

understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2-1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. From June 7, 2000 to July 31, 2000, § 117.261(ll) is suspended and a new paragraph (ss) is added to read as follows:

#### § 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

\* \* \* \* \*

*N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. on Monday through Friday except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the quarter-hour and three-quarter hour. The south leaf may remain in the closed position unless two hours advance notice for a double leaf opening is provided to the bridge tender.

Dated: June 7, 2000.

**T.W. Allen,**

*Rear Admiral, Commander, Seventh Coast Guard District.*

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#### DEPARTMENT OF THE INTERIOR

#### National Park Service

#### 36 CFR Parts 5 and 13

RIN 1024-AC58

#### National Park System Units in Alaska; Denali National Park and Preserve, Special Regulations

**AGENCY:** National Park Service, (NPS), Interior.

**ACTION:** Final rule.

**SUMMARY:** For the portion of Denali National Park and Preserve formerly known as Mount McKinley National Park (the Old Park) only, this rule establishes a definition for "traditional activities" as the term is used in Alaska National Interest Lands Conservation Act (ANILCA) section 1110(a) and related Department of the Interior regulations. The rule also applies this definition and determines that, for the Old Park only, prior to the enactment of ANILCA, no traditional activities took place during periods of adequate snow cover for which snowmachines (snowmobiles) may now be used. In addition, the rule implements the June, 2000 Statement of Finding: Permanent Closure of the Former Mt. McKinley National Park Area of Denali National Park and Preserve To The Use of Snowmachines and determines that any snowmachine use in the Old Park would be detrimental to the resource values of the area. The rule also consolidates, expands and codifies certain designations, closures and permit requirements for Denali National Park and Preserve, including requirements for vehicular traffic, vehicle use limits, and public health and safety. The rule also replaces the out-of-date references to "Mount McKinley National Park" with the Alaska National Interest Lands Conservation Act name "Denali National Park and Preserve."

**EFFECTIVE DATE:** July 19, 2000.

**ADDRESSES:** Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755. Attention: Ken Kehrer, Jr.

**FOR FURTHER INFORMATION CONTACT:** Ken Kehrer, Jr. at the above address or by calling 907-683-2294.

#### SUPPLEMENTARY INFORMATION:

#### Background

As used in this Rule, the term "Old Park" means the portion of Denali National Park and Preserve that was formerly known as Mount McKinley National Park. This Rule incorporates

all the information in the Environmental Assessment for Permanent Closure Of the Former Mount McKinley National Park to Snowmachine Use, the Finding of No Significant Impact for the Proposed Permanent Closure of the Former Mount McKinley National Park to Snowmachine Use, the Statement of Finding: Permanent Closure of the Former Mt. McKinley National Park area of the Denali National Park and Preserve to the Use of Snowmachines and the Final Cost-Benefit analysis: Denali National Park and Preserve Special Regulations.

In 1903, United States Geological Survey geologist Alfred Brooks wrote: “\* \* \* the abundance of sheep, bear, moose and caribou found along the north slope of the Alaska Range rank it as one of the finest hunting grounds in North America.” In 1917, to protect and preserve natural and scenic resources and for public enjoyment and recreation, Congress directed that Mount McKinley National Park “shall be, and is hereby established as a game refuge.” 39 Stat. 938. Congress expanded the Park in 1922 and 1932. Horace Albright, the National Park Service (NPS) Director, welcomed these additions, in part, as a means to better protect wildlife, particularly to improve protection of Dall sheep and moose in the Park by giving them additional winter range protection. House Committee on the Public Lands, Report 207, Letter of January 20, 1932.

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which enlarged Mount McKinley National Park and renamed it Denali National Park and Preserve (Pub. L. 96-487, Dec. 2, 1980, 94 Stat 2371). Consistent with the 1917 Act that created the Park, ANILCA recognized the importance of protecting habitat for, and populations of, fish and wildlife. The legislative history of ANILCA states that certain NPS units in Alaska, including “Mount McKinley [National Park] \* \* \* are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.” Sen. Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H10532 (Nov. 12, 1980). The heart of the Park and preserve lies on the lands that once comprised Mount McKinley National Park (the Old Park); there, on lands that ANILCA designated as Wilderness, predator-prey relationships have functioned for decades without significant human interference.

Under NPS management for the past 83 years, the wildlife and the wilderness have remained virtually unchanged. It is the human recreational element that has undergone a dramatic evolution. During the summer of 2000, the National Park Service (NPS) expects that over 400,000 people will visit the Old Park. Nevertheless, like Alfred Brooks, they will see an abundance of sheep, bear, moose and caribou, and the occasional wolf, against a spectacular backdrop of pristine, subarctic, alpine landscape—taiga and tundra, glaciers, glacier-fed rivers and cathedral peaks. The health of this shielded ecological system is also the cornerstone of a multimillion-dollar tourism industry in Alaska which is very dependent upon the presence of this diverse wildlife along the Denali road corridor.

Limiting motor vehicle use on the Denali Park Road, educating backcountry users and prohibiting snowmachine use in the Denali wilderness have been essential factors in maintaining the natural systems in the Park interior, and in providing continued outstanding visitor experiences; experiences that depend, in large part, on seeing the spectacular variety of wildlife along the Park road and the opportunity to observe natural predator-prey interactions. The wildlife populations in the Old Park are available for this unparalleled viewing opportunity precisely because they have been protected from intrusive interactions with humans for decades. Vehicle use of the road corridor beyond certain levels has been determined by NPS to displace the wildlife that can be seen from the road and otherwise disrupts the Park’s ecosystems, thereby impairing the resources, values and purposes for which the Park was established.

During the difficult interior Alaska winters, any increase in stress on the wildlife through added energy expenditure or loss of preferred habitat is a concern. The braided river valleys and the high open tundra of the Old Park leave little opportunity for wildlife to avoid intrusions and take refuge. Any snowmachine use in the Old Park would result in detriment to the resource values of the Old Park and a significant change from the long-standing patterns of non-intrusive human interaction with wildlife. A major change in the level and extent of human activity in this historically undisturbed winter environment would be detrimental to many animals over a large area. The possibility of many additional miles of snowmachine trails and increased snowmachine activity levels throughout the Old Park threatens

all types of habitat. This area of previously protected habitat is particularly vulnerable to increased disturbance given its proximity to access points along the George Parks Highway. In the long term, preserving the Old Park wilderness and its continually evolving natural processes is essential to ensuring opportunities for outstanding resource-based visitor experiences.

The historical limitations on motorized use have also created a unique wilderness recreation opportunity in Alaska. There is no other comparably sized, naturally regulated ecosystem in Alaska that has been as protected from motorized use during winter months. As a result, the resource values of solitude and natural quiet, which are the source of this opportunity, remain at exceptional levels during the winter and are enjoyed by skiers, mushers, snowshoers and winter campers.

The NPS Organic Act of 1916 directs NPS to manage National Parks and Monuments to “\* \* \* conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. 1. ANILCA section 1110(a) provides that snowmachine use may be prohibited if such use would be detrimental to the resource values of the unit or area. Additional information upon which NPS relied is found in the June, 2000 Statement of Finding: Permanent Closure of the Former Mt. McKinley National Park Area of Denali National Park and Preserve To the Use of Snowmachines. In that Finding NPS concluded that any snowmachine use in the Old Park would be detrimental to the resource values of the area and that snowmachine usage for travel to and from villages and homesites and for traditional activities did not occur. That Finding is available from the superintendent or on the Denali National Park and Preserve web page at [www.nps.gov/dena](http://www.nps.gov/dena).

#### **Administrative History of ANILCA Section 1110(a), Special Access for Snowmachines**

##### *National Park Service Rulemakings*

On December 2, 1980, President Carter signed ANILCA into law. On January 2, 1981, NPS published a proposed rule (46 FR 5642). The purpose of the proposed rule was “\* \* \* to harmonize the statutory directives [of ANILCA] with existing [national monument] regulations

\* \* \*” and “\* \* \* to provide public guidance as soon as practicable.” *Id.* According to the rule, expeditious rulemaking was needed to, among other reasons, address new directives in ANILCA such as section 1110(a) access. NPS regulations then in effect, generally prohibited aircraft and snowmachine use in Parks. *Id.* NPS described the proposed regulations as those minimally necessary to provide proper management in Park areas in Alaska and noted that further comprehensive rulemaking would follow. *Id.*

The proposed rule stated that: “\* \* \* [s]ections 13.10–13.12 would initially open all Park areas to access by snowmachine, aircraft and motorboat for any purpose.” *Id.* at 5644. The proposal sought to reduce the need for persons to obtain individual access permits and distinguished between recreational uses and traditional activities:

Sections 13.10–13.12 of these proposed regulations initially open all Park areas in Alaska to access by snowmachine (on areas with adequate snow cover or frozen rivers), motorboat, and aircraft, without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (e.g. travel between villages, to a homesite, for mineral development, for recreation, or for traditional activities except as is specifically provided for subsistence uses in ss 13.45 and 13.46 discussed below under subsistence. Sections 13.10–13.12 implement section 1110(a) of the Alaska Lands Act which provides access for “traditional activities \* \* \* and for travel to and from villages and homesites.” This approach extends the statutory concept to access for all purposes, except the special provisions concerning access for subsistence uses.”

*Id.*, (emphasis added).

Under the corresponding access section for subsistence users (13.46), the proposal noted:

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmachines, motorboats, and other means of surface transportation [sic] in accordance with the appropriate Subpart A regulations. For example, local rural residents engaged in recreational uses of snowmachines, motorboats, and other means of surface transportation would comply with the provisions of ss 13.10, 13.11, and 13.13, respectively, and local rural residents seeking otherwise-closed access to Inholdings or temporary access would comply with the provisions of ss 13.14 and 13.15, respectively.

*Id.* at 5654, (emphasis added).

This explanation was repeated in the final rulemaking (46 FR 31836, 31852). It is instructive to note that, from the beginning, the authors of the rule distinguished recreational activities from traditional activities. On June 17,

1981, NPS published the final rule (46 FR 31836). The preamble to the rule also noted that:

A substantial number of comments (203) objected to making these regulations applicable to all Park areas in Alaska (see ss 13.1(m), 13.2), including pre-ANILCA areas like the former Mt. McKinley National Park and Katmai and Glacier Bay National Monuments. The proposed regulations were viewed by these commentators as an unwarranted lessening of protective measure for these “old” Park areas.

