

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 7**

RIN 1024-AD11

**Special Regulations; Areas of the National Park System****AGENCY:** National Park Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The National Park Service is promulgating this rule to more effectively manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. This rule is issued in conjunction with the Winter Use Plans Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement and is necessary to mitigate impacts resulting from oversnow motorized recreation in the parks and to implement the Record of Decision of March 25, 2003. The rule implements an adaptive management strategy. In order to minimize impacts the rule requires that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound emissions requirements, be accompanied by a trained guide, and comply with established daily entry limits on the numbers of snowmobiles that may enter the parks. Cross-country routes will continue to remain closed to oversnow motorized vehicles.

**DATES:** This regulation is effective December 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** John Sacklin, Planning Office, Yellowstone National Park, 307-344-2021.

**SUPPLEMENTARY INFORMATION:** The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades. In 1997, the Fund for Animals and others filed suit, alleging that the NPS failed to: Consult with the U.S. Fish and Wildlife Service on impacts of winter use on threatened and endangered species; prepare an EIS concerning winter use; and evaluate the effects of grooming on wildlife and other park resources. The suit was resolved with a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the three park units. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (FEIS) was published for

YNP, GTNP, and the Parkway. A Record of Decision (ROD) was signed by Intermountain Regional Director Karen Wade on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminated both snowmobile and snowplane use from the parks by the winter of 2003-2004, and provided access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time, and the snowmobile use analyzed in the FEIS alternatives, impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). The rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others in the Department of the Interior and the NPS were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association and several groups and individuals. The State of Wyoming subsequently intervened on behalf of the plaintiffs. Following promulgation of final regulations, the original complaint was amended to also challenge the regulations. The lawsuit asked for the decision contained in the ROD be set aside. The lawsuit alleged that NPS failed to give legally mandated consideration to all of the alternatives, made political decisions outside the public process and contrary to evidence and data, failed to give the public appropriate notice and participation, failed to adequately consider and use the proposals and expertise of the cooperating agencies, failed to properly interpret and implement the parks' purpose, discriminated against disabled visitors, and improperly adopted implementing regulations. A procedural settlement was reached on June 29, 2001, under which, NPS prepared a Supplemental Environmental Impact Statement (SEIS). In accordance with the settlement, the SEIS incorporated "any significant new or additional information or data submitted with respect to a winter use plan." Additionally, the NPS provided the opportunity for additional public participation pursuant to NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact

Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The draft SEIS examined four additional alternatives: Two alternatives that would allow some form of snowmobile access to continue; a no-action alternative, that would implement the November 2000 ROD; and another alternative that would implement the no-action alternative one year later to allow additional time for phasing in snowcoach-only travel. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included: Air quality and air quality related values, employee health and safety, natural soundscapes, public health and safety, socioeconomics, wildlife—bison and elk, and visitor experience. The SEIS did not include re-evaluating the decision to ban snowplane use on Jackson Lake because this had not been an issue in the lawsuit, and was not an aspect of the resulting settlement.

On November 18, 2002, the NPS published a final rule (67 FR 69473) based on the FEIS, which generally postponed for one year implementation of the phase-out of snowmobiles in the parks under the January 2001 regulation. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003-2004 and the complete prohibition on snowmobiles until 2004-2005. The transitional requirement under the 2001 regulation that snowmobile parties use an NPS-permitted guide was also delayed until the 2003-2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, and the ban on snowplane use remained effective for the winter use season of 2002-2003. The rule also closed to snowmobiles 14 miles of roads that had been previously opened to snowmobile use.

The Notice of Availability for the Final SEIS was published on February 24, 2003 (68 FR 8618). The Final SEIS included a new alternative, alternative 4, consisting of elements which fell within the scope of the analyses contained in the Draft SEIS and which

was identified as the preferred alternative. In addition, the final SEIS included changes to the alternatives, changes in modeling assumptions and analysis, and it incorporated additional new information. Intermountain Regional Director Karen Wade signed a Record of Decision for the SEIS, which became effective on March 25, 2003. In the ROD she stated: “[that there is] broad discretion afforded under the applicable laws and policies to the Service in the operation of these units” \* \* \* [T]here is no single decision mandated by these laws and policies. This is reflected in my ROD from November 2000 \* \* \* and the decision I made herein today \* \* \*.” The Regional Director selected Final SEIS alternative 4 for implementation, and enumerated specific modifications to that alternative. The Final SEIS and ROD each concluded that implementation of Final SEIS alternatives 1a, 1b, 3, or 4 would not be likely to impair park resources or values resulting from motorized oversnow recreation. Promulgation of this rule is necessary to implement the March 25, 2003, ROD. Absent the promulgation of these new regulations, the existing regulations which reduce the numbers of snowmobiles that may be used in the parks during the winter of 2003–2004, but without air and sound emissions requirements, will continue to apply. A detailed description of the background of this regulation is contained in the proposed regulation.

#### Summary of and Responses to Comments

The NPS published a proposed rule on August 27, 2003 (68 FR 51526) and took comment for 49 days. The NPS received 104,802 documents commenting on the proposed rule, including 90,624 in electronic form, 12,584 in hard copy, and 1,594 in other formats. The comments were categorized into one of four possible positions on the proposed regulations: (1) *Pro Rule*—the commentator generally supports the proposed rule; (2) *Anti Rule, Too Strong*—commentator generally objects to the proposed rule because it places too much of a burden on snowmobilers; (3) *Anti Rule, Weak*—commentator generally objects to the proposed rule because it does not adequately protect park resources due to the presence of snowmobiles; (4) *Unclear*—general position concerning the proposed rule is unclear.

Approximately 91% of all commentators believed the proposed regulation does not adequately protect park resources due to the presence of snowmobiles. These commentators

generally believe that the National Park Service should not implement this proposed rule and instead allow the current regulations to take effect, which would eliminate snowmobiles in favor of mass transit snowcoaches. About 8% of all commentators generally supported the proposed regulation, arguing that the NPS has correctly balanced visitor use with preserving park resources. Nearly 2% of commentators offered comments within the scope of the rulemaking, but they were generally unclear as to their position. Less than 1% of commentators generally believed the rule imposed too great of a burden on snowmobilers due to the restrictions associated with the regulation.

The following is a summary of substantive comments on the proposed rule and our responses to them.

#### Snowmobile BAT

*Issue:* Many commentators raised concerns that 2004 snowmobile models are more polluting than 2002 model-year machines, despite the NPS’ expectations that snowmobile technology will continue to improve. They asserted that the snowmobile industry cannot be relied upon to provide innovative clean and quiet machines in a market that seeks faster and more powerful snowmobiles.

*NPS Response:* NPS analysis indicates that some snowmobiles’ emissions in the 2004 model year have increased slightly since the 2002 model year. 2004 snowmobile models that have been certified as Best Available Technology (BAT) have slightly increased carbon monoxide emissions, relative to the tests on the 2002 models. This is likely due to an increase in horsepower. For hydrocarbon emissions, one manufacturer has slightly decreased emissions since 2002, but another manufacturer has slightly increased emissions. This increase is likely the result of the 2002 snowmobile being a prototype machine, which was significantly altered. In any event, these snowmobiles are still better than the BAT requirement of 90% reduction of hydrocarbons and 70% reduction of carbon monoxide. Sound emissions have been relatively level between 2002–2004 model years. The BAT requirements of this rule may encourage a niche market for a handful of snowmobile models. This may also provide incentives for some manufacturers to design snowmobiles that are cleaner and quieter than our BAT requirements, as future adaptive management decisions will be based in part on noise and air emissions.

*Issue:* The rule does not recognize permeation emissions from snowmobile

fuel systems. Permeation losses from snowmobiles stand to be a source of significant air pollution under the current rule, yet there is no proposed means for testing or regulating this form of pollution.

*NPS Response:* We agree that permeation emissions could be a source of pollution in the parks. However, the EPA has promulgated regulations that will govern permeation emissions from snowmobile tanks. This is primarily a summer issue when temperatures are higher (as the report cited by the commentator indicates). We feel it is more appropriate to rely on these regulations for controlling permeation emissions. We will monitor air quality in the parks, and continue to evaluate this issue. Should we detect that permeation emissions lead to unacceptable air quality impacts, we will take action under the adaptive management provisions of this regulation.

*Issue:* Several individuals believe the rule should require that snowmobiles produce the same emissions per passenger as snowcoaches. They recommended that snowmobiles would have to emit, at most, one-sixth the amount of pollution and noise as the cleanest and quietest snowcoaches.

*NPS Response:* We are trying to provide a range of appropriate activities in the parks, while protecting park resources and values. Use of snowcoaches has definite emissions benefits, relative to snowmobiles, because of their overall lower emissions and their ability to carry as many as seven times the number of passengers. However, we believe it is more appropriate to require that all snowmobiles in the park utilize BAT, which is demonstrably cleaner and quieter than conventional snowmobiles and allows for a range of activities in a manner that ensures protection of park resources and values.

*Issue:* One commentator recommended including a new section requiring BAT-certified snowmobiles to be visually marked with a sticker or stamp demonstrating BAT compliance. Another commentator questioned how NPS will ensure that each snowmobile has not been modified by the owner in such a way that would increase emissions.

*NPS Response:* Entrance station personnel will be given information to identify BAT compliant snowmobiles. The requirements that 80 percent of all snowmobilers be accompanied by commercial guides operating under a concessions contract will also provide further assurances that BAT snowmobiles are used. Further, snowmobile engines will already be

labeled with emissions information in compliance with the EPA's snowmobile regulation. NPS will evaluate the need for additional measures as this rule is implemented. If NPS determines that additional measures are necessary, these could be required through the adaptive management framework of this rule. We also considered suggestions of installing remote sensing devices at each entrance, which would detect snowmobile emissions and indicate if they exceed the 15 and 120 g/kW-hr requirements. However, we believe instituting this system as it currently exists is impractical because of the burden on visitors and cost. The final regulation has also been clarified to include language that using a snowmobile or snowcoach which has been modified in such a way as to increase air or sound emissions is prohibited. This provision will provide NPS with sufficient assurance that snowmobiles will not be modified in ways that increase emissions.

*Issue:* There should be a date by which the park will identify makes, models and year of manufacture of snowmobiles meeting BAT.

