

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 7****RIN 1024-AD73****Special Regulations; Areas of the National Park System****AGENCY:** National Park Service, Interior**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service is proposing this rule to manage winter visitation and recreational use in Yellowstone National Park for an interim period of three winter seasons commencing with the 2008–2009 season. The proposed rule would also establish the framework for the long-term management of winter use in Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway. This proposed rule would require that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound requirements, and that snowmobilers in Yellowstone be accompanied by a commercial guide. It also proposes daily entry limits on the numbers of snowmobiles and snowcoaches that may enter the parks. Traveling off designated oversnow routes will remain prohibited.

**DATES:** Comments must be received by November 20, 2008.

**ADDRESSES:** You may submit your comments, identified by Regulatory Information Number 1024-AD73 (RIN), by any of the following methods:

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

- *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190

- *Hand Deliver to:* Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

All submissions received must include the agency name and RIN. For additional information see "Public Participation" under **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** John Sacklin, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307-344-2019 or at the address listed in the **ADDRESSES** section.

**SUPPLEMENTARY INFORMATION:****Background**

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 under the guidance provided by a number of sources. The history of the issue has been discussed at length in previous notices, most recently at 72 FR 70781 (Dec. 13, 2007) and in the 2008 Winter Use Plans Environmental Assessment (2008 EA).

In 2003–2004, the U.S. District Courts for the District of Columbia and the District of Wyoming vacated the prior winter use plans and implemented special regulations that had been promulgated in 2003 and in 2000–01, respectively. Subsequently, the NPS prepared a Temporary Winter Use Plans Environmental Assessment in 2004. The 2004 Plan was intended to provide a framework for managing winter use in the parks for a period of three years, and was approved in November 2004 with a "Finding of No Significant Impact" (FONSI). A final rule was published in the **Federal Register** implementing the 2004 Plan beginning with the 2004–2005 winter season (69 FR 65360). Its provisions imposed a limit of 720 snowmobiles per day for Yellowstone and 140 snowmobiles for Grand Teton and the Parkway; a requirement that all recreational snowmobiles in Yellowstone must be accompanied by a commercial guide; and a requirement that all recreational snowmobiles operating in the parks must meet Best Available Technology (BAT) requirements (hereinafter referred to as air and sound emissions requirements) for reducing noise and air pollution (with limited exceptions at Grand Teton and the Parkway). With these limits and requirements, the NPS did not find impairment to park resources and values in its 2004 decision and did not evaluate impairment at higher levels.

The 2004 rule provided the framework for management of winter use in the Parks from December 2004 through the winter season of 2006–2007, during which time the NPS prepared a long-term winter use plan and EIS for the parks.

Several litigants filed lawsuits challenging the 2004 Plan in both the District Court in Wyoming and the District Court in the District of Columbia. In October 2005, the Wyoming District Court upheld the validity of the 2004 winter use rule in *The Wyoming Lodging and Restaurant Association v. U.S. Department of the Interior*. Congress on three occasions included language in appropriations legislation for the Department of the Interior requiring that the 2004 winter use rules remain in effect for the winter seasons of 2004–2005, 2005–2006, and 2006–2007. As a result of the legislative

actions, on September 24, 2007, the DC District Court dismissed as moot the pending claims against the 2004 Plan.

Scoping for the new long-term plan began in June 2005, a Draft Environmental Impact Statement was released in March 2007, and a proposed rule reflecting the preferred alternative in the DEIS was published in May 2007. A Final Environmental Impact Statement was released in September 2007, and a Record of Decision was signed in November 2007 (later amended on July 16, 2008). The Final Rule implementing the decision was published in the **Federal Register** on December 13, 2007 (72 FR 70781).

The decision provided a framework for long-term management of winter use in the Parks that was similar in many ways to that which occurred under the 2004 Plan, although with lower daily snowmobile entry limits for Yellowstone. A maximum daily limit of 540 snowmobiles meeting air and sound emission requirements was mandated for Yellowstone, along with a requirement that all snowmobilers must be accompanied by a commercial guide. A limit of 83 snowcoaches per day was established, with air and sound emission requirements implemented by the winter season of 2011–2012. For Grand Teton and the Parkway, the decision imposed a limit of 40 snowmobiles on Jackson Lake in order to provide ice fishing access, and 25 snowmobiles on the Grassy Lake Road in order to provide access to and from the adjoining Targhee National Forest. While these limits were well within the range of discretion for the agency to adopt, these limits again did not reflect any legal "cap" on any future limits adopted by the agency. In order to provide continuity during the transition from the 2004 Plan, the first season under the 2007 Plan was managed in virtually the same way as had been in effect under the 2004 Plan.

Shortly after the NPS published the 2007 Final Rule, the National Parks Conservation Association, Greater Yellowstone Coalition, and several other environmental groups filed lawsuits in the U.S. District Court for the District of Columbia. The plaintiffs challenged the adequacy of the analysis supporting the decision, and alleged that the NPS had violated the 1916 Organic Act and other laws, policies, and regulations governing management of the Parks. In particular, the plaintiffs argued that a daily limit of 540 snowmobiles in Yellowstone would cause irreparable harm and that snowmobiles should be eliminated in favor of snowcoach-only access to the park.

Concurrently, the State of Wyoming and others filed lawsuits in the U.S. District Court for the District of Wyoming, also challenging the 2007 FEIS, ROD, and Final Rule. The plaintiffs in the Wyoming District Court challenged the decision regarding the requirements for commercial guiding, and argued that the NPS Organic Act compels the NPS to allow at least 720 snowmobiles per day in Yellowstone. The plaintiffs also challenged the decision to use full-forecasting only for the management of Sylvan Pass.

In accordance with the 2007 Record of Decision, the NPS met with the community of Cody and the State of Wyoming to further explore options for management of Sylvan Pass. Those discussions resulted in an agreement in June 2008, and a ROD amendment on July 16, 2008, calling for use of forecasting and helicopter and howitzer-dispensed explosives to manage avalanche danger at Sylvan Pass. The pass would also be open for a limited, core season.

On September 15, 2008, the DC District Court issued a decision granting summary judgment for the plaintiffs and ordered the 2007 Final Rule, ROD, and FEIS to be vacated and remanded to the NPS for further proceedings consistent with the Court's opinion. The DC District Court order is not final, and the decision whether to appeal that order is currently under consideration. Although litigation is still pending in the Wyoming District Court, the vacatur by the DC Court, if it becomes final, would result in the 2004 Rule being reinstated since it was the rule in effect that was replaced by the 2007 Rule. The 2004 Rule did not have an expiration date, though it has often been referred to as the "temporary rule." The intent of the NPS was that it would be superseded after 3 years by a long-term rule. The 2004 Rule had 10 specific provisions within it that actually authorized the use of snowmobiles and snowcoaches in the Parks, but only through the winter of 2006–2007. Thus, while the 2004 Rule is currently in effect as a result of the vacatur and remand, it provides no authority to operate either snowmobiles or snowcoaches in the Parks. As a result of the terms of the 2004 rule, the NPS does not have the administrative authority after 2007 to amend the rule or otherwise authorize the use of either snowmobiles or snowcoaches except through another rulemaking process.

In light of the significant disruption that would be caused to persons planning to visit the Parks this winter, and to communities and businesses that would be severely affected, the NPS has determined that in order to restore the

authority to allow oversnow vehicle use of the Parks, a new Interim Winter Use Plan supported by an environmental assessment is required. The parks' Congressional delegation, as well as others, requested the NPS administratively address provision of motorized winter use. This proposed rule is based on the preferred alternative identified in the 2008 Winter Use Plans Environmental Assessment that is concurrently available for public review and comment. If promulgated, this rule would govern winter use in Yellowstone from 2008–2011 and would provide long term direction for Grand Teton and the Parkway. During this time, NPS will determine a long-range strategy for Yellowstone winter use.

#### **Park Resource Issues**

The Environmental Assessment supporting this proposed rule analyzes the environmental impacts of two alternatives for the management of winter use in the parks. The major issues analyzed in the EA include social and economic issues, human health and safety, wildlife, air quality, natural soundscape, visitor use and access, and visitor experience. The impacts associated with each of the alternatives are detailed in the EA and are available at the following site: <http://parkplanning.nps.gov>. Additional information is available online at: <http://www.nps.gov/yell/planyourvisit/winteruse.htm> and <http://www.nps.gov/grte>.

#### **Impairment and Conservation of Park Resources and Values**

In addition to determining the environmental consequences of the alternatives, NPS policy requires analysis of potential effects to determine whether actions would impair park resources. In managing National Park System units, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. As NPS Management Policies explain (1.4.7.1), "Virtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that the particular use must be disallowed." The NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

The responsible NPS manager generally has significant discretion to determine what impacts are allowed that would not impair park resources.

The NPS is also required to conserve the resources and values of the National Park System units and to prioritize the conservation of park resources over their use whenever the two are found to be in conflict. The NPS complies with this mandate by ensuring that a proposed use of the parks will not result in unacceptable impacts to park resources and values, and by further allowing impacts to park resources only when allowing the impacts is appropriate to fulfill the purposes of the park and necessary (meaning that the impacts are unavoidable and incapable of further mitigation in light of the authorized appropriate use).

