



**Billing Code 4312-CT**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 7**

**RIN 1024-AD92**

**Special Regulations; Areas of the National Park System, Yellowstone National Park**

**AGENCY:** National Park Service, Interior

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Record of Decision for the 2011 Winter Use Plan/Environmental Impact Statement and governs winter visitation and certain recreational activities in Yellowstone National Park for the 2011-2012 winter season. The rule retains, for one additional year, the regulations and management framework that have been in place for the past two winter seasons (2009-2010 and 2010-2011). Specifically, the rule retains provisions that: require most recreational snowmobiles operating in the park to meet certain National Park Service air and sound emissions requirements; require snowmobiles and snowcoaches in Yellowstone to be accompanied by a commercial guide; set daily entry limits on the numbers of snowmobiles (up to 318) and snowcoaches (up to 78) that may enter the park; and prohibit traveling off designated oversnow routes.

**DATES:** This rule is effective December 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Steve Iobst, Deputy Superintendent,  
Yellowstone National Park, 307-344-2002

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The National Park Service (NPS) has managed winter use in Yellowstone National Park for several decades. A detailed history of the winter use issue, past planning efforts, and litigation is provided in the background section of the 2011 Environmental Impact Statement (EIS), available at <http://parkplanning.nps.gov/yell>. The park has most recently operated under the 2009 interim plan, which was in effect for the past two winter seasons and expired by its own terms on March 15, 2011.

On July 5, 2011, NPS published a proposed long-term regulation to implement the preferred alternative identified in the Draft EIS. Under that alternative, NPS proposed providing four different use-level combinations for snowmobiles and snowcoaches, which would vary according to a seasonal schedule. Snowmobile use would have ranged from 110 to 330 vehicles per day and snowcoach use would have ranged from 30 to 80 vehicles per day.

NPS had intended to issue a Final EIS and final long-term regulation for Yellowstone winter use by December 2011. However, some of the more than 59,000 public comments received on the Draft EIS raised reasonable questions as to long-term effects and options, and NPS has decided to delay implementation of a long-term rule. In order to make a reasoned, sustainable long-term decision, NPS requires additional time to update its analyses.

In the Record of Decision for the 2011 EIS, NPS identified Alternative 8 as the selected action to be implemented. Under Alternative 8, the 2009 interim regulation will remain in effect for one additional year, the 2011-2012 winter season. Accordingly, up to 318 commercially guided, best available technology snowmobiles and 78 commercially guided snowcoaches will be allowed in the park per day; a variety of non-motorized uses will also be allowed.

In the proposed rule (76 FR 39049), NPS stated its intent to implement a "transition year" for the 2011-2012 winter season, under the same requirements and restrictions as the 2009 interim regulation. Implementation of the transition year through this regulation will provide the additional time needed to complete the analyses of alternative long-term management strategies. NPS intends to complete a supplemental EIS, make a decision on a plan for long-term winter use, and issue a new regulation for winter use before the 2012-2013 winter season.

Additional information regarding winter use at Yellowstone National Park is available online at: <http://www.nps.gov/yell/parkmgmt/participate.htm>.

### **Analysis of Public Comments**

The public comment period was open from July 5, 2011, to September 6, 2011. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: <http://www.regulations.gov>. NPS received approximately 165 timely comments. All of the comments focused on the analysis in the Draft EIS and addressed issues related to long-term management, except for one substantive comment regarding what is being implemented under this rule, the "transition year." NPS will consider the comments received regarding long-term issues as it works on the supplemental EIS and a new proposed and final rule for the long-term winter use plan.

### **Comment Response**

*1. Comment:* Under "Description of Proposed Rule" it stated the "transition year" would allow 38 snowcoaches per day; it should have stated up to 78 snowcoaches would be allowed per day.

*Response:* NPS agrees that the number 38 was a typographic error (76 FR 39049), and notes that the correct number, 78 snowcoaches, was printed correctly in a different section on the

same page. During the one-year implementation of this regulation, NPS will allow up to 78 snowcoaches per day into the park.

### **Section by Section Analysis**

NPS is revising § 7.13 paragraphs (l)(3)(ii), (l)(4)(vi), (l)(7)(i) and (l)(8)(i) by replacing the terms “the winter season of 2010-2011” and “the winter of 2010-2011” with the terms “the winter season of 2011-2012” and “the winter of 2011-2012.” This is the only change to the existing regulations.