*Id.* at 31837.

NPS concluded that there was no basis under the statutory language to exclude the Old Park from the conservation system units subject to section 1110(a).

NPS agreed with comments made that the findings required by Executive Order 11644 would not allow a general opening for snowmachine use—thus the final rule limited snowmachine use to the uses enumerated in section 1110(a), while allowing motorboats, airplanes and non-motorized surface transportation means to be used for any purpose. Executive Order 11644 requires that off-road vehicle use, including that of snowmachines, must be limited to specific areas and trails that: minimize damage to soils and vegetation; minimize harassment of wildlife or significant disruption of wildlife habitat; and minimize conflicts with, and danger to, other existing or proposed recreational uses. Furthermore, snowmachine use was not to be authorized in designated Wilderness Areas, and could be authorized in areas of the National Park system only if it would not adversely affect natural, aesthetic or scenic values. Consequently, the final rule authorized snowmachine use during periods of adequate snow cover or frozen river conditions only for traditional activities and village to village travel that were still permitted in park areas. The final rule provided two examples of uses that were not authorized, because the land use was no longer permitted in parks: snowmachine use to locate new mining claims and sport hunting. The rule also cautioned that “\* \* \* [p]rospective snowmachine users should note that the legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation. See S. Rep. No. 96–413, supra at 248; H. Rep. No. 96–97, Part 1, supra at 239.”

On April 6, 1983, NPS proposed regulations that would have effectively closed much of the Old Park to snowmachine and other motorized uses (48 FR 14978). The proposed rule noted that “\* \* \* [o]ne of the primary

purposes for establishing Denali National Park and Preserve was to provide protection to certain species of wildlife and their habitats \* \* \*” “Motorized use of certain areas of Denali National Park is believed to be detrimental to its ecosystem and the values for which it was established.” *Id.* William P. Horn, then Deputy Under Secretary of the Interior announced the proposal by stating:

The proposed regulations \* \* \* would correct an oversight in the 1980 Alaska National Interest Lands Conservation Act (ANILCA). When Congress enacted Section 1110(a) of ANILCA it opened all units of the vastly expanded conservation system to snowmachine \* \* \* use. Prior to ANILCA, the critical wildlife habitat and natural resource areas of [Mount McKinley were] essentially closed to motorized access. Congress inadvertently opened [Mount McKinley] to this kind of use. By re-establishing the historical public use restrictions, the National Park Service seeks to correct the action and restore the historical level of resource protection.

Department of the Interior, News Release, April 6, 1983.

The April 6, 1983 proposal was never adopted in a final rule.

#### *Department of the Interior Rule Making*

On July 15, 1983, the Department of the Interior proposed regulations that would implement portions of ANILCA Title XI that had not been promulgated by any of the bureaus. The rule also proposed to repeal and replace the bureaus’ various special access, temporary access and access to inholdings regulations, to codify all Title XI regulations in a single part. These regulations essentially mirrored NPS and U.S. Fish and Wildlife Service (FWS) regulations that generally tracked the language of ANILCA section 1110(a). The proposed rule would authorize snowmachine use during periods of adequate snow cover or frozen river conditions only for traditional activities that were still permitted in Park areas, and for travel to and from villages and homesites, pursuant to an access permit, and for subsistence purposes. The rule also proposed a definition for “adequate snow cover.”

On September 4, 1986, the Department of the Interior published final regulations implementing ANILCA Title XI. Following the precedent established by NPS and FWS, the proposed regulations on motorboat, aircraft and nonmotorized surface transportation access were not restricted to traditional activities and travel to and from villages and homesites, as in the statutory authorization. In the final rule, the Department noted that EO 11644, regarding off-road vehicles (ORV), does

not apply to motorboats or aircraft. Therefore, the Department exercised its discretion under other applicable statutes in order to authorize airplane and motorboat use beyond that mandated in ANILCA. The fact that the Department did not limit airplane and motorboat access to only traditional activities under section 1110(a) demonstrates that traditional activities are a distinct subset of all the legally permissible activities that may occur in a Park area consistent with its enabling legislation.

The Department again also declined to endorse comments that supported a blanket exception from the provisions of 1110(a) for the parks and monuments that predated ANILCA.

The argument is made that Congress did not intend to open the pre-ANILCA areas to the uses described in Section 1110(a), since these pre-ANILCA areas had been closed to such uses prior to the enactment of ANILCA. Interior does not find any *statutory* support for this position, since Section 1110(a) provides no exception for the pre-ANILCA areas. Accordingly, no exception for pre-ANILCA areas is provided for in these regulations."

*Id.* (emphasis added).

While the statutory language must be read to apply to the Old Park, NPS and the Department continue to believe that the Department's 1983 characterization is correct, and that inclusion of the Old Park was inadvertent.

The Department also declined to accept comments to define "traditional activities," even though, under the regulations, snowmachines are limited to use for traditional activities and travel to and from villages and homesites. The Department noted that: "\* \* \* [o]ne suggestion was made that *the regulations should limit access to traditional activities to the means traditionally employed*, and should define what those means are." *Id.* at 31626, (emphasis added). The Department chose to neither reject nor accept this suggestion. Instead the Department stated that:

Because these regulations apply to a number of areas under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a definition that would be appropriate for all areas under all circumstances. Exactly what "traditional activities" are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define "traditional activity" for each area. Accordingly, these regulations do not contain a definition of "traditional activity."

*Id.*

#### *Denali National Park and Preserve 1986 General Management Plan*

In the 1986 General Management Plan (GMP) for Denali National Park and Preserve, NPS followed the suggestion in the 1986 regulations for the development of area specific definitions of "traditional activity" (GMP, page 195). The GMP also indicated that recreational snowmachining can be treated as either a means of access or as a distinct activity in and of itself. The GMP identified recreational snowmachining as a distinct activity that needed to be evaluated against the definition of traditional that was provided in the GMP in order to determine if it was a traditional activity within the Old Park (GMP, page 37). This definition was not incorporated into regulation, but the Old Park was closed for 19 years to this activity by way of Superintendent's Orders (Compendium) based on an interpretation that recreational snowmachining was not a traditional activity in the Old Park.

#### **Denali National Park and Preserve: 2000 Final Rule**

Under Section 1110(a) of ANILCA, snowmachines may be used in conservation system units for traditional activities, unless a particular traditional activity is barred by ANILCA or other applicable law, and for travel to and from villages and homesites. The use of snowmachines for such purposes may not be prohibited unless, after notice and hearing in the vicinity of the affected unit, it is determined that such use "would be detrimental to the resource values" of the unit.

There are no villages, homesites and other valid occupancies within the Old Park. Access by snowmachine through the Old Park in transit to homesites, villages and other valid occupancies did not lawfully occur prior to ANILCA and is available through routes outside the Old Park that have been historically used for that purpose, both prior to and since the enactment of ANILCA. Thus, no snowmachine use within the Old Park is authorized by Section 1110(a) or 43 CFR 36.11(c) for travel to and from villages, homesites and other occupancies.

Consumptive use as stated in the final rule definition of "traditional activity" was derived by the Department after careful review of the legislative history of ANILCA. The four specific examples found in that history are sport hunting, fishing, trapping and berry picking. In the context of the proposed rule, NPS requested specific information on other activities which the public felt might be

traditional activities. Based on its review of the comments, NPS has not identified any other consumptive activities in the Old Park which are traditional activities under the adopted definition.

The definition of traditional activities in this final rule differs from the November 12, 1999 proposed rule definition in two main ways. First, the application of the final rule definition is limited. The final rule definition is for the Old Park only, while the proposed definition was a general definition that would have applied to all the NPS units in Alaska. This is because the public comments indicated there was some confusion over the applicability of the definition to other than the Old Park. NPS also believes that further consideration of the definition in the context of the other park areas in Alaska is needed before a definition applicable to them is promulgated due to the possibility of different historical use patterns in those areas.

Second, the final rule definition is now clearer about what NPS considers to be traditional activities in the Old Park. The revised definition clearly states that traditional activities are related to consumptive use, and that recreational snowmobiling is not a traditional activity in the Old Park. These changes are described in further detail below. Because the meaning of the phrase "utilitarian Alaska lifestyle" was not clear to many commentators we have replaced it with language which we believe accomplishes the same purpose, but defines the term traditional activity in a manner that is more readily understood by the public.

The November 12, 1999 proposed rule suggested the following definition of a traditional activity for NPS units in Alaska: An activity that generally and lawfully occurred in a unit or a geographically defined area of a unit prior to enactment of ANILCA, and that was typically associated with that region as an integral and established part of a utilitarian Alaska lifestyle or cultural pattern.

This final rule adopts the following definition of a traditional activity for the former Mount McKinley National Park portion of Denali National Park and Preserve:

An activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity

generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

As a general definition for all NPS units in Alaska, and under which an area-by-area analysis would be done, the proposed definition of traditional activities generally received widespread support. However, in reviewing the public comment, NPS realized that the proposed definition was not entirely clear; accordingly, NPS has made several clarifying changes in the final definition. To produce a more understandable definition, the description "involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities" has been added consistent with the legislative history which uses these examples of traditional activities for purposes of section 1110(a). This consumptive use is part of a life style or cultural pattern that remain practical and essential components of subarctic life. Clarification that the recreational uses of snowmachines (such as picnicking, sightseeing, wildlife viewing, photography and camping) were not traditional activities in the Old Park has been added. Although non-snowmobile based recreational activities did take place in the Old Park these activities were not the type of activities offered during the Congressional deliberations as the traditional activities to be preserved. Clarification that a traditional activity that only took place in a portion of the Old Park is a traditional activity only in the area where it generally occurred has also been added. After analysis and consideration of the public comments, NPS has decided to define and apply this definition only to the Old Park at this time. NPS intends to define traditional activities and apply such definitions to other park areas, including the remainder of Denali National Park and Preserve, in subsequent processes, such as future rulemakings to implement backcountry management plans for some of the national parks in Alaska.

NPS emphasizes that the definition of traditional activities in this rule is applicable to the Old Park only. NPS could develop and apply a different definition of traditional activities for the remainder of Denali National Park and Preserve and other Alaska Parks, based on historical use patterns for those areas. While NPS has found that certain activities did not occur in the Old Park during periods of adequate snow cover,

and has developed and applied in this rule the definition of traditional activities for that area only, NPS could find differently for other NPS areas. NPS notes that the use of the Old Park may be distinct as compared to the ANILCA established portions of the Alaska Park units, due to the use restrictions that have been historically applied to the Old Park.

