

any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

Dated: November 16, 2009.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

RIN 1024-AD82

#### Special Regulations; Areas of the National Park System

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

**ACTION:** Final rule.

**SUMMARY:** This rule governs winter visitation and certain recreational use in Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway. This final rule is issued to implement the Finding of No Significant Impact (FONSI) for the 2008 Winter Use Plans Environmental Assessment (2008 EA) approved October 15, 2009, and will provide visitors a range of winter recreation opportunities that are appropriate to the national park setting, and that these activities do not unacceptably impact or impair park resources and values. The rule requires that recreational snowmobiles operating on Jackson Lake meet certain air and sound emissions requirements, and that such snowmobile use is for the sole purpose of accessing ice fishing opportunities on the lake. The rule sets daily entry limits on the numbers of snowmobiles allowed on Jackson Lake and on the Grassy Lake Road, and also designates the route between Flagg Ranch and the South Entrance of Yellowstone National Park for snowmobile and snowcoach use, subject to compliance with the daily entry limits and other requirements set out in the separate rule authorizing snowmobile and snowcoach use in Yellowstone National Park. Traveling off designated oversnow routes will remain prohibited.

**DATES:** The effective date for this rule is December 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gary Pollock, Management Assistant, Grand Teton National Park, 307-344-3428.

#### SUPPLEMENTARY INFORMATION:

##### Background

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 (the Parkway) for several decades under the guidance provided by a number of sources. The history of the issue was discussed at length in the notice for the proposed rule, 73 FR 65,784 (Nov. 5, 2008) and in the 2008 Winter Use Plans Environmental Assessment (2008 EA).

After the proposed rule was published, on November 7, 2008, the U.S. District Court for the District of Wyoming issued an order reinstating the 2004 final rule on winter use in the parks, without its sunset provisions, "until such time as NPS can promulgate an acceptable rule to take its place." The NPS complied with the court order and on December 9, 2008, republished the 2004 regulation without its provisions terminating snowmobile and snowcoach use after the winter of 2006-07.

The NPS is promulgating this final regulation to replace the reinstated 2004 regulation beginning with the winter season of 2009-2010.

The EA, FONSI, and other documents pertaining to winter use management in the parks can be found at <http://www.nps.gov/yell/planyourvisit/winteruse.htm>, and at <http://www.nps.gov/grte/parkmgmt/planning.htm>.

##### Rationale for the Final Rule

This rule allows for a limited amount of snowmobile use in Grand Teton and the Parkway to provide a range of appropriate winter activities while protecting the integrity of park resources. It allows for winter anglers to access ice fishing opportunities on the large expanse of Jackson Lake, and for snowmobile access from the adjacent Targhee National Forest to and from Flagg Ranch, via the Grassy Lake Road. The rule also designates the route between Flagg Ranch and the South Entrance of Yellowstone for use by snowmobiles and snowcoaches, subject to any daily entry limits, air and sound emissions, guiding, and other such requirements that apply to oversnow vehicle travel within Yellowstone. The designation is necessary since winter travel through the South Entrance of Yellowstone begins and ends at Flagg Ranch, approximately two miles south of the Yellowstone boundary.

The rule is designed to protect against the adverse impacts that occurred from the historical types and numbers of oversnow vehicle use in the Park and the Parkway. Experience over the past several winters has shown that a limited number of snowmobiles, in combination with the NPS requirements for air and sound emissions on Jackson Lake, allows for a range of appropriate visitor experiences while ensuring that the integrity of park resources and values is not harmed. The NPS found that the regulations that were in effect over the past several winter seasons resulted in quieter conditions, and that impacts on air quality, wildlife, other resources, and visitor experience were acceptable. This rule limits the daily number of snowmobiles allowed on Jackson Lake and the Grassy Lake Road in order to better protect park soundscapes and other resources, and includes requirements for snowmobile air and sound emissions. It also eliminates certain oversnow vehicle routes.

This rule is consistent with the 2006 NPS Management Policies. In managing units of the National Park System, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. However, the NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is defined in the 2006 NPS Management Policies in section 1.4.5 as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources and values.

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

This rule initially limits the number of snowmobiles authorized in Grand Teton to 25 per day in order to provide access to ice fishing opportunities on the large expanse of Jackson Lake. The rule allows this limit to be adjusted upward or downward, not to exceed 40

snowmobiles per day, through a monitoring and adaptive management program. The daily limits, combined with a provision that all snowmobiles used on Jackson Lake must meet NPS air and sound emissions requirements, will mitigate impacts on park resources, including the natural soundscapes of the park. The rule also allows 25 snowmobiles per day on the Grassy Lake Road in the Parkway. This route is the easternmost portion of an approximately 40-mile route that traverses the Targhee National Forest from the vicinity of Ashton, Idaho, and which terminates at Flagg Ranch. The route serves as a connection to popular snowmobile touring opportunities in the vicinity of Island Park, Idaho, and West Yellowstone, Montana. Snowmobiling opportunities abound in the portion of the route that is within the national forest, and almost all use of the route within the Parkway is incidental to activities in the forest. In view of the low amount of use that has historically occurred on the Parkway portion of the Grassy Lake Road, the importance of ensuring that visitors to the remote portions of the national forest have access to the facilities and services at Flagg Ranch (including the ability to report emergencies and obtain food and gasoline), and to provide access from Flagg Ranch to the recreational opportunities available in the national forest, snowmobiles on the Grassy Lake Road are not required to meet the air and sound emission requirements.