The 2001 Rule recognized that, "achieving compliance with the applicable legal requirements while still allowing snowmobile use would require very strict limits on the numbers of both snowmobiles and snowcoaches." Thus, it recognized that some snowmobile and snowcoach use could possibly be accommodated in the parks through appropriate management actions without resulting in impairment of park resources and values. The 2003 SEIS, 2004 EA, and 2007 EIS reinforced these conclusions.

Over the last four winter seasons, the parks were intensively managed in order to provide a heightened protection to the environment and prevent the impairment of park resources and values. The 2004 plan guided the first three seasons, while the 2007 plan guided the 2007–2008 season under essentially the same rules. Thus, even though two separate and distinct rules governed winter use of the Parks during this 4-year period, for brevity that period of time will simply be referred to hereinafter as being guided by the "2004 plan."

During this time, the cumulative number of snowmobiles entering the parks was much less than the number under the allowable daily limits. In Yellowstone, use averaged somewhat less than 300 snowmobiles per day, with a peak of 557, well under the daily limit of 720. Actual numbers in Grand Teton and the Parkway were only a small fraction of what was allowed, and therefore only a fraction of what the park managers had determined to be well within the legally permissible impact.

During this 4-year period, there were strict requirements on snowmobiles and snowcoaches, along with a comprehensive monitoring program. Monitoring efforts focused on air

quality, natural soundscapes, wildlife, employee health and safety, and visitor experience. Daily entry limits were established that represented use levels slightly below the historic average numbers of snowmobiles entering Yellowstone, thereby eliminating the much higher peak use days experienced in the past. The reduced numbers of snowmobiles contributed to fewer conflicts with wildlife, fewer air and noise emissions, and improved road conditions. Limits on the numbers of snowmobiles also provided park managers with more predictable winter use patterns and an assurance that use could not increase.

Under the 2004 plan, all snowmobilers entering Yellowstone were accompanied by a commercial guide. This requirement reduced conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercial guides must also have control over their clientele, which greatly reduces unsafe and illegal snowmobile use. In this way, guides ensure that park regulations are observed and provide a safer experience for visitors. The requirement that all snowmobilers travel with commercial guides also benefits natural soundscapes, since commercially guided parties tend to travel in relatively large groups, resulting in longer periods when snowmobile sound is not audible.

Finally, the 2004 plan required that all recreational snowmobiles entering the parks meet NPS air and sound emissions requirements. This condition, along with air emissions requirements for snowcoaches, ensured that the vast majority of recreational over-snow vehicles operating in the parks employed up-to-date emissions control equipment, and has resulted in improvements in air quality and natural soundscapes.

This proposed rule is based on Alternative 2 of the 2008 EA which, while imposing a daily limit of only 318 snowmobile entries for Yellowstone, is similar in all other significant respects to the 2004 plan. To be sure, the NPS continues to believe that it could legally permit significantly higher levels of snowmobiles within the park. The 2008 EA, however, was prepared in part as a matter of comity in light of the DC District Court decision vacating the 2007 rule, even though that decision is not yet final. For this reason, and for the reasons described further in the EA supporting this proposed rule, the NPS believes implementation of Alternative 2 is far below any limit that would

result in the impairment of park resources and values.

The NPS has also determined that implementation of Alternative 2 and the proposed rule would not result in unacceptable impacts to park resources or values. As disclosed in the EA, the adverse impacts to wildlife would be negligible to minor, due to moderate levels of visitor use (with possible moderate effects on swans and eagles). Guiding would minimize most such effects. For soundscapes, the adverse impacts would be negligible to moderate for Yellowstone due to audibility and maximum sound levels, and minor for Grand Teton and the Parkway. Air quality impacts in all three parks are forecast to be negligible because the air and sound emissions requirements and strict daily entry limits will restrict emissions. Impacts on visitor and employee health and safety in Yellowstone are expected to be moderately adverse due to possible high snowmobile noise exposure levels and avalanche danger at Sylvan Pass, but mitigated in several ways. In Grand Teton, risk levels would be expected to be less, so the adverse effects there are predicted to be minor. As described in the EA, the NPS's threshold for considering whether there could be an impairment is based on *major* (or significant) effects. The EA identified less than major effects on wildlife, natural soundscapes, and air quality for Alternative 2. Indeed, the NPS has not determined that any snowmobile use over the past 4 years—which included daily usage at times nearly double the daily limit now adopted—imposed any impairment of park resources. Guided by this analysis and the superintendents' professional judgment, there would be no impairment of park resources and values from implementation of the proposed rule.

Finally, the NPS has determined that the impacts associated with the proposed oversnow vehicle use, and which are described at length in the EA, are both appropriate and necessary to fulfill the purposes of the park.

Section 1.5 of *Management Policies* (2006), "Appropriate Use of the Parks," directs that the National Park Service must ensure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources and values. A new form of park use may be allowed within a park only after a determination has been made in the professional judgment of the park manager that it will not result in unacceptable impacts. In addition, section 8.1.2 of the *Management Policies* (2006), "Process for Determining Appropriate Uses," directs

the Service to evaluate the proposed use's consistency with applicable laws, executive orders, regulations, and policies; consistency with existing plans for public use and resource management; actual and potential effects on park resources and values; total costs to the Service; and whether the public interest will be served. Finally, section 1.5 of the *Management Policies* directs park superintendents to continually monitor all park uses to prevent unanticipated and unacceptable impacts. If unanticipated and unacceptable impacts occur, section 1.5 directs the superintendent to engage in a thoughtful deliberative process to further manage or constrain the use, or discontinue it.

The EA supporting this proposed rule contains the above-described evaluation of the proposed oversnow vehicle use. In addition, the EA demonstrates that no unacceptable impacts are anticipated as a result of the proposed use. Finally, the preferred alternative in the EA establishes a comprehensive monitoring and adaptive management plan to ensure that no unanticipated or unacceptable impacts will occur. On this basis, the NPS has determined that the proposed oversnow vehicle use is appropriate to fulfill the purposes of the park.

The NPS has also determined that the proposed oversnow use is necessary to fulfill the purposes of the park. Section 8.2 of *Management Policies* confirms that enjoyment of park resources and values by the people of the United States is one of the fundamental purposes of all parks. That Section further states: "To provide for enjoyment of the parks, the National Park Service will encourage visitor use activities that are appropriate to the purpose for which the park was established, and are inspirational, educational, or healthful, and otherwise appropriate to the park environment; and will foster an understanding of and appreciation for park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and can be sustained without causing unacceptable impacts to park resources and values."

As explained in the EA, oversnow vehicular winter use of Yellowstone National Park has been occurring since 1949, and snowmobiles have been used for 45 of the park's 136 years. Distances between attractions at Yellowstone are great, and some form of vehicular access is needed to access various destination areas. Snowmobiles and snowcoaches are used for this purpose in the winter just as private vehicles and buses are

used in the summer. Finally, snowmobiles and snowcoaches each provide very different experiences, in that they provide varying levels of direct interaction with the Park's resources and values.

#### **Description of the Proposed Rule**

The proposed regulations are similar in many respects to the plans and rules that have been in effect the last four winter seasons. Thus, many of the regulations regarding operating conditions, designated routes, and restricted hours of operation have been in effect and enforced by the NPS for several years under the authority of 36 CFR Part 7 or 36 CFR 1.5. One notable difference, however, is that the number of snowmobiles allowed to enter Yellowstone each day has been reduced to 318. As noted above, the NPS does not consider this number to be the maximum number of snowmobiles that may be permitted within the Park consistent with the *Management Policies*, and instead has chosen this number to be unquestionably within both the NEPA standard for significance and the NPS standards for impairment. In addition, certain changes have been made to the routes that are designated for snowmobile use in Grand Teton and the Parkway, as well as changes to the daily entry limits in those parks.

The NPS has found that the interim regulations that have been in effect for the past four winter seasons have resulted in quieter conditions, clean air, fewer wildlife impacts, and much improved visitor safety and experiences. The NPS has further concluded that OSV use authorized by the interim regulations did not cause unacceptable impacts or impairment to park resources and values. The NPS believes that these proposed regulations will continue to produce similar results and that these results will not cause impairment of park resources.

#### **Monitoring**

Scientific studies and monitoring of winter visitor use and park resources (including air quality, natural soundscapes, wildlife, employee health and safety, water quality, and visitor experience) will continue under the 2008 Plan. Selected areas of the parks, including sections of roads, will be closed to visitor use if these studies and monitoring indicate that human presence or activities have a substantial effect on wildlife or other park resources that cannot otherwise be mitigated. A one-year notice will be provided before any such closure would be implemented unless immediate closure is deemed necessary to avoid impairment of park

resources. The superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

#### **Air and Sound Emissions Requirements**

To mitigate impacts to air quality and the natural soundscape, the NPS is proposing to continue the requirement that all recreational snowmobiles meet air and sound emission restrictions to operate in the parks, with limited exceptions. For air emissions restrictions, the requirement means that all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound restrictions, snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). The superintendent will maintain a list of approved snowmobile makes, models, and year of manufacture that meet the NPS requirements. For the winter of 2007–2008, the NPS certified 47 different snowmobile models (from various manufacturers; model years 2002–2008) as meeting the requirements. Generally, each snowmobile model will be approved for entry into the parks for 6 winter seasons after it is first listed (for example, for the 2008–2009 winter season, 2002 model year snowmobiles would no longer be certified). Based on NPS experience, 6 years represents the typical useful life of a snowmobile, and thus 6 years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant. This length of time is consistent with the deterioration factors used in EPA's regulations pertaining to snowmobiles. The NPS recognizes that some privately owned snowmobiles used predominantly for ice fishing on Jackson Lake may have relatively low mileages even after 6 years of use, and therefore may not have experienced the type of deterioration that would cause them to fail NPS air and sound emissions requirements. The certification period for snowmobiles being operated on Jackson Lake will still be considered to be 6 years, but it may be extended up to a total of 10 years as long as the snowmobile's mileage does not exceed 6,000 miles.

