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**36 CFR Part 7
Special Regulations; Areas of the National
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DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 7**

RIN 1024-AD29

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

SUMMARY: This rule will manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway for up to three winter seasons (*i.e.*, through the winter of 2006–2007). This final rule is issued in conjunction with the Finding of No Significant Impact (FONSI) for the Temporary Winter Use Plans Environmental Assessment (EA), approved November 4, 2004, and will ensure that visitors to the parks have an appropriate range of winter recreational opportunities for the interim period. In addition, the final rule will ensure that these recreational activities are in an appropriate setting and that they do not impair park resources or values. The final rule is also necessary to allow time to collect additional monitoring data on the strictly limited snowmobile and snowcoach use. This rule provides a structure for winter use management in the parks for an interim period and is intended to reduce confusion and uncertainty among the public and local communities about winter use. These regulations require that recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound restrictions, that snowmobilers be accompanied by a commercial guide in Yellowstone, and institute new daily entry limits on the numbers of snowmobiles that may enter the parks. Traveling off designated oversnow routes remains prohibited.

DATES: This regulation is effective December 10, 2004.

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SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway (parkway; collectively the parks) for several decades. In 1990, the NPS completed a Winter Use Plan for the parks, but by 1993, it was clear that winter visitation was increasing much

more rapidly than the plan had projected, with peak day use exceeding 1,600 snowmobiles in both parks. This prompted the Greater Yellowstone Coordinating Committee (composed of the park superintendents and national forest supervisors) to begin data collection for the analysis of winter use within the entire Greater Yellowstone Area. Their work culminated in 1999 with a document entitled, *Winter Visitor Use Management: A Multi-Agency Assessment*.

However, in 1997, the Fund for Animals and other plaintiffs filed a lawsuit in the United States District Court for the District of Columbia, claiming, among other things, violations of the National Environmental Policy Act (NEPA) in developing the winter use plan for the parks. In October 1997, the Department of the Interior and the plaintiffs reached a settlement agreement wherein the NPS agreed, in part, to prepare an environmental impact statement (EIS) for a new winter use plan for the parks. The Final EIS was released in October 2000, and the Record of Decision was signed on November 22, 2000. The decision stated the intention of the NPS to eliminate both snowmobile and snowplane use of the parks, based on a finding that these uses (at historical and essentially unregulated levels) caused an impairment of the parks' resources and values. A final rule to implement this decision was published in the **Federal Register** on January 22, 2001.

In early December 2000, the International Snowmobile Manufacturers Association (ISMA) and several other plaintiffs (subsequently including the States of Wyoming and Montana) named the Secretary of the Interior, the Director of the National Park Service, and other officials in the Department of the Interior as defendants in a lawsuit filed in the United States District Court for the District of Wyoming. The lawsuit asked for the decision to prohibit snowmobiles to be set aside, alleging that the NPS violated NEPA and the Administrative Procedure Act (APA), among other things, in reaching the decision. The Interior Department and the NPS settled this lawsuit by agreeing to prepare a Supplemental Environmental Impact Statement (SEIS) in order to incorporate any new or additional information regarding cleaner and quieter snowmobile technology and to allow for additional public involvement in the process. On November 18, 2002, the NPS published a rule in the **Federal Register** delaying the snowmobile phase-out by one year, allowing time for completion of the SEIS. On February 20,

2003, the NPS issued the Final SEIS, which proposed to continue allowing snowmobile use under three strict conditions: (1) Winter visitation was to be limited to no more than 950 snowmobiles per day in Yellowstone; (2) all snowmobiles would have to use best available technology; and (3) snowmobilers would have to be led by trained guides. A Record of Decision was signed on March 25, 2003, and a final rule implementing the decision was published in the **Federal Register** on December 11, 2003. The new decision was challenged by the Fund for Animals and the Greater Yellowstone Coalition in the United States District Court for the District of Columbia. On December 16, 2003, the court vacated the new regulation and effectively reinstated the January 22, 2001, rule phasing out the recreational use of snowmobiles in the parks. Under the amended 2001 rule, approximately half the number of snowmobiles that would have been allowed under the 2003 rule were allowed into the parks for the 2003–2004 winter season, and snowmobiles were to be phased out entirely beginning with the 2004–2005 winter season.

Following the D.C. court's decision, ISMA and the State of Wyoming reopened their lawsuit against the Department and the NPS in the Wyoming court. On February 10, 2004, the Wyoming court issued a preliminary injunction preventing the NPS from continuing to implement the 2001 phase-out rule, and directing the park superintendents to issue emergency rules that would be "fair and equitable" to all parties. The parks' compendia were revised to allow a total of up to 780 snowmobiles per day into Yellowstone, and 140 for Grand Teton and the Parkway. In Yellowstone, the requirement that all snowmobilers travel with a commercial guide remained in effect. Thus, the 2003–2004 winter season was essentially split into two sub-seasons, with different rules regarding use of the parks in effect at different times. This created a highly uncertain atmosphere for park visitors, the local communities, and others with an interest in the parks, with many people not knowing how or whether they could visit the parks in winter. On October 14, 2004, the Wyoming Court vacated and remanded the 2000 EIS and ROD and the January 22, 2001, rule to the NPS.

Judicial proceedings are continuing in both Wyoming and Washington, DC.

Rationale for the Final Rule

This rule best balances winter use with protection of park resources to

ensure that adverse impacts from historical types and numbers of snowmobile uses do not occur. Winter use in the parks following the February 10, 2004, order of the Wyoming court demonstrates that—with strict limits on the numbers of snowmobiles allowed, the use of primarily BAT snowmobiles and commercial guiding—some level of both snowmobiles and snowcoaches can in fact be used in Yellowstone without impairing park resources and values. The decisions underlying the FONSI and this rule are based, in part, on the actual experiences of last winter. Our decision in this rule is also made with awareness that when asked to close Yellowstone to snowmobile use via legislation, a clear, bi-partisan majority of the U.S. House of Representatives explicitly voted this down. While this vote was not binding on the Department, it is informative and reflects the discretion afforded to the

Secretary under the laws she administers.

The rule also demonstrates the NPS commitment to monitor and use those results to adjust the winter use program. Last winter, the NPS implemented the monitoring program that it committed to in the 2003 decision, and the results of that monitoring were used to help formulate the alternatives in the EA as well as guide the decisions being made. This rule applies the lessons learned in the winter of 2003–2004 relative to commercial guiding, which demonstrated, among other things, that 100% commercial guiding was very successful and offered the best opportunity to protect park resources and provide opportunities for visitor enjoyment. Law enforcement incidents were reduced well below historic numbers, even after taking into account reduced visitation. That reduction is attributed to the quality and success of the commercial guiding program. This rule uses strictly limited snowmobile

numbers (at a level below the historical average use level for Yellowstone) combined with best available technology requirements for snowmobiles and 100% commercial guiding in Yellowstone to ensure that the impacts to park resources and values are not significant. This rule requires that all snowmobiles must remain on roads that automobiles use in the summer months, or in the case of Jackson Lake, lakes that motorized boats also use. With minor exceptions, all recreational snowmobiles in both parks would be required to meet Best Available Technology (BAT) requirements. The term “Best Available Technology” is specific to describing the air and sound emissions restrictions for snowmobiles that are operated in the three park units. This term is not similar to, nor should it be confused with, the term “Best Available Control Technology” used by the Environmental Protection Agency.