### **Compliance with Other Laws and Executive Orders**

#### **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.

(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.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency specific rule.

(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.

(4) This rule does not raise novel legal or policy issues. This rule only allows for a one year extension of the previous interim regulation.

### **Regulatory Flexibility Act (RFA).**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

NPS used two separate baselines for its regulatory flexibility analysis. If no new rule were passed, Baseline 1 would be defined by the no-action alternative in the EIS. Under this baseline, no motorized oversnow vehicles would be allowed in the park. In addition, NPS defined a second baseline, Baseline 2. Baseline 2 represents the continuation of the same levels of use allowed under the 2009 interim regulation in place for the past two winter seasons. Under Baseline 2, there would be a zero net change between the past two years and the actions being implemented under this rule, because the rule extends the management framework in place the past two winter seasons for one additional year. A regulatory flexibility analysis is included in the report titled “Economic Analysis of Winter Use Regulations in Yellowstone National Park” (RTI International, 2011).

### **Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. 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 rule 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 (UMRA).**

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. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. The rule 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, the rule does not have significant takings implications. Access to private property located adjacent to the park will be afforded the same access during winter as before this rule. No other property is affected. A takings implication assessment is not required.

### **Federalism (Executive Order 13132).**

Under the criteria in Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A Federalism summary impact statement is not required.

### **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.

**Consultation with Indian tribes (Executive Order 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 in the development of the previous winter use planning documents. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

**Paperwork Reduction Act (PRA).**

This rule does not contain information collection requirements and a submission under the PRA is not required.

**National Environmental Policy Act (NEPA).**

This winter use plan and rule constitute a major Federal action significantly affecting the quality of the human environment. NPS prepared a 2011 Winter Use Plan/Environmental Impact Statement under the National Environmental Policy Act of 1969. The EIS is available for review at <http://parkplanning.nps.gov/yell>.

**Effects on the Energy Supply (Executive Order 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 (Effective Date)**

The National Park Service recognizes that under 5 U.S.C 553(d) new rules ordinarily go into effect thirty days after publication in the *Federal Register*. However, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that good cause exists for this rule to become effective on December 15, 2011, for the following reasons:

(1) A 60-day public comment period was open from July 6, 2011, through September 6, 2011, on the proposed rule, which provided that NPS would implement this winter use plan during the winter 2011-2012 season as a transition year. There was only one public comment related to implementing such a rule for the 2011-2012 season and it simply noted a clerical error in the number of snowcoaches NPS will allow in the park per day.

(2) The rule implements the winter use plan for Yellowstone NP and allows for snowmobile and snowcoach use that otherwise would be prohibited.

(3) NPS intends and has publicly stated that the 2011–2012 winter season for Yellowstone National Park would commence on the traditional date of December 15, and the public and businesses have made decisions based on the widespread public knowledge of this customary opening date.

(4) 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 two years.

### **Drafting Information**

The primary authors of this regulation are David Jacob, Environmental Protection Specialist, National Park Service, and Russel J. Wilson, Chief Regulations and Special Park Uses, National Park Service, Washington, D.C.

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

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

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

1. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501-511, D.C. Code 10-137 (2001) and D.C. Code 50-2201 (2001).

2. In § 7.13 revise paragraphs (l)(3)(ii), (l)(4)(vi), (l)(7)(i) introductory text, and (l)(8)(i) introductory text to read as follows:

**§ 7.13 Yellowstone National Park.**

\* \* \* \* \*

(1) \* \* \*

(3) \* \* \*

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2011-2012.

\* \* \* \* \*

(4) \* \* \*

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2011-2012.

\* \* \* \* \*

(7) \* \* \*

(i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are designated for snowmobile use through the winter of 2011-2012:

\* \* \* \* \*

(8) \* \* \*

(i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (1)(7)(i)(A) through (1)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes through the winter of 2011-2012:

\* \* \* \* \*

\_\_\_\_\_ \_December 6, 2011\_

Rachel Jacobson

Acting Assistant Secretary for Fish and Wildlife and Parks

Date