Adjustment to the daily entry limits for snowmobiles through an adaptive management program is one of several tools available to park managers to ensure that the goals and objectives of the winter use plans are maintained. Through an adaptive management program, if monitoring of use levels indicates that conditions are acceptable and could accommodate greater use, the NPS may increase the daily entry limits on Jackson Lake to 40 snowmobiles per day. Conversely, if monitoring indicates unacceptable conditions, the NPS will reduce use levels to an extent that acceptable conditions can be maintained.

To mitigate impacts to air quality and the natural soundscape, the NPS is continuing the requirement that all recreational snowmobiles on Jackson Lake meet strict air and sound emissions requirements. For air emissions, all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound restrictions, snowmobiles

must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers (SAE) J192 test procedures (revised 1985). The Superintendent will maintain a list of approved snowmobile makes, models, and years of manufacture that meet NPS requirements.

The NPS is continuing the requirement that began with the 2005 model year that all snowmobiles must be certified under 40 CFR 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons (HC) and 120 g/kW-hr for carbon monoxide (CO). Snowmobiles must be tested on a five-mode engine dynamometer consistent with the test procedures specified by the EPA (40 CFR 1051 and 1065). Other test methods could be approved by the NPS.

The NPS is retaining the use of the FEL method for demonstrating compliance with its emissions requirements because it has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve the NPS's emissions requirements, unless modified or damaged (under this regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with NPS requirements and therefore not permitted to enter the parks). Use of FEL will also minimize any administrative burden on snowmobile manufacturers to demonstrate compliance with NPS requirements, because they already provide FEL data to the EPA. Further, the EPA has the authority to ensure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, the NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that NPS emissions requirements are consistent with these

labels. The use of FEL will avoid potential confusion for consumers.

The air emissions requirements for snowmobiles allowed to operate in the park should not be confused with standards adopted by the EPA in a final rule published in the **Federal Register** on November 8, 2002 (67 FR 68242). The EPA regulations require manufacturers to meet certain fleet averages for HC and CO emissions. For example, the Phase 1 standards required all snowmobile manufacturers to meet a fleet-wide average in 2007 of 275 g/kW-hr for CO and 100 g/kW-hr for HC, which represents a 30-percent reduction from the baseline emission rates for uncontrolled snowmobiles. Any particular make/model may emit more or less than the standard as long as the fleet average does not exceed the standard. Phase 2 and Phase 3 standards will be implemented in 2010 and 2012, respectively, effectively requiring the equivalent of a 50% reduction in both HC and CO as compared to average baseline levels. By comparison, NPS requires that all snowmobiles operating in the Parks meet a FEL of 120 g/kW-hr for CO and 15 g/kW-hr for HC. This means that snowmobiles operating in the park represent the cleanest that are commercially available.

To determine compliance with the sound emissions requirements, snowmobiles must be tested using SAE J192 test procedures (revised 1985; or potentially as further revised and adapted for use by NPS). The NPS recognizes that the SAE updated these test procedures in 2003; however, the changes between the 2003 and 1985 test procedures could yield different measurement results. The sound emissions requirement was initially established using 1985 test procedures (in addition to information provided by industry and modeling). To ensure consistency in the test results, the NPS will at this time continue to use the 1985 test. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dBA over the sound limit to account for variations in weather, snow conditions, and other factors. The NPS understands that an update to the 2003 J192 procedures may be underway, and the NPS will continue to evaluate these test procedures and possibly adopt them after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures maintains consistency with the testing conditions used to determine

the sound requirement. This allowance for reduced barometric pressure is necessary since snowmobiles were tested at the elevation of Yellowstone National Park, where atmospheric pressure is lower than that under the SAE J192's requirements. Testing data indicate that snowmobiles test quieter at high elevation, and therefore some snowmobiles may comply with the NPS's sound emissions requirements at higher elevations even though they do not when tests are conducted near sea level.

The NPS will annually publish a list of snowmobile makes, models, and years of manufacture that meet its emissions and sound requirements. Snowmobile manufacturers may demonstrate that snowmobiles are compliant with the air emissions requirements by submitting to the NPS a copy of their applications used to demonstrate compliance with EPA's general snowmobile regulation (indicating FEL). The NPS will accept this application information from manufacturers in support of conditionally certifying a snowmobile as meeting its air emissions requirements, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify a snowmobile at an emission level that would no longer meet the NPS's requirements, this snowmobile would no longer be considered by NPS to be compliant with its requirements and would be phased out according to a schedule that will be determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers may submit their existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to continue to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program. When the NPS certifies snowmobiles as meeting its requirements, it will announce how long that certification applies. Generally, each snowmobile model will be approved for entry into the parks for 6 winter seasons after it is

first listed. Based on NPS experience, 6 years represents the typical useful life of a snowmobile, and thus 6 years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant. It is also based on EPA snowmobile emission regulations and the deterioration factors that are part of those regulations (EPA requires that if a manufacturer certifies its snowmobile will comply with EPA's emission regulations, the snowmobile will meet those regulations for a period of 5 years or 5,000 miles). The NPS recognizes that some privately owned snowmobiles used predominantly for ice fishing on Jackson Lake may have relatively low mileages even after 6 years of use, and therefore may not have experienced the type of deterioration that would cause them to fail NPS air and sound emissions requirements. The certification period for snowmobiles being operated on Jackson Lake will still be considered to be 6 years, but it may be extended up to a total of 10 years as long as the snowmobile's mileage does not exceed 6,000 miles.

