre-feet (which is compared to the threshold volumes) is based on the difference

between the volume at minimum pool (192,270 acre-feet) and the volume at the thermocline (139,837 acre-feet). This is a conservative estimate of the mixing zone for the reservoir because the lowest recorded elevation of the reservoir is 7,428 feet while the minimum pool elevation is 7,393 feet, a difference of 35 feet. At the time of preparation of the EA (January 2003), the elevation was 7,445 feet, 52 feet above minimum pool. While PWC use may be concentrated in, but not restricted to, areas between Elk Creek and the Lake City Bridge and in the Soap Creek Arm, water in these areas will mix with waters outside of the areas. The maximum calculated threshold volume needed to dilute emissions from personal watercraft under any alternative is 4,534 acre-feet for benzene in 2002 (see Table 18 of EA). Impacts to water quality are termed negligible in view of the fact that the threshold volume is less than the available mixing zone volume and that the half-life of benzene is less than 5 hours. This assessment of adverse impacts due to PWC use on a peak-use day (16 personal watercraft) is conservative even if PWC use is concentrated in a few areas of the reservoir.

11. One commenter stated that the analysis represents an outdated look at potential emissions from an overstated PWC population of conventional 2-stroke engines, and underestimated the accelerating changeover to 4-stroke and new 2-stroke engines. The EA also states that benzo(a)pyrene concentrations in gasoline range from 0.19 to 2.8 mg/kg, but the EA chooses the highest figure for the analysis. The net effect is that the analysis overestimates potential PWC hydrocarbon emissions, including benzene and polycyclic aromatic hydrocarbons (PAHs), to the water in Blue Mesa Reservoir.

*NPS Response:* Assumptions regarding PWC use (16 per day in 2002 and 20 per day in 2012) were based on actual count data from the month of July 2002 and on park staff observations. Because of holiday timing in 2001 and poor weather, the observation of 9 personal watercraft on a peak-use day was thought to be more typical of a non-peak use summer day, not a peak-use day. Therefore, peak-use PWC numbers in 2002 were estimated to be 16 vessels. PWC use at other times of the year ranged from 0 to 4 PWC per day. Data for the years 2001 and 2002 were the only data available for Curecanti (page 75 of EA). Because data from other years were not available, trends in PWC use at Curecanti could not be determined for use in the EA. The July 2002 estimate can be considered a "worst case"

estimate, but it is not "unrealistic" since it is based on actual Curecanti data and park staff observations. Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible for all alternatives evaluated. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

12. One commenter stated that even minor oil spills can cause increased levels of volatile organic compounds (VOCs) and PAHs in the water, which will cause damage to aquatic wildlife.

*NPS Response:* Impacts to wildlife from PWC under alternative A range from negligible to minor adverse. Impacts to water quality from the discharge of fuel constituents under alternative A range from negligible to minor adverse.

13. One commenter stated that levels of methyl tertiary-butyl ether (MTBE) levels must be tested and disclosed to the public, yet the EA does not disclose the levels of toxins (BTEX, PAHs and MTBE) from samples taken in the summer of 2000.

*NPS Response:* MTBE was not included in the analysis of impacts to water quality because MTBE is banned in Colorado and is unlikely to be brought into the park in large quantities. Although potential concentrations of gasoline-related constituents in the water were not included in the proposed rule, they were used in the calculations of water volumes needed to dilute constituents to levels below the ecotoxicological and human health benchmarks in the Environmental Consequences section of the EA.

Colorado is not the only state to ban MTBE. According to data provided by the Energy Information Administration (EIA) (<http://www.eia.doe.gov/oiaf/servicerpt/mtbeban/table1.htm>), which was last updated March 27, 2003, 17 states have banned or restricted the concentration of MTBE in gasoline.