TOTAL DAILY SNOWMOBILE ENTRY LIMITS

Entrance	Commercially guided snowmobile limits	Unguided snowmobiles	Total
Yellowstone National Park			
West Entrance	400	.....	400
South Entrance	220	.....	220
East Entrance	40	.....	40
North Entrance*	30	.....	30
Old Faithful*	30	.....	30
Total	720	.....	720
Grand Teton National Park and the Parkway			
CDST	0	50	50
Grassy Lake Road (Flagg-Ashton Road)	0	50	50
Jackson Lake	0	40	40
Total	0	140	140

* **Note:** Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessionaire is the sole provider at both of these areas, this regulations 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 60. For example, the concessionaire could operate 25 snowmobiles at Old Faithful and 35 at the North Entrance if visitor demand warranted it. This will allow the concessionaire to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

The combination of strictly limited snowmobiles use and the availability of snowcoaches will provide park visitors with a range of appropriate winter recreational opportunities. The significant restrictions on snowmobile use also ensures that these recreational activities will not impair or irreparably harm park resources or values. Under this interim plan, NPS will continue to monitor and study the impacts of winter use in the parks. The interim plan is consistent with the Department of the Interior policies set forth in the

February 17, 2004, memorandum from the Assistant Secretary for Fish and Wildlife and Parks to the Director of the NPS.

The winter of 2003–2004 was the first time the NPS had the opportunity to collect information on a strictly managed winter use program. This rule will allow the NPS to continue to collect additional monitoring data on strictly limited snowmobile and snowcoach use. The monitoring data is extremely important in helping the NPS understand the results of its

management actions and for planning future actions. Prior to the winter of 2003–2004, the only monitoring information the NPS had on historical snowmobile use was at essentially unregulated levels with snowmobiles that were substantially more polluting and noisier. By contrast, the EIS, SEIS, and to a certain extent the EA, relied on modeling to forecast impacts. The modeling is useful for comparison purposes so that managers can understand the relative differences among alternatives, but it does not

replicate on-the-ground conditions. Monitoring measures actual outcomes. With only one winter's data on strictly managed snowmobile use, the ability of the NPS to fully understand the impacts of a strictly controlled management regime is limited. Implementing this plan will allow monitoring information to be collected for up to three additional winters.

Access by either snowmobile or snowcoach is the only feasible means of travel for most winter visitors wishing to see Yellowstone's most famous sites, including the Old Faithful area, and is also generally the only feasible means to travel to most interior areas of the park in order to enjoy cross-country skiing or snowshoeing. Of the 350 miles of roads in Yellowstone that are open to motorized vehicles in the summer, snowcoaches and snowmobiles share access to 180 miles in the winter, with snowcoaches alone using an additional 14 miles of roads.

This rule also helps support the communities and businesses both near and far from the parks and will encourage economically sustainable winter recreation programs. Snowmobile numbers allowed under this rule are below the historic peak averages, but the snowmobile limits should provide a viable program for winter access to the parks, and in combination with snowcoach access, provide the opportunity for achieving historic visitor use levels. This plan also provides certainty for park visitors, communities, and businesses by laying out a program for winter use for up to the next three winters.

Additionally, implementation of a temporary winter use plan is needed not only to comport with the results of the Wyoming and DC court decisions that vacated the 2000 and 2003 records of decision and the 2001 and 2003 implementing regulations, but also to address legal uncertainty about whether snowmobiling in these parks would return to the essentially unlimited levels afforded by the prior 1983 regulations as a result of the Wyoming court's October 2004 decision.

The current EA and the temporary winter use plan address only public recreational use in these three park units. Administrative use, including the packing of roads for snowmobile and snowcoach use by park, contractor, and concessioner employees is not covered by this winter use planning, but remains essential for park operations, including the protection of natural and cultural resources. More than 100 employees and their families live in developed areas within Yellowstone that are accessible in the winter only by

oversnow vehicle. Oversnow access by these employees is critical for protection, maintenance, and preservation of park buildings and other facilities (including, for example, this winter's essential rehabilitation of the Old Faithful Inn, a 100 year-old National Historic Landmark), utility systems, historic resources, and employee health and safety. This administrative use takes place irrespective of public use. Oversnow access is also needed for wildlife monitoring and research projects that are continuing in the parks. Similarly, the temporary winter use plan and EA are not intended to address access to public and private lands in or adjacent to Grand Teton National Park. For clarity, and in accordance with 36 CFR 2.18, the rule includes provisions as to where these access routes are located.

The EA did not re-evaluate the issue of whether the use of snowplanes should be allowed on Jackson Lake (*see* page 6 of the EA). The decision to prohibit snowplanes was based on analysis provided in the 2000 Winter Use Plans Final Environmental Impact Statement and subsequently incorporated into the 2003 Final Supplemental Environmental Impact Statement analysis, which found that snowplane use impaired park resources and values. Although both of these documents have been vacated by the courts on procedural grounds, the court's decision did not preclude NPS from using that data. Because the use of snowplanes was discontinued following the 2001–2002 winter season, the NPS did not address the reinstatement of their use in the EA and concluded in the FONSI, that the use of snowplanes still impaired park resources. These regulations continue to prohibit snowplanes on Jackson Lake where they were used prior to 2001 and on Yellowstone Lake where they were never allowed.

Summary of and Responses to Public Comments

The NPS published a proposed rule on September 7, 2004, (69 FR 54072) and accepted public comments through October 7, 2004. Comments were accepted through mail, hand delivery, and through the Internet. A total of 36,715 people commented on the proposed rule, and 41,483 comment documents were received (some commentors chose to comment more than once). Eighty-six percent of the commentors sent form letters while 14% sent unique letters.

Adaptive Management

1. *Comment:* Adaptive management should be incorporated into the final rule.

Response: Adaptive management is not a direct part of the final rule; that is, during the three-year term of this rule, significant changes in numbers, BAT requirements, commercial guiding, or other aspects are not expected to be made. In part, this is to help provide some certainty to local communities, businesses, concessionaires, and park staff as to how winter use will be implemented for the next three winter seasons. Additionally, the Superintendents maintain the authority to open or close over-snow routes or modify the operating conditions under 36 CFR 1.5 and in various paragraphs in the regulations (for example 36 CFR 7/13(7)(ii)) to protect park visitors, resources and employees as needed. From a broader perspective, however, the knowledge gained through monitoring strictly limited snowmobile and snowcoach use during the interim period will contribute significantly to the development of a new long-term plan and to a long-term rule for which adaptive management could again be considered. Further, as noted in the EA, it would be impractical to implement adaptive management as provided for in the SEIS since changes under the adaptive management framework would have generally occurred after at least one or two years of monitoring, followed by a 6–12 month notification and waiting period. This could account for the entire interim period the rule is in effect.

2. *Comment:* NPS is proposing to allow a level of snowmobile use that violates the adaptive management thresholds identified in the SEIS. This is inconsistent with previous statements made by NPS that it would take action should the thresholds be exceeded. Instead of reducing snowmobile entries or tightening BAT requirements to meet the protective threshold, NPS is now choosing to allow levels of human-made noise it previously considered unacceptable and simply define these impacts as less problematic than it previously did. NPS provides no rationale for this change and shuns an alternative that would meet its natural soundscape thresholds.

Response: The adaptive management thresholds identified in the SEIS were vacated by the DC court along with the rest of the SEIS. Though NPS used such thresholds as guidelines for analysis in the EA, this rule does not incorporate adaptive management, as discussed in the prior response. Actions of the sort

suggested by the comment would be impractical during the interim period though they will be evaluated as part of the longer-term plan.

Air and Sound Emissions Requirements Consistent With Best Available Technology (BAT)

3. *Comment:* The Grassy Lake Road should be open to non-BAT snowmobiles regardless of whether they originate in the Targhee National Forest or at Flagg Ranch. The provision that allows non-BAT snowmobiles to travel eastbound from the national forest to Flagg Ranch and then return westbound, but prohibits non-BAT snowmobiles to originate at Flagg Ranch is confusing.

Response: The NPS believes that the use of BAT snowmobiles within the John D. Rockefeller, Jr., Memorial Parkway is necessary to mitigate the adverse impacts on natural soundscapes as described in the EA. However, the NPS recognizes that due to the remoteness of the area, access to Flagg Ranch for snowmobilers who are recreating in the Targhee National Forest may be necessary for obtaining fuel or supplies or to report an emergency. For these reasons, the BAT requirement is not imposed on snowmobiles originating in the Targhee.