To comply with the air emissions restrictions, the NPS proposes to continue the requirement that began with the 2005 model year, that all snowmobiles must be certified under 40 CFR 1051 to a Family Emission Limit

(FEL) no greater than 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide. Snowmobiles must be tested on a five-mode engine dynamometer, consistent with the test procedures specified by EPA (40 CFR 1051 and 1065). Other test methods could be approved by the NPS.

The NPS proposes to retain the use of the FEL method for demonstrating compliance with the air emissions requirements because it 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 this proposed regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with the NPS requirements and therefore not permitted to enter the parks). Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS requirements because FEL data are already provided to EPA by the manufacturers. Further, the EPA has the authority to ensure 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, the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, the 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.

To determine compliance with the NPS sound emission restrictions, snowmobiles must be tested using SAE J192 (revised 1985) test procedures. The NPS recognizes that the SAE updated these test procedures in 2003; however, the changes between the 2003 and 1985 test procedures could alter the measurement results. The requirement was initially established using 1985 test

procedures (in addition to information provided by industry and modeling). Therefore, to be consistent with our requirements, we will continue to use the 1985 test. We also understand that an update to the 2003 J192 procedures may be underway. We are interested in transitioning to the newer J192 test procedures, and we will continue to evaluate this issue after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

The NPS requirement for sound was established by reviewing individual machine results from side-by-side testing performed by the NPS contractor, Harris Miller Miller & Hanson Inc. (HMMH) and the State of Wyoming's contractor, Jackson Hole Scientific Investigations (JHSI). Six four-stroke snowmobiles were tested for sound emissions. These emission reports independently concluded that all the snowmobiles tested between 69.6 and 77.0 dB(A) using the J192 protocol. On average, the HMMH and JHSI studies measured four-strokes at 73.1 and 72.8 dB(A) at full throttle, respectively. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dB(A) over the sound limit to account for variations in weather, snow conditions, and other factors.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures maintains consistency with the testing conditions used to determine the sound emissions requirement. This reduced barometric pressure allowance is necessary since snowmobiles were tested at the high elevation of Yellowstone National Park, where atmospheric pressure is lower than the SAE J192's requirements due to the park's elevation. Testing data indicate that snowmobiles test quieter at high elevation, and therefore may be able to pass our requirements at higher elevations but fail when tests are conducted near sea level.

NPS will annually publish a list of snowmobile makes, models, and year of manufacture that meet the NPS requirements. Snowmobile manufacturers may demonstrate that snowmobiles are compliant with the air emissions requirements by submitting a copy of their application used to demonstrate compliance with EPA's general snowmobile regulation to the NPS (indicating FEL). We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as meeting NPS requirements, pending

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 NPS requirements, this snowmobile would no longer be considered to be compliant and would be phased out according to a schedule determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers could submit their 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. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program. When certifying snowmobiles as meeting NPS requirements, the NPS will announce how long the certification applies. Generally, each snowmobile model would be approved for entry into the parks for six winter seasons after it was first listed. Based on NPS experience, six years represents the typical useful life of a snowmobile, and thus six years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant.

Individual snowmobiles modified in such a way as to increase sound and air emissions of HC and CO beyond the proposed emission restrictions would be denied entry to the parks. It would be the responsibility of the end users and guides and outfitters to ensure that their oversnow vehicles, whether snowmobiles or snowcoaches, comply with all applicable restrictions. Emission and sound requirements for snowcoaches are described below. The requirement in Yellowstone that all snowmobilers travel with commercial guides will assist NPS in enforcing the requirements, since businesses providing commercial guiding services in the parks are responsible under their contracts with the park to ensure that their clients use only NPS-approved snowmobiles. In addition, these businesses are required to ensure that snowmobiles used in the park are not modified in such a way as to increase sound or air emissions, and that snowmobiles are properly maintained.

All commercially guided recreational snowmobiles operating within Yellowstone would be required to meet the NPS air and sound emissions requirements. Snowmobiles being operated on the Cave Falls road, which extends approximately one mile into the park from the adjacent national forest, would be exempt from the requirements. In Grand Teton and the Parkway, all recreational snowmobiles operating on Jackson Lake must meet the air and sound emissions requirements; however, snowmobiles being operated on the Grassy Lake Road would not be required to meet them. Use of the Grassy Lake Road is predominantly to provide access to the adjoining Targhee National Forest, where such requirements are not in effect, and is similar to other routes that the NPS designates to provide snowmobile access to adjacent public lands without such restrictions. Any commercially guided snowmobiles authorized to operate in the Parkway or Grand Teton will be required to meet NPS air and sound emissions requirements.

The University of Denver conducted winter emissions measurements in YNP that involved the collection of emissions data from in-use snowcoaches and snowmobiles in February 2005 and February 2006. Results from that work indicate that while most snowcoaches have lower emissions per person than two-stroke snowmobiles, the snowcoach fleet could be modernized to reduce carbon monoxide (CO) and hydrocarbon (HC) emissions. This work also supports snowmobile air emissions requirements and the development of snowcoach air emission requirements.

Under concessions contracts issued in 2003, 78 snowcoaches are currently authorized to operate in Yellowstone. Approximately 29 of these snowcoaches were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured before 1983 and are referred to as "historic snowcoaches" for the purpose of this rulemaking. All other snowcoaches are passenger vans or light buses that have been converted for oversnow travel using tracks and/or skis. During the winter of 2007–2008, an average of 35 snowcoaches entered Yellowstone each day.

In comparison with four-stroke snowmobiles, snowcoaches operating within EPA's Tier 1 standards are cleaner, especially given their ability to carry up to seven times more passengers (Lela and White 2002). In 2004, EPA began phasing-in Tier 2 emissions standards for multi-passenger vans, and they will be fully phased-in by 2009.

Tier 2 standards will require that vehicles be even cleaner than Tier 1, and full emission controls will function more of the time.

During the duration of this temporary plan, all non-historic snowcoaches must meet air emission requirements, which will be the EPA emissions standards in effect when the vehicle was manufactured. This will be enforced by ensuring that all critical emission-related exhaust components are functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component where possible. If 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. Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes. Individual snowcoaches may be subject to periodic inspections to determine compliance with emission and sound requirements.

However, during the duration of this plan, the NPS will encourage snowcoach operators to replace or retrofit their coaches with models that meet higher emission standards. In the 2007 FEIS, the NPS anticipated that snowcoach air and sound emission requirements would go into effect in 2011–2012, after the duration of this temporary plan. Thus these recommendations will assist snowcoach operators anticipating future possible requirements.

During these intervening years, the NPS will recommend that diesel vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 pounds or more meet, at a minimum, the EPA 2004 "engine configuration certified" diesel air emission standards. The NPS will further recommend that diesel vehicles meet the 2007 "engine configuration certified" air emission standard. If a new vehicle is being purchased, the NPS recommends that operators confirm that the vehicle has, at a minimum, an engine that meets the 2004 standard. If it is the operators' intention to purchase a vehicle with the newest diesel emission technology, the NPS recommends that the vehicle has a "2007 standard" engine. If a diesel engine is being purchased for retrofit into an existing vehicle, the above recommendations apply. If the diesel vehicle has a GVWR between 8,500 and 10,000 pounds, there may be a configuration that meets the EPA light duty Tier II standards, which would

achieve the best results from an emissions perspective.

For air emissions from gasoline vehicle air emissions, the NPS will recommend the vehicles engine meet EPA Tier 1 emission requirements. The NPS will further recommend that gasoline vehicles meeting EPA Tier II requirements be used. If a new vehicle is being purchased, the NPS will recommend the vehicle has, at a minimum, an engine that meets the Tier I requirements, or more ideally, the vehicle will meet Tier II requirements. If an existing gasoline engine and exhaust system is being retrofitted, the vehicle should have, at a minimum, a computer controlled, port-fuel injected engine and a catalytic converter in the exhaust system. Regarding the sound emission recommendations, the NPS will recommend that new and retrofitted snowcoaches not exceed 73 dBA when measured by operating the coach at or near full throttle for the test cycle. Thus a coach might be traveling at a speed of 25–30 miles per hour for the pass-by test to determine if the vehicle produces no more than 73 dBA.