*NPS Response:* The NPS wishes to be as flexible as possible and not have an arbitrary date for determining which snowmobiles are BAT compliant. We will certify snowmobiles as BAT when we have received sufficient information from snowmobile manufacturers concerning the emissions of machines. We recognize that potential customers want to know if a machine is BAT compliant before they order that machine for the upcoming winter season. Consumer demand may provide incentives to the snowmobile manufacturers to disclose emissions information early in the year, so potential customers will know which machines will be BAT and can make appropriate choices in determining which machines to purchase. We strongly encourage anyone who wishes to purchase a snowmobile for the parks to check with the manufacturer to insure it is BAT compliant.

#### **BAT Snowmobile Sound Emissions**

*Issue:* One commentator noted that the proposed rule sets BAT for snowmobiles at 73 dB(A) and the SAE J192 test procedures allows a +2 decibel error range. They claimed this represented no improvement over two-stroke snowmobiles, which typically perform at 75–78 dB(A). Another commentator suggested that we change the BAT requirement to 75 dB(A), since we already allow the 2 dB(A) error range.

*NPS Response:* The BAT sound requirements established by this rule are

noticeably quieter than conventional two stroke-snowmobiles; a 3–5 dB difference represents a doubling of sound emissions. Monitoring will provide NPS with additional data concerning noise impacts, and we may make changes under adaptive management. In addition, if improved technology becomes available, BAT sound requirements could be adjusted accordingly. We are continuing to use 73 dB(A) as our BAT requirement, as we wish to base it on SAE test procedures. If we changed this to 75 dB(A), we would need to eliminate the 2 dB(A) margin of error provided in the SAE J192 testing procedures.

*Issue:* Several commentators noted that the data NPS relied on to establish the proposed BAT sound requirement was not in full accordance with SAE J192 (March 1985) test method cited in the proposed regulation. Specifically, the atmospheric pressure during the test runs was outside the range specified in the test method. One commentator suggested that final BAT limits should be based on test data that fully complies with the applicable test method and that the test method be a standard SAE procedure. Another commentator recommended revising part 7.13 (I)(4)(ii) to disclose that the J192 test procedure was modified using Yellowstone elevations/barometric pressure.

*NPS Response:* We recognize that the test procedures used, in part, to determine the BAT sound requirement were based on testing done at Yellowstone National Park, where the atmospheric pressure is lower than the SAE J192 requirements due to the park's elevation. Initial testing data indicates that snowmobiles may test quieter at high elevation, and likewise be able to pass our BAT requirements at higher elevations but fail our requirements near sea level. Therefore, the NPS is initially allowing testing to be performed at reduced barometric pressure, recognizing that snowmobiles will be used in these conditions. The regulatory text has been clarified to note that snowmobile manufacturers may test at any barometric pressure above or equal to 23.4 inches Hg (uncorrected). We are interested in transitioning to the standard SAE J192 test as sufficient test data becomes available.

*Issue:* The test specified in the proposed rule (SAE J192, 1985 revision) was revised in March 2003. The BAT requirement should be based on this newer test.

*NPS Response:* We are continuing to use the SAE J192 test, 1985 revision, for several reasons. Most importantly, our BAT requirement was established using the 1985 test procedures along with

industry information and modeling. At the time this testing occurred, the J192 testing procedures that were used were the most up to date (revised 1985). However, after that initial testing and after the SEIS was finalized, the SAE updated J192 test procedures in March 2003. The changes from the 1985 procedures to the 2003 procedures could alter the results. For instance, because of technical changes to sound meter settings, snowmobiles may yield slightly quieter test results using the 2003 test procedures. In addition, the rolling start called for in the new procedure may also generate higher sound levels due to increased speed. Therefore, to be consistent with our BAT requirements, we must continue to use the 1985 test. We are interested in transitioning to the March 2003 J192 test because it is a more current procedure, and we will continue to evaluate this issue after these regulations are implemented.

*Issue:* One commentator recommended that the BAT sound requirement should be adjusted upward by 3 dB(A) to reflect the effects of different atmospheric pressures between Yellowstone and the SAE J192 test procedures.

*NPS Response:* We believe the BAT sound requirement of 73 dB(A) is appropriate and should not be altered. As noted above, we are allowing manufacturers to test at any barometric pressure above 23.4 inches Hg (uncorrected). Currently, there are two snowmobile manufacturers that have demonstrated compliance with this BAT requirement. Testing for one of these snowmobiles indicates that it is well within our BAT requirement even when tested in the Midwest at approximately 1,000 feet in elevation. This snowmobile yields sound emissions of 71.75 dB(A), well below our BAT requirements. If tested at higher elevation in Yellowstone National Park, we believe this snowmobile would yield sound emissions even below 71 dB(A). If the BAT requirement was increased by 3 dB(A), to 76 dB(A), it would only be 2 dB(A) quieter than the maximum snowmobile sound emissions allowed for any snowmobile. A BAT requirement of 76 dB(A) would be far too high to achieve our goal of insuring that soundscapes are protected.

*Issue:* One commentator suggested the SAE J2567 test be used for snowmobile sound.

*NPS Response:* We have no information at this time about the comparability of this test to the SAE J192 test, and the commentator does not provide any further data or information about this test. Accordingly, we have not made this change in the regulation.

### BAT Snowmobile Air Emissions

*Issue:* One commentor was concerned that the 5-mode engine dynamometer is not reasonable since it includes a full throttle measurement while snowmobiles are not allowed to operate at full throttle because of speed limits. Another commentor suggested that we use this test since it is the industry standard.

*NPS Response:* The 5-mode engine dynamometer is the industry standard test for measuring emissions. It is also the test used by snowmobile manufacturers in determining compliance with the EPA's regulation on snowmobile emissions. Relying on the same testing will simplify compliance procedures for snowmobile manufacturers, as the manufacturers will be able to provide NPS with a copy of their emissions data generated to comply with EPA's rule. Further, snowmobiles used in the park are often operated by users at full throttle during acceleration, even though speed limits are in place. Many four-stroke machines also operate near full throttle when going 45 mph, especially when they are going up hills, weighted with two riders or luggage or other gear, or pulling a tow sled. Eliminating the full throttle mode within the 5-mode test would also amount to a de facto increase in total emissions in the parks.

*Issue:* One commentor provided a report by an independent firm reviewing the SEIS air quality analysis, which alleged that the SEIS overestimated the air quality impacts resulting from snowmobiles. They requested that NPS re-analyze the air quality impacts of snowmobiles and factor in the new analysis to the final regulation.

*NPS Response:* The NPS believes the SEIS conclusions concerning air quality impacts resulting from snowmobiles are accurate. While the modeling may have overestimated one emissions factor, others were underestimated. However, specific questions related to the SEIS analysis are beyond the scope of this rule. Further, it would be impossible to re-analyze the air quality impacts of snowmobiles and still publish this final rule prior to the start of the 2003–2004 winter season. The NPS will conduct ongoing monitoring to determine the accuracy of the SEIS analysis.

*Issue:* One commentor recommended harmonization of the NPS BAT program with EPA's November 2002 regulation. The commentor also suggested that NPS use the EPA's 2012 snowmobile emissions limits as the BAT requirements.

*NPS Response:* We wish to make the administrative burden for complying with our BAT requirements as simple as possible. Therefore, we are requiring through the final regulation that manufacturers submit to the NPS their Family Emissions Limit (FEL) application, which complies with EPA's regulations. This should minimize the need for snowmobile manufacturers to conduct any additional testing or analysis to demonstrate their compliance with the NPS' air emissions requirements. Generally, engine families contain only a single engine, which are then used in a variety of snowmobile body styles or models. Snowmobile engines that have significant emissions related modifications are categorized as a different engine family. For instance, a four-stroke with a turbo charger would constitute a separate engine family, and require a separate FEL, than the same engine without a turbo charger.

Using FELs will harmonize the process for determining BAT compliance with EPA's regulation. However, we do not believe EPA's Tier 3 emissions limits, which reduce hydrocarbons and carbon monoxide by 50%, will sufficiently protect air quality in the parks, where snowmobile use is highly concentrated. Therefore, the final regulation relies on the proposed BAT requirements of a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide.

*Issue:* BAT limits as proposed should only be applied to the average emissions of individual snowmobile models. Thus, BAT limits in the proposed regulation should be compared to Official Test Results (OTR).

*NPS Response:* When initially contemplated, the NPS intended for the BAT requirements to represent the maximum emissions a snowmobile could emit while still being allowed to enter the parks. Several statements regarding BAT in the ROD and SEIS indicate that "any recreational snowmobile entering YNP must achieve emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide." (ROD p. 14) We believe that we can use FEL to demonstrate compliance with BAT and achieve this purpose. If we instead relied on Official Test Results to determine compliance with BAT, some snowmobiles could have emissions greater than our BAT requirements, which could result in an overall increase in emissions in the parks.

*Issue:* One commentor said the use of OTR as an emission standards basis is not as reliable as the use of FELs, nor is it consistent with EPA's current practice for developing emission

standards. They concluded that NPS should base its numerical limits on the use of FEL values.

*NPS Response:* We agree with these comments and we are adopting the FEL method of demonstrating compliance with BAT in the final regulation. The use of FEL has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve our emissions requirements, unless modified or damaged (under the final regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with BAT and not permitted to enter the parks). For this reason, FEL is the best mechanism to protect park air quality. Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS BAT requirements. Further, the EPA has the authority to insure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that our emissions requirements are consistent with these labels and the use of FEL will avoid potential confusion for consumers.

*Issue:* One commentor stated that the EPA baseline emissions assumptions for conventional two-stroke snowmobiles (400 g/kW-hr for CO; 150 g/kW-hr for HC) were determined based on the average test results of several snowmobile models. They were not intended to reflect the FEL. Therefore, NPS should rely on OTR.

*NPS Response:* NPS recognizes that the EPA baseline assumptions represent the emissions of an "average" snowmobile. However, EPA ties this assumption to their FEL requirements. For instance, the EPA regulation requires that all snowmobiles achieve a

50 percent reduction for hydrocarbons and carbon monoxide by 2012. This reduction is demonstrated with the manufacturer's FEL and is a reduction from the baseline snowmobile assumption. This is the purpose of the FEL "to ensure that snowmobiles are consistently under the certification values, with the difference in emissions benefiting the environment in the form of further emission reductions.

*Issue:* One commentor said that in developing the appropriate FEL, NPS should not use the current BAT values, which were based on OTR. These do not account for test variability, durability effects, and other inherent sources of variability. When these effects are accounted for (*i.e.*, with a 15–20 percent margin), the BAT values should be adjusted to 18 g/kW-hr for HC and 144 g/kW-hr for CO.