4. *Comment:* The use of BAT snowmobiles should not be required on the Continental Divide Snowmobile Trail through Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway because this route is along a plowed highway which is open to vehicles. In addition, this route would provide recreationists from Wyoming the opportunity to ride from Wyoming to Idaho and on to West Yellowstone without traveling through Yellowstone National Park.

Response: The NPS believes that the use of BAT snowmobiles within Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway is necessary to mitigate the adverse impacts on natural soundscapes as described in the EA. Notwithstanding the fact that the route is immediately adjacent to the plowed roadway through the two park units, it is of sufficient length that the NPS believes the use of non-BAT snowmobiles would result in unacceptable impacts to the natural soundscapes. The CDST will continue to provide a link from Wyoming to West Yellowstone. As noted in the response to comment 6, NPS will allow an exception for one partial segment on the CDST.

5. *Comment:* Snowmobilers on Jackson Lake should not be required to use BAT snowmobiles because of the

expense of acquiring a BAT snowmobile.

Response: The NPS recognizes that the cost of a new BAT snowmobile is currently higher than for a new non-BAT snowmobile. However, the NPS continues to believe that the EA as well as the data and analysis provided in the EIS and SEIS show that the use of non-BAT snowmobiles on Jackson Lake would result in unacceptable impacts to park visitors and could result in impairment of the natural soundscape. Therefore, the NPS could be in violation of the NPS Organic Act if it were to allow the recreational use of non-BAT snowmobiles on Jackson Lake.

6. *Comment:* The portion of the Continental Divide Snowmobile Trail through Grand Teton National Park that is located along U.S. Highway 26/287 from Moran Junction to the eastern park boundary should not be subject to BAT requirements in order to allow access to nearby public and private lands.

Response: The NPS agrees with this comment. This relatively short portion of the CDST is located immediately adjacent to the major U.S. highway serving northwest Wyoming, which carries a high volume of automobile and commercial truck traffic. The park boundary is such that the CDST over this segment is sometimes within the park and sometimes out of the park. This portion of the CDST provides access to nearby public and private lands. For a variety of practical reasons as well as to ensure access to public and private lands, this portion of the CDST will be treated like other access routes in Grand Teton and will not be subject to BAT requirements nor to the daily entrance limits.

7. *Comment:* BAT snowmobiles, which emit a lower frequency range of sound than two-stroke engines, might be quieter but could be potentially audible at greater distances than non-BAT snowmobiles.

Response: Modeling done for the SEIS indicates that BAT snowmobiles are somewhat quieter and are audible for shorter distances than non-BAT snowmobiles.

8. *Comment:* The proposed rule's BAT emissions requirements do not account for wear and tear or other modifications that have been made by users. Therefore increased emissions could result.

Response: The final rule requires the use of EPA's family emissions limits (FEL) in determining BAT compliance. The emissions limits incorporate the life cycle and durability of a snowmobile by requiring emissions tests after various periods of usage. Manufacturers take into account any increases in emissions during the snowmobile's life cycle when

setting the FEL. Thus, the FEL accounts for the possibility that a snowmobile's emissions could increase after 1–3 years of use. The EPA also requires that snowmobile manufacturers conduct production line testing of snowmobiles to ensure that the FEL is not exceeded during production. Finally, this rule prohibits snowmobile owners from modifying snowmobiles in such a way that would increase air or sound emissions. This rule's requirement that all snowmobilers in Yellowstone travel with commercial guides will allow the NPS to further insure that snowmobiles are not modified in a manner that would adversely effect air or sound emissions.

9. *Comment:* NPS should require BAT for snowcoaches. Snowcoach emissions can easily be tested using a stationary vehicle exhaust gas analyzer.

Response: After further consideration of the implications of applying the BAT concept to snowcoaches, the NPS believes that the term "best available technology" should not be used with respect to snowcoaches for air and sound emission restrictions. Under this final rule, snowcoaches are not required to utilize the best commercially available technology to reduce air and sound emissions. Instead, they are required to have the emissions control equipment that was installed on the vehicle at the time it was manufactured. There are two main reasons for this decision: the level of complexity associated with determining BAT for snowcoaches and the relatively small environmental gains expected from imposing further requirements on snowcoaches. There are a variety of different vehicles operating as snowcoaches, ranging from vans manufactured in the 1980s to the most recent model-year. Vehicles that were manufactured twenty years ago would be likely to yield higher emissions than vehicles manufactured today because of advances in emissions control technology. However, even vehicles manufactured in the same model year may produce different levels of emissions, and attempting to determine which particular emission limits the vehicles are meeting would be a very complex undertaking. The NPS believes that in the short term, determining how to regulate snowcoaches beyond what is required here is not the most pressing need. The EA, SEIS, and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from snowmobile use. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because modern coaches are far cleaner in both grams of

CO and particulate matter emissions per mile and have a greater passenger capacity. Because of the level of complexity associated with determining BAT for snowcoaches and the small gains in air quality expected as a result of such effort, the NPS has determined that there will be no further requirements with respect to snowcoach emission as part of this rulemaking. However, NPS will continue to study this issue and may consider more stringent alternatives as part of the new EIS.

10. *Comment:* There should be no exemptions from BAT for historic snowcoaches.

Response: The EA, SEIS, and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from the historic use levels and types of snowmobiles. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because modern coaches are far cleaner on both grams of CO and particulate matter emissions per mile and greater passenger capacity relative to snowmobiles. For sound emissions, the SEIS soundscape modeling noted that a group of 4 BAT snowmobiles, carrying up to 8 people total, has a distance to audibility of 5,810 feet in open terrain under average background conditions. A comparable snowcoach, potentially carrying even more passengers, is audible for only 2,630 feet under the same conditions. Historic snowcoaches are being initially exempted from any air or sound emission requirements because the NPS wishes to provide incentives to continue operation of these machines to maintain the character of winter touring, as they add to the overall winter experience. Further, because there are not very many of these vehicles operating in the parks (approximately 29), they are not expected to contribute significantly to air quality or other concerns and they provide additional options for visitors.

Daily Snowmobile Entry Limits

11. *Comment:* NPS should allow 950 snowmobiles/day after the 2004–05 season in Yellowstone. Additional snowmobile entries should be permitted in Grand Teton and the Parkway.

Response: As explained in the EA (and in the SEIS), such a number of snowmobiles would result in significant adverse impacts and would be inconsistent with the purpose and need of this EA.

12. *Comment:* NPS should have considered an option allowing between 950 and 1,200 snowmobiles/day in Yellowstone.

Response: The EA contained a reasonable range of alternatives. The EA analysis also indicates that alternative 5 (with 950 snowmobiles per day allowed in Yellowstone) would yield significant adverse impacts. Allowing use above this level would result in even greater impacts. However, other use levels will be evaluated in the long-term plan.

13. *Comment:* Retaining most of the proposed rule but reducing the proposed daily entries to the levels of the beginning of the 2003–2004 season (*i.e.*, 493 per day in Yellowstone) would be a far more reasonable alternative for the NPS to support. It would show a concern to the local businesses as well as a commitment for the health, safety, and welfare of the employees, visitors, and park resources.

Response: The NPS believes such a reduction in snowmobile numbers is not necessary to achieve the goals and objectives of the temporary plan and implementing rule based on the EA analysis. The NPS is attempting to balance appropriate visitor access and a range of recreational opportunities, subject to strict limitations, with the protection of park resources. This final rule accomplishes this goal.

14. *Comment:* The entry limits the NPS proposes in the proposed rule are mischaracterized as “strict limits.” This level of snowmobiling is only a slight reduction from historic levels. Just three years ago, the NPS stated that in order to comply with its legal mandates, drastic reductions in winter visitors would be needed.

Response: The maximum daily snowmobile entry level allowed by this rule is less than half the historic average peak day for Yellowstone, and less than the historic average (mean) number of snowmobiles in the park. When combined with BAT requirements, 100% commercially guiding, nighttime use restrictions, speed limit reductions, and side-road closures, the numerical limits do represent “strict limits.”