Individual snowmobiles modified in such a way as to increase sound and air emissions of hydrocarbons (HC) and carbon monoxide (CO) beyond the proposed emission restrictions will be denied entry to the parks. It is the responsibility of end users to ensure that their oversnow vehicles, whether snowmobiles or snowcoaches, comply with all applicable restrictions.

Snowmobiles being operated on the Grassy Lake Road will not be required to meet air and sound emissions requirements regardless of whether they originate travel at Flagg Ranch or in the national forest. In light of the relatively short length of this segment and the very limited amount of snowmobile use, the NPS has determined that the impacts of this use of snowmobiles that does not meet NPS air and sound emissions requirements are acceptable.

Scientific studies and monitoring of winter visitor use and park resources will continue. If these studies indicate that human presence or activities have a substantial adverse effect on wildlife or other park resources that cannot otherwise be mitigated, as part of its adaptive management of winter use activities the NPS will close selected areas to visitor use. A one-year notice will ordinarily be provided before any such closure is implemented unless immediate closure is deemed necessary to avoid impairment of park resources. The Superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

Snowmobiles will continue to be restricted to designated routes, which are either roads that are traveled by motor vehicles during the remainder of the year, or in the case of Jackson Lake, by motorboats during the summer.

The NPS will close the Continental Divide Snowmobile Trail (CDST) as an oversnow vehicle route through most of Grand Teton and the Parkway. Experience over the past several winters strongly suggests that the minimal amount of use on this route would not substantially increase if it were to remain open, since much of the previous use of the CDST was associated with visitors traveling through to Yellowstone. The NPS recognizes that the guiding and air and sound emissions requirements for Yellowstone have contributed to a substantial reduction in the use of the CDST, since visitors have not been able to continue into Yellowstone without a guide and a snowmobile that meets the emissions requirements, as well as complying with the daily entrance caps.

The NPS also recognizes, however, that snowmobile access to and from the Targhee National Forest is important to some visitors. While the CDST will no longer be maintained or designated for snowmobile use, the air and sound emissions requirements for the Grassy Lake Road will be removed beginning with the 2009–2010 winter season. Snowmobilers will be able to transport their machines by trailer between Moran and Flagg Ranch using plowed roads, in order to connect to the Grassy Lake Road and the national forest lands to the west of the Parkway. The daily entry limit of 25 is sufficient to accommodate the levels of use that have typically occurred in the past and those which are reasonably foreseeable.

#### **Summary of and Responses to Public Comments**

The NPS published a proposed rule on November 5, 2008, (73 FR 65784) and initially accepted public comments through November 20, 2008. The comment period was reopened on July 24, 2009, and comments were accepted through September 8, 2009. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: <http://www.regulations.gov>. A total of 39,796 comment documents were received. Since the proposed rule was combined with rulemaking for winter use management in Yellowstone, many of the comments addressed issues primarily or entirely related to that park. The comments and responses below are those that were pertinent to the issues in Grand Teton and the Parkway.

Comments relevant to Yellowstone are included in a separate rulemaking.

1. *Comment:* The NPS should not require the use of BAT snowmobiles on Jackson Lake.

*Response:* The BAT requirement on Jackson Lake is important in mitigating the impacts of snowmobile use on Jackson Lake. Due to the large and unobstructed expanse of the frozen surface of the lake, sound from snowmobiles is able to propagate over long distances, and therefore could have a disproportionate impact on the natural soundscapes even at relatively low levels of use. The BAT requirement helps to mitigate that impact due to the reduced sound emissions compared to non-BAT snowmobiles, as well as the tonal qualities of the sound.

2. *Comment:* The daily limits for snowmobile use on Jackson Lake and the Grassy Lake Road are too low.

*Response:* The NPS recognizes that the levels of use on Jackson Lake in recent years may have been affected by the uncertainty over the winter use issue, and winter anglers may have been reluctant to purchase BAT snowmobiles. Should this reluctance diminish as a result of greater certainty regarding winter use management on Jackson Lake, some increase in BAT snowmobile use could be expected. In light of the amount of use in recent years, and after considering the historic levels of use on Jackson Lake, the NPS believes that the daily limits established will accommodate current and reasonably foreseeable future demand for snowmobile access on Jackson Lake. Similarly, the limits established for the Grassy Lake Road are sufficient to accommodate current use levels and those that are reasonably foreseeable.

3. *Comment:* Since the level of use analyzed in the Selected Alternative is considered less than a significant impact, the decision would unnecessarily restrict snowmobile use with no resulting benefit for park resources.

*Response:* The NPS believes that the snowmobile daily entry limits on Jackson Lake and the Grassy Lake Road are sufficient to accommodate current and reasonably foreseeable demand for use of those areas. At the same time, the NPS believes the Selected Alternative will be protective of park resources. The NPS is not obligated to increase the daily limits to a level that would be considered significant simply for the purpose of accommodating demand that may or may not be present. Should the need arise in the future, the NPS could revisit whether the daily entry limits should be adjusted.