*NPS Response:* We believe that the BAT requirements identified in the proposed rule are appropriate. As noted elsewhere, these were intended to represent the maximum emissions a snowmobile would be allowed to produce. For instance, one snowmobile manufacturer is currently producing a snowmobile that is certified by EPA at a FEL of 10 g/kW-hr for hydrocarbons and 115 g/kW-hr for carbon monoxide. This is 33.3% better than our hydrocarbon requirements and 4.2% better than our carbon monoxide requirements. Thus, it is clear the industry is currently able to meet our BAT requirements given technology presently used in snowmobiles.

*Issue:* Snowmobile manufacturers and the public must have significant advance notice before changes are made to BAT requirements. Significant changes in emissions performance require modifications to basic engine and chassis design features. NPS should allow 4 years leadtime before BAT requirements are changed, which is the amount of time EPA generally allows before modifying emissions requirements.

*NPS Response:* We agree that snowmobile manufacturers must have sufficient advance notice before changes to BAT requirements are enacted. Therefore, the final rule will require that any changes to the BAT requirements will be published in the **Federal Register** and the public will be notified in accordance with 36 CFR 1.7(a). Through this process, snowmobile manufacturers and the public will be notified on the timeframe for changes to BAT requirements in light of the technology that is available at the time, environmental needs, and whatever changes might be proposed. Additional details about the adaptive management

process are contained in the response to comments in the adaptive management section. The BAT requirements are not a restriction on what snowmobile manufacturers may produce, but an end-use restriction on which commercially produced snowmobiles may be used in the parks.

#### BAT Certification Issues

*Issue:* One commentor noted that the certification process is the responsibility of the snowmobile manufacturers, not the guides and outfitters. Another commentor stated that manufacturers should be allowed to use existing documentation and test methods to certify snowmobiles as BAT compliant. For emissions certification, relevant sections of the current EPA certification template for snowmobiles should be used. The relevant sections include the family information form, the test results form, and the certified models form. This information on the EPA template is subject to audit by EPA and the manufacturer certifies it is correct when submitted to EPA. Production line testing, required by EPA, ensures the units being produced exhibit emission characteristics consistent with the certification values.

*NPS Response:* We agree that the snowmobile manufacturers have the primary responsibility for documenting compliance with BAT, although guides and outfitters have a responsibility to insure their snowmobiles are BAT compliant and are well-maintained. We also agree that manufacturers should be permitted to use information submitted in accordance with EPA's regulation to document compliance with the NPS BAT requirements. We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as BAT, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify the snowmobile at a level that would no longer meet BAT requirements, this snowmobile would no longer be considered to be BAT compliant and would be phased-out according to a schedule determined by the NPS to be appropriate.

*Issue:* For sound testing, NPS should confirm compliance with the BAT requirements by using the existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards.

*NPS Response:* We agree that snowmobile manufacturers should be allowed to use the existing SSCC sound level certification form to demonstrate compliance with NPS BAT requirements. Our regulation does not require this form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation.

*Issue:* One commentor suggested that NPS should develop an alternative test method in addition to the manufacturer certification process should a BAT snowmobile be modified.

*NPS Response:* The primary method for documenting compliance with BAT is the FEL method. All recreational snowmobiles used in the park that are 2005 or later model years must be certified by EPA with an FEL at or below the NPS BAT requirement. However, an individual may modify a snowmobile already approved by the NPS as a BAT machine, so long as these modifications do not increase air or sound emissions. The responsibility to demonstrate that such modifications did not increase emissions would be on the owner. Thus, if after-market emissions reduction equipment became available, a snowmobile owner could install it only on machines already BAT approved.

#### Snowcoach BAT

*Issue:* Many commentors said that snowcoaches should be treated the same as snowmobiles for determining compliance with BAT. Snowcoaches should be BAT compliant at the same time snowmobiles are required to be BAT compliant. Many of these individuals do not feel it is fair to exempt historic snowcoaches. Many also said that snowcoaches should not be allowed to operate at 2 dB higher than snowmobiles with speed measured at 25 mph as opposed to full throttle.

*NPS Response:* The SEIS and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from the historic use levels and types of snowmobiles. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because they are far cleaner on both grams of CO and particulate matter emissions per mile and greater passenger capacity relative to snowmobiles. For sound emissions, the SEIS soundscape analysis noted that a group of 4 BAT snowmobiles, carrying up to 8 people total, has a distance to audibility of 5,810 feet in open terrain under average background conditions. A

comparable BAT snowcoach, potentially carrying even more passengers, is audible for only 2,630 feet under the same conditions. Therefore, it is appropriate to allow snowcoaches to be somewhat louder individually, because they can carry many more passengers than a single snowmobile. In addition, the NPS is allowing additional time to phase-in BAT requirements for snowcoaches because of the substantial investment required to upgrade snowcoach technology. Historic snowcoaches are being initially exempted because the NPS wishes to provide incentives to continue operation of these machines to maintain the character of winter touring, as they add to the overall winter experience. Further, there are not very many of these vehicles operating in the parks, (approximately 29) and they provide additional options for visitors.

*Issue:* One commentator recommended that 2004 engine technology should be required as it becomes phased-in. They stated that replacement of original equipment manufacturer (OEM) equipment on older snowcoaches does not necessarily result in reduced emissions due to open-loop operation of emission control technology.

*NPS Response:* The NPS intends to work with operators to better understand snowcoach emissions and how they can be reduced. This recommendation could be part of adaptive management, recognizing a phase-in requirement due to the potentially significant investment.

*Issue:* A commentator asked the NPS to elaborate on how EPA's Tier 2 standards will significantly reduce the open loop mode of operation for snowcoaches.

*NPS Response:* New 2004 and later medium and heavy duty vehicles (or snowcoaches) will be cleaner and operate more often in closed-loop mode because of the new EPA rules in effect for 2004 and beyond. Manufacturers now have equipment and engine controls that will keep their engines operating in closed loop for more of their power curve, cutting down on the area where these engines would operate in a period of "enrichment" (open loop). Because the engine controls have not been implemented yet, there is some uncertainty about how much the open loop mode will be reduced.

#### General BAT

*Issue:* One commentator recommended that part 7.13 (l)(1) include a term defining BAT.

*NPS Response:* The regulatory text does not use the term "BAT". Therefore we have not defined it in the regulation.

#### Adaptive Management

*Issue:* Several commentators suggested there should be a written plan of what monitoring will be done at the minimum, and how, where, and when it will be conducted.

*NPS Response:* The Final SEIS and ROD included information (Table 12 and Appendix A, respectively) related to monitoring and adaptive management. We will periodically report to the public on the results of monitoring and adaptive management. Administrative details of monitoring are beyond the scope of this rule. We will continue to work with state regulatory agencies in our monitoring programs.

*Issue:* Several commentators expressed concerns regarding the timeframe for changes under adaptive management. One commentator recommended taking management actions for future winters in August or September, as opposed to July 1 as specified in the preamble of the proposed rule. Adequate time for appropriate analyses of monitoring results must occur. They suggested that a July 1 date does not allow sufficient time for collecting and reporting environmental monitoring data or for the installation of any updated vehicle equipment.

*NPS Response:* NPS recognizes that monitoring data can take several months to fully analyze. The winter season ends approximately the first week of March. This provides for over 3 months to complete data analysis and provide results to the NPS. At the same time, gateway communities, concessioners, and the public should have adequate notice before any changes are made to the management of winter use. Thus, it is our goal to notify the public of changes in winter use management by July 1. However, if monitoring results are not available by that time, notice could come at a later time.

*Issue:* One commentator noted that the adaptive management provisions of this rule will not allow for the public to comment on changes in management of winter use. Another commentator requested that in implementing adaptive management, the NPS consult with the cooperating agencies involved in the SEIS process. Another commentator questioned how substantive changes that might have impacts to the human environment can be accomplished through the adaptive management process. Several commentators suggested that the final regulation be more specific in outlining specific procedures entailed in the Parks' adaptive management process.

*NPS Response:* The public will be notified of all changes under adaptive

management, and the regulation has been clarified to reflect the process we will use to provide the public with notice. Some changes to winter use under adaptive management will be published in the **Federal Register** to provide notice to the public. Specifically, we will provide notice in the **Federal Register** and through one or more of the methods identified in 36 CFR 1.7(a) for changes to BAT air and sound emissions requirements, the commercial: non-commercial guiding ratio, new snowcoach-only routes, and the daily entry limits. The public will be notified of changes to other elements of this regulation, such as group size requirements, and hours of park operation, through one or more of the methods in 36 CFR 1.7(a). New snowmobile routes would be promulgated as a special regulation in accordance with 36 CFR 2.18(c). This is in keeping with the philosophy of adaptive management and will provide park managers with the flexibility necessary to respond quickly to changing circumstances and conditions. We will involve our partners, gateway communities, former cooperating agencies, and the public, as appropriate throughout the adaptive management process.

*Issue:* One commentator stated that if the adaptive management thresholds identified in the ROD are not violated, there will be significant pressure on NPS to relax the daily entry limits, BAT requirements, or guiding requirements. Another commentator stated that the proposed rule does not define what "unacceptable impacts" are under the adaptive management provisions, and it avoids establishing any criteria which would, if met or exceeded, require the Superintendent to impose new management strategies.

*NPS Response:* NPS will only take action under adaptive management when it is warranted based on resource conditions and visitor experience. Preliminary thresholds, and what constitutes "unacceptable impacts" were established in the SEIS and ROD (Table 12 and Appendix A, respectively) to protect park resources. The thresholds are not intended to necessarily automatically trigger action. Instead, these thresholds would be used by park managers, as would other factors, in a larger context of determining when adjustments in winter use management are appropriate.

*Issue:* The SEIS demonstrated that impacts of this rule already exceed the thresholds set for air quality, visibility, human health, natural soundscapes, wildlife, and visitor experience.

**NPS Response:** While NPS does not agree with this blanket statement, actual monitoring will tell the NPS if the thresholds are exceeded. It is not possible to exceed the thresholds set by the ROD until the rule is actually implemented. Further, the SEIS impact analysis was based on models, projections, and expert judgements. While each of these have inherent limitations, they provide the best estimate of impacts. The models' fundamental purpose is to allow comparisons to be made among the alternatives.

**Issue:** One commentor said it is unacceptable to wait until a "future winter season" to make changes based on adaptive management. They said it should not take a full year to remedy health problems.

**NPS Response:** Existing regulations ensure that the Superintendent may take emergency action for safety (including health problems), resource protection, or other reasons under the authority of 36 CFR 1.5. For non-emergency adaptive management actions, we would ordinarily announce changes by July 1. These changes would be implemented in a future winter season. For some changes, this could be the following winter season, beginning that December (six months after the announcement). Other changes, which might require a phase-in, could be implemented in December of the following year (an 18-month phase-in).