Side Roads

15. *Comment:* NPS should open all other historically open side roads to snowmobiles. Further, opening all side roads historically accessible to snowmobiles would provide better opportunity to collect monitoring data.

Response: The NPS would like to provide a variety of winter touring options, including the ability to tour areas exclusively by snowcoach. Very few park roads are open exclusively to snowcoaches (the side roads amount to approximately 14 miles of road); the side roads present the most feasible options for such opportunities. Keeping side roads closed to snowmobiles

provides a valuable opportunity to compare roads open to snowmobile use with those closed to such use. Indeed, retaining this closure presents the only such monitoring opportunity in Yellowstone. In addition, the NPS wishes to provide for a range of opportunities for visitors, including opportunities for visitors riding a snowcoach to experience areas free of snowmobiles. An exception is made to allow snowmobile use on the Firehole Canyon drive in the afternoons because it is typically only used by snowcoaches in the morning. This temporal zoning achieves the objective of maintaining some areas of separation between snowmobile and snowcoach use.

16. *Comment:* NPS should not open the Firehole Canyon Drive to snowmobile use. This extends to more of the park the adverse impacts that violate NPS’ legal obligations to protect park resources and visitor enjoyment. Expanding the territory impacted by snowmobile use utterly contradicts the concept of “very strict limits.” Finally, opening the Firehole Canyon to snowmobile use ignores the preference expressed to NPS by the overwhelming majority of hundreds of thousands of citizens who have said they want snowmobile use eliminated in Yellowstone, not expanded.

Response: As stated above, this area is typically only used by snowcoaches in the morning. Allowing snowmobile use in the afternoon temporally zones snowcoach and snowmobile users, allowing snowcoach riders to visit the area without the presence of snowmobiles, while allowing snowmobilers the opportunity to also visit the area.

Guiding

17. *Comment:* NPS should develop training that would allow non-commercial guides (usually around 20% of daily entries) to lead groups through Yellowstone, and to permit 20% of daily entries to be non-commercial guides.

Response: Because of the timing of this rule and the commencement of the 2004–2005 winter season, it would be impossible to develop an adequate non-commercial guide training program for the upcoming winter season. In addition, it would be impractical during the winters of 2005–2006 and 2006–2007 due to the temporary nature of this rule. As noted by the EA, commercial guides have significant incentives to ensure that their group does not unacceptably disturb wildlife. The winter of 2003–2004 demonstrated that commercial guides significantly reduce law enforcement incidents and provide for a safer and high quality visitor

experience. Commercial guides have contractual obligations to the NPS and as such, risk losing their permit to operate guiding services in the park if they fail to perform adequately. Non-commercial guides, who are leading family and friends through the park, have no similar incentives or motivation. The NPS also experienced problems when it attempted to implement a non-commercial reservation system after the March 25, 2003, Record of Decision was signed. For example, some individuals in gateway communities purchased large blocks of non-commercial reservations (reservations every day of the season) with the apparent intent of reselling them to visitors or including them in a larger package for their clients. This was contrary to the purpose of the non-commercial guide reservation system. Unguided or non-commercially guided access to the parks will be addressed in the long-term winter use plan.

18. *Comment:* NPS should allow a portion of the daily usage on the CDST and Grassy Lake Road to be commercially guided.

Response: The NPS would consider allowing commercially guided use on these road segments as a portion of the daily entries authorized by this rule if the NPS determines there is a demand for the service and the service is economically feasible.

Road Grooming

19. *Comment:* The artificiality or unnaturalness of winter ecology attributable to bison use of the groomed road system is causing substantive and deleterious impacts to individual bison, the bison population, and bison habitat by allowing far more bison to survive and successfully reproduce than would exist if natural factors provided a natural control on bison population dynamics, movements, distribution patterns, and habitat use patterns. The interior bison population of Yellowstone faces an uncertain future.

Response: As stated previously, the science concerning the effects of road grooming on bison and elk is unclear, with significant disagreement among experts in the field. These issues are discussed on pages 143–145 of the EA. This is a subject of the long-term study. In the meantime there is no clear evidence that road grooming has adverse effects on bison distribution and abundance. Further, there is no dispute that the bison population is healthy.

20. *Comment:* The proposed rule should close park roads to grooming or at minimum, experimental road closures should be initiated during the next three years to collect data on bison or other

wildlife use of previously groomed areas. It is unacceptable to wait another three years for a long-term plan to analyze these issues.

Response: The NPS considered including an alternative in the EA that closed park roads to grooming, but rejected it from detailed analysis in the EA. This discussion is on page 19 of the EA. The science surrounding the issue of the long-term effects of groomed roads on bison and elk is currently unclear. Experts disagree about how groomed roads affect, if at all, bison distribution and abundance. Given the scientific uncertainty surrounding these complex ecological issues, an end to the long-standing practice of road grooming is not warranted at this time, as it would effectively close much of the park to visitors, thereby preventing the NPS from allowing for the public to experience and enjoy many of the park's most significant resources. Although administrative use is not part of this winter use plan and these regulations, a total cessation of road grooming and packing would affect critical park resources, and present considerable adverse effects on employee health and safety. The NPS is also in the midst of several important studies, which will provide further information to address these issues. The results of these studies will be available for a longer-term analysis of winter use in the parks.

Experimental closures of a portion of Yellowstone's road system (such as one or two road segments) would also be impractical at this time for similar reasons. Many of the side roads that are only open to snowcoaches closely parallel the main roads and would not appear to be useful for experimental closures. Also, the NPS believes it is more prudent to wait for the results of the road grooming study before considering any road closures, since it will provide important information about which road segments are most critical to bison distribution and abundance. It is currently uncertain which road segments may play the most important role in facilitating bison travel (if at all). Further, variables in weather could have great influence on bison distribution and their use of groomed roads. It would take several years of monitoring the effects of road closures to understand how weather conditions might affect bison movements. This would be beyond the interim period of this plan. Finally, experimental closures of some road segments could inhibit visitor access to some of Yellowstone's most world-renowned features.

Consistency With Laws, Policies, Executive Orders, Court Decisions, etc.

21. *Comment:* The NPS Organic Act requires that park resources be protected in an unimpaired condition. The NPS must err on the side of protecting park resources unimpaired. The EA, SEIS, and Final EIS have all shown that recreational snowmobiles impair park resources and values. Therefore, snowmobiles should be phased-out.

Response: The results from the 2003–2004 winter demonstrates that some level of snowmobile use may take place without impairing park resources. The EA analysis indicates that alternative 4, implemented by this final rule, does not impair park resources and values. The NPS believes this alternative is consistent with the Organic Act, because it best balances protection of park resources and values with allowing for appropriate public enjoyment and access to the parks.

22. *Comment:* NPS must adopt the snowcoach-only alternative in order to comply with NPS regulations, Executive Orders, and NPS Management Policies. The EA concludes that snowmobile use will continue to cause adverse effects previously considered unacceptable to air quality, public and employee health, natural quiet, wildlife, and visitor experience.

Response: Additional language has been added to the FONSI and final rule clarifying why the NPS believes this decision and rule are consistent with NPS regulations, Executive Orders, and NPS Management Policies.

23. *Comment:* The NPS has failed to provide a legitimate rationale for reversing its November 2000 decision to phase out snowmobile use. Further, there have been no significant changes that would justify allowing recreational snowmobiling in the parks.

Response: First, the results of the winter of 2003–2004 demonstrate that some level of snowmobile use can take place, and provide a rational basis for modifying the November 2000 decision. This rule balances winter use with protection of park resources to ensure that adverse impacts from historical types and numbers of snowmobile use will not occur. Strictly limited snowmobile numbers, combined with BAT requirements and requirements for commercial guiding, ensure that the impacts to park resources and values are not significant. Monitoring information from the winter of 2003–2004 demonstrates the important role these strict limitations play in protecting park resources and values. In addition, the NPS has discretion under the 1916 Organic Act to balance the protection of

park resources while providing for appropriate visitor enjoyment of the parks. This final rule reflects that balancing mandate. Finally, the 2000 decision and resulting 2001 rule were vacated by the Wyoming court.