NPS has previously provided separately for snowmachine use for subsistence activities under 36 CFR 13.46, but subsistence is not authorized in the Old Park.

Applying this park specific definition to the Old Park, NPS is unable to identify any traditional activities or travel to and from villages, homesites and other valid occupancies during periods of adequate snow cover. In response to the request for comments regarding the identification of traditional activities within the Old Park, NPS received no comments that identified a history of any traditional activities as defined in this rule legally taking place contemporaneous with the enactment of ANILCA. The NPS has additionally concluded that any snowmachine use in the Old Park would be detrimental to the resource values of the area. Accordingly, NPS has inserted in the regulations for the Old Park only, that snowmachine use is not permitted for any reason within the Old Park portions of Denali National Park and Preserve.

The legislative history of ANILCA contains several examples of traditional activities: sport hunting; fishing; berry picking; trapping. The House and Senate Committee Reports that accompany ANILCA list the first three of these activities as examples of traditional activities. Trapping was discussed as a traditional activity during Senate mark-up. The Committee Reports state that if traditional uses were generally occurring in an area prior to its designation the uses shall be allowed to continue. NPS notes that hunting, fishing, berry picking and trapping share a common characteristic; they are all consumptive, resource gathering activities. Congress sought to specially protect access for these activities (where the activities were authorized by ANILCA or other law) within areas that were being created to protect natural resources. Section 1110(a) was drafted to address Congressional concern that many Alaskans who practiced these kinds of activities would not qualify as subsistence users under Title VIII and therefore would not qualify for snowmachine access under section 811(b). Section 1110(a) was adopted to provide similar access for consumptive

activities to these non-qualifying members of the public.

With respect to the Old Park, NPS is certain that Congress did not expressly intend and did not create, an exception to the Wilderness Act that would allow snowmachines in wilderness areas—because someone on the snowmachine intended to look around, or happened to be carrying a sandwich or disposable camera—or because non-motorized sightseeing, picnicking and photography were permissible in the Old Park prior to ANILCA. If a contrary interpretation were correct, Congress need not have linked snowmobile access to traditional activities, but would have allowed it for any purpose since virtually any use of the Park entails an element of sightseeing. Such an interpretation would render the term "traditional activities" as the equivalent of "for any purpose". NPS has found no evidence of such intent in the legislative history.

The Senate Committee on Energy and Natural Resource mark-up sessions that were the origin of this section, and the Committee Reports on the Act consistently reference traditional hunting, fishing and berry picking. Congress did not identify other activities, such as recreational activities, in deliberations on section 1110(a). Conversely Congress made its intent clear in other provisions of ANILCA, specifically opening conservation system units to recreation by authorizing such access specifically, and separately from access for traditional activities. See *e.g.*, section 201(2) Bering Land Bridge National Preserve ("in a manner consistent with the foregoing [the preserve shall be managed] for public access for recreational purposes to the Serpentine Hot Springs area."); section 202(5) Kenai Fjords National Park ("the Secretary is authorized to develop access to the Harding Icefield and to allow use of mechanized equipment on the Icefield for recreation."); section 202(6) Kobuk Valley National Park ("the Secretary shall permit aircraft to continue to land at sites in the upper Salmon River watershed.") and section 202(10) Yukon-Charley Rivers National Preserve ("the Secretary shall permit aircraft to land on sites in the upper Charley River watershed").

With respect to the authorization of landing sites in the upper Salmon and Charley River watersheds, amendments approved at the October 10, 1979 Senate Committee on Energy and Natural Resources mark-up struck the phrase "traditionally used for such purposes" from the end of each sentence. The amendments put a period after the word "watershed". The accompanying mark-

up colloquy explains the Committee's intent to authorize access beyond where and what was traditional in these two areas due to their high potential for compatible recreational use.

As the Alaska Conservation Foundation commented:

[T]he only mention of recreational use in the "Purposes" section of ANILCA states that the intent of Congress was "to preserve wilderness resource values and related recreational opportunities including but not limited to hiking, canoeing, fishing and sport hunting." Unquestionably, recreational snowmachining is not a recreational opportunity that related to wilderness resource values. (Section 101(b)). The other purposes outlined in Section 101 are either antithetical to recreational snowmachining or are in no way supportive of recreational snowmachining.

With respect to Section 1110(a) and the term "traditional activities", first and foremost, it is instructive to consider the explanatory title for the section, which is "Special Access and Access to Inholdings." Congress expected this section to only apply to "special" access situations—which are, by definition "distinguished by some unusual quality, being other than the usual." Therefore, Congress limited access to these areas, allowing intrusions only for "traditional activities" or for access to homesites and villages.

NPS also notes that due to the distance that may be traveled by modern snowmachines and the resulting noise impacts, even only a few snowmachines would cause detriment to the special resource values of the Old Park, in particular the wilderness and wildlife values of the Old Park. These values have developed over time as a result of the unique management history of the area, and are therefore coincident with the boundaries of that former unit. See *Statement of Finding*, June, 2000.

### Summary and Analysis of Public Comment on Snowmachine Issues

#### Summary of Comments

ANILCA section 1110(a) and 43 CFR 36.11(h) require notice and hearing(s) in the vicinity of the area(s) directly affected by such closures. NPS provided notice of the hearings in a press release that was mailed to approximately 450 Alaskans and businesses in the Anchorage-Fairbanks rail-belt. The press release was posted on Denali's website and faxed directly to 31 community, local and national news organizations, including print, radio and television in mid-November 1999. The press release was published in the Fairbanks Daily News-Miner, Anchorage Daily News, Valley Sun and Mat-Su Frontiersman. Two follow-up press releases were also faxed to the 31 news organizations and were published in the Fairbanks and

Anchorage newspapers. NPS also placed newspaper advertisements in Fairbanks and Anchorage newspapers to inform the public of the purpose for, and the times, dates and locations of, the hearings. Alaska's congressional delegation was also informed. Four public meetings were held from December 6, 1999, to December 9, 1999, in McKinley Village, Talkeetna, Fairbanks and Anchorage. Comments on the proposed rule were originally due by Jan. 11, 2000, but were subsequently extended until Jan. 25, 2000. Public discussion of the proposal was extensive, with many articles, editorials, and opinion pieces published, as well as television and radio coverage broadcast.

At the public meetings: 81 people testified in favor of closing the Old Park to snowmachine use, and 44 people testified against the proposed closure; 34 speakers voiced support for the proposed definition of traditional activities, and 11 spoke against it. Including written comments, approximately 6,039 timely comments were received on the November 12, 1999 proposed rulemaking. Some commentators sent comments by both conventional and electronic mail. NPS attempted to match such duplicate mailings and count them as one. Additionally, many comments were signed by more than one person—particularly comments that supported the proposed rule. NPS acknowledges this point, but for this rulemaking, chose to count a letter or post card as a single comment, regardless of the number of signatures. The numbers shown in parentheses are the portions of the totals that were received from Alaska residents.

Total Comments—6039

(2334, 39% of responses are from Alaskans)

Supporting Closure—5784 (96% of total response on this issue)

(2105, 91% of Alaskans on this issue)

Opposed to Closure—226 (4% of total response on this issue)

(201, 9% of Alaskans on this issue)

NPS proposed Definition of Traditional Activities.

Supporting comments—3176 (98% of total response on this issue)

(1215, 96% of Alaskans on this issue)

Opposing comments—68 (2% of total response on this issue)

(57, 4% of Alaskans on this issue)

Many commentators on both sides of the issue identified themselves as snowmachine owners. Quite a few commentators wrote of the detrimental effects snowmachines have had on Yellowstone National Park and urged NPS to protect Denali from similar

impacts. The comments NPS received concerning the superintendent's determination of adequate snow cover supported this provision.

#### Response to Public Comment

*Comment:* The State of Alaska, Office of the Governor commented that it would support selected snowmachine closures in Denali National Park if NPS agrees to meet additional procedural steps such as a management regime less restrictive than a total closure. Other commentators simply disagree with the NPS assertion that any snowmachine use in the Old Park would be detrimental due to the unique values of the area. They suggest that just by the act of allowing snowmachine use into wilderness areas in Alaska, Congress was acknowledging that some impact was acceptable and therefore cannot be considered detrimental for the purposes of regulating use. The State suggests that in determining what would be detrimental to the resource values of the Park, NPS should be "focusing greater attention on the intrinsic values of the unit, which are becoming increasingly important to the public."

*NPS response:* NPS agrees that in many cases the limited snowmachine use envisioned by Congress in ANILCA for traditional activities may not represent a significant change or a significant threat to the resource values of much of the previously unreserved federal lands that were used to create new Parks and wilderness areas. This is because snowmachine use had been occurring on many of those lands before their establishment as new conservation system units by ANILCA. Use of snowmachines for traditional activities, subsistence activities and village to village travel was the status quo condition in many of these areas.

However in the Old Park, essentially the area that is now the Denali Wilderness, it is dramatically different. McKinley was Alaska's only national park prior to ANILCA, and as a result it has a very special set of resource values that have developed since 1917, through protective management. The health of this shielded ecological system is the park's most intrinsic value. It is the foundation for one of the world's finest wildlife viewing opportunities. The possibility of seeing in a single day, bears, wolves, caribou, moose, Dall sheep, and other animals against the backdrop of a spectacular subarctic, alpine landscape and vegetation is the cornerstone of a multimillion-dollar tourism industry in Alaska. Wildlife populations within the historical boundaries of the Old Park are available for unparalleled viewing opportunity

precisely because they have been protected for decades from intrusive interactions with humans. The opportunity to see natural predator-prey interactions is one of the primary visitor attractions at Denali National Park and Preserve.

Another important long-term value of this area is the possibility of recording and gaining understanding of a naturally functioning subarctic system with minimal disturbance by people. This largely undisturbed core area is regularly referred to as a comparison site in scientific studies throughout the circumpolar region. Denali National Park and Preserve has been designated an International Biosphere Reserve for its unique scientific values and the presence of the protected core area. The area defined by the boundaries of the Old Park is recognized as a distinct area in the reserve unit because of its different management history. It has also been selected for long-term ecological monitoring by NPS and other federal agencies because of its historic level of protection and ecological integrity.