4. *Comment:* The NPS should use the ongoing monitoring of the effects of snowmobile use to determine the appropriate number of snowmobiles that can access Jackson Lake.

*Response:* The Selected Alternative allows for an initial daily entry limit of 25 snowmobiles per day on Jackson Lake. This level of use is higher than the recent-years average of 3–5 snowmobiles per day, as well as the peak day of 17. The NPS believes that it is reasonable to expect that use will increase somewhat once the winter use management situation stabilizes, but does not have any information that suggests that the demand cannot be accommodated within the limits established in the Selected Alternative. Nevertheless, the decision allows for the entry limits to be adjusted up or down, not to exceed 40 per day based on monitoring and adaptive management.

5. *Comment:* The daily snowmobile limits on Jackson Lake and the Grassy Lake Road are too high in light of the low level of snowmobile use that has occurred in the Park and Parkway in recent years. The daily limits should be capped at current levels.

*Response:* The daily limits proposed in the Selected Alternative are low enough to ensure that no significant impacts will occur, but high enough to accommodate a reasonable amount of increased use. The NPS recognizes that the levels of use on Jackson Lake in recent years may have been affected by the uncertainty over the winter use issue, and winter anglers may have been reluctant to purchase BAT snowmobiles.

6. *Comment:* Snowmobile use should not be allowed on Jackson Lake because anglers can access the lake by non-motorized means, and because snowmobiles leave behind pollutants.

*Response:* Due to the large size of Jackson Lake, most of it would be inaccessible without the some form of motorized access.

7. *Comment:* Snowmobiles should not be allowed on Jackson Lake because they leave behind pollutants that enter the lake when the ice melts.

*Response:* The requirement that snowmobiles meet BAT requirements, combined with the daily entry limits, will result in negligible levels of pollutants entering the waters of Jackson Lake.

8. *Comment:* The Continental Divide Snowmobile Trail (CDST) through Grand Teton and the Parkway should be kept open. It is an important link between popular snowmobile touring opportunities portions of the CDST outside the park and in the Island Park/West Yellowstone areas.

*Response:* In recent years, use of the CDST through the parks was extremely low—in the neighborhood of 15 snowmobiles per season. Although use levels were higher than that prior to the initiation of guiding and BAT requirements in Yellowstone, the amount of use has always been modest. The amount of use on the CDST does not warrant the cost of continuing to construct and maintain the trail each year. Since BAT snowmobiles will no longer be required on the Grassy Lake Road, those wishing to complete a long-distance tour between other parts of the CDST and the Island Park/West Yellowstone areas will be able to trailer their snowmobiles through the parks to Flagg Ranch and continue traveling the trail from there.

9. *Comment:* The Continental Divide Snowmobile Trail between Moran Junction and Flagg Ranch should be discontinued.

*Response:* The CDST will no longer be designated or maintained for snowmobile use.

10. *Comment:* Implementation of a long-term plan for Grand Teton and the Parkway, while putting in place an interim plan for Yellowstone will cause further confusion and uncertainty for the public.

*Response:* Separate decisions regarding Yellowstone, Grand Teton, and the Parkway are not expected to create confusion and uncertainty. The oversnow vehicle use allowed under the Selected Alternative at Grand Teton and the Parkway is separate and distinct from that which occurs in Yellowstone. The use of snowmobiles on Jackson Lake for ice fishing has no connection with opportunities for touring Yellowstone, nor does use of the Grassy Lake Road. A long-term decision for Grand Teton and the Parkway will alleviate the existing confusion and uncertainty regarding winter use management in those two areas.

11. *Comment:* Snowmobiles should not be allowed on the Grassy Lake Road.

*Response:* The Grassy Lake Road within the Parkway is the easternmost segment of an approximately 40-mile route that extends from near Ashton, Idaho, to Flagg Ranch, mostly within the Targhee National Forest. Within the national forest, there are many opportunities for winter recreation, including snowmobile touring. Allowing snowmobile use on the portion of the Grassy Lake Road within the Parkway provides opportunities for visitors to the national forest to access the services available at Flagg Ranch, including emergency notification, and for visitors to access the adjacent national forest lands from Flagg Ranch.

12. *Comment:* The NPS should implement a winter shuttle service that would haul non-BAT snowmobiles through Grand Teton and Yellowstone so that tours to West Yellowstone would be possible without a long side trip through Island Park.

*Response:* The NPS would consider proposals from a potential service provider for such a service.

13. *Comment:* The EA did not include a sufficient range of alternatives.

*Response:* As discussed in the purpose and need for the 2008 EA, this EA and rulemaking considered only those options that would have allowed the NPS to open the parks for an interim period without causing major impacts. NPS did not examine options that it knew, based on previous analyses, modeling data, or monitoring data, would cause major impacts. Such impacts must first be analyzed in an EIS. In order to ensure that some motorized access could occur for the upcoming winter, NPS proposed an approach it believed could likely be supported by a Finding of No Significant Impact, which required that no major impacts from the decision could be experienced.