The restrictions on air and sound emissions proposed in this rule are not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the parks. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to "promote and regulate" the use of national parks "by such means and measures as conform to the fundamental purpose of said parks \* \* \* which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Further, the Secretary is expressly authorized by 16 U.S.C. 3 to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks. \* \* \*" This exercise of the NPS Organic Act authority is not an effort by NPS to regulate manufacturers and is consistent with Sec. 310 of the Clean Air Act.

Since 2001, Yellowstone and Grand Teton National Parks have been converting their own administrative fleet of snowmobiles to four-stroke machines. These machines have proven successful in use throughout the parks. NPS now uses these snowmobiles for most administrative uses. However, NPS recognizes that some administrative applications, such as off-trail boundary patrols in deep powder, towing heavy

equipment or disabled sleds, search and rescue, or law enforcement uses may require additional power beyond that supplied by currently available snowmobiles that meet the air and sound emissions requirements. In these limited cases, NPS may use snowmobiles that do not meet the requirements proposed in this rule.

The emission and sound limit requirements for snowmobiles (and the gradual implementation of those requirements for snowcoaches) would result in low levels of air pollution within the parks in the winter, as evidenced by the past four years of air quality monitoring results that indicate excellent air quality. Similarly, soundscapes monitoring indicates that sound from recreational oversnow vehicles are well within acceptable ranges. Therefore the air and sound emissions that would occur would not constitute unacceptable impacts or impairment, nor would they be inconsistent with the NPS mandate to conserve park resources.

#### *Use of Commercial Guides*

To mitigate impacts to natural soundscapes and wildlife, and for visitor and employee safety, the NPS is again proposing that all recreational snowmobiles operated in YNP must be accompanied by a commercial guide, except for those being operated on the one-mile segment of the Cave Falls road that extends into the park from the adjacent national forest. This guiding requirement will reduce conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercially guided parties also tend to be larger in size, which reduces the overall number of encounters with wildlife and reduces the amount of time over-snow vehicles are audible. Commercial guides are educated in safety and are knowledgeable about park rules. Commercial guides are required to exercise reasonable control over their clientele, which has proven to greatly reduce unsafe and illegal snowmobile use. Commercial guiding with contractual obligations to the NPS also allow for more effective enforcement of park rules by the NPS. These guides receive rigorous multi-day training, perform guiding duties as employees of a business, and are experts at interpreting the resources of the parks to their clients. Commercial guides are employed by local businesses; those jobs are not performed by NPS employees.

Commercial guides use a "follow-the-leader" approach, stopping often to talk

with the group. They lead snowmobiles single-file through the park, using hand signals to pass information down the line from one snowmobile to the next, which has proven to be effective. Signals are used to warn group members about wildlife and other road hazards, to indicate where to turn, and when to turn on or off the snowmobile. Further, all commercial guides are trained in basic first aid and CPR. In addition to first aid kits, they often carry satellite or cellular telephones, radios, and other equipment for emergency use. In this way, guides will ensure that park regulations are observed and will provide a safer experience for visitors.

Since the winter of 2003–2004, all snowmobilers in Yellowstone have been led by commercial guides, resulting in significant positive effects on visitor health and safety. Guides are effective at maintaining proper touring behavior, such as adherence to speed limits, staying on the groomed road surfaces, and other snowmobiling behaviors that are appropriate to safely and responsibly visit the park. Since implementation of the guiding program there have been pronounced reductions in the number of law enforcement incidents and accidents associated with the use of snowmobiles, even when accounting for the reduced number of snowmobilers relative to historic use levels. The use of guides has also had beneficial effects on wildlife since guides are trained to respond appropriately when encountering wildlife.

No more than eleven snowmobiles would be permitted in a group, including that of the guide. Individual snowmobiles may not be operated separately from a group within the park. No minimum group size requirement is necessary since commercially guided parties always have at least two snowmobiles—that of the guide and the customer. Moreover, as a practical matter, in recent winters, group size has

averaged nearly seven snowmobiles per group.

Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. This will ensure that guided parties do not become separated. One-third mile will allow for sufficient and safe spacing between individual snowmobiles within the guided party, allow the guide(s) to maintain control over the group and minimize the impacts on wildlife and natural soundscapes.

In the Parkway, all snowmobile parties traveling north from Flagg Ranch must be accompanied by a commercial guide. Otherwise, snowmobilers in Grand Teton and the Parkway do not have to be accompanied by a guide. The use of guides in Grand Teton and the Parkway is generally not required due to the low volume of use, the conditions for access to Jackson Lake for winter fishing, and the fact that use of the Grassy Lake Road is primarily to provide access to and from the adjoining national forest lands where guiding is not required.

#### *Designated Routes*

In Yellowstone, a number of changes are proposed in routes designated for snowmobile use based on analyses in the 2008 EA and experience with the management of winter use over the past four winters. Certain additional side roads will be open for snowmobile use in the afternoons, based on the successful experience of NPS with this time of day use on Firehole Canyon Drive. Virginia Cascades would be accessible only via ski and snowshoe, returning it to an earlier type of non-motorized use.

In Grand Teton and the Parkway, the NPS is proposing to discontinue operation and use of the CDST. Use of this route over the last four winters has averaged fewer than 15 snowmobiles per season and in light of the proposed

requirements for entry into Yellowstone, the NPS has no reason to believe that there would be any significant increase in use of the CDST if it were to remain open. The NPS will continue to allow the State of Wyoming to groom the portion of the CDST along U.S. Highway 26/287 to its east boundary in order to provide access to adjacent public and private lands in Buffalo Valley.

#### *Daily Snowmobile Limits*

The number of snowmobiles and snowcoaches that could operate in the parks each day would be limited under this rule. These limits are intended to mitigate, even more than legally necessary, impacts to air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience, consistent with preventing unacceptable impacts and impairment to park resources and values. The daily entry limits for snowmobiles and snowcoaches in Yellowstone are identified in Table 1, and for Grand Teton and the Parkway in Table 2. Use limits identified in Table 1 include guides since commercial guides are counted towards the daily limits. For Yellowstone, the daily limits are identified for each entrance and location; for Grand Teton and the Parkway, the daily limits apply to total snowmobile use on the road segment and on Jackson Lake.

Limits are specifically identified for Old Faithful in this proposed rule since a park concessioner provides snowmobile rentals and commercial guiding services originating there. The limits for the North Entrance and Old Faithful allow additional flexibility in offering visitors the opportunity to experience the park. For example, some visitors choose to enter the park on a snowcoach tour, spend two or more nights at the Old Faithful Snow Lodge, and go on a commercially guided snowmobile tour of the park during their stay at Old Faithful.

TABLE 1—YELLOWSTONE DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Entrance	Commercially guided snowmobiles	Commercially guided snowcoaches
West Entrance .....	160	34
South Entrance * .....	114	13
East Entrance .....	20	2
North Entrance .....	** 12	13
Old Faithful .....	** 12	16
Cave Falls .....	*** 50	0

\* Includes portion of the Parkway between Flagg Ranch and South Entrance.



\*\* Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows the daily entry limits between the North Entrance and Old Faithful to be adjusted as necessary, so long as the total number of snowmobiles between the two entrances does not exceed 24. For example, the concessioner could operate 16 snowmobiles at Old Faithful and 8 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

\*\*\* This use occurs on a short (approximately 1-mile segment) of road and is incidental to other snowmobiling activities in the Targhee National Forest. These users do not have to be accompanied by a guide.

TABLE 2—GRAND TETON AND THE PARKWAY DAILY SNOWMOBILE ENTRY LIMITS

Entrance	Snowmobiles
Grassy Lake Road (Flagg-Ashton Road) .....	* 25
Jackson Lake .....	25

\* Snowmobiles being operated on the Grassy Lake Road would not be required to meet NPS air and sound emissions requirements.

The purpose of these daily entry limits is to impose strict limits on the numbers of snowmobiles and snowcoaches that may use the parks in order to minimize resulting impacts, consistent with the NPS's mandate to conserve park resources and ensure that they are not impaired. While these limits do not constitute the maximum limit on snowmobiles that could be permitted in the Park, these limits are intended to continue to provide adequate snowmobile access to the Park under the current circumstances. Compared to historical use where peak days found as many as 1,700 snowmobiles in the parks, these limits represent a considerable reduction in peak day use, are less than the historic seasonal daily average of Yellowstone entries, and are clearly much less than the NPS has legal discretion to authorize consistent with the *Management Policies*. These limits would reduce snowmobile usage well below historic levels that were of particular concern in the 2000 ROD.

The daily snowmobile and snowcoach limits are based on the analysis contained in the EA, which concluded that these limits, combined with other elements of this rule, would prevent unacceptable impacts thus preventing impairment to park resources and values while allowing for an appropriate range of experiences available to park visitors.

#### *Avalanche Management—Sylvan Pass*

Sylvan Pass will be open under the 2008 Plan for oversnow travel (both motorized and non-motorized) for a limited core season, from December 22 through March 1 each year, subject to weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities. A combination of avalanche mitigation

techniques may be used, including risk assessment analyses as well as forecasting and helicopter and howitzer dispensed explosives. The results of previous safety evaluations of Sylvan Pass by the Occupational Health and Safety Administration and an Operational Risk Management Assessment will be reviewed and updated, and the NPS will evaluate additional avalanche mitigation techniques and risk assessment tools in order to further improve safety and visitor access.