Section 701 of ANILCA designated about 95 per cent of the Old Park as the Denali Wilderness. The boundaries of the Old Park are essentially now the boundaries of the Denali Wilderness. This area provides a unique wilderness recreation opportunity in Alaska. There is no other large, naturally regulated ecosystem in the entire 375 million acres of Alaska that is as free from motorized use in the winter months. As a result, the fundamental wilderness resource values of solitude, natural quiet and extensive untracked vistas, which are the source of this opportunity, remain at exceptional levels during winter. This area provides a unique opportunity to those members of the public who seek to exercise their "quiet rights." No other area with such special qualities is readily available or adjacent to the road system of Alaska.

Given this unique situation in the public lands of Alaska, the NPS believes it is justified in its finding that the introduction of any snowmachine use into the Old Park represents a fundamental change to the condition of the unique resource values of the area. This shift from no use to the levels of use that are now possible with modern technology is completely different from the continuation of pre-existing types and levels of use that Congress envisioned when it moved to protect access for resource gathering related activities associated with an ongoing Alaska lifestyle. Any snowmachine use in the Old Park is a fundamental change; and therefore, such use alone

would have a significant, detrimental effect on resource values. (*See* Statement of Finding, June, 2000.)

Furthermore, when enacting ANILCA in 1980, Congress did not envision that snowmachines would carry large numbers of people into the backcountry. Nor did the framers of ANILCA envision the potential for resource harm that is now possible due to the dramatic increases in snowmachine use caused by technological advances, increases in urban population and increased expendable income.

*Comment:* Several commentors, including the Alaska State Legislature, suggested that, as proposed, the definition of a traditional activities requires that a utilitarian activity must have a cultural component to qualify as traditional. The Legislature also objected to the requirement that a qualifying activity must have been an integral and established part of a utilitarian Alaska lifestyle or cultural pattern. Other commentors, including the State of Alaska, Office of the Governor, pointed out that the statute does not require such a showing and joined in that objection.

*NPS response:* Based on the comments submitted, NPS realized that the reference to "utilitarian Alaska lifestyle" was not well understood by the commentors. Accordingly, NPS has modified the final definition and eliminated this phrase to more clearly describe the activities falling within section 1110(a).

*Comment:* Many of the same commentors felt that the definition of traditional activities should have been written more broadly to include activities that these commentors generally concede are recreational in nature, such as sightseeing, picnicking, wildlife viewing, camping and photography. These commentors insist that if these activities generally occurred in the Old Park prior to ANILCA, they are "traditional activities." Most commentors, however, strongly disagreed with this approach; they felt that NPS had correctly identified "traditional activities" as activities that are necessarily connected with a generally rural—and from the Alaska perspective, generally unique—Alaska lifestyle or Alaska culture.

*NPS response:* NPS notes that it is rare that people visit National Parks, especially an Alaska Park like Denali, without sightseeing. It's also our experience that visitors often carry a camera and bring something to eat. NPS also notes that many visitors to Alaska go sightseeing, take pictures and eat take-out food in downtown Anchorage. NPS finds no specific reference in

ANILCA or its legislative history that indicates that Congress intended to include any recreational activities under section 1110(a). With respect to the Old Park, NPS is certain that Congress did not expressly intend and did not create, an exception to the Wilderness Act that would allow snowmachines in wilderness areas—because someone on the snowmachine intended to look around, or happened to be carrying a sandwich or disposable camera—or because non-motorized sightseeing, picnicking and photography were permissible in the Old Park prior to ANILCA. If a contrary interpretation were correct, Congress need not have linked snowmobile access to traditional activities, but would have allowed it for any purpose since virtually any use of the Park entails an element of sightseeing. Such an interpretation would render the term "traditional activities" as the equivalent of "for any purpose". NPS has found no evidence of such intent in the legislative history.

*Comment:* Building on its analysis of what should qualify as traditional activities, the Alaska Governor's Office contends that NPS cannot justify a post-ANILCA snowmachine closure in the Old Park on the fact that snowmachines were prohibited there pre-ANILCA. The proper analysis, the Governor suggests, is whether traditional activities were conducted in the Park prior to ANILCA, not whether snowmachines were used there. The Alaska Outdoor Council made a similar comment. The Wilderness Society, the Trustees for Alaska and numerous other commentors, on the other hand, argue that ANILCA must be interpreted to prohibit any snowmachine use in the Old Park regardless of how traditional activities are defined. They believe there having been no use in the Old Park prior to ANILCA, there can be none after ANILCA. In a recent court decision, *ASSA v. Babbitt*, A99-59 CV (JWS), the United States District Court, District of Alaska, agreed with the Wilderness Society that the statutory language of ANILCA does not foreclose the interpretation that they suggest.

*NPS response:* NPS first notes that it has conducted, with this rule's definition, an analysis of whether traditional activities occurred in the Old Park in the manner suggested by the Governor. For reasons that are explained in this preamble, NPS cannot identify any traditional activities that generally occurred in the Old Park prior to ANILCA, for which a snowmachine could be now used during periods of adequate snow cover. Prior to ANILCA, park regulations prohibited such traditional Alaska activities as hunting

and trapping in the Old Park; those activities are still prohibited. Other subsistence activities have never been authorized and despite our request for comments, we can find no evidence that fishing or berry picking took place during periods of adequate snow cover contemporaneous with the enactment of ANILCA. There are no villages or homesites in the Old Park, and villages and homesites to the west or north of the Old Park have been commonly and more easily reached by a flatter, more northern route.

NPS has, however, reviewed the comments of the Wilderness Society and the legislative history of ANILCA that they submitted with their comments. NPS has also reviewed similar comments and legislative history submitted by the Trustees for Alaska on behalf of a number of conservation groups. NPS also conducted its own review of ANILCA's legislative history, prior rulemaking and interpretive case law. ANILCA does not define the term "traditional activities". The relevant Committee Report explanation from the Senate is itself ambiguous:

The Committee recommends that traditional uses be allowed to continue in those areas where such activities are allowed. This is not a wilderness type of pre-existing use test. Rather, if uses were generally occurring in the area prior to its designation, those uses shall be allowed to continue and no proof of pre-existing use will be required.

Report of the Senate Committee on Energy and Natural Resources, Report No. 96-413, p. 248.

While the statute itself addresses the use of snowmachines for traditional activities, the Committee Report speaks in terms of continuing "traditional uses". Although Congress did not define the term "traditional activities", the Department has determined that Congress intended to allow traditional activities to continue where they were taking place prior to the enactment of ANILCA. The report only identifies hunting, fishing and berry picking as traditional activities. In view of its ambiguity, ANILCA has left it to the Secretary to define this term.

ANILCA section 1110(a), as enacted, was derived from section 1110(a) of the Senate Committee's reported version of the bill. S. Rep. No. 413, 96th Cong. 1st Sess. (1979). In exercising the Secretary's discretion to define this term, we have attempted to review all potentially relevant information. In this regard, NPS believes the Senate Committee on Energy and Natural Resources mark-up sessions on August 1 and 8, 1978, are informative of the concerns expressed even though they do not represent binding legislative history.

The mark-up colloquies reveal that, in consideration of the large size of the new conservation system units and the remoteness of rural Alaska, Congress carefully fashioned an exception to the 1964 Wilderness Act in ANILCA section 1110(a). Motorized access for specific traditional activities, where they were generally occurring, was allowed to continue in Alaska wilderness because Congress recognized that continued access for these activities was necessary to sustain the Alaska lifestyle. Where snowmachines were being used for such things as hunting or trapping, or service functions such as hauling freight to villages, snowmachine use for these purposes would continue regardless of wilderness designations. Congress understood that where access for these activities was ongoing, it supported Alaskan lives and defined Alaskan identity. However, there is no suggestion in ANILCA or its legislative history that Congress intended to authorize new snowmachine use in the Old Park, which ANILCA designated as wilderness, when there had been no authorized snowmachine use there prior to ANILCA (for any activities). Indeed the legislative history shows that Congress intended to tailor this authorization narrowly. (Senate Energy and Natural Resources Committee Alaska (d)(2) Lands—Mark-up, August 1, 1978, pages 47-74). The August 8th discussion focused particularly on authorizing mechanized use where it had been done in the past. In order to prohibit a traditional use of this type of vehicle or mechanized equipment in a wilderness area the land manager must find that it would cause damage. (Senate Energy and Natural Resources Committee Alaska (d)(2) Lands—Mark-up, August 8, 1978, pages 10-14, 49-50, 60-64).

*Comment:* Some commentators thought NPS should ban all recreational uses of snowmachines from all of Denali National Park and Preserve. Others thought NPS should be able to accommodate some recreational use in areas other than the Old Park.

*NPS response:* Unlike the proposed rule, the final definition adopted here applies only to the Old Park. NPS intends to use park planning processes, particularly the backcountry management planning process for the Denali addition areas and other park units, in developing and applying the definitions of "traditional activities" outside the Old Park. Although NPS makes no decision at this time on such definitions, based on its present review of the statute and its legislative history, NPS believes that such future processes could conclude that recreational

activities independent of the types of activities discussed in this preamble are not traditional activities for purposes of section 1110(a) in these other areas. NPS intends nevertheless to examine, as part of these planning processes, where snowmobile use for recreational activities then determined to be outside the scope of section 1110(a) could be appropriate within individual park units, consistent with the applicable statutes and Executive Orders pertaining to the National Park System in Alaska.

*Comment:* A few commentators suggested that the definition of traditional activities will have major impacts on other forms of access such as sightseeing flights that want to land on NPS lands.

*NPS response:* The definition of traditional activities adopted by this rule does not have the broad effect described by some. The Department's 1986 regulations went beyond the scope of section 1110(a) and, based on other statutory authorities, authorized the non-commercial use of motorboats and airplanes in all DOI areas without regard to the purpose. 43 CFR 36.11(d) & (f). That extended authorization not only remains unchanged, but the definition adopted here applies solely to snowmachines in the Old Park. This rulemaking has no effect on access by means other than by snowmachines. Commercial activities, including sightseeing landings, have been and will continue to be, regulated under NPS concessions authority.

*Comment:* The Alaska State Legislature and Territorial Sportsmen Inc. commented that the proposed definition of traditional activities is a major regulatory departure by NPS.

