

Superintendent's Compendium to the Code of Federal Regulations— A Brief History

Introduction

The exercise of discretionary authority by park superintendents has been part of park management for over 120 years, although use of the term “compendium” to describe it was not used until 1983. It has allowed park managers to address issues and conditions that are unique to their particular parks, and given them the ability to act immediately in emergency situations. This authority has its limits—the NPS must know those limits and when a special regulation is required instead.

The development and changes in complexity of this authority parallel the development and changes in complexity of the National Park System. Interest by the public through the regulatory process also influenced changes in the regulations authorizing the use of discretionary authority.

Background

A brief history may help to better understand the evolution of the superintendent's compendium as a tool for management of a park.

As early as 1881, in the regulations for Yellowstone National Park, the park superintendent was given the discretionary authority to regulate the use of wood as well as the collection of “natural curiosities” found in the park. In the 1907 edition of the U.S. Department of the Interior “Regulations Governing the Several National Park, Hot Springs Reservation and the Preservation of American Antiquities,” park superintendents were given discretionary authority to license guides for pack trains, close areas of parks to fishing, designate fishing seasons, and in some parks, grant permission to graze cattle.

In 1936, NPS regulations were updated and printed in the first edition of the Federal Register. In addition to previous authority, superintendents could now regulate and issue permits for commercial filming, regulate motor vehicle traffic, and set restrictions on the possession of cats and dogs by the public and NPS employees. Superintendents were also given the authority to set times when park roads were open to the public, as well as direction of travel on those roads.

Those regulations were codified in 1938, in the first Title 36 of the Code of Federal Regulations, with the superintendent discretionary authority incorporated under Part 2, as well as the “local subsidiary” (now “special”) regulations for specific parks.

In 1949, superintendents were given the authority to close all or part of a park during “any period of emergency.” Authority to set times and areas for activities such as picnicking and camping or close areas to activities such as swimming was added.

Section 2.6 of 36 CFR was added in 1967. It allowed the park superintendent to “establish a reasonable schedule of visiting hours for all or portions of a park area...” in addition to closures or public use restrictions for protection of the park area or to protect persons or property.

Section 2.6 was expanded in 1976 to incorporate the term *public use limit*. Superintendents could close areas and now regulate the number of people, pack animals and the amount, type and size of equipment that could be used in designated areas of a park. Public use limits were to be established by a superintendent through use of the “best information available” and consideration of “such factors as health, safety, sanitation, environmental and resource protection, management capabilities and visitor enjoyment.”

The section also included the authority to establish permit, reservation, and registration systems to set public use limits, but required the superintendent to announce them in the Federal Register.

In 1983, the NPS expanded and clarified the discretionary authority of superintendents in 36 CFR. The contents of section 2.6 was moved to Part 1 and codified as sections 1.5 “Closures and Public Use Limits” and 1.6 “Permits.” Criteria were added that, if met, required a special regulation instead of a superintendent’s discretionary rule. Section 1.5 required a written justification for implementation or termination of disclosures, restrictions, and visitor use limits. NPS added section 1.7, which required the superintendent compile closures and public use restrictions and make them available to the public as a written document; the Federal Register notice announcing this rule referred to this listing as a “compendium.”