Park Resource Issues

24. *Comment:* NPS needs to explain why it prefers larger groups that are audible farther away than small groups (though less frequently) over smaller groups that are less audible (but more frequently).

Response: Allowing larger groups reduces the overall number of such groups, which decrease the percent time oversnow vehicles (OSVs) are audible. The commentator is encouraged to read the soundscapes analysis in the EA on pages 102–117. Allowing larger groups also reduces the number of times that snowmobile groups encounter bison and other wildlife along the road.

25. *Comment:* Allowing continued employee exposure to toxic air pollutants violates the park's commitment to employee welfare and safety. Further, proposing to more than double the number of snowmobiles, despite documented violations of Agency for Toxic Substances and Disease Registry (ATSDR) Minimal Risk Levels (MRLs) for benzene and toluene, violates NPS management policies.

Response: Although it appears the now-vacated adaptive management thresholds (ATSDR MRLs) for benzene and toluene may have been exceeded during the winter of 2003–2004, no standards, including those of OSHA, the National Institute for Occupational Safety and Health, and the American Conference of Governmental Industrial Hygienists, were exceeded. There is also some uncertainty how the ATSDR standards are applied and interpreted in these settings. NPS will continue its efforts to ensure a safe work environment. The three-year interim period will provide NPS the opportunity to better understand the applicability of the ATSDR MRLs and continue monitoring employee exposure to toxic air pollutants. BAT requirements and limits on snowmobile numbers will help mitigate potential violations of ATSDR MRLs or other health standards.

26. *Comment:* The EA and proposed rule do not address NPS' obligation to protect the natural smells of the parks. At locations such as Old Faithful, when snowmobile numbers are high and/or weather conditions trap emissions, there is every reason to believe that the odor of snowmobile exhaust will build beyond the threshold.

Response: Most odors from snowmobile emissions are associated with 2-stroke engines and the combination of burned and unburned gasoline and oil that is emitted as hydrocarbon emissions. Current BAT snowmobiles are all 4-stroke, and 4-stroke engines eliminate the emission of unburned gas and oil. BAT snowmobiles reduce hydrocarbon emissions by a minimum of 90%, relative to conventional two-stroke snowmobiles. This will reduce the presence of snowmobile exhaust. However, on days when there are poor weather conditions (such as an inversion or little air movement), it is possible that the scent of 4-stroke snowmobile exhaust (similar to automobiles) may be noticeable. The three year interim period of this rule will provide the opportunity for the NPS to monitor conditions.

27. *Comment:* The proposed rule impairs visitor experience by creating more air and noise pollution, creating more congestion on park roadways, and disturbing wildlife. A rule that prohibited recreational snowmobiling would offer greater potential for visitor enjoyment than the proposed rule.

Response: The impacts to visitor experience are disclosed in the EA, which concludes that this final rule would not impair visitor experience. This rule balances protection of park resources while allowing appropriate visitor enjoyment and access to the parks. Under this rule, visitors will have greater choice about how they access the parks (*i.e.*, on snowmobiles or snowcoaches) than if snowmobiles were prohibited.

28. *Comment:* Snowmobile use impairs wildlife. The NPS should prohibit snowmobiling because of its impacts to wildlife.

Response: Last winter's experience demonstrates that wildlife are not necessarily impaired by snowmobile use. This rule requires that all snowmobilers travel with a commercial guide, which will mitigate impacts to wildlife. NPS has concluded that the rule will not result in impairment. Using guides that have training and expertise riding with winter wildlife, and a professional obligation to obey NPS regulations, are the most efficient means to educate riders and ensure compliance with park rules. Authorized guide companies, each responsible for the activities of their tour groups, can reduce impacts by: Keeping their groups an appropriate distance from wildlife, ensuring that all members of the group abide by snowmobile regulations including abiding by posted speed limits, preventing riders from

approaching animals, and reducing noise levels and the time a group interacts with a group of animals. Professional guide services with contractual obligations also permit more effective enforcement by NPS rangers and business management personnel. One study noted in the EA found that recreationists often believed that it was acceptable to approach wildlife more closely than the data indicated the animals would tolerate. Thus, the education and supervision provided to groups by their commercial guides is key in reducing disturbance to wildlife. Effects to wildlife are further mitigated by the Superintendent's current requirement that OSVs only travel between 7 a.m. and 9 p.m.

Miscellaneous

29. *Comment:* The proposed rule, based on the EA, violates NEPA because there are significant impacts to the human environment.

Response: The NPS believes this rule is supported by the FONSI. While there will be impacts to park resources that are adverse, they are no greater than moderate in intensity. NPS training and practice supports the use of a FONSI at moderate levels of impact. Although this rule is of a temporary duration, the finding is based on the actual impacts during those three years and does not rest solely on the fact that the rule is only effective for three years.

30. *Comment:* The proposed rule on winter use is not written clearly, as required by Executive Order 12866. Specifically, the discussion on BAT and the economic analysis are highly technical.

Response: Snowmobile technology and economic analyses are inherently highly complex issues. We would encourage the reader to review the pages in the EA where broader discussions of these topics occur.

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

NPS Response: In ordinary circumstances with automobiles, individuals possessing learner's permits are required to be accompanied by a fully licensed driver. Learner's permits are intended to allow student drivers the opportunity to safely learn positive driving habits while in the presence of an adult. However, operation of snowmobiles in Yellowstone is a totally different environment. In fact, past experience is that children with learner's permits often will ride on a

snowmobile by themselves, with adults on other snowmobiles that would be some distance away. The park and visitors will be safer by requiring that all snowmobile operators have driver's licenses.

31. *Comment:* Snowmobile and snowcoach contracts or permits should be offered to all qualified applicants at least through this interim rule.

Response: Concessions contracting issues are beyond the scope of this rulemaking. However, NPS regulations governing concessioners require that all businesses operating in the parks have a contract with the NPS. The number of concessions contracts issued is limited in order to provide a viable economic opportunity to authorized concession providers. Therefore, the NPS could not allow an unlimited number of concessions contracts.

32. *Comment:* Every snowmobile operating within the State of Wyoming is required to display a resident or non-resident user fee sticker and those available for rent must display a Wyoming commercial snowmobile registration. This should be required in Yellowstone and Grand Teton National Park.

Response: This State law is not applicable within Yellowstone National Park as a result of its exclusive Federal jurisdiction status. In Grand Teton National Park and the Parkway, where the NPS holds concurrent jurisdiction with the State of Wyoming, State law is assimilated so long as it does not conflict with Federal regulations. This final rule allows snowmobile owners to display a valid snowmobile registration from any State or Canadian province. Owners may choose to register their snowmobiles in Wyoming.

33. *Comment:* Publishing a proposed rule before the EA's public comment period was completed demonstrates that the NPS predetermined the outcome of this process.

Response: Publishing the proposed regulation concurrently with the public review of the EA provides the public with the opportunity to comment and potentially affect in a substantive manner both actions, since no final decisions have been made. This enhances the public's ability to participate in agency decisionmaking, while at the same time streamlining the process so that it can be completed in time to provide the public with adequate notice prior to the start of the winter use season.

34. *Comment:* The rule should re-evaluate the issue of snowplanes on Jackson Lake. The NPS has failed to supply a reasoned analysis for total elimination of snowplane use.

Response: The NPS continues to believe that the data and analysis in previous environmental analyses remain valid and again concluded in the FONSI that the use of snowplanes on Jackson Lake would result in impairment of the natural soundscape. The NPS is not aware of any new or additional information regarding snowplanes that would suggest any different conclusion. Therefore, the NPS would be in violation of the NPS Organic Act if it were to allow the recreational use of snowplanes on Jackson Lake. In addition, with their unguarded propellers and high travel speeds, snowplanes present unacceptable safety risks, even on the surface of Jackson Lake.