#### Comments Regarding Air Quality

14. One commenter stated that the analysis failed to mention the impact of PWC permeation losses on local air quality.

*NPS Response:* Permeation losses of volatile organic compounds (VOCs) from personal watercraft were not included in the calculation of air quality impacts primarily because these losses are insignificant relative to emissions from other operating watercraft. Also, permeation losses were not included because of numerous related unknown contributing factors such as the number

of personal watercraft refueling at the reservoir and the location of refueling (inside or outside of the airshed). Using the permeation loss numbers in the comment (estimated to be half the total of 7 grams of losses per 24 hours from the fuel system), the permeation losses per hour from fuel systems are orders of magnitude less than emissions from operating personal watercraft. Therefore, we believe the inclusion of permeation losses would not have a significant effect on the results of the air quality impact analyses.

15. One commenter expressed concern that PWC emissions were declining faster than forecasted by the EPA. As the Sierra Report documents, in 2002, hydrocarbons (HC) + nitrogen oxides (NO<sub>x</sub>) emissions from the existing fleet of PWC were already 23% lower than they were before the EPA regulations became effective, and will achieve reductions greater than 80% by 2012.

*NPS Response:* The EPA data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that these data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA NONROAD Model, which was used to estimate emissions. However, the level of detail included in the Sierra Research report has not been carried into the EA for reasons of consistency and conformance with the model predictions. Most states use the EPA NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with state programs and with the methods of analysis used for other similar NPS assessments, the NPS has elected not to base its analysis on focused research such as the Sierra Report for assessing PWC impacts.

It is agreed that the relative quantity of HC + NO<sub>x</sub> are a very small proportion of the county based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis.

For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 Spark Ignition Engine Rule which are consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be in the conservative range, if compared to actual emissions.

#### Comments Regarding Soundscapes

16. One commenter stated that continued PWC use at Curecanti will

not result in sound emissions that exceed the applicable Federal or State noise abatement standards, and technological innovations by the PWC companies will continue to result in substantial sound reductions.

*NPS Response:* The NPS concurs that on-going and future improvements in engine technology and design would likely further reduce the noise emitted from PWC. However, given the ambient noise levels in the recreation area, it is unlikely that the improved technology could reduce all cumulative impacts of motorized vessels beyond minor to moderate through out the recreation area.

17. One commenter stated that the NPS places too much hope in new technologies significantly reducing PWC noise since there is little possibility that the existing fleet of more than 1.1 million machines (most of which are powered by conventional two-stroke engines) will be retrofitted to reduce noise. Furthermore, many PWC owners modify the exhaust system to increase horsepower and thrust, which can render useless the attempts by manufacturers to reduce engine noise levels.

*NPS Response:* The analysis of the preferred alternative states that noise from PWC would continue to have minor to moderate, temporary adverse impacts, and that impact levels would be related to number of PWC and sensitivity of other visitors. This recognizes that noise will occur and will bother some visitors, but site-specific modeling was not needed to make this assessment. The availability of noise reduction technologies is also growing, and we are not aware of any scientific studies that show these technologies do not reduce engine noise levels. Also, the analysis did not rely heavily on any noise reduction technology. It recognizes that the noise from the operation of PWC will always vary, depending on the speed, manner of use, and wave action present.

Although PWC use does occur throughout the lake, it is concentrated more in certain areas, and this is noted in the soundscapes impact analysis that follows the introductory statements and assumptions listed on page 104 of the EA. The analysis did not assume even distribution of PWC and predicted moderate impacts from concentrated PWC use in one area.

#### Comments Regarding Wildlife and Threatened and Endangered Species

18. One commenter stated that the analysis lacked site-specific data for impacts to wildlife, fish, and threatened and endangered species at Curecanti.

*NPS Response:* The park did not conduct site-specific studies regarding potential effects of PWC use on wildlife species at Curecanti. Analysis of potential impacts of PWC use on wildlife at the national recreation area was based on best available data, input from park staff, and the results of analysis using that data.

19. One commenter stated that PWC use and human activities associated with their use may not be any more disturbing to wildlife species than any other type of motorized or non-motorized watercraft. The commenter cites research by Dr. Rodgers, of the Florida Fish and Wildlife Conservation Commission, whose studies have shown that PWC are no more likely to disturb wildlife than any other form of human interaction. PWC posed less of a disturbance than other vessel types. Dr. Rodgers' research clearly shows that there is no reason to differentiate PWC from motorized boating based on claims on wildlife disturbance.