*NPS response:* NPS has consistently managed the two-million-acre Old Park as closed to snowmachine use and open for nonmotorized winter recreation in a way that allows visitors to experience solitude and natural sounds, such as dog mushing, snowshoeing, and cross-country skiing. Pre-ANILCA regulations and policy prohibited snowmachine use. As early as 1981, in the implementing regulations to ANILCA, NPS cautioned "[p]rospective snowmachine users [to] note that the legislative history of section 1110(a) defines traditional activities in terms of a use generally occurring in a Park area prior to its designation." 46 FR 3184, June 17, 1981. Based on this interpretation, every post-ANILCA superintendent closed the Park to snowmachine use through a compendium order since snowmachine use had not lawfully occurred in the Old Park contemporaneous with the enactment of ANILCA.

Interpreting the term "traditional activities" so as to distinguish recreational snowmachining from it, as a distinct activity in and of itself, was presented to the public in the Park's 1986 GMP. Then, as now, the public strongly supported such a distinction. Consequently, the definition adopted by this rule does not represent a change in the public understanding of the implementation of ANILCA section 1110(a) relative to the Old Park. Nor does it alter the actual patterns of use that are currently occurring in the Old Park. Since Congress did not define the term "traditional activities" the NPS has done so within its discretion.

*Comment:* Three commentors suggested that this closure would discriminate against persons with disabilities because it would limit their access to the Old Park.

*NPS response:* The decision treats all potential users equally in that snowmachine use is prohibited for everyone in the Old Park. Additionally, as noted above, NPS has determined that any snowmachine use would be detrimental to the resource values of the Old Park. The commercial dog sled companies that operate in the Old Park have expressed a willingness to take any interested individuals, including those with disabilities, into the Old Park.

#### **Summary and Analysis of Public Comment on Other Issues**

##### *Comments and Responses on Regulations Affecting Management of the Denali National Park Road*

##### **Background**

This regulation is the culmination of several years of planning and public involvement on managing the Denali National Park Road. Detailed direction for managing the road was outlined in the Draft Entrance Area and Road Corridor Development Concept Plan and Environmental Impact Statement that was available for public review between June 21 and August 19, 1996. This draft plan was based on the recommendations of the Denali Task Force, a committee formed at the request of the Secretary of the Interior in 1994, on proposals received during public scoping during 1995, on previous plans, and on planning team work and impact analysis. NPS management proposals affecting the Park road received widespread support during the public comment period. The final plan was distributed in early 1997, and elements of the plan calling for safety improvements on the road and for replacing some private vehicles with buses were implemented beginning later that year. The additional bus trips

provided for in the plan—without increasing the overall number of vehicles—resulted in more people having the opportunity to travel into the Park interior. The specific vehicle allocations outlined in the proposed regulations were also evaluated in the 1996 draft Entrance Area and Road Corridor Development Concept Plan and published in the final plan as part of the "Road Management" section. The need for regulations for management of the Park road is listed as the first item under provisions affecting general vehicle traffic. NPS kept the public informed of actions to implement the plan and progress on the regulations through press releases and newsletters. The concept of restricted vehicle access on the Denali National Park road has been supported by the public since it was started in 1972. The overall traffic limit on the park road, 10,512 vehicle trips during the summer allocation season, was evaluated as part of the 1986 General Management Plan, which included public review and comment. Public support for the road management provisions in the draft Development Concept Plan was expressed during studies along the park road and in unsolicited visitor comments. Those who commented on the road regulations during late 1999 and early 2000 demonstrated even greater support. Of the 6,039 comments received on the proposed regulations, 382 addressed management of the Denali National Park Road. Of these 382 comments, 368 were in favor of the road regulations as proposed and 7 were opposed to the regulations as proposed. Another 7 comments were generally in favor of restrictions on road use but expressed a preference for other methods than those in the proposed regulations. Public involvement and continued planning for management of the park road indicate that the road regulations are long overdue. These regulations are consistent with ANILCA, and all decisions have been made with full participation of the public, above and beyond the requirements of ANILCA and the National Environmental Policy Act.

*Comment:* The State of Alaska and one individual commented that ANILCA does not allow for the regulation of the Park road as proposed.

*NPS response:* ANILCA does provide for the reasonable regulation included in the final rule. See section 1110(b) of ANILCA (16 U.S.C. 3171(b)): "Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands." The permit system identified in the regulation affords the

superintendent the flexibility to accommodate the access allowances in ANILCA while managing the Park pursuant to the NPS Organic Act and other applicable authorities. The 1997 Entrance Area and Road Corridor Development Concept Plan identified methods to increase the numbers of visitors to the core of Denali National Park. These provisions have been implemented and the overall number of visitors has increased as a result.

*Comment:* One individual noted that in his view the proposed regulations are confusing, the process is misleading, public comment was inadequate and Kantishna landowners and stakeholders were not provided adequate notice.

*NPS response:* The proposed regulations affecting road use in Denali National Park followed two previous planning processes involving the public, the General Management Plan in 1986 and the 1997 Entrance Area and Road Corridor Development Concept Plan. Public notice of the 1997 plan was widely published. The plan specifically addressed the promulgation of special regulations for management of the Park road, establishing the GMP limit of 10,512 vehicle trips during the allocation season in regulation, setting formal "Rules of the Road," and setting a seasonal allocation limit for Kantishna business traffic.

Several Kantishna landowners and lodge operators commented on the 1997 Development Concept Plan. The Park also produced a strategic plan that included the need for special regulations. The 1997 Strategic Plan includes the following long-term goal on page 20: "By 2002, regulations affecting road use and snowmachine use are implemented and enforced."

The National Park Service has continued meeting with individuals and groups interested in the process and has kept the public informed through newsletters and press releases. Newsletters discussing implementation of the 1997 development concept plan and the need for road regulations were distributed to the public twice during 1996, twice during 1997, once during 1998, twice during 1999, and once in early 2000. Four press releases on the issue were sent to the media, and information has been available on the Park's web site since early 1997.

*Comment:* One individual commented that the proposed regulations will deny people the opportunity to visit their Park.

*NPS response:* The National Park Service disagrees. The 1997 Entrance Area and Road Corridor Development Concept Plan identified methods to increase the numbers of visitors to the

core of Denali National Park. These provisions have been implemented during the past three seasons, and the overall number of visitors has increased as a result. The 1997 plan and accompanying environmental impact statement also outlined resource protection needs and the need for the proposed regulations.

*Comment:* A few individuals and one mining company commented that they saw no reason to limit traffic on the Park road. They proposed that safety concerns could be resolved through road improvements and constructing an additional access route into the Park from the north creating a one-way loop.

*NPS response:* The NPS considered these issues in the 1997 Entrance Area and Road Corridor Development Concept Plan and the 1997 North Access Feasibility Study. The 1997 development concept plan provides for improvements to the existing road to address safety issues and for increasing the numbers of visitors traveling into the interior of the park.

The North Access Feasibility Study determined that a new north access route, either road or rail, would be feasible, but notes that much more study and planning is needed. As stated in the opening paragraph, the 1997 study "does not contain recommendations and is not a decision document."

In the cover letter accompanying the document, the Acting Assistant Secretary for Policy, Management and Budget found that:

The projected costs of either new road access or rail access into Denali would exceed the projected costs for the National Park Service's 10-year, visitor access development program for the entire State of Alaska. Thus, we believe this study must be considered in conjunction with the other National Park Service proposals for visitor facilities and access in Alaska-proposals developed with input from the State of Alaska, the visitor industry and the public.

The National Park Service believes that it is a far more efficient use of funding to expand upon the existing visitor opportunities along the Park road, following the widely supported direction in the 1997 development concept plan, than to explore the much more controversial and expensive north access route. Park visitors have continued to support the management decision to maintain most of the Park road in its rustic, historic condition.

*Comment:* The Alaska Visitors Association commented that the number of trips on the Denali National Park Road apportioned to businesses and park visitors should not decrease over time in order to accommodate any National Park Service increase in the

administrative and temporary categories.

*NPS response:* The National Park Service vehicle trip allocation in the 1986 General Management Plan (1754 total) was amended slightly by the 1997 Entrance Area and Road Corridor Development Concept Plan, which sets the limit of 1,776 vehicle trips. Under the regulations, the park would adhere to that limit for its administrative use. NPS notes that there have been fewer than 10 emergency vehicle trips in each of the past three years. Such additional emergency trips will not effect the allocations for other users. The NPS believes that some flexibility must remain in the system and that emergency traffic should not be constrained. While the NPS has committed to restraint in its administrative travel, the same cannot be done with emergency traffic. The agency must be able to respond to emergencies along the park road to provide for safe and enjoyable visitor use. NPS also notes that emergency or other non-routine road maintenance may require NPS to make or to authorize a NPS/Federal Highway Administration contractor to make additional trips to effect repairs. However, NPS will make every effort to schedule repairs pre- and post-season.

*Comment:* The State of Alaska commented that the final rule should incorporate an annual notice requirement and some sort of built in administrative appeal mechanism and that the "Rules of the Road" part of the regulations should not be used to indirectly restrict public access outside the Section 1110(a) and (b) processes.

*NPS response:* As discussed above, operation of the regulations including issuance of permits is consistent with section 1110(b) of ANILCA. The "Rules of the Road" will continue to be conditions of a permit. These driving rules are designed to increase safety on the Park road and are not a means of indirectly restricting access. Public access is enhanced by the operation of the visitor transportation system and the tour buses. Annual notice and administrative appeal provisions are already in place and will continue to be utilized.

*Comment:* The State of Alaska, the Alaska Outdoor Council, and two individuals commented that ANILCA "guarantees" economic and feasible access to inholdings and that the NPS cannot diminish the scope of this broad statutory right through regulation.

*NPS response:* These comments generally omitted the last sentence of Section 1110(b) of ANILCA: "Such rights shall be subject to reasonable

regulations issued by the Secretary to protect the natural and other values of such lands."

The regulations do not deny access; they regulate access along the park road to protect natural and other values. The result of such protection within the road corridor is the high economic value of the inholdings in question. What were once mining claims are now instead valued by their proximity to the core of Denali and their access via the Park road, with its superlative wildlife viewing opportunities. The National Park Service is proposing to regulate, not deny this access.

As stated in the text of the proposed regulations, the traffic limits being proposed have also been reviewed as part of the General Management Plan in 1986 and the 1997 Entrance Area and Road Corridor Development Concept Plan. During the more recent planning process, the NPS received 262 written comments and heard testimony from 40 people. No comments were received opposing the overall level of 10,512 motor vehicle trip permits, although there were numerous comments that supported more restrictive regulation of vehicle traffic than was adopted in the final plan.