35. *Comment:* The NPS should allow for up to 70 snowmobiles per day on Jackson Lake on Fridays, Saturdays, and Sundays, and should allow for a 5-year phase-in period for BAT snowmobiles on the lake.

Response: The NPS will monitor the amount of use on Jackson Lake and collect data on the impacts of snowmobiles on natural soundscapes. This information will be used in the development of a long-term plan and will help to determine whether higher (or lower) daily entry limits should be established. A 5-year phase-in period for BAT snowmobiles exceeds the length of time that this rule is intended to cover and would be inconsistent with the NPS' determination that the use of non-BAT snowmobiles causes unacceptable impacts on the natural soundscape of Jackson Lake and Grand Teton National Park.

Changes to the Final Rule

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

First, we have added a footnote to table 1 in § 7.13 noting that entry limits at Yellowstone National Park's North Entrance and at Old Faithful may be reallocated as necessary so long as the total number of snowmobiles authorized on any single day for these two sites does not exceed 60. We are allowing this because commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. This allows the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone. It also benefits visitors using other concessioners and entering at other locations, if they choose to stay

overnight at Old Faithful or Mammoth Hot Springs (near the North Entrance). These visitors will have greater options for guided snowmobile tours given this change, since the daily entry limits can be adjusted (as long as they do not exceed 60 snowmobiles) to meet changing demand.

Second, paragraph (g)(3) of § 7.22 has been modified to specify that snowmobile use on routes used to access other public lands or private property within or adjacent to Grand Teton National Park is not subject to the three-year interim period of this rule. These snowmobile routes are not used for recreational purposes and are generally not subject to the winter use planning process. Because their impacts are low, NPS we never intended to sunset these routes after three winter seasons.

Third, we are allowing the use of non-BAT snowmobiles on the section of the Continental Divide Snowmobile Trail (CDST) in Grand Teton National Park from the park's east boundary to Moran Junction. This portion of the CDST is located immediately adjacent to the major U.S. highway serving northwest Wyoming, which carries a high volume of automobile and commercial truck traffic. The park boundary is such that the CDST over this segment is sometimes within the park and sometimes out of the park. This portion of the CDST also provides access to nearby public and private lands. For a variety of practical reasons as well as to ensure access to public and private lands, this portion of the CDST will not be subject to BAT requirements nor to the daily entrance limits. This route has been identified under paragraph (g)(16) (iii) in § 7.22.

Fourth, in paragraph (g)(16) of § 7.22, we have specified that BAT requirements do not apply to snowmobiles using the routes listed in that paragraph. This was inadvertently omitted from the proposed rule. The purpose of the three access routes identified in this paragraph is to provide access to other areas outside of Grand Teton National Park, where BAT snowmobiles are not required. They are relatively short road segments through the park with relatively infrequent use. This change makes paragraph (g)(16) consistent with paragraph (g)(18), which states that BAT snowmobiles are not required to access private property within or adjacent to Grand Teton National Park.

Summary of Economic Analysis

This analysis examines five alternatives for temporary winter use plans in the Greater Yellowstone Area

(Yellowstone National Park, Grand Teton National Park, and John D. Rockefeller, Jr., Memorial Parkway). Alternative 1 would permit snowcoaches only, banning recreational snowmobile use within the parks. Alternative 1 is similar to the conditions expected under the January 2001 final rule. Alternative 2 would emphasize snowcoach access while allowing some snowmobile use with 100% commercially guided trips. That alternative is similar to the conditions experienced during the 2003–2004 winter season. Alternative 3 balances snowmobile and snowcoach access, and permits 20% unguided trips in Yellowstone. Alternative 4 allows more snowmobile use than Alternative 3, but requires 100% commercially guided trips in Yellowstone. Alternative 4 is the preferred alternative. Finally, Alternative 5 allows more snowmobile use than Alternative 4, and permits 20% non-commercially guided trips in Yellowstone. Alternative 5 is similar to the conditions expected under the December 2003 final rule.

This analysis estimates the benefits and costs associated with the 5 alternatives relative to two baselines: Alternative 1, which would ban snowmobiles, and historic snowmobile use as represented by the 1997–1998 winter season. The rationale for using these two baselines flows from two regulatory actions and three Federal district court rulings. NPS issued a special regulation on January 22, 2001, phasing in a snowmobile ban. In settling a law suit filed by the International Snowmobile Manufacturers' Association and other plaintiffs regarding that regulation, NPS agreed to re-evaluate its winter use plan alternatives, and subsequently issued a special regulation on December 11, 2003, permitting snowmobile use subject to certain management restrictions. On December 16, 2003, the Washington, DC, District Court issued a ruling overturning the December 2003 regulation and implementing the January 2001 regulation. Following that ruling on February 10, 2004, the Wyoming District Court issued a preliminary injunction against implementing the January 2001 regulation. That injunction was followed by an October 15, 2004, ruling from the same court overturning the January 2001 regulation.

These two rulings potentially imply the two baselines used in this analysis. In order to cover the potential range of analysis suggested by these rulings, NPS used Alternative 1 and historic snowmobile use as alternative baselines to estimate the benefits and costs of its proposed temporary winter use plan alternatives. NPS believes that the

actual economic impacts of the proposed temporary winter use plan alternatives fall within the range of benefits and costs estimated relative to these two baselines.

The quantitative results of the benefit-cost analysis are summarized below with respect to Alternative 1 and the historical baselines, respectively. It is important to note that this analysis could not account for all costs or benefits due to limitations in available data. For example, the costs associated with adverse impacts to park resources and with law enforcement incidents are not reflected in the quantified net benefits presented in this summary. It is also important to note that the benefit-cost analysis addresses the economic efficiency of the different alternatives and not their distributive equity (*i.e.*, does not identify the specific sectors or groups on which the majority of impacts fall). Therefore, additional explanation is required when interpreting the results of this benefit-cost analysis. An explanation of the selection of the preferred alternative is given following the summaries of quantified benefits and costs.

Quantified Benefits and Costs Relative to the Alternative 1 Baseline

The primary beneficiaries of Alternatives 2, 3, 4, and 5 relative to the Alternative 1 baseline are the park visitors who ride snowmobiles in the park and the businesses that serve them such as rental shops, restaurants, gas stations, and hotels. Overall, Alternative 5 should provide greater quantified benefits to snowmobiles than Alternatives 2 through 4. The daily caps on snowmobile use vary across the four alternatives, with Alternative 5 allowing the most snowmobiles per day into the parks. Alternatives 2, 3 (in 2004–2005), and 4 require snowmobilers to be part of a commercially guided tour, which is expected to reduce benefits to snowmobilers who prefer unguided tours or who face additional expenses from being forced to take a guided tour. Alternatives 3 (in 2005–2006 and beyond) and 5 allow for at least 20% of the tours to be unguided or led by non-commercial guides, which may somewhat mitigate the potential loss in benefits associated with the commercial guided tour requirement.

The primary consumer group that would incur costs under Alternatives 2, 3, 4, and 5 would be the park visitors who do not ride snowmobiles. Out of the set of alternatives that allow for continued snowmobile access to the parks, Alternative 2 is expected to impose the lowest costs on non-snowmobile users because of the lower

daily limits and the commercially guided tour requirements.

Alternative 5 is expected to provide the greatest benefits to local businesses because it places the least restrictions on snowmobilers and is expected to result in the largest increase in visitation. Alternatives 2 and 4 are the most restrictive options for snowmobilers (primarily due to the requirement that all snowmobilers in Yellowstone must be on commercially guided tours) and are expected to result in the smallest increase in visitation relative to the Alternative 1 baseline among Alternatives 2 through 5.