*NPS Response:* Based on the documents provided as part of this comment, it appears that PWC are no more apt to disturb wildlife than are small outboard motorboats; however, disturbance from both PWC and outboard motorboats does occur. In addition to this conclusion, Dr. Rogers recommends that buffer zones be established, creating minimum distances between boats (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. Under the final rule, there will be a 100-foot buffer around Steven's Creek campground for Gunnison sage grouse protection. This buffer area will be zoned as flat wake speed for all motorized watercraft. The arms of the lake would remain flat wake speed areas to minimize disturbances to wildlife and visitors. Impacts to wildlife and wildlife habitat under all the alternatives were judged to be minor to moderate from all visitor activities.

20. One commenter is concerned that the EA does not consider a large enough area inland in its analysis for PWC noise and its impact upon wildlife. The EA states that PWC may disturb wildlife along the shore, extending inland approximately 100 feet, while the distance used for analyzing impacts upon humans is  $\frac{3}{4}$  of a mile.

*NPS Response:* The evaluation area used in the EA for noise impacts to wildlife is 200 feet, not 100 feet from the shoreline. Even within this relative short distance from personal watercraft, noise impacts to wildlife are expected to be short-term and either minor or negligible. Noise levels from PWC use would be decreased further at greater

distances. However, additional potentially affected wildlife may be present within  $\frac{3}{4}$  mile of the shoreline. Therefore impact levels may increase slightly from those described for the various alternatives and wildlife categories. In the errata to the EA, impacts described as negligible were changed to minor, impacts described as minor were changed to moderate, and ranges of impacts from negligible to minor were changed to minor to moderate.

21. Several commenters are concerned about PWC impacting the Gunnison sage grouse and its habitat and lek located near Stevens Creek campground.

*NPS Response:* Under the final rule, a 100-foot buffer area, as marked by buoys, will be implemented around Steven's Creek campground for protection of the Gunnison sage grouse lek. This buffer area will be zoned as flat wake speed for all motorized vessels.

22. One comment stated that the additional buffer zones proposed for Gunnison sage grouse protection are not necessary because the NPS already has procedures in place that protect the grouse lek located near Stevens Creek campground.

*NPS Response:* The flat wake zone near Stevens Creek campground will apply to all motorized boats, and would afford additional protection to the Gunnison sage grouse during the lek season, which extends from March through mid-May, when PWC and other boats may be in use on the reservoir.

#### Comments Regarding Vegetation

23. One commenter stated that there has been no documentation of any adverse effects to shoreline vegetation from PWC use.

*NPS Response:* The NPS agrees. There are no sensitive shoreline species and vegetation along the Blue Mesa Reservoir shoreline is generally lacking. The shoreline buffer established near Stevens Creek campground and in the arms of the lake will provide some additional protection from erosion caused from wave action created by PWC. Shoreline vegetation is more likely to be impacted from wave action when the reservoir is at full pool.

#### Comments Regarding Visitor Safety

24. One commenter stated that the conclusion that PWC use poses a health and safety risk "primarily to the operators" themselves is mistaken and the analysis does not adequately assess the safety threat posed to park visitors by PWC use.

*NPS Response:* Incidents involving watercraft of all types, including PWC, are reported to and logged by NPS staff.

A very small proportion of incidents in the recreation area are estimated to go unreported. In the "Visitor Conflicts and Visitor Safety" section of the "Affected Environment" chapter of the EA, it is reported by the National Transportation Safety Board that in 1996 personal watercraft represented 7.5% of state-registered recreational boats but accounted for 36% of recreational boating accidents. In the same year, PWC operators accounted for more than 41% of people injured in boating accidents. PWC operators accounted for approximately 85% of the persons injured in accidents studied in 1997.

25. One commenter stated that the accident data used in the analysis was outdated and incorrect because PWC accidents are reported more often than other boating accidents.