14. *Comment:* The decision to permanently allow snowmobile use in Grand Teton and the Parkway will impact future long-term decisions regarding winter access into Yellowstone.

*Response:* The snowmobile use authorized in Grand Teton and the Parkway is distinct and separate from oversnow vehicle access into Yellowstone. The plan for Grand Teton and the Parkway allows a limited amount of snowmobile access for ice fishing on Jackson Lake, and for use of the Grassy Lake Road between Flagg Ranch and the Targhee National Forest. Neither of these uses has any bearing on winter access into Yellowstone.

15. *Comment:* The comment period on the EA was too short.

*Response:* The EA and proposed rule were available for public comment for nearly concurrent 15-day periods ending on November 17, 2008, and November 20, 2008, respectively. The lengths of the comment periods were based on the time constraints that existed at the time, because NPS was attempting to complete a NEPA and rulemaking process in time for the 2008–2009 winter season. Subsequent events made it possible for NPS to reopen the proposed rule for an additional 45 days of public comment in July 2009. The issues are largely the same, and the NPS considered all of the comments made during both comment periods in the NEPA process.

16. *Comment:* By releasing a proposed rule contemporaneously with the 2008 EA, the NPS indicated that it had already made a decision regarding the outcome of the EA.

*Response:* Publication of the proposed rule did not prejudice or commit the NPS to a course of action since it was not a final rule. The rule could be altered any time prior to publication of a final rule in the **Federal Register**.

17. *Comment:* The NPS should disclose the amount of Federal funds that have been spent on winter use planning for the parks.

*Response:* Since 1997, the NPS has spent over \$11 million on planning for winter use management in Yellowstone, Grand Teton, and the Parkway.

18. *Comment:* The No-action alternative in the EA (Alt 1—Eliminate Motorized Recreational Oversnow Travel) was incorrect because it should have represented the “current level of activity,” meaning the daily entry limits that had been in effect the previous four winters.

*Response:* When the 2008 EA was prepared, the 2007 rule had been vacated. No snowmobile or snowcoach use would have been authorized without action by the NPS, because the authorizations in the 2004 rule had expired pursuant to the sunset date provisions. After the 2008 EA was issued, the U.S. District Court for the District of Wyoming reinstated the 2004 rule without the sunset clauses, and as a result, up to 720 snowmobiles per day were allowed for the winter of 2008–09. Due to a pending appeal, there is still uncertainty regarding that reinstatement. As explained above, there has been no current NEPA analysis or other determination that use at the levels authorized under that regulation is consistent with the NPS’s statutory and other mandates. Accordingly, the No Action Alternative analyzed in the 2008 EA represents a more logical and useful benchmark against which impacts can be compared, and therefore continues to better satisfy the purposes of the no action alternative under NEPA.

19. *Comment:* The NPS has no basis for reducing the number of snowmobiles allowed on Jackson Lake from 40 per day to 25.

*Response:* The rule provides an initial limit of 25 per day, but allows up to 40. The initial limit is sufficient to accommodate the amount of use that has been occurring in recent years, and the potentially higher limit of 40 is sufficient to accommodate reasonably foreseeable increases in fishing/snowmobiling demand.

20. *Comment:* The impacts associated with the use of snowmobiles violate the NPS Organic Act prohibition on the impairment of park resources.

*Response:* As described in the EA and FONSI, the impacts associated with the limited and carefully regulated use of snowmobiles under the Selected Alternative do not constitute impairment of park resources or cause unacceptable impacts.

21. *Comment:* The NPS must take into account its obligation to seek to perpetuate the best possible air quality in the parks.

*Response:* The limited amount of snowmobile use permitted in the Selected Alternative will have negligible impacts on the air quality of the parks.

22. *Comment:* The NPS should continue operating the parks under the 2004 rules.

*Response:* The 2004 rules were reinstated by the U.S. District Court for the District of Wyoming and were intended to provide guidance until such time as the NPS could promulgate new rules. Continued operation under the reinstated rule would lead to uncertainty, as a result of pending litigation in both the U.S. Court of Appeals for the Tenth Circuit and the U.S. District Court for the District of Columbia. In addition, there has been no current NEPA analysis or other determination that the use levels authorized under that regulation are consistent with the NPS’s statutory and other mandates.

23. *Comment:* The NPS should delay implementation of any new rules for one season in order to minimize confusion.

*Response:* The NPS is currently managing winter use activities under a 2004 rule that was reinstated by the U.S. District Court for the District of Wyoming. Continued operation under that rule would lead to uncertainty, as a result of pending litigation in both the U.S. Court of Appeals for the Tenth Circuit and the U.S. District Court for the District of Columbia. In addition, there has been no current NEPA analysis or other determination that the use levels authorized under that regulation are consistent with the NPS’s statutory and other mandates. In order to ensure that the Park and Parkway are open to oversnow vehicle use for the winter of 2009–2010, the NPS believes it is prudent to implement the Selected Alternative prior to the start of the season.

24. *Comment:* The NPS general regulation on snowmobiles, 36 CFR 2.18, requires that snowmobiles may only be allowed where they will not disturb wildlife.