### **Daily Entry Limits**

**Issue:** There is no emissions-related basis for the specific limits on snowmobiles proposed in the regulations. The Final SEIS air quality analysis indicates the modeled levels of CO and PM10 will be well below the NAAQS limits. The Prevention of Significant Deterioration increment consumptions under these alternatives were below that permitted under the Clean Air Act. Emissions from snowmobiles do not result in a situation inconsistent with the NPS mission.

**NPS Response:** The parks are designated as Class I airsheds under the Clean Air Act, which requires that their air quality be the most pristine in the nation. The BAT requirements and daily entry limits are a necessary alternative to eliminating all snowmobile use in the parks.

**Issue:** One commentor requested that the NPS reconsider the requirement to count commercial guides towards the daily entry limits.

**NPS Response:** Exempting commercial guides from the daily entry limits would cause a substantial increase in the number of snowmobiles

operating in the parks. This increase would not be supported by the SEIS' analysis of impacts. Through adaptive management, daily entry limits could be subject to review and change.

**Issue:** One commentor questioned how the 40 snowmobiles allowed per day on Jackson Lake will be monitored, and if they would need a reservation.

**NPS Response:** The NPS will monitor the amount of snowmobile use on Jackson Lake through ranger patrols and visual observation by park staff. Entry to the lake is only at two locations, which may be readily monitored. Snowmobiles will have to be trailered to these two locations as there is no direct access to the lake from points where snowmobiles are otherwise permitted. The operational details of the monitoring are beyond the scope of this rule. If monitoring shows that the number of snowmobiles using Jackson Lake is sufficient to warrant a more stringent monitoring and/or reservation system, a reservation system will be developed as needed (in accordance with 36 CFR 1.5(d) and 1.6).

**Issue:** Several commentors stated the proposed restrictions on the number of snowmobiles allowed into YNP each day will increase, not decrease, the total number of snowmobiles permitted in the parks throughout a winter season.

**NPS Response:** This is the first time there has been a limit on snowmobiles in the parks. Therefore, it is inappropriate to compare daily entry limits with historic averages. Additionally, the limits are set below peak usage in the Parks, so they may reduce visitation on particular days. The daily entry limits do not automatically constitute an "increase" from historic visitation. First, it is uncertain at best if visitors will redistribute themselves to other entrances or to other days of the week because their preferred entrance and/or day are already fully utilized. Second, snowmobile visitation numbers for the past 10 years have not exhibited significant growth, nor are there any factors that lead NPS to conclude this trend will change (EIS 184 and SEIS 132).

### **Guiding**

**Issue:** Some commentors suggested that NPS should not require that all snowmobilers travel in groups of at least two snowmobiles. These commentors believed photographers and other individuals wishing to travel alone should be permitted to do so.

**NPS Response:** We have removed group size limitations from the final regulation. This will allow the Superintendent the flexibility to determine group size requirements

based on adaptive management. Changes to group size requirements would be announced using one or more of the methods identified in 1.7 of this section. Initially, we will allow groups of 1–11 snowmobiles, which will permit individuals traveling by themselves to do so. The goal of establishing a minimum group size of two snowmobiles was to concentrate snowmobilers into groups, thus reducing the overall number of snowmobile-wildlife encounters. However, after taking into account public comments and further assessing visitor use patterns, we believe our interest in concentrating snowmobiles will be best achieved by other means. First, the requirement that 80% of all visitors travel with a commercial guide will concentrate groups together, because it is more economical for a guide to offer services with more snowmobiles in the group. Past practice in Yellowstone indicates that most commercially guided groups contain 8–11 snowmobiles. We believe this practice will continue. Further, only a very small number of snowmobile visitors travel by themselves (about 2% according to a 2002–2003 visitor survey). NPS believes this small number of additional groups would have negligible impacts to wildlife. Finally, visitor experience will be enhanced by allowing visitors the opportunity to have a solitary experience on snowmobiles.

**Issue:** Some commentors suggested that the NPS should adopt different ratios of commercial and non-commercial guides.

**NPS Response:** We are initially requiring that 80% of all entries be accompanied by a commercial guide, and 20% be accompanied by a non-commercial guide. Through adaptive management, we may alter this ratio. However, at this time we believe it to be prudent to maintain the 80/20 ratio, which was analyzed in the SEIS, selected in the ROD, and specified in the proposed rule in order to retain some opportunity for the public to view the park outside of a commercial group.

**Issue:** One commentor suggested that the non-commercial guide training should not be too cumbersome, and should be offered through the Internet or by mail. Another commentor suggested that the NPS invest the time and resources into making the non-commercial training program work and give it 2–3 years to work out any issues before making any changes.

**NPS Response:** NPS is currently developing the non-commercial guide training program. We have previously stated a goal to have the training be



partially off-site (*i.e.*, through the mail or Internet). Details of the implementation of this program are outside the scope of this regulation. NPS agrees that elements of this regulation, including the non-commercial guiding program, will likely require at least two seasons of monitoring to determine their effectiveness before changes are made.

*Issue:* If some of the daily commercially guided entries are not fully utilized on a given day, they should be re-allocated for non-commercially guided use. The reverse should also be true.

*NPS Response:* Guiding requirements are in place primarily to protect wildlife and visitor health and safety. Professional, commercial guides typically have greater snowmobiling expertise than non-commercial guides. Therefore, this final rule caps the number of non-commercial guides at 20 percent of the daily entries in Yellowstone, and we will not allow unused commercially guided entries to be re-allocated to non-commercial entries. In addition, it would be impractical at this time to fairly reallocate unused non-commercial entries to commercial guides given the number of concessionaires that we may potentially have operating in the parks. Further, this potentially would prevent visitors from obtaining same-day non-commercially guided reservations. Through adaptive management, however, these details could be changed to enhance visitor experience or protect park resources.

*Issue:* One commentor asserted that stretching a group of 10 snowmobiles over  $\frac{1}{3}$  mile (about 160 feet between snowmobiles) is very difficult to monitor. They suggested requiring each snowmobiler to keep a distance of 75–100 feet between machines.

*NPS Response:* This comment is consistent with the regulation. Outfitters may suggest or require clients to keep a distance of 75–100 feet between machines as appropriate, as long as all the group members stay within a maximum distance of  $\frac{1}{3}$  mile of the first snowmobile in the group. We want to insure that snowmobilers maintain a safe following distance and that guides have suitable control over (and actually accompany) their parties. The  $\frac{1}{3}$  mile requirement provides both.

*Issue:* A commentor said NPS should allow commercial guides to operate on the CDST and Jackson Lake and should offer a prospectus for commercial guiding purposes.

*NPS Response:* The issue of whether or not the NPS should offer a prospectus for commercial guiding operations on the CDST is outside the scope of this

rule. However, the rule does not prohibit commercial guiding on the CDST or Jackson Lake, and the Superintendent of Grand Teton National Park could issue a prospectus for such commercial activities.

#### Licensing, Registration

*Issue:* Several commentors did not agree with the requirement that only people with valid driver's licenses be allowed to operate a snowmobile in the parks. There is no evidence that children with a learner's permit cause problems driving snowmobiles.

*NPS Response:* In ordinary circumstances with automobiles, individuals possessing learner's permits are required to be accompanied by a fully licensed driver. Learner's permits are intended to allow student drivers the opportunity to safely learn positive driving habits while in the presence of an adult. However, operation of snowmobiles in Yellowstone is a totally different environment. Even if an adult was a passenger on the same sled as the learner it is very difficult if not impossible to communicate with the driver over the noise of the snowmobile. Most riders wear helmets and many wear ear plugs. In fact, past experience is that children with learner's permits often will ride on a sled by themselves, with adults on other snowmobiles that would be out of earshot and potentially out of sight. The park and visitors will be safer by requiring that all snowmobile operators have driver's licenses.

*Issue:* The proposed rule requires that snowmobilers display a State registration sticker from any State in the U.S. This is a change from existing language. What registration is acceptable for Canadian visitors?

*NPS Response:* We have updated the final regulations to allow visitors to operate snowmobiles registered in Canada in the parks. Otherwise these regulations clarify prior regulations concerning registration.

#### Entry Passes

*Issue:* Many commentors said that only allowing one snowmobile to enter the park with an annual pass discriminates against families.

*NPS Response:* No provision in this final regulation affects this issue, as it is contained in 36 CFR Part 71. NPS is attempting to clarify, not change, existing regulation with regard to entrance passes. The intent in the passes is to admit for free or at a reduced rate, only those persons occupying the same motor vehicle as the pass holder. In the case of snowmobiles, we are allowing the rider of the snowmobile with the

pass holder, and the pass holder's immediate family, to enter at the fee rate of the pass holder. Thus, several snowmobiles could qualify for entry under the pass holder's fee rate, so long as it was immediate family only (spouse, parents, and children under the age of 21).

#### Side Roads

*Issue:* Many commentors required that NPS re-open the Firehole Canyon Drive, North Canyon Rim Drive, and Riverside Drive to snowmobile use.

*NPS Response:* NPS believes it to be important to allow for some spatial separation of use and user groups. The side roads will be open to snowcoach riders, skiers, and snowshoers to offer areas of increased quiet and solitude. These road segments amount to approximately 14 miles, while there are still over 180 miles of park roads open to both snowmobile and snowcoach use. In addition, there are thousands of miles of snowmobile trails outside the parks, none of which are open to snowcoaches.

#### Reservations

*Issue:* Several commentors said the reservation fee is too expensive.

*NPS Response:* This issue is beyond the scope of this regulation. However, NPS is working to keep fees reasonable and recover only the costs of administering the reservation system.

*Issue:* Several commentors stated that people obtaining an entrance reservation under the 20 percent of non-commercially guided daily snowmobile entries should not be allowed to re-sell their entrance reservations for profit, *i.e.*, "scalping" should not be allowed.

*NPS Response:* NPS agrees with these comments. The passes are not transferable without NPS authorization, and the Superintendent will determine procedures for transfer and publicize them appropriately. Passes that have been transferred without prior authorization are invalid.

*Issue:* It should be illegal for individuals or groups to purchase snowmobile entrance reservations without the intent to use them.

*NPS Response:* It would be difficult if not impossible to know if individuals intended to actually use their snowmobile entrance reservations. Further, we have no evidence to date to indicate that this is a problem. Therefore, we are not attempting to regulate this issue through this final rule, but we will address it in the future if needed.