Based on the results of this analysis, the losses to non-snowmobilers generally outweigh the gains to snowmobilers and local businesses. However, there are a number of uncertainties that may influence this result. The most important factor is that this analysis uses the estimated losses to non-snowmobilers in Yellowstone to estimate the losses to non-snowmobilers in Grand Teton. This may overstate the losses to non-snowmobilers in Grand Teton because there is less snowmobile use in Grand Teton than in Yellowstone, which may imply that non-snowmobilers are less affected by their presence. Snowmobile use and non-snowmobile activities tend to occur in separate areas of Grand Teton, while there is much more overlap in the areas used by these visitors in Yellowstone. In addition, the study design did not describe whether all the snowmobiles were on guided tours. The effect of this on the conclusion of the results is unknown. Finally, the underlying study measured visitor's preferences as compared to hypothetical alternatives. The responses to the survey could differ from actual behavior.

The present values of quantified net benefits (benefits minus costs) are presented in Table 1 for the Alternative 1 baseline. As noted above, these quantified net benefits do not account for certain costs associated with the protection of park resources or with law enforcement incidents. Further, these quantified net benefits do not reflect potentially significant distributive impacts on local communities. For example, the regional economic analysis that was done as part of the Temporary Winter Use Plans Environmental Assessment (NPS, August 2004) show that Alternative 4 resulted in the second highest economic gains to the area businesses as compared to Alternative 1. While this type of analysis only estimates the effects to local businesses rather than to society as a whole (which is reflected in the results below), it provides useful information about the

rule's estimated effects in the surrounding communities. The regional economic analysis shows that Alternative 5 resulted in the highest

gain to area businesses, but that alternative was not chosen due to its non-monetized effects on the parks' resources. The amortized quantified net

benefits per year are presented in Table 2 for the Alternative 1 baseline.

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Table 1	
Total Present Value of Quantified Net Benefits for the Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007 Relative to the Alternative 1 Baseline	
Total Present Value of Quantified Net Benefits	
Alternative 2	
Discounted at 3% ^a	-\$31,413,190 to -\$13,561,920
Discounted at 7% ^a	-\$29,120,810 to -\$12,567,170
Alternative 3	
Discounted at 3% ^a	-\$37,500,110 to -\$15,445,220
Discounted at 7% ^a	-\$34,852,390 to -\$17,485,480
Alternative 4	
Discounted at 3% ^a	-\$40,256,520 to -\$19,906,990
Discounted at 7% ^a	-\$37,331,330 to -\$18,469,380
Alternative 5	
Discounted at 3% ^a	-\$34,730,530 to -\$8,600,760
Discounted at 7% ^a	-\$32,203,250 to -\$7,977,670
^a Office of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.	

Table 2	
Amortized Quantified Net Benefits per Year for the Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007 Relative to the Alternative 1 Baseline	
Amortized Quantified Net Benefits per Year^b	
Alternative 2	
Discounted at 3% ^a	-\$11,105,520 to -\$4,794,550
Discounted at 7% ^a	-\$11,096,530 to -\$4,788,740
Alternative 3	
Discounted at 3% ^a	-\$13,257,430 to -\$5,460,350
Discounted at 7% ^a	-\$13,280,560 to -\$5,519,720
Alternative 4	
Discounted at 3% ^a	-\$14,231,902 to -\$7,037,730
Discounted at 7% ^a	-\$14,225,165 to -\$7,037,790
Alternative 5	
Discounted at 3% ^a	-\$12,278,300 to -\$3,040,630
Discounted at 7% ^a	-\$12,271,100 to -\$3,039,900
^a Office of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.	
^b This is the present value of quantified net benefits reported in Table 1 amortized over the three-year analysis timeframe at the indicated discount rate.	

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Quantified Benefits and Costs Relative to the Historical Use Baseline

The primary losses under Alternatives 1 through 5 relative to the historical use baseline accrue to the park visitors who ride snowmobiles in the parks and the businesses that serve them. Overall, Alternative 1 would impose greater losses on snowmobilers since it would ban snowmobiles in the parks. The losses associated with Alternatives 2 through 5 are less since those alternatives would allow some level of snowmobile use. Alternatives 2 and 4 would also require 100% commercially guided tours. That feature is expected to increase losses to snowmobilers who prefer unguided tours or who face additional expenses from being forced to take commercially guided tours.

The primary beneficiaries of Alternatives 1 through 5 would be the park visitors who do not ride snowmobiles. Alternative 1 would yield the greatest benefits for non-snowmobilers. Out of the set of alternatives allowing continued snowmobile access to the parks, Alternative 2 is expected to generate the largest gains for non-snowmobilers because of the lower daily limits,

stricter technology requirements, and the commercially guided tour requirement. Alternative 4 is expected to generate only slightly lower gains for non-snowmobile users than Alternative 2, with the biggest difference between Alternatives 2 and 4 coming from the higher daily use limits under Alternative 4.

For businesses, the losses relative to the historical use baseline are expected to be ordered in the same way as losses accruing to snowmobilers because they are driven largely by the number of visitors. Alternative 1 is expected to have the greatest negative impact on local businesses because it places the highest restrictions on snowmobilers and is expected to result in the largest decrease in visitation. Alternative 5 is the least restrictive option for snowmobilers and is expected to result in the smallest decrease in visitation.

Based on the results of this analysis, the gains to non-snowmobilers generally outweigh the losses to snowmobilers and local businesses. However, as noted in the summary of benefits and costs relative to the Alternative 1 baseline, there are a number of uncertainties that may influence this result.

The present values of quantified net benefits (benefits minus costs) are

presented in Table 3 for the historical use baseline. As noted above, these quantified net benefits do not account for certain costs associated with the protection of park resources or with law enforcement incidents. Further, these quantified net benefits do not reflect potentially significant distributive impacts on local communities. For example, the regional economic analysis that was done as part of the Temporary Winter Use Plans Environmental Assessment (NPS, August 2004) show that Alternative 4 resulted in the second lowest economic losses to the area businesses as compared to the historical use baseline. While this type of analysis only estimates the effects on local businesses rather than to society as a whole (which is reflected in the results below), it provides useful information about the economic impact to the surrounding communities. The regional economic analysis shows that Alternative 5 resulted in the lowest losses to area businesses, but that Alternative was not chosen due to its non-monetized effects on the parks' resources. The amortized quantified net benefits per year are presented in Table 4 for the historical use baseline.

**Table 3
Total Present Value of Quantified Net Benefits for the
Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007
Relative to the Historical Use Baseline**

Total Present Value of Quantified Net Benefits	
Alternative 1	
Discounted at 3% ^a	\$122,314,860 to \$130,820,690
Discounted at 7% ^a	\$113,396,820 to \$121,284,230
Alternative 2	
Discounted at 3% ^a	\$87,375,260 to \$92,043,960
Discounted at 7% ^a	\$81,003,340 to \$85,333,060
Alternative 3	
Discounted at 3% ^a	\$76,771,740 to \$81,118,430
Discounted at 7% ^a	\$71,155,010 to \$75,200,030
Alternative 4	
Discounted at 3% ^a	\$75,276,170 to \$79,983,340
Discounted at 7% ^a	\$69,786,780 to \$74,152,310
Alternative 5	
Discounted at 3% ^a	\$77,031,890 to \$81,224,360
Discounted at 7% ^a	\$71,414,700 to \$75,302,790

^aOffice of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

Table 4
Amortized Quantified Net Benefits per Year for the
Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007
Relative to the Historical Use Baseline

Amortized Quantified Net Benefits per Year^b	
Alternative 1	
Discounted at 3% ^a	\$43,242,020 to \$46,249,090
Discounted at 7% ^a	\$43,210,050 to \$46,215,560
Alternative 2	
Discounted at 3% ^a	\$30,889,810 to \$32,540,340
Discounted at 7% ^a	\$30,866,460 to \$32,516,310
Alternative 3	
Discounted at 3% ^a	\$27,141,140 to \$28,677,830
Discounted at 7% ^a	\$27,113,740 to \$28,655,100
Alternative 4	
Discounted at 3% ^a	\$26,612,410 to \$28,276,540
Discounted at 7% ^a	\$26,592,370 to \$28,255,860
Alternative 5	
Discounted at 3% ^a	\$27,233,110 to \$28,715,280
Discounted at 7% ^a	\$27,212,690 to \$28,694,250

^aOffice of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.
^bThis is the present value of quantified net benefits reported in Table 3 amortized over the three-year analysis timeframe at the indicated discount rate.