*Response:* Winter use has some small and occasional effects on wildlife, just like every other form of visitor use of the park, but the impacts are expected to be acceptable, and are a necessary and unavoidable consequence of an appropriate use. Taking or intentionally disturbing wildlife are prohibited by the NPS's general regulations on natural resource preservation and wildlife protection, 36 CFR 2.1, 2.2. Section 2.18, which addresses the use of snowmobiles in the National Park System, requires that routes for snowmobile use may only be designated where the use will not disturb wildlife, but in doing so does not establish a different standard than sections 2.1 and 2.2. The wildlife responses to normal snowmobile use that are expected to occur do not cause the taking, frightening, or intentional disturbance that is prohibited by NPS regulations.

25. *Comment:* The NPS has not provided a reasoned explanation for its adaptive management thresholds and their consistency with its mandates.

*Response:* The adaptive management thresholds are a management tool only; they do not represent the unacceptable impacts or impairment thresholds described in section 1.4 of the Management Policies. Rather, they are a conservative measure used to alert the NPS manager that additional attention to a particular park resource or value is merited. By reacting to the exceedance of a conservative adaptive management threshold, NPS can seek to ensure that no unacceptable impacts or impairment occur.

26. *Comment:* The NPS should require winter users to maintain a 100 meter distance from animals when stopping.

*Response:* The NPS requires visitors to stay at least 100 yards (91 meters) away from bears and wolves, and at least 25 yards (21 meters) away from all other animals.

27. *Comment:* Promulgation of a long-term rule for winter use management at Grand Teton and the Parkway is a major Federal action pursuant to NEPA and should have required the preparation of an environmental impact statement.

*Response:* As disclosed in the 2008 environmental assessment and 2009 Finding of No Significant Impact, the Selected Alternative (and its implementation in the final rule) is not an action that normally requires the preparation of an environmental impact statement. Nor will it have a significant effect on the human environment.

Environmental impacts that could occur are limited in context and intensity, with generally adverse impacts that range from localized to widespread,

short- to long-term, and negligible to minor. As discussed in the EA, impacts would have to rise to the level of major to be considered significant, and these impacts fall well short of major impacts. There are no unmitigated adverse effects on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the action will not violate any Federal, State, or local environmental protection law. Based on the foregoing, it has been determined that an EIS is not required for this project.

28. *Comment:* The NPS should allow the Wyoming Game and Fish Department to use non-BAT snowmobiles to access Jackson Lake.

*Response:* When the use of BAT snowmobiles is unsafe or impractical, or the use of non-BAT snowmobiles is otherwise necessary for the proper administration of the park, the Superintendent may allow NPS and other authorized parties to use non-BAT snowmobiles for specialized administrative purposes, such as law enforcement, search and rescue, or other management functions.

#### Changes to the Final Rule

After taking the public comments into consideration and after additional internal review, several changes were made to the final rule, in addition to non-substitutive editorial changes made to improve clarity of the rule. These changes are as follows:

First, paragraphs 7.21(a)(2) and 7.22(g)(2) for the Parkway and Grand Teton have been revised to fully describe all of the terms that are necessary to know, rather than simply referencing those terms in the corresponding section of the Yellowstone rule, § 7.13(l).

Second, paragraph 7.21(a)(4) was revised to eliminate the descriptions for snowcoach air emissions requirements. The revision does not necessarily remove emissions requirements, however, because any snowcoach use in the Parkway will only be pursuant to a concessions contract with Yellowstone National Park, and snowcoaches will be required to meet any emissions requirements in the Yellowstone regulations at § 7.13(l).

Third, paragraphs 7.21(a)(5) and (6) regarding the models of snowmobiles that may be operated in the Parkway, along with snowmobile air and sound

emissions requirements, were deleted and subsequent paragraphs were renumbered accordingly. The revision simply reflects the fact that snowmobile trips into Yellowstone through the South Entrance of the park begin and end at Flagg Ranch, and that all use of the two-mile route between Flagg Ranch and the South Entrance is in conjunction with those trips. Therefore, the final rule specifies at paragraph 7.21(a)(5) that snowmobiles traveling along the route between Flagg Ranch and the South Entrance must meet any air and sound emissions requirements and other conditions described in the Yellowstone regulations at § 7.13(l). The proposed rule did not include any air and sound emissions requirements for the Grassy Lake Road, and therefore the revision does not affect snowmobiles using that route.

Fourth, paragraph 7.21(a)(10), renumbered as 7.21(a)(8), was revised to remove the table showing snowmobile and snowcoach daily limits and simply describe those limits in the text. The revision also specifies that the daily entry limits for snowmobiles and snowcoaches on the route from Flagg Ranch to the South Entrance of Yellowstone are established in § 7.13(l).

#### Summary of the Economic Analysis

NPS analyzed the potential costs and benefits associated with the Selected Alternative as compared to the baseline conditions. The baseline conditions for this regulatory action are influenced by recent court decisions. When the Environmental Analysis was issued in 2008, the 2007 winter use regulation had been vacated and the authorization for snowmobile access in the 2004 winter use regulation had expired pursuant to its sunset provision. Thus, without regulatory action by NPS at that time, no snowmobile access would have been permitted, wheeled vehicle travel would have continued on roads that had been traditionally plowed, and the Park would have been open to skiing and snowshoeing.