#### Alcohol Restrictions

*Issue:* Several commentors noted that the policy of preventing anyone who



has ever received a DUI from being a guide is discriminatory. It would be impossible for concessionaires to know if one of their guides had ever received a DUI and could create undue liability for these concessionaires. In addition, people should not be penalized for mistakes made far in their past. This would also be difficult to enforce and manage.

*NPS Response:* We have eliminated this stipulation from these regulations.

*Issue:* One commentor said the term snowcoach "operator" is unclear in the regulation as it pertains to alcohol restrictions for individuals driving a snowcoach, as concessionaires are sometimes referred to as "operators." Concessionaires should not lose their licenses to operate in the parks because of an infraction by an employee, which this language implies. They suggested that NPS change the language to snowcoach "driver."

*NPS Response:* We have made this change in the regulatory text.

*Issue:* The Blood Alcohol Content (BAC) requirements for guides should parallel the requirements for commercial drivers. Federal and State rules pertaining to BAC threshold for someone with a Commercial Drivers License (CDL) is .04. If .04 is appropriate for someone with a CDL (semi trucks over 26,000 pounds, buses, etc.), then .02 seems to be an unreasonable standard for a snowmobile guide or coach operator when compared to vehicles being operated by bus or truck drivers.

*NPS Response:* The NPS agrees and we have changed the BAC maximum for guides to be .04 grams of alcohol per 100 ml of blood or .04 grams of alcohol per 210 liters of breath.

#### **Cross Country Skiing, Etc.**

*Issue:* One commentor questioned the validity of the assertion that 20% of the winter visitors use cross country skis.

*NPS Response:* As discussed on page 135 of the final SEIS, visitor surveys indicate that 20% of visitors participate in cross country skiing while visiting Yellowstone, although they may enter the park by other means, including snowmobile, snowcoach, or automobile.

*Issue:* One commentor stated that the NPS should promote human-powered activities in winter, such as skiing and snowshoeing, in order to satisfy the June 20, 2002, Executive Order signed by President Bush to promote personal fitness, and not allow snowmobiling.

*NPS Response:* The management of the parks in winter provides ample opportunity for people to pursue physical fitness goals by skiing or snowshoeing. The parks groom ski

trails, lead snowshoe walks, and there are hundreds of miles of ungroomed trails available for visitors. Grand Teton National Park's Inner Park Road was also closed in 2002–2003 to snowmobiles and is now groomed for cross country skiing.

#### **Natural Soundscapes Issues**

*Issue:* To protect natural soundscapes, one commentor suggested concentrating the departure times from motorized tour groups, so there are significant periods during each day when visitors are likely to be free of noise impacts.

*NPS Response:* This could be considered under adaptive management if necessary and if evidence indicated it would be effective in improving the natural soundscape. This action would do little to protect the natural soundscape for visitors riding snowmobiles if they were part of a group that was departing at a concentrated time with many other snowmobile groups. However, as the commentor notes, it could result in more periods of quiet for visitors seeking a non-motorized experience.

*Issue:* Getting away from crowds, peace and tranquility, and quiet are perhaps expectations that cannot be totally met with a destination as popular as Yellowstone. NPS is not obligated to ensure the existence of natural soundscapes along and proximate to road systems.

*NPS Response:* The NPS is required by law to protect the values of Yellowstone National Park, which include these attributes. These are among the fundamental purposes for the existence of the parks. The natural soundscapes are one of the intrinsic elements of the environment that are associated both with the purpose of the parks and with their natural ecological functioning. The soundscape is an inherent component of the "scenery and the natural and historic objects and the wildlife" protected by the NPS Organic Act. The NPS policy is to facilitate, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscape in a condition unimpaired by inappropriate noise sources. Visitors seeking wilderness-dependent experiences have expectations for natural quiet. Visitors viewing wildlife or scenery along park roads also have an expectation for natural quiet that must be accommodated, although perhaps to a lesser degree than visitors in the backcountry. The adaptive management thresholds identified in Table 12 of the SEIS and Appendix A of the ROD recognize these distinctions by instituting different thresholds for

different zones. We will be monitoring the soundscape conditions along park roads and in the backcountry to ensure the desired conditions and thresholds identified in the SEIS are being achieved.

#### **Snowcoaches**

*Issue:* Several commentors stated that snowcoaches must offset any declines in total snowmobile use.

*NPS Response:* NPS agrees that snowcoaches are a critical part of the winter experience and may increase opportunities for access to the parks in winter. We are working to develop a new generation snowcoach, which will substantially improve touring in the parks.

#### **Laws, Policies, Executive Orders**

*Issue:* Many commentors believe the rule is inconsistent with the NPS Organic Act, the General Authorities Act as amended by the Redwood Act, the Clean Air Act, the NPS general snowmobiling regulations (36 CFR 2.18), executive orders, NPS Management Policies, and OSHA regulations to protect employee and visitor health.

*NPS Response:* The NPS disagrees. This rule will protect park resources and values in an unimpaired condition through adaptive management, daily entry limits, guiding, and BAT requirements. This regulation reflects the NPS' commitment to: provide protection of park resources and values; allowing appropriate levels of visitor use, while recognizing that winter in the parks is a unique experience; and work closely and cooperatively with gateway communities. The NPS believes there is no single decision mandated by the laws and policies governing the national parks, and that these laws and policies provide broad discretion to the NPS in the operation of the parks. Requirements for BAT and snowmobile daily entry limits will substantially improve air quality conditions relative to the current situation of unregulated snowmobile use. This rule will protect public health by establishing air and sound emissions requirements, daily entry limits, and requirements for guides. Finally, the provisions for adaptive management will allow park managers to make adjustments in winter operations to protect park resources and values.

#### **Consistency With Other Regulations**

*Issue:* Some letters stated that the NPS has exempted snowmobiling in the parks from 36 CFR 2.18 through the proposed regulation. They stated that this provision, among other things, prohibits snowmobiling in national

parks except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources. The routes designated by this rule are not subject to 36 CFR 2.18(c), and hence exempt from disturbing wildlife. However, new routes would be subject to the language in 36 CFR 2.18(c). This can only be interpreted as an admonition by NPS that snowmobiling cannot coexist in Yellowstone without causing disturbance to wildlife. The NPS should retain the prohibition of wildlife disturbance by snowmobiles in the final rule.

**NPS Response:** The intent of the proposed rule was to incorporate the appropriate language of 2.18 (including 2.18(c)), and have all the applicable snowmobile regulations in one location. We have clarified the rule to insure the language in question applies to both existing and proposed oversnow routes. Specifically, this regulation no longer supercedes 36 CFR 2.18(c).

#### Road Grooming

**Issue:** The proposed rule fails to address road packing and grooming. Habitat degradation may be occurring in conjunction with the changes in bison numbers and distribution. The proposed rule will do nothing to alleviate the ecosystem change generated by changes in bison distribution and numbers.

**NPS Response:** This rule allows for the Superintendent to take management action should unacceptable impacts to park resources and values, including wildlife, occur. Currently, the NPS believes the evidence of whether or not road grooming is affecting bison distribution and abundance is inconclusive. Thus taking dramatic actions, such as ceasing grooming, appears unwarranted based on the evidence currently available.

#### Economics

**Issue:** Several commentors stated that the economic impact of the proposed rule is going to be devastating. Another commentor believed the 2002–2003 visitor survey was flawed because it did not adequately represent a sample of visitors entering through the West Entrance.

**NPS Response:** An economic impact analysis has been prepared in support of this rulemaking. It found that there will be negligible impacts on the economies surrounding the parks. Further details are contained in this report, which is available at [www.nps.gov/yell](http://www.nps.gov/yell). The study used statistically valid sampling

to arrive at its conclusions. This means that only a certain number of visitors at each entrance were surveyed, based on the percent of total visitors that enter through each entrance.

**Issue:** Banning snowmobiles in Yellowstone will result in a more diverse, sustainable economy for West Yellowstone and attract new winter visitors, especially since snowmobiling is allowed on the adjacent national forest lands.

**NPS Response:** This rule allows the gateway communities opportunities to benefit economically, as would almost any alternative which maintains winter-time visitation. The purpose for implementing this rule is not related directly to diversifying local economies, however.

**Issue:** This rule places a tremendous administrative burden on the staffs of the parks, due to the reservation system, monitoring, guiding requirements, etc.

**NPS Response:** NPS recognizes that there are often substantial costs associated with properly operating and maintaining national parks and will strive to effectively manage these costs.

#### Consistency With the SEIS and EIS

**Issue:** Many commentors stated the proposed rule runs counter to the conclusions of the FSEIS.

**NPS Response:** This regulation is based on the Final SEIS and ROD and is necessary to implement these documents. The NPS believes this rule is consistent with the Final SEIS and ROD, as these documents concluded that park resources will be protected in an unimpaired condition through adaptive management and requirements related to the daily entry limits, guiding, and BAT. Specifically, conclusions regarding impairment are on pages 242–246 of the Final SEIS.

**Issue:** In the 2001 rule phasing-out snowmobile use, the NPS considered “strict limitations” to mean caps so stringent they would result in “drastically reducing” visitation. In contrast, the 2003 ROD does not anticipate reduced visitation.

**NPS Response:** This regulation substantially reduces peak-day use of snowmobiles and imposes several types of limitations, beyond daily entry limits to protect park resources and values in an unimpaired condition. These limitations represent a suite of management actions, including BAT and guiding requirements, in addition to the daily entry limits. Further, we could take action under adaptive management if desired resource conditions are not met.

#### Misc.

**Issue:** One commentor suggested that the term “recreational snowmobile” be replaced with “snowmobile transportation.”

**NPS Response:** NPS wishes to make a distinction between snowmobiling by visitors for recreational purposes versus snowmobiling by NPS, contractors, researchers, concessioners, or others for administrative or non-administrative snowmobile travel. The term snowmobile transportation does not adequately capture this distinction.

**Issue:** Several commentors said there are no statistics to back up the claim that towing people is a potential safety hazard and that prohibiting this discourages family participation in snowmobiling. They urged NPS to remove this provision.

**NPS Response:** NPS believes that towing people on sleds or sliding devices is unacceptable for several reasons, especially in the conditions associated with snowmobiling in the parks. First, this places riders in direct exposure to snowmobile exhaust, including carbon monoxide and air toxics. Although four-stroke snowmobiles are far cleaner than traditional two-strokes, they still produce air pollution. Generally, visitors spend several hours snowmobiling in the parks, which substantially increases exposure risks to those riding in the towing unit. In the case of children, such long-term and direct exposure to these chemicals is especially dangerous. In addition, towing people could present a special hazard if the snowmobile was involved in an accident, or if the towing device did not have lights and was not adequately visible to other drivers. Therefore, to adequately provide for the safety of our visitors we are prohibiting this activity.