From March 2 to March 15, the NPS will maintain the road segment from the East Entrance to a point approximately four miles west of the entrance station to provide for opportunities for cross-country skiing and snowshoeing. Limited snowmobile and snowcoach use will be allowed in order to provide drop-offs for such purposes.

This approach both addresses the concerns of the communities and the National Park Service. The City of Cody, Wyoming, as well as Park County, Wyoming, and the State of Wyoming have clearly articulated the importance of this route to the community and the historical relationship between Cody and Yellowstone's East Entrance. They have spoken for the businesses near Yellowstone's East Entrance and how those businesses have been negatively impacted in recent years by the changing patterns of winter visitation. They have stated how those businesses will continue to be adversely affected if the pass is closed to oversnow vehicle travel in the winter. The community and businesses have also stated the value they place on the certainty of the road being open in the winter and the importance of that certainty to their businesses and guests. NPS acknowledges those values and concerns and has carefully weighed those considerations.

Avalanche control at Sylvan Pass has long represented a safety concern to the National Park Service. The 2000 FEIS, the 2003 SEIS, the 2004 EA, and the 2007 FEIS all clearly identify the significant avalanche danger on Sylvan Pass, which has been well known for many years. Approximately 20 avalanche paths cross the road at Sylvan Pass. They average over 600 feet of vertical drop, and the East Entrance Road crosses the middle of several of

the paths, putting travelers at risk of being caught in an avalanche. NPS employees must cross several uncontrolled avalanche paths to reach the howitzer used for discharging those avalanches, and the howitzer is at the base of a cliff prone to both rock-fall and additional avalanche activity (the howitzer cannot be moved without compromising its ability to reach all avalanche zones). Artillery shells sometimes fail to explode on impact, and unexploded rounds remain on the slopes, presenting year-round hazards to both employees and visitors, both in Yellowstone and the Shoshone National Forest. Natural avalanches can and do occur, both before and after howitzer use. Using a helicopter instead of a howitzer also is a high-risk activity because of other risks a helicopter contractor would have to incur.

The NPS may use a combination of techniques that have been used in the past (howitzer and helicopter), as well as techniques that may be available in the future. Area staff may use whichever tool is the safest and most appropriate for a given situation, with the full understanding that safety of employees and visitors comes first. Employees in the field make the operational determination when safety criteria have been met, and operations can be conducted with acceptable levels of risk. The NPS will not take unacceptable risks. When safety criteria have been met, the pass will be open; when they have not been met, the pass will remain closed. As with past winters, extended closures of the pass may occur.

#### **Section-by-Section Analysis**

*Sec. 7.13(l)(2) What terms do I need to know?*

The NPS has included definitions for a variety of terms, including oversnow vehicle, designated oversnow route, and commercial guides. These definitions are also applicable to Grand Teton and the Parkway, § 7.22(g)(2) and § 7.21(a)(2), respectively. For snowmobiles, NPS is continuing to use the definition found at 36 CFR 1.4, and sees no need to alter that definition at this time. Earlier regulations specific to Yellowstone, Grand Teton and the Parkway referenced "unplowed roadways" but that terminology was changed to "designated oversnow



routes” to more accurately portray the condition of the route being used for oversnow travel. These routes remain entirely on roads or water surfaces used by motor vehicles and motorboats during other seasons and thus are consistent with the requirements in § 2.18. Earlier regulations also referred only to snowmobiles or snowcoaches. Since there is a strong likelihood that new forms of machines will be developed in the future that can travel on snow, a definition for “oversnow vehicle” was developed to ensure that such new technology is subject to this regulation. When a particular requirement or restriction only applies to a certain type of machine (for example, some concession restrictions only apply to snowcoaches), the specific machine is stated and only applies to that type of vehicle, not all oversnow vehicles. However, oversnow vehicles that do not meet the strict definition of a snowcoach (i.e., both weight and passenger capacity) would be subject to the same requirements as snowmobiles. The definitions listed under § 7.13(l)(2) will apply to all three parks. These definitions may be clarified in future rulemakings based on changes in technology.

*Sec. 7.13(l)(3) May I operate a snowmobile in Yellowstone National Park?*

The authority to operate a snowmobile within Yellowstone, subject to use limits, guiding requirements, operating hours and dates, equipment requirements, and operations established elsewhere in this section, is provided in § 7.13(l)(3). Similarly, it is provided for Grand Teton in § 7.22(g)(3) and for the Parkway in § 7.21(a)(3). The authority to operate snowmobiles in Yellowstone would be limited to three winter seasons, terminating at the conclusion of the 2010–2011 season. This limitation is included because the rule is intended to be an interim regulation for Yellowstone, during which time the NPS will seek to develop a new long-term management plan and regulations to guide winter use of the park. In light of the highly controversial and complex nature of the issue and its history of litigation, the NPS believes that a 3-year interim period is the minimum necessary to provide sufficient time to complete whatever process will follow to guide long-term winter use management of the park. The 3-year limitation would not apply to Grand Teton and the Parkway. However, snowmobile use between Flagg Ranch and the South Entrance of Yellowstone would effectively be limited to a 3-year

period because all such use is associated with trips into Yellowstone and controlled by concession contracts.

*Sec. 7.13(l)(4) May I operate a snowcoach in Yellowstone National Park?*

This paragraph continues the authority to operate snowcoaches in Yellowstone, and requires that they be commercially operated under a concessions contract. Similarly, the authority to operate snowcoaches in the Parkway is provided in § 7.21(a)(4). For Grand Teton, § 7.22(g)(4) continues the current prohibition on the operation of snowcoaches.

Similar to the 3-year limitation on snowmobile use described above, the authority to operate snowcoaches in Yellowstone would also be in effect only through the winter season of 2010–2011. Although the 3-year limitation on the authority to operate snowcoaches in the Parkway is not included in § 7.21(a)(4), snowcoach use would effectively be limited to a 3-year period since all such use is associated with trips into Yellowstone and controlled by concession contracts.

The NPS also proposes to continue the requirement that all non-historic snowcoaches meet the applicable EPA air emissions standards that were in effect at the time the vehicle was manufactured.

*Sec. 7.13(l)(5) Must I operate a certain model of snowmobile?*

This paragraph continues the requirement that only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in Yellowstone. Similarly, this requirement is described for Grand Teton and the Parkway in § 7.22(g)(5) and § 7.21(a)(5), respectively.

*Sec. 7.13(l)(6) How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?*

The NPS is not proposing any changes to the hydrocarbon and carbon monoxide emissions requirements for snowmobiles operating in the park. Snowmobiles must be certified under 40 CFR part 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons and an FEL no greater than 120 g/kW-hr for carbon monoxide. Changes are not proposed to the current requirement that snowmobiles must operate at or below 73 dBA.

For Grand Teton and the Parkway, the same requirements are contained in § 7.22(g)(6) and § 7.21(a)(6), respectively.

*Sec. 7.13(l)(7) Where may I operate my snowmobile in Yellowstone National Park?*

See also § 7.22(g)(7) and § 7.21(a)(7) for Grand Teton and the Parkway. Specific routes are listed where snowmobiles may be operated, but this proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including, for example, the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns, and in the interest of public safety and protection of park resources.

*Sec. 7.13(l)(8) What routes are designated for snowcoach use?*

See also § 7.21(a)(8) for the Parkway. In addition to the specific routes open to snowmobile use, snowcoaches may be operated on several other specific routes in Yellowstone. This proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns, and in the interest of public safety and protection of park resources.

*Sec. 7.13(l)(9) Must I travel with a commercial guide while snowmobiling in Yellowstone?*

See also § 7.22(g)(8) and § 7.21(a)(9) for Grand Teton and the Parkway. The NPS is proposing to retain the requirement that all recreational snowmobile operators in Yellowstone be accompanied by a commercial guide. Parties must travel in groups of no more than eleven snowmobiles including that of the guide.

No changes are being proposed regarding guiding requirements for Grand Teton and the Parkway, where guides are not currently required except in the Parkway on the route between Flagg Ranch and the South Entrance of Yellowstone.

*Sec. 7.13(l)(10) Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the park each day?*

The NPS is proposing to change the number of snowmobiles allowed in Yellowstone each day from 720 to 318, and from 140 per day in Grand Teton and the Parkway to 50 (see § 7.22(g)(9) and § 7.21(a)(10)). The NPS is also proposing to establish a daily entry limit of 78 snowcoaches. This number conforms to the existing number authorized in concession contracts and reflects consideration of the analyses of impacts in the EA.

*Sec. 7.13(l)(11) When may I operate my snowmobile or snowcoach?*

See also § 7.22(g)(10) and § 7.21(a)(11) for Grand Teton and the Parkway. The NPS is not proposing any changes to the methods that the superintendent would use to determine operating hours and dates.

*Sec. 7.13(l)(12) What other conditions apply to the operation of oversnow vehicles?*

This section includes a variety of requirements regarding the operation of snowmobiles in the parks, such as drivers' license and registration requirements, operating procedures, requirements for headlights, brakes and other safety equipment, length of idling time, towing of sleds, and other requirements related to safety and resource impact considerations. No changes are being proposed in this section from the previous regulations. See also § 7.22(g)(11) for Grand Teton and § 7.21(a)(12) for the Parkway.