However, in November 2008 the Wyoming District Court ordered the reinstatement of the 2004 regulation, without its sunset provision, until NPS promulgates an acceptable regulation to take its place. The result of that decision is the continued authorization for snowmobile access as provided by the 2004 regulation. While there has been no current NEPA analysis or other determination that snowmobile use at the levels authorized under that regulation is consistent with NPS statutory and other mandates, these conditions describe baseline for purposes of this regulatory analysis.

NPS has considered the Selected Alternative vis-à-vis these baseline conditions and determined that the resulting changes in winter season visitation will be de minimis. For example, in Grand Teton National Park, snowmobile use on Jackson Lake in recent years has averaged less than five machines per day. On a few days, snowmobile use has involved approximately 10 machines, and approximately 19 machines on the peak use day. On Grassy Lake Road, snowmobile use has typically been no more than five to 10 machines per day, and often less. Some increases beyond these levels may occur if uncertainty about authorized use levels is reduced by this regulatory action. However, such increases would be expected only gradually, if at all. The Selected Alternative will initially permit 25 snowmobiles per day on the Lake for ice fishing access, and as many as 40 snowmobiles per day if monitoring indicates acceptable resource impacts. Therefore, the Selected Alternative is not considered binding on snowmobile use within the Parks and any changes in visitation from the baseline conditions would likely be imperceptible.

Given that, NPS believes the incremental benefits and costs associated with the Selected Alternative are essentially zero for both visitors and businesses alike. Therefore, NPS estimates zero net benefits (benefits minus costs) as a result of the Selected Alternative.

NPS also analyzed the potential economic impacts of the Selected Alternative on small entities, considering the potential changes in business revenue that could occur under that alternative relative to the baseline conditions. As noted above, NPS believes that any changes in winter season visitation in the Parks resulting from the Selected Alternative will be de minimis. Therefore, NPS also believes that any revenue impacts on small entities will also be de minimis. Additionally, NPS notes that most of the visitors potentially affected by the Selected Alternative reside in the local area, and that these visitors do not utilize local hotels, restaurants, or other businesses to the extent that those coming from outside the GYA would. Therefore, NPS does not believe that significant impacts to a substantial number of small entities will occur as a result of the Selected Alternative. Given that, NPS has determined that the Selected Alternative will have de minimis impacts on the affordability or viability of local businesses, small or large.

### **Compliance With Other Laws**

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

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

(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 Analyses: Selected Winter Use Plan for Grand Teton National Park and John D. Rockefeller, Jr., Memorial Parkway" (Peacock, September 2009).

(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 snowmobiles within specific units of the National Park System. No grants or other forms of monetary supplement are involved.

(4) While the NPS has been the subject of numerous lawsuits regarding winter use management, this rule does not raise novel legal or policy issues.

#### **Regulatory Flexibility Act**

The NPS has determined that this regulatory action will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the report "Economic Analyses: Selected Winter Use Plan for Grand Teton National Park and John D. Rockefeller, Jr., Memorial Parkway" (Peacock, September 2009).

#### **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. This conclusion is based on the report "Economic Analyses: Selected Winter Use Plan for Grand Teton National Park

and John D. Rockefeller, Jr., Memorial Parkway" (Peacock, September 2009).

(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 immediate area surrounding Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway, 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)**

Under the criteria in Executive Order 12630, this 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)**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **Paperwork Reduction Act**

This rule does not contain information collection requirements,



and a submission under the Paperwork Reduction Act (PRA) is not required.

### National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We have prepared an Environmental Assessment (Winter Use Plans Environmental Assessment, November 2008) under the National Environmental Policy Act of 1969. A Finding of No Significant Impact (FONSI) has also been completed. The EA and FONSI are available for review by contacting the Superintendent's Office at Grand Teton National Park, or can be found online at: <http://www.nps.gov/grte/parkmgmt/planning.htm>.

### Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on Federally recognized Indian Tribes. Numerous Tribes in the area were consulted, however, in the development of the previous NEPA processes. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that by limiting the numbers of snowmobiles allowed and authorizing such use only in areas where wildlife is not abundant during the winter.

### Information Quality Act

In developing this rule NPS did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

### Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

### Administrative Procedure Act

Comment periods on the proposed rule were provided from November 5, 2008, through November 20, 2008, and from July 24, 2009, to September 8, 2009, for a total of 60 days.

This rule is effective on December 15, 2009. The National Park Service recognizes that new rules ordinarily go into effect thirty days after publication in the **Federal Register**. For this regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective on December 15, 2009, the traditional date for commencement of the park's winter use season. This rule implements the winter use plans for

Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway and relieves the restrictions on the use of snowmobiles that would exist in its absence. In addition, good cause exists for the effective date of December 15, 2009, for the following reasons:

(1) The NPS has in good faith publicly stated that the 2009–2010 winter season for Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway would commence on December 15, 2009, and the public and businesses have made decisions based on the widespread public knowledge of this opening date.

(2) The finding of no significant impact for this rule was signed on October 15, and was made available to the public for 30 days prior to the signing of this rule. By December 15, the public therefore will have had more than 60 days notice of the NPS decision.

(3) There would be no benefit to the public in delaying the effective date of this rule, given that there has already been substantial notice of the opening date and that the park will be open under conditions substantially similar to those in effect for the past three years. The above-described harms to the public resulting from a procedural delay of this rule should therefore be avoided, and an effective date of December 15, 2009, is warranted.