#### Changes to Final Rule

After taking the public comments into consideration, and after additional internal review, several changes were made to the final rule. Those changes are as follows:

A paragraph was added to each park's section to define the scope of the regulations. These regulations address recreational and commercial snowmobile use and are not applicable to the provisions for air and sound emissions, guiding and daily entry limits for the use of snowmobiles by NPS or concessioner employees who live or work in the interior of the park. There are daily circumstances where a person who resides in the interior of the park must exit or transit the park to

retrieve groceries, attend medical appointments, or conduct other types of daily activities which are neither recreational nor commercial in nature. These uses are not intended to count towards daily entry limits or similar types of regulated activities. The parks will be working to produce a directive that addresses this kind of use and manages it appropriately but similar to an administrative use.

Changes were made to paragraph (4) and language added to the new paragraph (6) based on input from the EPA regarding air emissions. EPA provided language on pollution control equipment for snowcoaches as well as language to clarify compliance with the FEL for snowmobiles.

A new paragraph (6) was added to each section to define how the makes, models and years of manufacture for snowmobiles will be approved for use in the parks. Specifically it introduced using the Family Emissions Limits (FEL) as the standard for demonstrating compliance with the hydrocarbon and carbon monoxide emission limits. Additional details on FEL are contained in the Summary of and Response to Comments. In general, after demonstrating compliance with BAT requirements particular snowmobile models will be approved for entry into the parks for six winter use seasons. However, the length of approval may be longer or shorter under the adaptive management framework. For example, technologies may begin to improve so rapidly that a shorter approval period could be warranted. In the future, the period of the approval for each snowmobile will be stated when published as an approved model. The period of approval will not be decreased once published. As of the 2003–2004 winter season, the following models of snowmobiles are approved for entry into the parks:

2002 Arctic Cat 4-Stroke Touring, 2002 Arctic Cat 4-Stroke Trail, 2002 Polaris Frontier Touring, 2003 Arctic Cat 4-Stroke Touring, 2003 Arctic Cat 4-Stroke Trail, 2003 Polaris Frontier Classic, 2003 Polaris Frontier Touring, 2004 Arctic Cat T660 Touring, 2004 Polaris Frontier Classic, and 2004 Polaris Frontier Touring. These snowmobiles are approved for entry into the parks through the 2008–2009 winter season.

Under paragraph (6) there are several references to a certain “model year” snowmobile. For the purposes of this paragraph, the model year refers to the calendar year the snowmobile is intended for use but the snowmobile generally becomes available for commercial sale during the previous

calendar year. For example, a model year 2005 snowmobile would generally become available for sale to the public during the fall of 2004.

Also under paragraph (6) a provision was added to specify the minimum barometric pressure at which snowmobiles could be tested to determine compliance with sound emission requirements. Many snowmobiles are tested at the place of manufacture or nearby which can be at a significantly different elevation than Yellowstone or Grand Teton National Parks. In order to make it clear what conditions are allowed for sound testing, a minimum barometric pressure was specified. Additional details on barometric pressure are contained in the Summary of and Response to Comments. Different emission reporting procedures are allowed for 2004 and prior model years because the EPA snowmobile emission regulations implementing FEL were not in effect.

Finally, under paragraph (6) a sentence was added to prohibit the entry of snowmobiles that have been modified in a manner that could affect air or sound emissions. There was a concern that a snowmobile model previously approved for entry could have after-market equipment added or mechanisms adjusted that could increase the decibel level of that model or increase the previously certified air emissions. Besides the possibility of increased air or sound emissions, it was necessary to prohibit these modifications in order to avoid the need for individual snowmobile testing. Modifications of snowmobiles approved under FEL that decrease air or sound emissions could be permitted.

In paragraph (7) language was added to clearly state that oversnow routes are designated in accordance with § 2.18(c). Although it was the intent of the proposed rule to comply with 2.18(c) when designating oversnow routes, it was not clearly stated and thus caused concern to some commentors. The final regulations also remove the language from the proposed rule that could have allowed the Superintendents to designate additional oversnow routes without going through rulemaking.

In paragraph (10) of Yellowstone and the Parkway, the specific group size numbers were removed from the rule. The Superintendents are establishing a maximum group size of 11 initially but will notify the public of this requirement or changes to the requirement through local methods. Had a specific number remained in the regulatory text, a notice in the **Federal Register** would have been required to change it. The final regulations also

eliminate the requirement for a minimum group size of 2 as explained in the response to comments.

Nonetheless, single snowmobile operators are still required to be certified as a snowmobile guide before operating in the park.

Similarly, the specific hours of operation for snowmobiles or snowcoaches are removed from the regulatory text for each of the parks. Initially, the hours of operation will be from 7 a.m. to 9 p.m. Had a specific number remained in the regulatory text, a notice in the **Federal Register** would have been required to change it. Changes to operating hours will be advertised through local methods.

Paragraph (11) for the Parkway was amended by modifying Table 1 to include a maximum number of snowmobiles on the road segment from Flagg Ranch to the South Entrance of Yellowstone. That road segment can only be accessed from inside the Parkway and the daily entry limit at the South Entrance of Yellowstone (only two miles north of Flagg Ranch) limits the number of snowmobiles that could proceed any further north. However, the park felt it was necessary to clarify that snowmobile use is permitted on that roadway and the daily limit is the same as the South Entrance of Yellowstone.

Paragraph (12) for Yellowstone was added to discuss the ways in which the daily entry limits will be applied and enforced. No reservation system exists for Grand Teton or the Parkway thus no similar regulations exist in those sections. First, a reservation system, managed by a contractor, has been set up to allocate all non-commercial daily entries. Commercial entries are allocated to local guiding businesses through a concessions contract. If you choose to use a commercial guiding service to enter the park, you will not need a separate reservation since this is already allocated to the commercial guiding service through their contract to operate inside the national park. Second, each snowmobile entering the park must have an entrance pass in addition to a reservation. Lastly, the Superintendent has prohibited the use of transferred reservations and entrance passes. This is intended to curtail the resale of these items for profit since there are a limited number of non-commercial reservations for each day. Additionally, the NPS is requiring that the person who holds the reservation must accompany the snowmobile group into the park in order to further discourage the mass purchase and resale of reservations. The NPS acknowledges the limitations of our ability to enforce such a requirement but will make every

effort to discourage such activities. The Superintendent has the authority to allow the use of transferred entrance passes for legitimate purposes (a trip cancelled due to illness, or some similar circumstance) through procedures established with the reservation contractor.

A minor change was made to the operating conditions in paragraph (14) for Yellowstone, (13) for the Parkway and (11) for Grand Teton. So as not to exclude Canadian or other foreign visitors, language was changed to allow for all types of motor vehicle operator's licenses, including international driver's licenses, and registration stickers on snowmobiles from the United States and Canada.

Changes were made to paragraph (15) for Yellowstone, (14) for the Parkway and (12) for Grand Teton and the conditions associated with alcohol use and operating a snowmobile or snowcoach. Paragraph (ii) proposed a maximum blood alcohol level of .02 when operating or being in physical control of a snowcoach or serving as a snowmobile guide. The maximum blood alcohol level has been changed to .04 to be consistent with most State commercial drivers' license requirements. Also, the NPS proposed to make any driving under the influence of alcohol or drug violations a disqualifier for being a snowmobile guide or driving a snowcoach. Many commenters felt this was an unreasonably strict requirement and the NPS agreed. If a person is properly and legally licensed by a state to operate a motor vehicle, they will be allowed to operate as a snowmobile guide or snowcoach driver. The requirement to be properly licensed is addressed in paragraph (14) for Yellowstone, (13) for the Parkway and (11) for Grand Teton. Finally, the term snowcoach operator was changed to snowcoach driver. Generally, the term operator refers to the business owner or contract holder, not the person actually driving the vehicle. To be clear, the prohibitions about alcohol consumption apply to the person actually driving the snowcoach, not the person(s) who operate the snowcoach business.

In paragraph (16) for Yellowstone, (15) for the Parkway and (13) for Grand Teton of the proposed regulations oversnow vehicles from the requirements of 36 CFR 2.18 and part of § 2.19. The exemption was proposed so that the existing regulations on such things as maximum operating decibels, operating hours, and operator age would be governed by the new regulations in part 7 for each park unit. However, the inadvertent result was the exclusion of

the requirements in § 2.18(c) for designating new snowmobile routes and what factors must be taken into consideration when designating such routes. As a result, only specific paragraphs in section 2.18 have been excluded from applying to the use of oversnow vehicles in the parks since those paragraphs conflict with the Winter Use Management Record of Decision. However, Yellowstone is exempt from paragraph (b) while the Parkway and Grand Teton are not. The use of oversnow vehicles in Grand Teton and the Parkway is subject to paragraph (b) due to the existing concurrent jurisdiction in both park areas. These two units are solely within the boundaries of the State of Wyoming and national park rangers work concurrently with state and county officers enforcing the laws of the State of Wyoming.

Throughout the document there are references to giving notice to the public of changes to the regulations through publication in the **Federal Register** and/or through one of the methods in § 1.7(a). Some changes, which are considered more significant, such as changes to air and sound emissions requirements, daily entry limits, or guiding requirements, will be published as both a change in the **Federal Register** and advertised through other local methods. Less significant changes, like hours of operation, group size or road closures and reopenings, will be advertised only through local methods, a less formal process. The parks will also make every effort to keep current information available on their Web sites including a list of the currently approved snowmobile makes, models, and years of manufacture and monitoring reports ([www.nps.gov/yell](http://www.nps.gov/yell) or [www.nps.gov/grte](http://www.nps.gov/grte)).

It is the intent of this regulation to have the Superintendents of the three park units work collaboratively when making future winter use management decisions under the adaptive management framework. Although some changes to oversnow vehicle use could be made to one park unit and not affect the other, it is expected that the Superintendents would engage in regular consultation with each other to make decisions that would be in the best interest of all three parks, the visiting public, and local businesses and communities.