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 of Temporary Regulations on Snowmobile Use in the Greater Yellowstone Area" (RTI International, October 2004).

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

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants

or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS 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 economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore a Regulatory Flexibility Analysis has been conducted. The information is contained in the report entitled "Economic Analysis of Temporary Regulations on Snowmobile Use in the Greater Yellowstone Area" (RTI International, October 2004). The report is available on the Yellowstone Web site.

From the point of view of small businesses, Alternative 5 and potentially Alternative 3 might be marginally better for small businesses depending on how popular commercially guided tours turn out to be, because they may result in higher visitation than Alternative 4. However,

for reasons described in Section 1 of the Economic Analysis and the August 2004 Temporary Winter Use Plans Environmental Assessment, NPS has decided that all snowmobiles should be commercially guided. Compared to Alternative 2, Alternative 4 would be better for small businesses because of the higher daily entrance limits, thus potentially increasing revenue generated by higher snowmobile visitation to the parks.

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 still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

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

National Environmental Policy Act

An Environmental Assessment and a Finding of No Significant Impact (FONSI) have been completed. The EA and FONSI are available for review by contacting Yellowstone or Grand Teton Superintendent Offices or at www.nps.gov/yell/winteruse-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 SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Drafting Information: The primary authors of this regulation were Kevin Schneider, Outdoor Recreation Planner, and John Sacklin, Management Assistant, Yellowstone National Park; Gary Pollock, Management Assistant, Grand Teton National Park; and Kym Hall, Special Assistant, National Park Service, Washington DC.

List of Subjects in 36 CFR Part 7

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

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

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

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

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

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

§ 7.13 Yellowstone National Park.

* * * * *

(1)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

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

Commercial guide means a guide who operates as a snowmobile guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this regulation, "guide" also means "commercial guide."

Historic snowcoach means a Bombardier snowcoach manufactured in

1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

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

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

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

(3) *May I operate a snowmobile in Yellowstone National Park?* (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 pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) is in effect only through the winter season of 2006–2007.

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

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle 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. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used.

(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) Historic snowcoaches are not required to meet air emissions restrictions.

(vii) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) is in effect only through the winter season of 2006–2007.

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

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

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have been shown to have emissions no greater than the limits specified in paragraph (l)(6)(i) of this section.

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

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

(iii) 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 must I operate my snowmobile in Yellowstone National Park?* (i) You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season of 2006–2007:

(A) The Grand Loop Road from its junction with Terrace Springs 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 the East Entrance to its junction with the Grand Loop Road.

(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, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

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

(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. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowmobile 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 paragraphs (l)(7)(i)(A) through (l)(7)(i)(M) of this section and the following additional oversnow routes through the winter season 2006–2007:

(A) Firehole Canyon Drive.

(B) Fountain Flat Road.

(C) Virginia Cascades Drive.

(D) North Canyon Rim Drive.

(E) Riverside Drive.

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

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

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

(9) *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.

(10) *Are there limits established for the numbers of snowmobiles permitted to operate in the park each day?* The numbers of snowmobiles 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.—DAILY SNOWMOBILE LIMITS

Park entrance/location	Total number of commercially guided snowmobile allocations
(i) YNP—North Entrance* ...	30
(ii) YNP—West Entrance	400
(iii) YNP—South Entrance ..	220
(iv) YNP—East Entrance	40
(v) YNP—Old Faithful*	30

*These limits may be reallocated between these two areas as necessary, so long as the total daily number of snowmobiles for the two areas does not exceed 60.

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

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

(B) Oversnow vehicle 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 public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

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

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

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters 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 also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as 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 not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

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

(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 pursuant to this section or other provisions of 36 CFR part 1.

(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.

(16) *May I operate a snowplane in Yellowstone?* 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 occurrence of non-compliance with these regulations is a separate violation.

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

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

(a)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

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

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

(ii) The authority to operate a snowmobile in the Parkway established in paragraph (a)(3)(i) is in effect only through the winter season 2006–2007.

(4) *May I operate a snowcoach in the Parkway?* (i) Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if

authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle 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. Malfunctioning critical emission-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used.

(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.

(vi) Historic snowcoaches are not required to meet air emissions restrictions.

(vii) The authority to operate a snowcoach in the Parkway established in paragraph (a)(4)(i) is in effect only through the winter season of 2006–2007.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound requirements as set forth in this section may be operated in the Parkway. The Superintendent will approve snowmobile makes, models and year of manufacture that meet those restrictions. Any snowmobile model not approved by the superintendent may not be operated in the Parkway.

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

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

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the

restrictions identified in paragraph (a)(6)(i) of this section.

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

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

(iii) These air and sound emissions restrictions shall not apply to snowmobiles originating in the Targhee National Forest and traveling on the Grassy Lake Road to Flagg Ranch. However these snowmobiles may not travel further into the Parkway than Flagg Ranch unless they meet the air and sound emissions and all other requirements of this section.

(iv) 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 must I operate my snowmobile in the Parkway?* (i) You must 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 through the winter season of 2006–2007:

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

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

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

(D) Flagg Ranch developed area.

(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. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowmobile 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 through the winter season of 2006–2007 on the route designated for snowmobile use in paragraph (a)(7)(i)(B) of this section. No other routes are open to snowcoach use.

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

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

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

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

(ii) 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 permitted to operate in the Parkway each day?* (i) The numbers of snowmobiles 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.—DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Total number of snowmobile entrance passes
(ii) GTNP and the Parkway—Total Use on CDST*	50
(iii) Grassy Lake Road (Flagg-Ashton Road)	50

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

Park entrance/road segment	Total number of snowmobile entrance passes
(iv) Flagg Ranch to Yellowstone South Entrance	220

* The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this trail in both parks.

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

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

(ii) The following are required:

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

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

(C) Equipment sleds towed by a snowmobile must be pulled behind the

snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

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

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

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

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

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

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

(iii) This paragraph also applies to non-administrative snowmobiles 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 is not subject to §§ 2.18(d), (e), and 2.19(b) of this chapter.

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

(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 pursuant to this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and

conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(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 to revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

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

(2) *What terms do I need to know?* All the terms in § 7.13(l)(1) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Grand Teton National Park?* (i) You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established pursuant to 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**.

(ii) The authority to operate a snowmobile in Grand Teton National Park established in paragraph (g)(3)(i) is in effect only through the winter season of 2006–2007, except for the routes designated in paragraphs (g)(16) and (18) of this section, for which it will remain in effect.

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

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

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

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

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

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

(iv) 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 must I operate my snowmobile in the park?* (i) You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season 2006–2007:

(A) The frozen water surface of Jackson Lake for the purposes of ice

fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming fishing license and the proper fishing gear.

Snowmobiles may only be used to travel to and from fishing locations on the lake.

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

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

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

(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 numbers of snowmobiles permitted to operate in the park each day?* The numbers of snowmobiles allowed to operate in the park each day are limited to a certain number per road segment or location. The snowmobile limits are listed in the following table:

TABLE 1 TO § 7.22.—DAILY SNOWMOBILE LIMITS

Road segment/location	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST*	50
(ii) Jackson Lake	40

* The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this route in both parks; however the limit does not apply to the portion described in paragraph (16)(ii) of this section.

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

be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

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

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

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

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

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

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

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

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

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in

36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters 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 snow coach 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 also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

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

(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 designated routes through the park. Requirements established in this section related to air and sound emissions, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

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

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

(iii) The Continental Divide Snowmobile Trail, from the east park boundary to Moran Junction.

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

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

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

(ii) The unplowed portion of the Teton Park Road to the piece of land

commonly referred to as the "Clark Property".

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

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

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

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

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

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

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

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

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Dated: November 4, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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