*Drafting Information:* The primary authors of this regulation are Gary Pollock, Management Assistant, Grand Teton National Park; John Sacklin, Management Assistant, Yellowstone National Park; Jason Waanders, Office of the Solicitor, and Philip Selleck, Regulations Program Manager, National Park Service, Washington, DC.

### List of Subjects in 36 CFR Part 7

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

■ For the reasons given in the preamble, 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, 462(k); Sec. 7.96 also issued under DC Code 10–137(2001) and DC Code 50–2201 (2001).

■ 2. Revise § 7.21 to read as follows:

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

(a)(1) *What is the scope of this section?* The regulations contained in paragraphs (a)(2) through (a)(17) of this

section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(15) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

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

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

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

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

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



which may be steered by a ski or skis in contact with the snow.

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

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

(4) *May I operate a snowcoach in the Parkway?* Snowcoaches may only be operated in the Parkway under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

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

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

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

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

(iii) The route described in paragraph (a)(5)(i)(A) of this section is subject to the air and sound emissions requirements, guiding requirements, and daily entry limits described in § 7.13(l) of this part.

(iv) This paragraph (a)(5) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(6) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on

the routes designated for snowmobile use in paragraphs (a)(6)(i)(A) and (C) of this section. No other routes are open to snowcoach use, except as provided in (a)(6)(ii) of this section.

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

(iii) The routes described in paragraph (a)(6)(i) of this section are subject to the air and sound emissions requirements and daily entry limits in § 7.13(l) of this part.

(iv) This paragraph (a)(6) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(7) *Must I travel with a commercial guide while snowmobiling in the Parkway?* Except as may be required under paragraph (a)(5)(iii) of this section, you are not required to use a guide while snowmobiling in the Parkway.

(8) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the Parkway each day?* (i) A limit of 25 snowmobiles per day applies to the Grassy Lake Road.

(ii) The daily entry limits for snowmobiles and snowcoaches on the route from Flagg Ranch to the South Entrance of Yellowstone are established in § 7.13(l) of this part.

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

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

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

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

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

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway

resources or otherwise in a reckless manner.

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

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

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

(ii) The following are required:

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

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

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

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

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

(iv) This paragraph (a)(10) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

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

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

grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (a)(11) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

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

(13) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

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

(15) *Is violating any of the provisions of this section prohibited?* (i) Violating any of the terms, conditions or requirements of paragraphs (a)(3) through (a)(14) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

(b) [Reserved]

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

**§ 7.22 Grand Teton National Park.**

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

(3) *May I operate a snowmobile in Grand Teton National Park?* You may

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

(4) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the Superintendent.

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

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

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

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

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

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

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

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

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

(7) *Where may I operate my snowmobile in the park?* (i) You may operate your snowmobile upon the frozen water surface of Jackson Lake, a route established in accordance with § 2.18(c) of this chapter, under the following conditions:

(A) You are ice fishing, and licensed or otherwise permitted to fish in Wyoming;

(B) You possess the proper fishing gear; and

(C) You limit your snowmobile travel to a direct route to and from and between fishing locations on the lake.

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

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

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

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

(9) *Are there limits established for the number of snowmobiles permitted to operate in the park each day?* (i) The number of snowmobiles allowed to operate in the park each day on Jackson Lake is 25.

(ii) The Superintendent may adjust this number up or down, not to exceed

a daily limit of 40 snowmobiles, after taking into consideration the location of wintering wildlife, appropriate snow cover, noise monitoring results, public safety and other factors. The Superintendent will provide notice of such adjustment by one or more of the methods listed in § 1.7(a) of this chapter.

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

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

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

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

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

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

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

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

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

(ii) The following are required:

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

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

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

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

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

(iv) This paragraph (g)(11) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

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

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters 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 operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

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

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

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

(i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

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

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

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

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

Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on the designated routes through the park identified in the following paragraphs (g)(16)(i) through (iv). Requirements established in this section related to air and sound emissions, daily entry limits, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. The following routes are designated for access via snowmobile to public lands:

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

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

(iii) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from the east park boundary to a point approximately 2 miles east of Moran Junction. If necessary for the proper administration of visitor use and resource protection, the Superintendent may extend this designated route to the Moran Entrance Station.

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

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

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

(i) From the Antelope Flats Road off U.S. 26/89/191 to private lands in the Craighead Subdivision.

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

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

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

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

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

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

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

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

(20) *Is violating any of the provisions of this section prohibited?* (i) Violating any of the terms, conditions or requirements of paragraphs (g)(3) through (g)(19) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

Dated: November 16, 2009.

**Thomas L Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E9-27894 Filed 11-17-09; 4:15 pm]

**BILLING CODE 4310-CX-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0674; FRL-8983-1]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Virginia. This revision establishes Virginia's transportation conformity requirements.

After they have been approved, the Commonwealth's regulations will govern transportation conformity determinations in the Commonwealth of Virginia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on January 19, 2010 without further notice, unless EPA receives adverse written comment by December 21, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0674 by one of the following methods:

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

B. *E-mail:*

*fernandez.cristina@epa.gov.*

C. *Mail:* EPA-R03-OAR-2009-0674, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2009-0674. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your