#### Summary of Economic Analysis

The preferred alternative (Alternative 4) and two other alternatives (Alternatives 2 and 3) are analyzed to examine the effect of allowing the use of snowmobile in the Yellowstone

National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway. Alternative 1b, the delay rule, represents the baseline for this analysis. Under that alternative, most snowmobile use would be prohibited in the parks by the 2004–2005 winter season, with restrictions on snowmobile use phased in during the 2003–2004 winter season. Alternatives 2, 3, and 4 allow for continued recreational snowmobile use subject to daily limits on the number of snowmobiles that can enter the parks. The daily limits on snowmobile use vary across these three alternatives, with Alternatives 2 and 4 allowing the greatest number of snowmobiles in the parks each day. Alternatives 3 and 4 also require snowmobiles to meet air and sound emission requirements and to be part of a guided tour. Alternative 4 allows for at least 20 percent of the tours to be led by non-commercial guides.

The primary beneficiaries of Alternatives 2, 3, and 4 are the park visitors who ride snowmobiles in the parks and the businesses that serve them. Alternative 2 is expected to provide the greatest benefits to snowmobile visitors and businesses, followed by Alternatives 4 and 3 in order of decreasing benefits. The primary group that would incur costs under Alternatives 2, 3, and 4 are the park visitors who do not ride snowmobiles. Alternatives 3 and 4 are expected to impose the least costs on non-snowmobile visitors.

The total present value of net benefits expected from Alternatives 2, 3, and 4 are calculated over a 10-year horizon from the 2003–2004 winter season through the 2012–2013 winter season. A range of net benefits is calculated to acknowledge uncertainty in the benefit and cost estimates. Given the uncertainties of this analysis and acknowledging the range of net benefits presented, the selection of Alternative 4 as the preferred alternative is considered reasonable because it provides increased benefits for snowmobile visitors while containing provisions that should help mitigate the costs imposed on those visitors who are negatively impacted by snowmobile use.

Table 1 presents the total present value of net benefits for Yellowstone National Park only. The amortized net benefits per year over the 10-year timeframe of the analysis for this valuation case are presented in Table 2. To calculate the net benefits to the Yellowstone National Park only, we assumed that the non-snowmobile visitors to Grand Teton are relatively unaffected by snowmobiles as compared

to the non-snowmobile visitors to Yellowstone, thereby effectively assigning zero cost impact to this group. These net benefit estimates therefore

may understate the cost estimate. The total present value of net benefits ranges from negative to positive for Alternatives 2 and 4 in this valuation

case, and are entirely negative for Alternative 3.

TABLE 1.—TOTAL PRESENT VALUE OF NET BENEFITS FOR YELLOWSTONE NATIONAL PARK ONLY, 2003–2004 TO 2012–2013

|                                     | Total present value of net benefits <sup>a</sup> |
|-------------------------------------|--------------------------------------------------|
| Alternative 2:                      |                                                  |
| Discounted at 3% <sup>b</sup> ..... | –\$89,310,000 to +\$9,660,000                    |
| Discounted at 7% <sup>c</sup> ..... | –\$73,470,000 to +\$6,880,000                    |
| Alternative 3:                      |                                                  |
| Discounted at 3% <sup>b</sup> ..... | –\$70,360,000 to –\$25,130,000                   |
| Discounted at 7% <sup>c</sup> ..... | –\$57,920,000 to –\$21,750,000                   |
| Alternative 4:                      |                                                  |
| Discounted at 3% <sup>b</sup> ..... | –\$56,750,000 to +\$5,430,000                    |
| Discounted at 7% <sup>c</sup> ..... | –\$46,730,000 to +\$3,470,000                    |

<sup>a</sup> The range in net benefits reflects the different values obtained for snowmobile visitors using the estimates from two economic valuation models, and the different scenarios analyzed for impacts to businesses.

<sup>b</sup> The economics literature supports a 3% annual discount rate in the valuation of public goods (e.g., Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).

<sup>c</sup> Office of Management and Budget Circular A–94 (revised January 2003).

TABLE 2.—AMORTIZED NET BENEFITS PER YEAR FOR YELLOWSTONE NATIONAL PARK ONLY, 2003–2004 TO 2012–2013

|                                     | Amortized net benefits per year <sup>a</sup> |
|-------------------------------------|----------------------------------------------|
| Alternative 2:                      |                                              |
| Discounted at 3% <sup>b</sup> ..... | –\$10,470,000 to +\$1,130,000                |
| Discounted at 7% <sup>c</sup> ..... | –\$10,460,000 to +\$979,000                  |
| Alternative 3:                      |                                              |
| Discounted at 3% <sup>b</sup> ..... | –\$8,249,000 to –\$2,946,000                 |
| Discounted at 7% <sup>c</sup> ..... | –\$8,247,000 to –\$3,096,000                 |
| Alternative 4:                      |                                              |
| Discounted at 3% <sup>b</sup> ..... | –\$6,653,000 to +\$637,000                   |
| Discounted at 7% <sup>c</sup> ..... | –\$6,653,000 to +\$493,000                   |

<sup>a</sup> This is the total present value of net benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.

<sup>b</sup> The economics literature supports a 3% annual discount rate in the valuation of public goods (e.g., Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).

<sup>c</sup> Office of Management and Budget Circular A–94 (revised January 2003).

Table 3 presents the total present value of net benefits for both Yellowstone and Grand Teton National Parks. In this valuation case, the non-snowmobile visitors to Grand Teton National Park are assigned the same unit

costs as non-snowmobile visitors to Yellowstone National Park. This valuation case may overstate the cost impacts to non-snowmobile visitors to Grand Teton National Park since they are believed to be less than the costs

imposed on non-snowmobile visitors to Yellowstone. The amortized net benefits per year over the 10-year timeframe of the analysis for this valuation case are presented in Table 4.

TABLE 3.—TOTAL PRESENT VALUE OF NET BENEFITS FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS, 2003–2004 TO 2012–2013

|                                     | Total present value of net benefits <sup>a</sup> |
|-------------------------------------|--------------------------------------------------|
| Alternative 2:                      |                                                  |
| Discounted at 3% <sup>b</sup> ..... | –\$254,717,000 to –\$140,490,000                 |
| Discounted at 7% <sup>c</sup> ..... | –\$208,342,000 to –\$116,011,000                 |
| Alternative 3:                      |                                                  |
| Discounted at 3% <sup>b</sup> ..... | –\$164,143,000 to –\$120,253,000                 |
| Discounted at 7% <sup>c</sup> ..... | –\$134,319,000 to –\$99,504,000                  |
| Alternative 4:                      |                                                  |
| Discounted at 3% <sup>b</sup> ..... | –\$141,679,000 to –\$64,572,000                  |
| Discounted at 7% <sup>c</sup> ..... | –\$116,060,000 to –\$54,211,000                  |

<sup>a</sup> The range in net benefits reflects the different values obtained for snowmobile visitors using the estimates from two economic valuation models, and the different scenarios analyzed for impacts to businesses.

<sup>b</sup> The economics literature supports a 3% annual discount rate in the valuation of public goods (e.g., Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).

<sup>c</sup> Office of Management and Budget Circular A–94 (revised January 2003).

TABLE 4.—AMORTIZED NET BENEFITS PER YEAR FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS, 2003–2004 TO 2012–2013

|                                     | Amortized net benefits per year <sup>a</sup> |
|-------------------------------------|----------------------------------------------|
| Alternative 2:                      |                                              |
| Discounted at 3% <sup>b</sup> ..... | –\$29,860,000 to –\$16,470,000               |
| Discounted at 7% <sup>c</sup> ..... | –\$29,663,000 to –\$16,517,000               |
| Alternative 3:                      |                                              |
| Discounted at 3% <sup>b</sup> ..... | –\$19,242,000 to –\$14,097,000               |
| Discounted at 7% <sup>c</sup> ..... | –\$19,124,069 to –\$14,167,000               |
| Alternative 4:                      |                                              |
| Discounted at 3% <sup>b</sup> ..... | –\$16,609,000 to –\$7,570,000                |
| Discounted at 7% <sup>c</sup> ..... | –\$16,524,000 to –\$7,718,000                |

<sup>a</sup> This is the total present value of net benefits reported in Table 3 amortized over the ten-year analysis timeframe at the indicated discount rate.

<sup>b</sup> The economics literature supports a 3% annual discount rate in the valuation of public goods (e.g., Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).

<sup>c</sup> Office of Management and Budget Circular A–94 (revised January 2003).

The range of net benefits for the valuation case represented by Tables 3 and 4 is entirely negative for Alternatives 2, 3, and 4.

### Compliance With Other Laws

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

This document is a significant rule and has 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. These conclusions are based on the analysis contained in the Final SEIS and a report entitled “Economic Analysis of Regulations on Snowmobile Use in the Greater Yellowstone Area” (MACTEC Engineering and Consulting, Inc., November 2003).

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

(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. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS received nearly 360,000 public comment letters on the draft SEIS and over 105,000 comments on the proposed

rule. Additionally, this is only the second NPS regulation to use an adaptive management strategy for managing visitor use levels. That concept, coupled with new provisions for Best Available Technology engine requirements, make this proposed rule unique to the NPS.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document 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 information contained in the report entitled “Economic Analysis of Regulations on Snowmobile Use in the Greater Yellowstone Area” (MACTEC Engineering and Consulting, Inc. November 2003). This report is available on the Yellowstone website.

#### *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 rule:

- Does not have an annual effect on the economy of \$100 million or more.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- 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. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Montana, Idaho and Wyoming region near the parks, not national or U.S. 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. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

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

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

#### *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. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

#### *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*

A Final Supplemental Environmental Impact Statement has been completed and a Record of Decision issued. The Final SEIS and ROD are available for review by contacting Yellowstone or Grand Teton Planning Offices or at [www.nps.gov/grte/winteruse/intro.htm](http://www.nps.gov/grte/winteruse/intro.htm).

*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. Numerous tribes in the area were consulted in the development of the SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

*Administrative Procedures Act*

NPS recognizes that new rules ordinarily go into effect 30 days after publication in the **Federal Register**. For this regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective immediately. This rule relieves a restriction on snowmobile use, and does not require a delay in its effective date. In addition, good cause exists for an immediate effective date because:

(1) Delaying implementation of this rule would prevent it from being in place in time for the opening of the winter use season and would cause it to go into effect well after the season started. Carrying out such a significant change in the terms for winter use mid-season would cause substantial confusion for the public, and could also present implementation and enforcement problems for NPS. It is better to avoid such confusion by ensuring that this new rule is in effect at the start of the season.

(2) Normally, the purpose of the delayed effective date is to give affected parties a chance to learn about a new regulation and how to comply with it. Here, any such benefit to winter users would be greatly outweighed by the harm that a delay in implementation would cause, because it would have significant impacts on visitors planning to visit the park during the forthcoming December-January holiday season, and on various small businesses in the

surrounding communities which provide services to the visitors.