*Sec. 7.13(l)(13) What conditions apply to alcohol use while operating an oversnow vehicle?*

The NPS is proposing no changes to the conditions applicable to the use of alcohol while operating oversnow vehicles. Although the regulations in 36 CFR 4.23 apply to oversnow vehicles, a provision was included in the 2004 regulations to address the issue of under-age drinking while operating a snowmobile, and snowcoach operators or snowmobile guides operating under the influence while performing services for others. Many states have adopted similar alcohol standards for under-age operators and commercial drivers and the NPS feels it is necessary to specifically include these regulations to help mitigate potential safety concerns.

The alcohol level for minors (anyone under the age of 21) is set at .02. Although the NPS endorses "zero tolerance," a very low Blood Alcohol

Content (BAC) is established to avoid a chance of a false reading. Mothers Against Drunk Driving and other organizations have endorsed such a general enforcement posture and the NPS agrees that under-age drinking and driving, particularly in a harsh winter environment, will not be allowed.

In the case of snowcoach operators or snowmobile guides, a low BAC limit is also necessary. Persons operating a snowcoach are likely to be carrying 8 or more passengers in a vehicle with tracks or skis that is more challenging to operate than a wheeled vehicle, and on oversnow routes that could pose significant hazards should the driver not be paying close attention or have impaired judgment. Similarly, persons guiding others on a snowmobile have put themselves in a position of responsibility for the safety of other visitors and for minimizing impacts to park wildlife and other resources. Should the guide's judgment be impaired, hazards such as wildlife on the road or snow obscured features, could endanger all members of the group in an unforgiving climate. For these reasons, the NPS is continuing to require that all guides be held to a stricter than normal standard for alcohol consumption. Therefore, the NPS has established a BAC limit of .04 for snowcoach operators and snowmobile guides. This is consistent with federal and state rules pertaining to BAC thresholds for someone with a commercial driver's license.

The same conditions apply within Grand Teton and the Parkway; see § 7.22(g)(12) and § 7.21(a)(13), respectively.

*Sec. 7.13(l)(14) Do other NPS regulations apply to the use of oversnow vehicles?*

See also § 7.22(g)(13) and § 7.22(a)(14) for Grand Teton and the Parkway, respectively. The NPS is not proposing any changes to the applicability of other NPS regulations concerning oversnow vehicle use.

Relevant portions of 36 CFR 2.18, including § 2.18(c), have been incorporated within these proposed regulations. Some portions of 36 CFR 2.18 and 2.19 are superseded by these proposed regulations, which allows these proposed regulations to govern maximum operating decibels, operating hours, and operator age (this is applicable to these park units only). In addition, 36 CFR 2.18(b) would not apply in Yellowstone, while it would apply in Grand Teton and the Parkway. This is due to the existing concurrent jurisdiction in Grand Teton and the Parkway. 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. The proposed rule also supersedes 36 CFR 2.19(b) in that it prohibits the towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile, except in emergency situations. Towing people, especially children, is a potential safety hazard and health risk due to road conditions, traffic volumes, and direct exposure to snowmobile emissions. This rule does not affect supply sleds attached by a rigid device or hitch pulled directly behind snowmobiles or other oversnow vehicles as long as no person or animal is hauled on them. Other provisions of 36 CFR Parts 1 and 2 continue to apply to the operation of oversnow vehicles unless specifically excluded here.

*Sec. 7.13(l)(15) Are there any forms of non-motorized oversnow transportation allowed in the park?*

See also § 7.22(g)(14) and § 7.21(a)(15) for Grand Teton and the Parkway, respectively. Non-motorized travel consisting of skiing, skating, snowshoeing, and walking are generally permitted. Yellowstone and Grand Teton have specifically prohibited dog sledding and ski-joring (the practice of a skier being pulled by dogs or a vehicle) to prevent disturbance or harassment to wildlife. These restrictions have been in place for several years and would be reaffirmed under these regulations.

*Sec. 7.13(l)(16) May I operate a snowplane in Yellowstone National Park?*

See also § 7.22(g)(15) and § 7.21(a)(16) for Grand Teton and the Parkway. Before the winter of 2002–2003, snowplanes were allowed on Jackson Lake within GTNP under a permit system. Based on the analysis set forth in the 2000 EIS and ROD and incorporated by reference into three subsequent rulemaking processes, the NPS found that the use of snowplanes results in impairment of the natural soundscape and opportunities for enjoyment of the park by visitors in violation of the NPS Organic Act. Additionally, with their ungarded propellers and high travel speeds, snowplanes present unacceptable safety risks. Accordingly, snowplanes have been banned since 2001. On June 27, 2007, the U.S. District Court for the District of Wyoming upheld the prohibition on the use of snowplanes; the case is currently on appeal. To date, NPS is not aware of any new or

additional information regarding snowplanes that would suggest their use would not impair park resources and values. As a result, and to avoid any uncertainty based on their previous use on Jackson Lake, this proposed rule includes language that specifically continues the prohibition of snowplanes in each of these parks.

*Sec. 7.13(l)(17) Is violating any of the provisions of this section prohibited?*

Some magistrates have interpreted the lack of a specific prohibitory statement in regulations to be ambiguous and therefore unenforceable. Although it would seem to be implicit that each instance of a failure to abide by specific requirements is a separate violation, the proposed regulation contains clarifying language for this purpose. Each occurrence of non-compliance with these regulations is a separate violation. However, it should also be noted that the individual regulatory provisions (i.e., each of the separately numbered subparagraphs throughout these three sections) could be violated individually and are of varying severity. Thus, each subparagraph violated can and should receive an individual fine in accordance with the issuance of the park's bail schedule as issued by the appropriate magistrate. It is not intended that violations of multiple subparagraphs of these regulations be treated as a single violation or subject only to a single fine. See also § 7.22(g)(20) and § 7.21(a)(17) for Grand Teton and the Parkway.

*Sec. 7.22(g)(16) May I continue to access public lands via snowmobile through the park?*

The NPS is proposing to continue providing access to public lands that are adjacent to Grand Teton National Park, consistent with the requirements found in the park's enabling legislation. Specific routes are designated to provide such access; the requirements established for air and sound emissions, guiding and licensing, snowmobile operator age, and daily entry limits do not apply on these routes. Section 7.22(g)(17) specifies that the routes designated in § 7.22(g)(16) may be used only to gain direct access to public lands located adjacent to the park boundary.

*Sec. 7.22(g)(18) May I continue to access private property within or adjacent to the park via snowmobile?*

The NPS is proposing to continue providing access to inholdings or private lands adjacent to Grand Teton National Park, consistent with the requirements found in the park's enabling legislation. Specific routes are designated to provide access, and the requirements established for air and sound emissions, guiding and licensing, snowmobile operator age, and daily entry limits do not apply on these routes. Section 7.22(g)(19) specifies that the routes designated in § 7.22(g)(18) may be used only to gain direct access to private lands located within or adjacent to the park boundary, and is authorized only for the landowners and their representatives or guests.

## Summary of Economic Analysis

### Introduction

The results of the cost-benefit analyses indicate that the costs of the proposed regulatory action are justified by the associated benefits. Specifically, this proposed regulatory action will not have an annual economic effect of \$100 million, and will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government relative to the Alternative 1 baseline. Rather, this proposed regulatory action is expected to improve economic efficiency. Further, this proposed regulatory action will have positive impacts on small entities relative to the Alternative 1 baseline.

### Cost-Benefit Analysis

NPS has considered the impacts of the Alternative 1 baseline and the Alternative 2 action alternatives, and determined that the resulting winter season park visitation (including YNP, GTNP, and the Parkway) under those two scenarios is represented by Table 3 below. These visitation levels are identical to relevant visitation levels during the 2005–06 winter season in YNP (Duffield and Neher, August 2006), which reflect recent trends for the GYA. Alternative 1 (baseline) includes only North Entrance wheeled vehicle entries plus park-wide ski entries, while Alternative 2 (action) also includes snowmobile and snowcoach entries. Visitation changes in GTNP and the Parkway between the two alternatives are considered *de minimis*.

TABLE 3—WINTER SEASON PARK VISITATION IN THE GREATER YELLOWSTONE AREA UNDER ALTERNATIVES 1 AND 2

Visitor-Days				
Alternative	Snowmobile	Snowcoach	Wheeled vehicle and ski	Total
1 (Baseline) .....	0	0	40,029	40,029
2 (Action) .....	28,833	19,856	40,029	88,718
Change from 1 to 2 .....	+28,833	+19,856	0	+48,689

### Benefits and Costs

As indicated in Table 3, park visitors to the GYA are expected to gain benefits from increased snowmobile and snowcoach access under Alternative 2 relative to the Alternative 1 baseline. These benefits are termed “consumer surplus,” which includes the maximum willingness to pay for such activities

minus the costs of participation. Therefore, consumer surplus measures the net benefits of visitation. NPS also estimates that businesses would receive benefits from Alternative 2 relative to the Alternative 1 baseline. These benefits would arise from the provision of additional services associated with the increased snowmobile and snowcoach visitation under Alternative

2. These benefits are termed “producer surplus,” which are a net benefits measure similar to the consumer surplus benefits accruing to visitors. NPS was able to quantify certain benefits in the current analysis. Those consumer and producer surplus benefits that could be quantified under Alternative 2 are summarized in Table 4.