*NPS Response:* The mediating factors described in the comment are recognized. However, these factors are unlikely to fully explain the large difference in percentages (PWC are only 7.5% of registered vessels, yet they are involved in 36% of reported accidents). In other words, PWC are 5 times more likely to have a reportable accident than are other boats. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and minor impact relative to other motorboats at the national recreation area.

26. Several commenters stated that the NPS analysis downplayed the threat PWC pose to the visiting public, specifically regarding PWC fire hazards.

*NPS Response:* According to the National Marine Manufacturers Association (NMMA), PWC manufacturers have sold roughly 1.2 million watercraft during the last ten years. Out of 1.2 million PWC sold, the U.S. Coast Guard had only 90 reports of fires/explosions in the years from 1995–1999. This is less than 1% of PWC boats having reports of problems associated with fires/explosions. As far as the recall campaigns conducted by Kawasaki and Bombardier, the problems that were associated with fuel tanks were fixed. Kawasaki conducted a recall for potentially defective fuel filler necks and fuel tank outlet gaskets on 23,579 models from the years 1989 and 1990. The fuel tank problems were eliminated in Kawasaki's newer models, and the 1989 and 1990 models are most likely not in use anymore, since life expectancy of a PWC is only five to seven years, according to the PWC Industry Association (PWIA). Bombardier also did a recall for its 1993, 1994, and 1995 models to reassess possible fuel tank design flaws.

However, the number of fuel tanks that had to be recalled was a very small percent of the 1993, 1994, and 1995 fleets, because fuel tank sales only amounted to 2.16% of the total fleet during this period (Bombardier Inc.). The replacement fuel tanks differed from those installed in the watercraft subject to the recall in that the replacement tanks had revised filler neck radius, and the installation procedure now also requires revised torque specifications and the fuel system must successfully complete a pressure leak test. Bombardier found that the major factor contributing to PWC fires/explosions was over-torquing of the gear clamp. Bombardier was legally required by the U.S. Coast Guard to fix 9.72% of the recalled models. Out of 125,349 recalls, the company repaired 48,370 units, which was approximately 38% of the total recall, far exceeding their legal obligation to repair units with potential problems.

Further, fuel tank and engine problems that could be associated with PWC fires have been reduced significantly since the NMMA set requirements for meeting manufacturing regulations established by the U.S. Coast Guard. Many companies even choose to participate in the more stringent Certification Program administered by the NMMA. The NMMA verifies annually, or whenever a new product is put on the market, boat model lines to determine that they satisfy not only the U.S. Coast Guard regulations but also the more rigorous standards based on those established by the American Boat and Yacht Council.

27. One commenter stated that demographic and usage information demonstrates that today's PWC owner typically uses PWC for family-oriented outings, and that they are not reckless "stunt" operators.

*NPS Response:* NPS agrees that some PWC operators are more mature and are not reckless with their machines, and that many trips are family-oriented. However, PWC use does vary, and many operators still use the machines for "thrill," including stunts, wake jumping, and other more risky exercises. Some users can still create disturbances or safety concerns, especially if children are operating the vessel. As part of the implementation of the final rule, NPS will provide additional enforcement and education to minimize the possibility of any serious injuries.

28. One commenter stated that even though the industry has attempted to promote three-person PWC as family machines, they are advertised and marketed as thrillcraft that tout the

machine's speed and power in advertisements.

*NPS Response:* NPS agrees. However, some PWC operators are better educated and are not reckless with their machines, and many trips are family-oriented. PWC use does vary, and many operators still use the machines for "thrill," including stunts, wake jumping, and other more risky exercises.

29. One commenter stated that several agencies, including the U.S. Coast Guard and the National Association of State Boating Law Administrators, recommend uniform application of flat wake zones to all motorized vessels.

*NPS Response:* The flat wake restrictions apply to all vessels, not just PWC. All vessels are required to observe the flat wake regulatory buoys as required by 36 CFR 3.6(c).

30. Several commenters were concerned about the NPS' reliance on PWC "self-policing" regarding speed and flat wake zones, and that both alternative A and B will require additional staff to monitor and enforce the restrictions.