*Comment:* One individual commented that the proposed regulations threaten the economic viability of Kantishna businesses.

*NPS response:* As stated earlier, the regulations are consistent with section 1110(b) of ANILCA as well as providing for annual adjustments of permit levels. The National Park Service notes that only one individual raised the question of economic viability of the several Kantishna businesses. In addition to the current level of permits which more than afford adequate and feasible access to inholders, the visitor transportation system provides access to Kantishna. Area businesses also utilize the Kantishna airstrip.

*Comment:* One individual and one business owner noted that the proposed rules do not provide any incentive to voluntarily reduce vehicle use of the Park road.

*NPS response:* The final rule has not been modified to address voluntary actions. The NPS agrees it is in the best interests of Park visitors, including the Kantishna business visitors, and the government to limit their use of the road. The National Park Service hopes other users agree and will voluntarily limit access without regulatory incentives, and NPS will work on such efforts with all interested parties.

*Comment:* One individual commented that the rule prohibiting motor homes, campers, and trailers to travel to

Kantishna is too restrictive and should allow exceptions by the Superintendent.

*NPS response:* The final rule retains the prohibition of the use of motor homes, campers and trailers to travel to transport guests to Kantishna businesses. This provision does not prohibit private inholder use of these types of vehicles provided they are operated during specific times of the day. Adequate and feasible access using buses is available for Kantishna businesses to transport guests. The prohibited types of vehicles pose a safety concern if frequently used commercially.

*Comment:* The State of Alaska commented that the regulations must provide a mechanism for currently active inholders to seek adjustments of individual allocations and must provide for other inholders to acquire access for their possible future "economic and other purposes."

*NPS response:* The current allocations afford more than adequate and feasible access for inholders. In addition, the final regulation contemplates reallocation to address future needs.

*Comment:* The Wilderness Society and two Kantishna businesses commented that each Kantishna business should be allocated the same number of permits.

*NPS response:* The distribution of permits among Kantishna businesses as outlined in the 1997 plan and as provided for in the regulation is appropriate in that it is fair to Kantishna businesses (*i.e.*, provides reasonably necessary and economically feasible access), considers the unique characteristics of individual operations, and maintains the overall travel limits.

*Comment:* One Kantishna business commented that the superintendent should not have the authority to revoke road allocations in the case of a sale or transfer of a Kantishna business, since it would be a severe encumbrance upon the business.

*NPS response:* The final regulation continues to provide for a reevaluation of access needs upon sale or other change. Additional visitor use may be accommodated by the reevaluation while continuing adequate access for the business needs of the inholding. To address these concerns, the NPS intends to retain the established limit for an individual Kantishna business for 12 months after the sale of the business while the access requirements of the new owner are being evaluated.

*Comment:* One business and the Alaska Visitors Association commented that the proposed rule should stipulate that the National Park Service will work on transfer of the concession agreement

and the vehicle permit allocation simultaneously.

*NPS response:* A regulation is not necessary, as consideration of any concession authorizations will also likely include consideration of vehicle permits at the same time.

*Comment:* Two individuals commented that the National Park Service has not provided adequate evidence, such as scientific studies, of the need for regulating traffic on the Park road.

*NPS response:* Studies addressing the importance of this regulation are identified and the topic discussed in the 1997 Entrance Area and Road Corridor Development Concept Plan. Other considerations including the large growth in visitor numbers, the condition of the road and the success demonstrated by road restrictions also make it clear that continuing the restrictions at the 1986 levels is best for the Park and the visitors.

*Comment:* The Denali Citizens Council, one Kantishna business, and several individuals commented that the regulations should include daily bus trip limits. The Wilderness Society, Denali Citizens Council, one Kantishna business, and several individuals also noted that the regulations should include daily limits on the Denali Natural History Tour.

*NPS response:* The National Park Service has already implemented daily bus trip limits including limits on the Denali Natural History Tour as outlined in the 1997 Entrance Area and Road Corridor Development Concept Plan. Since the bus systems are operated under concessions contracts, the National Park Service has the authority to enforce these restrictions as part of the conditions of the contracts.

*Comment:* The Alaska Visitors Association commented that the National Park Service should provide at least one year advance notice of specific numbers of the annual permit allocation.

*NPS response:* The regulations provide that an annual date to evaluate requests will be established. The National Park Service recognizes that businesses desire to know as far in advance as possible and the Superintendent will consider that desire in establishing the date.

*Comment:* The Alaska Visitors Association commented that absent documented safety or resource issues, the regulations should not be expanded to further control vehicular traffic.

*NPS response:* The National Park Service believes that safety and resource issues should be addressed in a proactive way rather than waiting for

damage to resource values or injury to visitors to occur. The National Park Service will continue to monitor all aspects of Park use and resource considerations and manage accordingly. In any event, the final rule is consistent with current motor vehicle practices on the park road, and do not constitute an expansion.

*Comment:* Several commentors noted that the Denali Natural History Tour (also known as the short tour) does not stop at the Savage River, but instead turns around 2.3 miles further into the park at the Primrose Overlook. A few questioned why NPS does not count the short tour bus trips as part of the 10,512 annual permits.

*NPS response:* While the park road changes from pavement to gravel at the Savage River and that has traditionally been the site of the check station and the beginning of the restricted access section, that location does not readily accommodate large buses. The limited parking there is often filled with private vehicles and backing busses (as is required to turn around there) would be a hazard to pedestrians. The short tour buses are better and more safely accommodated at the Primrose Overlook where they can turn around without backing. As these buses only travel 2.3 miles up the moderate and improved grade past the Savage River before returning, there are no resource nor road wear reasons to include these trips in the annual limits and these trips have, therefore, always been excepted. This issue received thorough public review in the 1997 Entrance Area and Road Corridor Development Concept Plan and the accompanying Environmental Impact Statement.

#### *Analysis of Comments on Kantishna Firearms Safety Zone*

Although many comments expressed general support for the entire proposed rule, NPS received a few comments specific to the seasonal prohibition on the discharge of firearms on public lands within the developed area of Kantishna. The closure applies on: the Kantishna Airstrip; the approximately 4.5 mile-long State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way (within the Park addition area surrounding Kantishna). Fourteen comments expressed specific support for the closure or suggested a more stringent closure was appropriate.

*Comment:* The Alaska Outdoor Council and the State of Alaska Office of the Governor did not oppose the closure. They suggested, however, that further evaluation of the need for this

closure was warranted and that NPS should guard against incremental expansions of or additions to this closure that favor non-consumptive Park uses and have cumulative impacts on consumptive uses. The state also pointed out that the state uses a one-half mile closure in many areas.

*NPS response:* NPS anticipates that public use will increase in this developed area. The fact that this area is developed distinguishes it from the approximately four million acres of Park addition and preserve land that is open to various types of hunting. The rule will only have a minimal effect as the Kantishna area is closed to sport hunting, protection of life and property is excluded, and there is only a small overlap of the permissible subsistence hunting periods and the visitor season. NPS finds that the closure is warranted.

#### *Analysis of Comments on Wildlife Protection*

Most commentors generally supported the wildlife closure regulations. Several people spoke in favor of the proposal at the public hearings and NPS received 25 written comments specifically supporting the proposed flexible closures for wildlife and wildlife habitat protection; two written comments were opposed. As explained below, NPS disagrees with the comments in opposition to this proposal and concludes that it does have the necessary legal authority for the closure provision as proposed. However, after reviewing the comments and further consideration of the proposal, we have determined that the proposed regulation is simply redundant with respect to the existing regulatory authorities pertaining to closures under 36 CFR 1.5 and 1.7. Accordingly, NPS has chosen not to promulgate this regulation but to instead continue to utilize existing regulations when wildlife closures are required.

The Department in 1986 concluded that the NPS regulations at 36 CFR 1.5 were not superceded by section 1110(a) and its implementing regulations:

\* \* \* Our review of section 1110(a) leads us to conclude that the closure of areas to the authorized uses (snowmachines, motorboats, airplanes, and nonmotorized surface transportation methods) should occur only under standards of the law which this section is to implement. Accordingly, the final regulations have been amended to provide that no closure to any use authorized under this section may be made unless the "area manager determines that the use would be detrimental to the values of the unit or area."

It is Interior's view however, that these uses may be limited or restricted pursuant to other applicable law. *The Secretary of the Interior has the authority in the areas*

*administered by Interior to close areas or restrict use for a variety of reasons, such as for health and safety. We do not believe that the provisions of this section of ANILCA were intended to preclude the Secretary from utilizing other statutory authorizations to restrict these uses.* The proposed and interim regulations attempted to incorporate these other laws and the standard stated above, for emergency closures. After reconsideration of these closure provisions as a result of the comments made about the standard for closure under section 1110(a), Interior has determined that these regulations should be limited to closures under the authority of that section. Accordingly, by limiting these regulations to closures authorized by section 1110(a), it was determined that the category of closure "emergency" was no longer necessary, and as such is covered by other established authority. *Regulations providing for the closure of areas for reasons other than the provisions of section 1110(a) include: For NPS, 36 CFR 1.5; for FWS, 50 CFR 25.21; and for BLM, 43 CFR 8364.*

51 FR 31619, 31627-8 (September 4, 1986) (emphasis added).

*Comment:* The Alaska State Snowmachine Association and the Alaska Outdoor Council question the legal authority of the NPS to permit the Superintendent to make seasonal closures and take other actions to protect wildlife and indicates that such authority is inconsistent with ANILCA section 1110(a). The State of Alaska, Office of the Governor recognized that NPS needs flexibility, but suggested the proposed rule was too wide-ranging and offered several suggestions to limit the range of the rule.

*NPS response:* The Department regulations at 43 CFR 36.11(h)(6) explicitly provide that nothing in that section limits the authority of the appropriate federal agency to restrict or limit uses of an area under other statutory authority. The quote in the previous response demonstrates that the Department has consistently maintained that the closure provisions of 1.5 are available when appropriate and are not preempted by the regulations implementing section 1110(a). The 1986 regulations recognize and confirm the responsibility of the NPS to protect the resource values of the Park units in Alaska not only through a finding of detriment to Park resources under section 1110(a), but also, where applicable, the use of other closure authorities such as those in 36 CFR 1.5.