TABLE 4—QUANTIFIED CONSUMER AND PRODUCER SURPLUS BENEFITS UNDER ALTERNATIVE 2

Discount rate	Total present value	Amortized annual value
3 percent .....	\$37,901,000	\$13,399,000
7 percent .....	35,163,000	13,399,000

Office of Management and Budget Circular A–4 recommends a 7 percent discount rate in general, and a 3 percent discount rate when analyzing the impacts to private consumption. Values are 2003 dollars rounded to the nearest 1,000.

Although costs could not be quantified, it is possible for visitors who do not access the parks by snowmobile or snowcoach to suffer consumer surplus losses under Alternative 2 due to interactions with those visitor uses. However, given recent visitor trends and the relatively low level of snowmobile and snowcoach use contemplated under Alternative 2, it is not possible at this time to estimate any such reductions in visitor use. Therefore, while recognizing that such losses to visitor benefits are possible under Alternative 2, NPS is unable to quantify those losses. Further, NPS recognizes that it is possible that some skiers may be worse off under the Alternative 1 baseline if they would use snowmobiles or snowcoaches to access trails within the parks. In addition to these potential costs, the proposed winter use plans may discourage additional visits to the parks by people who do not currently visit the parks in the winter, but might if snowmobiles and snowcoaches were prohibited from the parks. The Winter 2002–03 Visitor Survey was based only on current visitors to the parks and therefore does not reflect the values of those people.

Costs to “passive” users of the parks may also result from the proposed winter use plans. These users are individuals who do not directly use park resources and perhaps never intend to do so. Economists refer to the values these users hold using several different terms, including non-use values, passive use values, and existence values. The underlying motivations for these values include the satisfaction of knowing that a particular resource is protected or a desire to preserve the resource for future generations. Under the proposed winter use plans, these users may be less confident that park resources are being protected, and will therefore incur costs arising from the knowledge that park resources may be compromised by the presence of snowmobiles and snowcoaches.

Other costs that could not be quantified include the costs of road grooming and maintenance, winter staffing, snowmobile and snowcoach safety hazards, and law enforcement. In general, increasing snowmobile and

snowcoach activity in the parks would require NPS to redirect resources away from other activities that would protect park resources and address park management needs.

#### Explanation of Selected Preferred Alternative

The preferred alternative in the EA was selected because it best balances winter use with protection of park resources to ensure that the impairment of, or unacceptable impacts to, park resources and values does not occur. The preferred alternative demonstrates the NPS commitment to monitor winter use and to use the results to adjust the winter use program. The results of the monitoring program, including data obtained regarding air quality, wildlife, soundscapes, and health and safety, were used in formulating the alternatives in the EA. The preferred alternative applies the lessons learned over the last several winters relative to commercial guiding, which demonstrated, among other things, that 100% commercial guiding has been very successful and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the parks. Law enforcement incidents have been reduced well below historic numbers, even after taking into account reduced visitation. That reduction is attributed to the quality of the guided program.

The preferred alternative uses strictly limited oversnow vehicle numbers, combined with air and sound emission requirements and 100% commercial guiding, to help ensure that the purpose and need for the environmental impact statement is best met. With access via snowmobile, snowcoaches, or non-motorized means, park visitors will have a range of appropriate winter recreational opportunities. With the significant restrictions built into snowmobile and snowcoach use, this plan also ensures that these recreational activities will not impair or irreparably harm park resources or values.

The preferred alternative also supports the communities and businesses both near and far from the parks and will encourage them to have an economically sustainable winter

recreation program that relies on a variety of modes for access to the parks in the winter. Peak snowmobile numbers allowed under the preferred alternative are well below the historic averages, but the snowmobile and snowcoach limits should provide a viable program for winter access to the parks.

#### 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 report “Economic Analysis: Proposed Temporary Winter Use Plans for the Greater Yellowstone Area for Winter Seasons 2008–09 through 2010–11” (Peacock, October 19, 2008).

(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) OMB has determined that this rule raises 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 has been the subject of numerous lawsuits regarding winter use management.

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this document will have a significant positive economic

effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, an Initial Regulatory Flexibility Analysis has been conducted. This analysis is contained in the report "Economic Analysis: Proposed Temporary Winter Use Plans for the Greater Yellowstone Area for Winter Seasons 2008–09 through 2010–11" (Peacock, October 19, 2008).

Only one action alternative was considered, Alternative 2. The Initial Regulatory Flexibility Analysis concludes that Alternative 2 will have positive impacts and will not have significant negative impacts on small businesses relative to the Alternative 1 baseline.

#### *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:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, 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 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 2008 Winter Use Plans Environmental Assessment (2008 EA) has been prepared and is or will shortly be available for public review and comment. The EA is available for review by contacting Yellowstone or Grand Teton Management Assistant's Offices or at <http://parkplanning.nps.gov/>.

Comments are being solicited separately for the 2008 EA and this proposed rule. See the Public Participation section for more information on how to comment on the EA.

#### *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:

The NPS has 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 previous winter use planning documents. 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.

#### **Clarity of This Regulation**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### *Administrative Procedure Act*

This proposed rule is available for public review and comment for a period of 15-days. Under more typical circumstances the NPS would normally provide a 60-day comment period. In this case, the Order that was issued by the DC District Court vacated the 2007 Rule only 90 days prior to the scheduled start of the winter season in the Parks, and has resulted in the need for an expedited rulemaking process. For this regulation, we have determined that in order for a final rule to become effective on or about December 15, 2008, it is necessary to reduce the normal review and comment period to 15 days. Good cause exists for the shortened comment period for the following reasons:

(1) The NPS has received voluminous public comment on previous rulemaking efforts regarding winter use of the Parks since 2000, including 2001, 2002, 2003, 2004, and 2007. Those rulemaking efforts addressed many of the same issues as are addressed in this rulemaking, and no substantially new issues are being raised.

(2) The NPS has in good faith since at least March 2007 publicly stated that the 2008–2009 winter season for the Parks would commence on December 15, 2008, and the public and businesses have made decisions based on the widespread public knowledge of this opening date.

(3) Many persons planning to visit the Parks have already made travel plans in anticipation of the Parks being open for snowmobile and snowcoach use, such as reserving time off from work, booking airfares and hotel accommodations, making reservations for snowmobile or snowcoach tours, and the like. The Christmas-New Year period is the most heavily visited time of the winter season. If the Parks do not open as scheduled on December 15, it would create unnecessary hardship for visitors who have already planned trips, and would likely result in economic losses

for some visitors if reservations had to be cancelled. Significant revenue loss for businesses in and around the Parks would also occur. Many businesses in the gateway communities surrounding the Parks, and the people who rely upon them for their livelihoods, are highly dependent upon the Parks being open for the entire duration of the 90-day season.

(4) Snowmobile and snowcoach operators have made business decisions and investments for the winter season premised on an opening date of December 15, 2008. Such actions include purchasing new snowmobiles and snowcoaches for their fleets, making offers of employment, preparing advertising and other materials, and purchasing snowmobile accessories such as suits, helmets, boots, mittens, etc. A late opening would shorten an already-brief winter season, thereby depriving these businesses and others that depend on the winter season (such as hotels, restaurants, service stations, and other hospitality-oriented businesses) of revenue that is important to their livelihoods.

**Drafting Information:** The primary authors of this regulation are Gary Pollock, Management Assistant, Grand Teton National Park, and John Sacklin, Management Assistant, Yellowstone National Park.

### Public Participation

If you wish to comment, you may submit your comments by any one of several methods.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190.
- **Hand Deliver to:** Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

All comments must be received by midnight of the close of the comment period.

As noted previously, an EA is also available for public comment. Those wishing to comment on both this proposed rule and the EA should submit separate comments for each. Comments regarding the EA may be submitted online via the NPS' Planning, Environment, and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov/>, or they may be addressed to: Winter Use Plans EA, P.O. Box 168, Yellowstone National Park, WY 82190. Additional information about the EA is available online at: <http://www.nps.gov/yell/planyourvisit/winteruse.htm>.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 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); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Amend § 7.13 by revising 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)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (l)(2) also apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(i) *Commercial guide* means a guide who operates as a snowmobile or snowcoach guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, “guide” also means “commercial guide.”

(ii) *Historic snowcoach* means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

(iii) *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 oversnow 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.

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

(v) *Snowcoach* means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

(vi) *Snowmobile* means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

(vii) *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?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and must provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2010–2011.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Snowcoaches may only be operated in Yellowstone National Park under a concessions contract. Snowcoach operation is subject to the conditions

stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must meet NPS air emissions requirements, which mean the applicable EPA emissions standards for the vehicle that were in effect at the time it was manufactured.

(iii) All critical emission-related exhaust components (as listed in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emissions-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

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

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2010–2011.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. 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 years 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 before the 2004 model year may be operated only if they have been shown to the Superintendent to have emissions no greater than the limits specified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must 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 73 dBA 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. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified.