*Drafting Information:* The primary authors of this regulation were Kevin Schneider, Outdoor Recreation Planner, and John Sacklin, Supervisory Park Resource Planner, Yellowstone National Park; Bill Holda, Supervisory Park Ranger, and Gary Pollock, Management Assistant, Grand Teton National Park; and Kym Hall, NPS Special Assistant, and Barry Roth, Deputy Associate Solicitor, Washington, DC.

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

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ 36 CFR part 7 is amended as set forth below:

**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); § 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Amend § 7.13 to revise paragraph (l) to read as follows:

**§ 7.13 Yellowstone National Park.**

\* \* \* \* \*

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(19) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(19) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of the park, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

*Commercial guide* means those guides who operate as a snowmobile guide for a fee or compensation and are authorized to operate in the park under a concession contract.

*Non-commercial guide* means those authorized guides who have successfully completed an NPS-approved training course and provide guiding services without compensation.

*Oversnow route* means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate

over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

*Oversnow vehicle* means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and is authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

*Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers.

*Snowplane* means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with use limits and entry passes, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Yellowstone National Park?* Commercial snowcoaches may be operated in Yellowstone National Park under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.



(iii) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(iv) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(v) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(vi) Individual snowcoaches may be subject to period inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have been shown to have

emissions no greater than the requirements identified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii) The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Lake Butte Road.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(xiii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall

be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(xiv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(xv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i) through (l)(7)(xii) of this section and the following additional oversnow routes:

(i) Firehole Canyon Drive.

(ii) Fountain Flat Road.

(iii) Virginia Cascades Drive.

(iv) North Canyon Rim Drive.

(v) Riverside Drive.

(vi) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(vii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(viii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Will I be required to use a guide while snowmobiling?* Beginning in the winter of 2004–2005, all snowmobile operators must be accompanied by a guide who has successfully completed an NPS-approved training program. During the winter of 2003–2004 only, the twenty percent (20%) of the authorized daily snowmobile entries that are allocated to the general public do not require a guide.

(10) *What other requirements apply to the use of snowmobile guides?* Eighty percent (80%) of the authorized daily snowmobile entries are allocated under concessions contracts for commercial guiding services while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated to the general public for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on park rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other park resources.

(ii) Snowmobile parties must travel in a group, including the guide. Maximum or minimum group size may be designated by the Superintendent. Notice of group size requirements shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of

compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial: non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made on

an annual basis and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(11) *Are there limits established for the numbers of snowmobiles permitted to enter the park each day?*

Snowmobiles allowed to enter the park each day will be limited to a specific number per entrance. The initial limits are listed in the following table:

TABLE 1 TO § 7.13.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

| Park entrance/road segment     | Number of commercially-guided snowmobile entrance passes | Number of non-commercially guided snowmobile entrance passes <sup>1</sup> | Total number of snowmobile entrance passes |
|--------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------|--------------------------------------------|
| (i) YNP—North Entrance .....   | 40                                                       | 10                                                                        | 50                                         |
| (ii) YNP—West Entrance .....   | 440                                                      | 110                                                                       | 550                                        |
| (iii) YNP—South Entrance ..... | 200                                                      | 50                                                                        | 250                                        |
| (iv) YNP—East Entrance .....   | 80                                                       | 20                                                                        | 100                                        |

<sup>1</sup> In the 2003–2004 winter season only, these entries will be available for unguided parties, to allow sufficient time to develop and implement a non-commercial guide training program.

(v) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits, after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of any new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(12) *How will the daily snowmobile entry limits be enforced?* The daily snowmobile entry limits will be enforced through at least three methods:

(i) The operator of a snowmobile is required to have a reservation to obtain entry into the park and pay any fees associated with that reservation;

(ii) The operator of a snowmobile is required to have an entrance pass to obtain entry into the park and pay any fees associated with that entrance pass; and,

(iii) The person who makes or holds the reservation must accompany the snowmobile group while in the park.

(iv) Reservations or entrance passes that have been obtained using false information, or have been altered, are invalid. Reservations or entrance passes that have been transferred or resold without the authorization of the Superintendent are invalid. The use of an invalid reservation or entrance pass is prohibited.

(13) When may I operate my snowmobile or snowcoach? The

Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(14) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow

vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. A learner's permit does not satisfy this requirement. The license must be carried by the operator at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle

is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(16) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is not subject to §§ 2.18 (b), (d), (e) and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(17) *Are there any forms of non-motorized oversnow transportation allowed in the park?* Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1.

(i) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(ii) Dog sledding or ski-jorring is prohibited.

(18) *May I operate a snowplane in Yellowstone?* The operation of a snowplane in Yellowstone is prohibited.

(19) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(2) through (l)(18) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

\* \* \* \* \*

■ 3. Amend § 7.21 to revise paragraph (a) to read as follows:

**§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.**

(a)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (a)(2) through (a)(18) of this section are intended to apply to the use

of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(18) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph applies to non-administrative snowmobile use by NPS or concessioner employees.

(3) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits and entry passes, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in the Parkway?* Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(iii) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(iv) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii)–(v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used. In general, catalysts that have exceeded their useful

life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(v) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the Parkway. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles originating in the Targhee

National Forest and traveling on the Grassy Lake Road to Flagg Ranch, however these snowmobiles may not travel further into the Parkway unless they meet the air and sound emissions and all other requirements of this section.

(iv) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(v) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile in the Parkway?* You must operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated for snowmobile use:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(ii) Along U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety or other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(v) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(vi) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the route designated for snowmobile use in paragraph (a)(7)(ii) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may open or close this oversnow route, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Will I be required to use a guide while snowmobiling in the Parkway?* Beginning in the winter of 2004–2005, all snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the parkway must be accompanied by a guide that has successfully completed an NPS-approved training program. A guide is not required in other portions of the Parkway. During the winter of 2003–2004 only, the twenty percent (20%) of the authorized daily snowmobile entries that are allocated to the general public do not require a guide.

(10) *What other requirements apply to the use of snowmobile guides?* Eighty percent (80%) of the authorized daily snowmobile use on U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the Parkway is allocated under concessions contracts for commercial guiding services while the remaining twenty percent (20%) of the

authorized daily snowmobile entries are allocated to the general public for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on Parkway rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other Parkway resources.

(ii) Snowmobile parties must travel in a group, including the guide. Maximum or minimum group size may be designated by the Superintendent. Notice of group size requirements shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial to non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made on an annual basis and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(11) *Are there limits established for the numbers of snowmobiles permitted to enter the Parkway each day?* Snowmobiles allowed to enter the Parkway each day will be limited to a specific number per road segment. The initial limits are listed in the following table:

TABLE 1 TO § 7.21.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

| Park entrance/road segment                                    | Number of commercially-guided snowmobiles | Number of non-commercially guided snowmobiles | Total number of snowmobiles |
|---------------------------------------------------------------|-------------------------------------------|-----------------------------------------------|-----------------------------|
| (i) GTNP and the Parkway—Total Use on CDST <sup>2</sup> ..... | N/A                                       | N/A                                           | 375                         |
| (ii) Parkway—Total Use Grassy Lake Road .....                 | N/A                                       | N/A                                           | 375                         |
| (iii) Flagg Ranch to Yellowstone South Entrance .....         | 200                                       | 50                                            | 250                         |

<sup>2</sup> The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

<sup>3</sup> These users do not have to be accompanied by a guide.

(iv) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits, after taking into consideration the

effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication

in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(12) *When may I operate my snowmobile or snowcoach?* The

Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(13) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or Parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. The license must be carried by the operator at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect Parkway resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by

NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a guide or a snowcoach driver and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(16) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees or park resources.

(iii) Dog sledding or ski-jorring is prohibited.

(17) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(18) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (a)(2) through (a)(17) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

\* \* \* \* \*

■ 4. Amend § 7.22 to revise paragraph (g) to read as follows:

**§ 7.22 Grand Teton National Park.**

\* \* \* \* \*

(g)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative snowmobile or snowcoach use by NPS or concessioner employees who live or work in the interior of Yellowstone.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits and entry passes, operating hours and dates, equipment, and operating conditions established in this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Grand Teton?* Operate a snowcoach in Grand Teton National Park is prohibited.

(5) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in Grand Teton?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels

(official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(iv) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated for snowmobile use:

(i) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming state fishing license and the proper fishing gear.

(ii) The Continental Divide Snowmobile Trail along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/287 from Moran Junction to the north park boundary.

(iii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the

methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(v) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Will I be required to use a guide while snowmobiling in Grand Teton?* (i) You will not be required to use a guide while snowmobiling in Grand Teton.

(ii) The Superintendent may establish requirements related to the use of guides, including requirements for commercial and/or non-commercial guides. Changes to guiding requirements may be made annually and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(9) *Are there limits established for the numbers of snowmobiles permitted to operate in Grand Teton each day?* Snowmobiles allowed to enter the park each day will be limited to a specific number per road segment or area. The initial limits are listed in the following table:

TABLE 1 TO § 7.22.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

| Park entrance/road segment                              | Number of commercially-guided snowmobile entrance passes | Number of non-commercially guided snowmobile entrance passes | Total number of snowmobile entrance passes |
|---------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------|--------------------------------------------|
| (i) GTNP and the Parkway—Total Use on CDST <sup>4</sup> | N/A                                                      | N/A                                                          | <sup>5</sup> 75                            |
| (ii) Jackson Lake                                       | N/A                                                      | N/A                                                          | <sup>5</sup> 40                            |

<sup>4</sup> The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

<sup>5</sup> These users do not have to be accompanied by a guide.

(iii) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be

notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so

slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. The license must be carried by the operator at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a commercial guide or a snowcoach driver and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel including skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(iii) Dog sledding or ski-jorring is prohibited.

(15) *May I operate a snowplane in Grand Teton National Park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to snowmobile operator age, air and sound emissions, guiding and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may use those routes designated in paragraph (g)(16) of this section only to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* Until such time as the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct access routes via snowmobile, to such inholding, or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age,

licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the "Clark Property".

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property".

(iv) From the Moose-Wilson Road to the land commonly referred to as the "Wittimer Property".

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the "Halpin Properties".

(vi) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the "JY Ranch".

(vii) From Highway 26/89/187 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "West Property".

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the piece of land commonly referred to as the "Lost Creek Ranch".

(ix) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* Those routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(2) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

**David P. Smith,**

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

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