For example, if NPS sought to close an area only to snowmachines due to the detrimental effects of snowmachines to that area, that closure must be implemented under the section 1110(a) regulations (43 CFR 36.11(h)). However, if high avalanche danger necessitated closing an area to all entry or use (thereby including snowmachines), such

a closure can be appropriately implemented in accordance with 36 CFR 1.5 and 1.7. Similarly, closing an area to all uses under 36 CFR 1.5 for resource protection purposes is permissible so long as the closure is reasonable under the given circumstances. Most uses of this closure authority in the past within the Park have occurred during the summer visitor season and are unrelated to section 1110(a) access issues.

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

##### *36 CFR 5.2(b), 5.4(a) and 5.10(a)*

To reflect the name change to the Park that occurred with the enactment of ANILCA, the rule changes the name of the Park, as it appears in these sections, from Mount McKinley National Park to Denali National Park and Preserve (Pub. L. 96-487 section 202(3)(a), Dec. 2, 1980). In § 5.4(a) the reference to "McKinley Park Hotel" in the existing regulations is replaced with "Denali Park Railroad Depot." This change reflects the fact that the 1996 Final Denali Entrance Area and Road Corridor Development Concept Plan Environmental Impact Statement (1996 Final Entrance and Road Plan), which was approved in a 1997 Record of Decision, adopted September 2001 as the closing date for the hotel. The railroad depot, which is just across the road, is substituted for the hotel because the depot will remain open. No change is made to the regulatory content of the other sections.

##### *36 CFR 13.2(c)*

This section lists those Parks statutorily excepted from applicability of the subsistence regulations found in Part 13, subpart B. In the case of Denali, only part of the Park was statutorily excepted (*i.e.*, that "core" part formerly known as Mount McKinley National Park, and referred to herein as the "Old Park") (Pub. L. 96-487, section 202(3)(a), Dec. 2, 1980). The rule revises this section to use that terminology to clarify the meaning of the current § 13.2(c) phrase "\* \* \* and parts of Denali National Park." The new language more clearly specifies the intended area and does not change the regulatory application of the section.

##### *36 CFR 13.63(d), Denali Park Road: Motor Vehicle Traffic*

This rule codifies the 1986 Denali National Park and Preserve General Management Plan (GMP) motor vehicle use level of 10,512 vehicle round trips on the Denali Park road west of the Savage River from Memorial Day weekend through mid-September.

Consideration of factors such as natural resource protection (including maintaining the opportunity for unparalleled wildlife watching), road wear and maintenance, environmental impacts and traffic safety led to this limit. The 1997 Final Entrance Area and Road Corridor Development Concept Plan considered these issues and called for retaining the annual season motor vehicle traffic level (10,512) as established in the 1986 GMP. Public comment on the draft development concept plan, which was designed to be applicable for 10–15 years, indicated widespread support for retaining the GMP level.

Because a portion of the motor vehicle traffic on the Denali Park road is destined for commercial lodges and other private inholdings in Kantishna at the western end of the road, the proposed regulation includes consideration of the requirements of ANILCA section 1110(b). ANILCA section 1110(b) affords inholders such rights as may be necessary to ensure adequate and feasible access to their land for economic and other purposes, subject to reasonable regulations that protect the natural and other values of the conservation system unit. Therefore, this section would be implemented with consideration of, and in compliance with, 43 CFR 36.10 (Access to Inholdings).

The primary visitor attraction at the Park is the unparalleled array of Alaska wildlife regularly seen from the Denali Park Road and the opportunity to see natural predator-prey interactions. In 1972, to ensure that the increasing number of visitors would continue to see grizzly bears, caribou, moose, Dall sheep, the occasional wolf, as well as other species of Alaska wildlife in their natural habitat, the National Park Service developed a shuttle bus system that replaced most of the private vehicular traffic with buses capable of transporting more passengers. Concurrently, general private vehicular traffic was limited to the easternmost 15 miles of the 88-mile Park road. Adding additional traffic to the road, especially private vehicular traffic, has been shown to displace wildlife. Private vehicle use causes the greatest disturbance because the vehicles can stop at will and passengers approach wildlife on foot. Although bus passengers may choose to be dropped off at any safe point along the road, when wildlife is near, passenger discharge is controlled to avoid conflicts with, and displacement of, wildlife. Accordingly, opportunities for viewing and photographing wildlife abound

while the bus is stopped for those purposes.

Traffic safety is also a significant factor for limiting use to the GMP allocation. Park visitors consistently support the NPS decision to maintain most of the Denali Park Road in its rustic, historic condition. The character of the Park road and its relationship with the landscape through which it passes are integral to the visitor experience at Denali. Consequently, 72 miles of the road are graded gravel, much of which varies between one and one-and-one-half lanes wide. As the road traverses scenic mountain passes between broad river valleys, it often dips and climbs and winds as it clings precipitously to the mountains' supporting contours. The road, which was originally designed for 1930s era vehicles and levels of use, now accommodates larger traffic levels—a mix of large tour and shuttle buses, private vehicles for inholder access, park administrative and maintenance traffic, and service vehicles traveling to Kantishna lodges.

National Park Service concern over traffic safety is also based on bus accidents that have occurred in 1969, 1974, 1981 and 1989, and that have resulted in six fatalities and numerous serious injuries to park visitors. The historic character of the road warrants special attention to safety procedures for its use. Known locally as the "Rules of the Road," practices such as driving with lights on and specific procedures for yielding to buses have developed through time. NPS will hereafter apply these practices as a term and condition of a permit to operate a vehicle on the restricted access section of the Denali Park Road.

This rule provides the superintendent with the regulatory authority to annually evaluate anticipated-use requirements and to reasonably apportion motor vehicle permits for the restricted access section of the road among authorized users. Specific allocations for Kantishna motor vehicle traffic will help ensure long-term protection of the current visitor experience and of wildlife populations along the road corridor. Motor vehicle permits for present and future Kantishna businesses would be reallocated in accordance with proposed section 13.63(d)(2) within the annual limit of 10,512 permits. A total of 1,360 vehicle round trips for Kantishna inholders are authorized, comprising 13 percent of all annual traffic. This total includes all Kantishna traffic (individual inholders, mining claim owners, lodges and others). As mining claims continue to be acquired by the

federal government, some Kantishna traffic will decrease. Kantishna businesses can also continue using both the Kantishna airstrip and the NPS visitor transportation system buses for guest access, as well as operate buses and other vehicles on the Park road as allocated below. The current number of round trips during the visitor season for the existing businesses are:

- Denali Backcountry Lodge: 315.
- Kantishna Roadhouse: 420.
- Northface Lodge/Camp Denali: 315.

Each business may determine the type of vehicle use to best suit their needs. However, recreational vehicle (RV) travel (motor homes, trailers, and campers) for the purpose of transporting guests to and from Kantishna businesses is not permitted. Motor vehicle permits will not be transferable from one business operation to another. Additionally, when a business is sold to a different entity, National Park Service will re-evaluate the access requirements of the new entity. If a business ceases to operate, or changes dramatically, it is intended that the superintendent would re-allocate the permits. The National Park Service intends to retain the established limit for an individual Kantishna business for 12 months after the sale of the business while access requirements of the new owner are being evaluated.

#### *36 CFR 13.63(g), Firearms*

The rule establishes a seasonal closure to the discharge of firearms on public lands in the developed area of Kantishna, except for the protection of life or property. The closure applies on: the Kantishna Airstrip; the approximately 4.5 mile-long State Omnibus Act Road right-of-way, and; all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way (within the Park addition area surrounding Kantishna).

The closure is effective seasonally beginning the Saturday of Memorial Day weekend through the second Thursday following Labor Day, or September 15, whichever comes first. This period is the time of heaviest overlap between subsistence hunting and other seasonal visitor activities in the Kantishna area. The purpose of the closure is to reduce the level of risk of firearm-related injury inherent in heavy use areas without unduly affecting authorized subsistence uses. The restriction does not apply on private property. This closure follows consultation with the State of Alaska.

36 CFR 13.63(h), *Snowmachines*  
(*Snowmobiles*)

The rule defines "traditional activities," as the term is used in the Alaska National Interest Lands Conservation Act (ANILCA) section 1110(a) and 43 CFR 36.11, for the portion of Denali National Park and Preserve formerly known as Mount McKinley National Park (Old Park). For that area only, traditional activity is: an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

The rule closes the former Mount McKinley National Park to all snowmachine use. The closure does not affect the Park's four-million-acre ANILCA additions where snowmachine use is permitted for traditional activities and for travel to and from villages and homesites, subject to reasonable regulations. (43 CFR 36.11(c)). The rule also requires the superintendent to determine that snow cover is adequate in order to protect the underlying vegetation and soils before seasonally opening the latter areas. This determination is necessary to prevent damage to soils and exposed vegetation and is similar to a provision at the Kenai National Wildlife Refuge (50 CFR 36.39(i)(4)(i)) which NPS understands has worked well since 1986. (See also, Denali State Park, 11 AAC section 20.425). NPS again notes that where snowmachine activity is presently authorized by section 1110(a), that activity is subject to the regulations found at 36 CFR 2.18(a), (b), (d) and (e).

A copy of the June, 2000, *Statement of Finding* prepared in connection with this rule and maps of the affected area can be obtained by visiting the Park's web site at [www.nps.gov/dena/statement.htm](http://www.nps.gov/dena/statement.htm) or by writing or calling the superintendent at the address or number printed at the top of this rule.

Drafting information. The primary authors of this rule are Ken Kehrer, Jr., Mike Tranel, Joe Van Horn, Steve Carwile and Russel J. Wilson, Denali

National Park and Preserve; Lou Waller and Paul Hunter, NPS Alaska Support Office also contributed.