*NPS Response:* The EA does state that generally there is at least one law enforcement ranger on the reservoir daily during daylight hours. There are also employees from other divisions who make boating contacts and/or report violations they observe while performing their tasks on the reservoir. Park staff noted that visitors frequently report violators of boating regulations, especially in the marinas.

Furthermore, enforcement would also be required under the no-action alternative. The park is fully aware that this new regulation will require short-term changes and reallocation of assets and resources, with an increase in enforcement. However, this effort will generally occur at popular boating use areas that are already the focus of enforcement activity. Enforcement of the November 6, 2002, prohibition of PWC required an increased focus on education and PWC enforcement during routine patrols at a limited number of popular use areas. This education and enforcement effort became successful in about two boating seasons. Additional educational efforts and a presence on the water by park rangers are proven methods of protecting resources for the future enjoyment of all visitors, with the end result of enhancing the visitor experience.

#### Comments Regarding Cultural Resources

31. One commenter stated that the analysis refers to a potential concern that the ability of PWC operators to access remote areas of the park unit

might make certain cultural, archeological and ethnographic sites vulnerable to looting or vandalism.

*NPS Response:* The EA was focused on the analysis of impacts from PWC use. The use of a PWC can make it easier to reach some remote upstream areas, compared to hiking to these areas and we agree that the type of impacts to cultural resources from any users of remote areas of the park would be similar if they can reach these areas. However, there is no indication of any instances where these problems have occurred from PWC users. Nor is there any reason to believe that PWC users are any more likely to pose these concerns than canoeists, kayakers, hikers, or others who might access these same areas.

#### Comments Regarding Socioeconomics

32. Several commenters stated that the proposed rule fails to mention the economic impacts on the PWC-related businesses in the area. One of the comments also mentions a recently published economic study that discusses the economic impact of prohibiting PWC at national parks nationwide.

*NPS Response:* NPS reviewed the Trade Partnership study quoted in the comment, which concludes that PWC sales grew steadily through 1995, and have declined dramatically since then. The study blames this decline in sales on the PWC prohibition at National Parks. While the PWC prohibition at some National Park units may have contributed slightly to decline in PWC sales, NPS disagrees with the study's conclusion that the prohibition is the primary reason for the decline in sales. Initially PWC use occurred in only 32 of the 87 park units that allow motorized boating. These 32 park units comprise a very small percentage of the total waterways in the United States that can accommodate PWC. A decline in PWC sales can be attributed to many other reasons, including economic reasons, perceptions about the machines, and limitations by other public entities. In fact, at least 34 states have either implemented or considered regulating PWC use and operation, and various Federal agencies have managed PWC use differently than other classes of motorized watercraft.

The economic analysis report quoted in the comment (*Economic Analysis of Management Alternatives for Personal Watercraft in Curecanti National Recreation Area*, MACTEC Engineering 2003) concludes that the rule is not expected to reduce any of the local area's PWC-related businesses' profit margins or reduce the competitiveness

of PWC rental and retail businesses. The report also concludes that increases in revenue are projected under the rule, relative to the no-action alternative, for firms selling and renting PWC to Curecanti visitors.

The purpose of the economic analysis was not to look at national economic trends of the service-wide rule, but to consider local and regional economic impacts of the Curecanti proposed rule.

#### Changes to the Final Rule

The final rule is the same as proposed in the NPRM, except that language has been added to paragraph (d)(1) of § 7.51 to address the buoyed barricaded sections in the vicinity of the Blue Mesa Dam, where boats are not allowed. This change was made in response to comments, as discussed in section 3 of the Summary of Comments, above.

#### Compliance With Other Laws

##### *Regulatory Planning and Review* (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The National Park Service has completed the report "Economic Analysis of Management Alternatives for Personal Watercraft in Curecanti National Recreation Area" (MACTEC Engineering, July 2003). This document may be viewed on the park's Web site at: [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park

Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled "Economic Analysis of Management Alternatives for Personal Watercraft in Curecanti National Recreation Area" (MACTEC Engineering, July 2003). This document may be viewed on the park's Web site at: [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm).