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

(v) These air and sound emissions requirements do not apply to snowmobiles being operated on the Cave Falls Road in Yellowstone.

(7) *Where may I operate my snowmobile in Yellowstone National Park?* (i) You may 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 only through the winter of 2010–2011:

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

(B) Norris Junction to Canyon Junction.

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

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

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

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

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

(H) The East Entrance Road from Fishing Bridge Junction to the East Entrance.

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

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village,

West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive, between noon and 9 p.m. each day.

(N) North Canyon Rim Drive, between noon and 9 p.m. each day.

(O) Riverside Drive, between noon and 9 p.m. each day.

(P) Cave Falls Road.

(ii) 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, avalanche conditions, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (l)(7)(i)(M) through (l)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes only through the winter of 2010–2011:

(A) Fountain Flat Road.

(B) The Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(C) For rubber-tracked snowcoaches only, the Grand Loop Road from Upper Terrace Drive to the junction of the Grand Loop Road and North Entrance Road, and within the Mammoth Hot Springs developed area.

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

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational



snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third

mile of the first snowmobile in the group.

(iv) The guiding requirements described in this paragraph (l)(9) do not apply to snowmobiles being operated on the Cave Falls Road.

(10) *Are there limits established for the number of snowmobiles and*

*snowcoaches permitted to operate in the park each day?* The number of snowmobiles and snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

TABLE 1 TO § 7.13(L)—DAILY SNOWMOBILE AND SNOWCOACH LIMITS

Park entrance/location	Commercially guided snowmobiles	Commercially guided snowcoaches
(i) North Entrance *	12	13
(ii) West Entrance	160	34
(iii) South Entrance	114	13
(iv) East Entrance	20	2
(v) Old Faithful *	12	16
(vi) Cave Falls	** 50	0

\* Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows the daily entry limits between the North Entrance and Old Faithful to be adjusted as necessary, so long as the total number of snowmobiles between the two entrances does not exceed 24. For example, the concessioner could operate 6 snowmobiles at Old Faithful and 18 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

\*\* These snowmobiles operate on an approximately 1-mile segment of road within the park where the use is incidental to other snowmobiling activities in the Targhee National Forest. These snowmobiles do not need to be guided or to meet NPS air and sound emissions requirements.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

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

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

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

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

(D) Driving 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 used where available

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

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver 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 a state or province in the United States or Canada, respectively.

(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 (l)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 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 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 (l)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(ii) This paragraph (l)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?*

(i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS 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. Notice will be made in accordance with § 1.7(a) of this chapter.

(iii) Dog sledding and ski-joring are prohibited. Bicycles are not allowed on oversnow routes in Yellowstone.

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

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited. Each such occurrence of non-compliance with these regulations is a separate violation.

3. Amend § 7.21 by revising paragraph (a) to read as follows:

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

(a)(1) *What is the scope of this section?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(3) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and will 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?* (i) Snowcoaches may only be operated in the Parkway under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must meet NPS air emissions requirements, which mean the applicable EPA emissions standards for the vehicle that were in effect at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emission-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

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

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the Parkway. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. 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 years 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 before the 2004 model year may be operated only if they have been shown to have air emissions no greater than the restrictions identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must 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 73 dBA 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. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the Parkway for a period not exceeding 6 years from the date upon which first certified.

(iv) These air and sound emissions requirements do not apply to snowmobiles being operated on the Grassy Lake Road. On all other oversnow routes within the Parkway, snowmobiles must meet these air and sound emissions requirements.

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

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

(A) Along U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway.

(B) Flagg Ranch developed area.

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

(ii) 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. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(7) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) 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 routes designated for snowmobile use in paragraph (a)(7)(i)(A) and (B) of this section. No other routes are open to

snowcoach use, except as provided in paragraph (a)(8)(ii) of this section.

(ii) 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. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner

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

(9) *Must I travel with a commercial guide while snowmobiling in the Parkway, and what other guiding requirements apply?* (i) All recreational snowmobile operators using the oversnow route along U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway must be accompanied by a commercial guide. A guide is not required in other portions of the Parkway.

(ii) Guided snowmobile parties must travel in a group of no more than 11

snowmobiles, including that of the guide.

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

(10) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the Parkway each day?* The number of snowmobiles and snowcoaches allowed to operate in the Parkway each day is limited to a certain number per road segment. The limits are listed in the following table:

TABLE 1 TO § 7.21(A)—DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Park entrance/road segment	Snowmobiles	Commercial snowcoaches
(i) Grassy Lake Road (Flagg-Ashton Road) .....	25	0
(ii) Flagg Ranch to Yellowstone South Entrance * .....	114	13

\* Commercially guided; the numbers of snowmobiles and snowcoaches allocated to this road segment may be adjusted depending on the results of analysis for concessions contracts, and will be the same as indicated in Table 1 to § 7.13(l) of this part.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *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) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

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

(D) Driving 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) Towing 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 used where available and accessible. Oversnow vehicles may

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

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver 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 Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (a)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 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 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 (a)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(ii) This paragraph (a)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS 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. Notice will be made in accordance with § 1.7(a) of this chapter.

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

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions, or requirements of paragraphs (a)(1) through (a)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

\* \* \* \* \*

4. Amend § 7.22, by revising paragraph (g) to read as follows:

**§ 7.22 Grand Teton National Park.**

\* \* \* \* \*

(g)(1) *What is the scope of this section?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, 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 (g)(2) also applies to non-administrative oversnow vehicle 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, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and 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 National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the Superintendent.

(5) *Must I operate a certain model of snowmobile in the park?* Except as provided for in paragraph (g)(6)(iv), only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. 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 years of manufacture for use in Grand Teton National 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 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 before 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 Parts 1051 and 1065) must 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 73 dBA 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. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified, except that snowmobiles being operated on Jackson Lake may continue to be operated up to 10 years, provided that these snowmobiles' mileage does not exceed 6,000 miles.

(iv) Snowmobiles will be exempt from these air and sound emissions requirements while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

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

(7) *Where may I operate my snowmobile in the park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with

§ 2.18(c) of this chapter. The following oversnow route is so designated for snowmobile use:

(A) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must be licensed or otherwise permitted to fish in Wyoming and possess the proper fishing gear. Snowmobiles may only be used to travel to and from fishing locations on the lake.

(ii) The Superintendent may open or close this route, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized uses on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (g)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park?* You are not required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the number of snowmobiles permitted to operate in the park each day?* (i) A total of 25 snowmobiles per day are allowed to operate on the route designated in paragraph (g)(7)(i)(A).

(ii) The Superintendent may adjust the number of snowmobiles described in paragraph (g)(9)(i) upwards or downwards, not to exceed a limit of 40 snowmobiles per day, based on the results of sound monitoring data, and after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such changes by 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, any changes to operating hours or dates will be made on an annual basis, 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) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

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

(D) Driving 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.

(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 used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver 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 Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (g)(11) also applies to non-administrative over-snow vehicle 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 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 operator 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 (g)(12) also applies to non-administrative over-snow vehicle 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 subject to §§ 2.18(a), (b), and (c), but 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 consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS 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 and ski-joring are prohibited.

(15) *May I operate a snowplane in the 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 the designated routes through the park identified in paragraphs (g)(i)–(iv) of this section. Requirements established in this section related to air and sound emissions, daily entry limits, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. Only the following routes 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.

(iii) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/

287 from the east park boundary to a point approximately 2 miles east of Moran Junction. If necessary for the proper administration of visitor use and resource protection, the Superintendent may extend this designated route to the Moran Entrance Station.

(iv) The Superintendent may designate additional routes if necessary to provide access to other adjacent public lands.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may only use those routes designated in paragraph (g)(16) of this section 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?* The Superintendent may establish reasonable and direct snowmobile access routes to the 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 private properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89/191 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 property commonly referred to as the "Halpin Property."

(v) From Highway 26/89/191 to those lands commonly referred to as the "Meadows," the "Circle EW Ranch," the "Moulton Property," the "Levinson Property," and the "West Property."

(vi) From Cunningham Cabin pullout on U.S. 26/89/191 near Triangle X to the piece of land commonly referred to as the "Lost Creek Ranch."

(vii) The Superintendent may designate additional routes if necessary to provide reasonable access to inholdings or adjacent private property.

(viii) 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?* The 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)(1) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

**Lyle Lavery,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8-26447 Filed 11-4-08; 8:45 am]

BILLING CODE 4310-CT-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R04-OAR-2008-0681; FRL-8737-2]

#### Outer Continental Shelf Air Regulations Consistency Update for North Carolina

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

**ACTION:** Proposed rule-consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act ("CAA" or "the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of North Carolina will be the designated COA. The effect of approving the OCS requirements for the State of North Carolina is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations (CFR) and is listed in the appendix to the OCS air regulations. This proposed action is an annual update of North Carolina's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources.

**DATES:** Comments must be received on or before December 5, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-

OAR-2008-0681, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

3. *Fax*: (404) 562-9019.

4. *Mail*: "(EPA-R04-OAR-2008-0681)," Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. "(EPA-R04-OAR-2008-0681)." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through

[www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. EPA's Evaluation
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

#### I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of

<sup>1</sup> For further information see the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792).