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

##### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

##### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

##### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

##### *Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

##### *National Environmental Policy Act.*

As a companion document to the NPRM, NPS issued the *Personal Watercraft Use Environmental Assessment for Curecanti National Recreation Area*. The Environmental Assessment (EA) was open for public review and comment from June 11, 2003 until July 13, 2003. A Finding of No Significant Impact (FONSI) was approved on June 16, 2006. These documents are available at [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm), or copies can be obtained directly from the park.

##### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

##### *Administrative Procedure Act*

This rule allows use of PWC in Curecanti National Recreation Area under specified conditions. Because current regulations do not allow use of PWC at all, this rule relieves a restriction on the public. For this reason, and because NPS wishes to allow the public to take advantage of the new rules as soon as possible, this final rule is effective upon publication in the **Federal Register**, as allowed by the



Administrative Procedure Act at 5 U.S.C. 553(d)(1).

The proposed rule was published in the **Federal Register** (71 FR 13792) on March 17, 2006, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b).

**List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

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

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

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Add new paragraph (d) to § 7.51 to read as follows:

**§ 7.51 Curecanti Recreation Area.**

\* \* \* \* \*

(d) *Personal Watercraft (PWC)*. PWC may operate within Curecanti National Recreation Area in the following designated areas and under the following conditions:

(1) PWC may operate and land on Blue Mesa Reservoir between Beaver Creek and Blue Mesa dam, except that PWC may not operate in the buoyed barricaded section in the vicinity of the dam.

(2) PWC must operate at “flat wake” speeds within Blue Mesa Reservoir in the following areas upstream of designated buoys:

(i) Soap Creek arm at approximate longitude 107°8’9” N latitude 38°30’16” W.

(ii) West Elk arm at approximate longitude 107°16’45” N latitude 38°29’43” W.

(iii) Cebolla arm at approximate longitude 107°12’16” N latitude 38°27’37” W.

(iv) Lake Fork arm at approximate longitude 107°18’19” N latitude 38°27’2” W.

(3) PWC must operate at “flat wake” speeds in the following areas:

(i) Within 100’ of shoreline inside Dry Creek cove.

(ii) Within 500’ of shoreline along old highway 50 and Bay of Chickens.

(iii) Within the buoyed area around Elk Creek and Lake Fork marinas.

(iv) Within the buoyed area at Iola, Stevens Creek, and Ponderosa boat launch.

(v) From Lake city bridge east to Beaver Creek.

(vi) Within 100’ of shoreline adjacent to Stevens Creek campground.

(4) PWC may only be launched from designated boat launch sites.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06–7846 Filed 9–20–06; 8:45 am]

**BILLING CODE 4312–52–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 60**

[EPA–OAR–2004–0510; FRL–8221–4]

**RIN 2060–AF83**

**Methods for Measurement of Visible Emissions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action finalizes Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method currently used. This action was requested by the States and is needed for the special data reduction requirements in their rules. The intended effect is to provide States

with an expanded array of data reduction procedures for determining compliance with their SIP opacity regulations.

In addition, this action amends various testing provisions in the New Source Performance Standards (NSPS) to correct inadvertent errors and amend a testing provision.

**DATES:** This final rule is effective on September 21, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–2004–0510. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, Docket ID No. OAR–2004–0510, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Robin Segall, Measurement Technology Group (E143–02), Air Quality Assessment Division, EPA, Research Triangle Park, North Carolina 27711; telephone (919) 541–0893; fax number (919) 541–0516; electronic mail address: [segall.robin@epa.gov](mailto:segall.robin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Categories and entities potentially regulated by the final rule include the following:

TABLE 1.—MAJOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

Examples of regulated entities	SIC codes	NAICS codes
Fossil Fuel Steam Generators .....	4931	221112
Industrial, Commercial, Institutional Steam Generating Units .....	4961	22133
Electric Generating .....	4911	221119
Portland Cement Plants .....	3241	327310
Petroleum Refineries .....	2911	324110
Hot Mix Asphalt Facilities .....	2951	324121
Kraft Pulp Mills .....	2611	3221
Municipal Solid Waste .....	4953	562213