**Compliance With Laws, Executive Orders and Department Policy**

*Regulator Planning and Review*  
(*Executive Order 12866*)

This rule is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866. 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. The NPS has prepared a Final Cost-Benefit Analysis that is available from the Denali National Park and Preserve superintendent. Based on this analysis, the NPS anticipates positive net benefits such as: increased public safety; improved public understanding of Park regulations; and, continued protection of wildlife, preservation of natural interactions among wildlife, and the minimization of habitat disturbances that contributes to visitors' use and enjoyment of Park resources. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not alter the budgetary effects, entitlements, grants, user fees, loan programs or the rights or obligations of their recipients. The rule may raise novel legal or policy issues, however, the primary effect of the proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

*Regulatory Flexibility Act*

The Department of the Interior has determined that this regulatory action will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The primary effect of this action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate authorities. Only one of the requirements addressed by the action is new. The new requirement would apply specific "Rules of the Road", such as driving with lights on and following procedures for yielding to buses, as a permit condition for vehicle use on the restricted access section of the Denali Park Road. This new requirement is not anticipated to inconvenience drivers or

otherwise adversely impact any small entity. Substantial areas exist nearby where Park users can go who may be displaced as a result of firearms and snowmachine closures in this proposed action. The wide availability of such substitute-use areas would lessen, or eliminate, any impact on Park users, including small entities. The only direct compliance cost that would be imposed by this proposed action is the requirement to provide drivers license information, vehicle license plate information, and a vehicle description for purposes of issuing a permit to operate a motor vehicle on the restricted access section of the Denali Park Road. That requirement is not anticipated to impose significant costs on the public, including small entities. No other direct compliance costs would be imposed. Therefore, significant impacts on small entities are not expected from this proposed action.

A qualitative Cost-Benefit Analysis was done and indicates positive net benefits for each component of the regulatory action. Two specific components that had the most public interest were the snowmobile and the road regulations. The road regulations codified the existing trip limits and the "Rules of the Road". The trip limits have been in effect since the 1986 general management plan and are sufficient to provide adequate and feasible access for the private holdings in Kantishna along with the current levels of Park visitors. The benefits exceed the potential costs in this case since this action protects the premier wildlife watching that is the main reason the public comes to the Park and local businesses. The "Rules of the Road" have been in place for years and most drivers already follow them. The codifying of these rules will improve safety and reduce accidents. The snowmobile regulation reinstates a closure of the Old Park to snowmachine use. There will be very little cost associated with this regulation since almost no snowmachine activity has taken place in the Old Park since it was created 83 years ago. There is very little commercial snowmachine operation in the area and there will be some benefits to the local dog mushing and skiing operations. Therefore both of these components will have a net economic benefit (see the Final Cost-Benefit Analysis that is available from the Denali National Park and Preserve superintendent).

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and 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. The primary effect of this action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. Copies of a Final Cost-Benefit Analysis are available from the Denali National Park and Preserve superintendent. The analysis found that no significant costs would result from this action.

#### *Unfunded Mandates Reform Act*

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of \$100 million or more in any given year on local, state or tribal governments or private entities. Copies of a Final Cost-Benefit Analysis are available from the Denali National Park and Preserve superintendent. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The rule applies only to Federal Park land and there should be no cost to the State from any of these regulations. The State was consulted on the topics that were of mutual concern. The NPS determined that there are no effects to any Federally recognized tribes.

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

In accordance with Executive Order 12360, the rule does not have significant takings implications. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. A takings implication assessment is not required.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have federalism implications which warrant the preparation of a Federalism Assessment. The substantive provisions of this rule apply mainly to the portion of Denali National Park and Preserve that was formerly known as Mount McKinley National Park which is under the exclusive jurisdiction of the United States. The primary effect of this

proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

#### *Civil Justice Reform (Executive Order 12988)*

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

#### *Paperwork Reduction Act*

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. The information collection requirements contained in this rule at § 13.63(d)(2) have been approved by the Office of Management and Budget and assigned clearance number 1024-0026. This information is being collected to solicit information that is necessary for the Superintendent to issue vehicle permits. The public is being asked to provide this information in order for the Park to track the number of permits issued and to whom they are issued. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Specifically, the NPS needs the following information to issue the permit:

- (1) Drivers license number and State of issue.
- (2) Vehicle license plate number and State.
- (3) Vehicle description, including year, make and model.

The public reporting burden for the collection of information in this instance is estimated to be 0.10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. This would make a total of about 25 hours annually.

#### *National Environmental Policy Act*

NPS has determined that most aspects of this rulemaking, with the exception of the portion concerning a snowmachine closure, have been previously addressed pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, in environmental documents prepared in conjunction with Park management plans. These are the environmental assessments prepared in conjunction with the Park General Management Plan which was approved

in a 1986 Finding of No Significant Impact, or the environmental impact statement prepared in conjunction with the Denali Entrance Area and Road Corridor Development Concept Plan which was approved in a 1997 Record of Decision. Copies of these documents are available from the Denali National Park and Preserve superintendent.

An environmental assessment (EA) was prepared by the NPS, in accordance with NEPA and its implementing regulations at 40 CFR 1508.9, on a proposed special regulation to permanently close the Old Park to snowmachine use. The EA was released for 60 days of public comment on November 9, 1999. The EA evaluated four alternatives: (1) No action, a continuation of snowmachine use for traditional activities in the Old Park; (2) closing all but a 180,000 acre area in the southeast part of the Old Park to snowmachine use for traditional activities; (3) instituting a series of temporary closures to the use of snowmachines in the Old Park by use of the procedures required in Section 1110(a) of ANILCA, including hearings in the vicinity and a published finding of detriment, and (4) permanently closing the Old Park to snowmachine use via a special regulation and a regulatory definition of "traditional activities." A Finding of No Significant Impact (FONSI) was approved on June 6, 2000. The environmental consequences of the snowmachine use closure in the old Mount McKinley National Park are minimal and are documented within the Environmental Assessment for the Permanent Closure of the Former Mt. McKinley National Park to Snowmachine Use and the FONSI. The action is also in the scope of the impacts anticipated in the approval given for the Park's General Management Plan in 1986.

A Summary Evaluation and Findings, pursuant to Section 810(a) of ANILCA, was attached to the Environmental Assessment for the Permanent Closure of the Former Mt. McKinley National Park to Snowmachine Use to document the impacts of a closure and alternatives on subsistence activities within the area. Lands in the Former Mount McKinley National Park are closed to subsistence activities; and, therefore, the analysis concluded that a closure would not result in a significant restriction to subsistence uses. Copies of these documents are also available from the Denali National Park and Preserve superintendent.

**List of Subjects****36 CFR Part 5**

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation.

**36 CFR Part 13**

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Chapter I, Parts 5 and 13 as follows:

**PART 5—COMMERCIAL AND PRIVATE OPERATIONS**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 17j–2, 462.

**§ 5.2 [Amended]**

2. In § 5.2(b) introductory text, the words “Mount McKinley” in the first sentence are revised to read “Denali”.

**§ 5.4 [Amended]**

3. In § 5.4(a) introductory text, the words “Mount McKinley (prohibition does not apply to that portion of the Denali Highway between the Nenana River and the McKinley Park Hotel)” in the first sentence are revised to read, “Denali National Park and Preserve (prohibition does not apply to that portion of the Denali Park road between the Highway 3 junction and the Denali Park Railroad Depot)”.

**§ 5.10 [Amended]**

4. In § 5.10(a) the words “Mount McKinley” in the first sentence are revised to read, “Denali”.

**PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

5. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub L. 105–277, 112 Stat. 2681, October 21, 1998; Pub. L. 106–31, 113 Stat. 57, May 21, 1999.

**§ 13.2 [Amended]**

6. In § 13.2(c), the words “and parts of Denali National Park” are revised to read “the former Mt. McKinley National Park”.

7. Section 13.63 is amended by adding paragraphs (d), (g) and (h) to read as follows:

**§ 13.63 Denali National Park and Preserve.**

\* \* \* \* \*

(d) *Operation of motor vehicles on the Denali Park road west of the Savage River*—(1) *Do I need a permit to operate*

*a motor vehicle on the Denali Park road west of the Savage River?* Yes, you must obtain a permit from the superintendent to operate a motor vehicle on the restricted section of the Denali Park road. The restricted section begins at the west end of the Savage River Bridge (mile 14.8) and continues to the former Mt. McKinley National Park boundary north of Wonder Lake (mile 87.9).

(2) *How many permits will be issued each summer?* The superintendent is authorized, under this section, to issue no more than 10,512 motor vehicle permits each year for access to the restricted section of the road. The superintendent will issue the permits for the period that begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first. Each permit allows one vehicle one entry onto the restricted portion of the Park road.

(3) *How will the superintendent manage the permit program?* (i) The superintendent will apportion motor vehicle permits among authorized users following the procedures in § 13.31. Authorized users are individuals, groups and governmental entities who are allowed by law or policy to use the restricted section of the road.

(ii) The superintendent will establish an annual date to evaluate permit requests and publish that date, along with the results of the annual apportionment, in the superintendent's compendium of rules and orders. The superintendent's compendium is available to the public upon request.

(iii) The superintendent will re-evaluate the access requirements of any business that is sold, ceases to operate or that significantly changes the services currently offered to the public.

(4) *What is prohibited?* (i) No one may operate a motor vehicle on the restricted section of the Park road without a valid permit.

(ii) No one may use a motor home, camper or trailer to transport guests to a lodge or other business in Kantishna.

(iii) No one may transfer or accept transfer of a Denali Park road permit without the superintendent's approval.

\* \* \* \* \*

(g) *Kantishna area summer season*

*firearm safety zone*—(1) *What is prohibited?* No one may fire a gun during the summer season in or across the Kantishna area firearm safety zone, unless they are defending life or property.

(i) The summer season begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first.

(ii) The Kantishna Area firearm safety zone includes: the Kantishna Airstrip; the State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way, from the former Mt. McKinley National Park boundary at mile 87.9 to the south end of the Kantishna Airstrip.

(h) *Snowmachine (snowmobile) operation in Denali National Park and Preserve*—(1) *What is the definition of a traditional activity for which Section 1110(a) of ANILCA permits snowmachines to be used in the former Mt. McKinley National Park (Old Park) portion of Denali National Park and Preserve?* A traditional activity is an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

(2) *May a snowmachine be used in that portion of the park formerly known as Mt. McKinley National Park (Old Park)?* No, based on the application of the definition of traditional activities within the park to the factual history of the Old Park, there are no traditional activities that occurred during periods of adequate snow cover within the Old Park; and, thus, Section 1110(a) of ANILCA does not authorize snowmachine access. Hunting and trapping were not and are not legally permitted activities in the Old Park at any time of the year. Sport fishing has not taken place in the Old Park during periods of adequate snow cover due to weather conditions that are adverse to sport fishing, and the limited fishery resources within the Old Park. During periods of adequate snow cover, berry picking is not feasible, and has not taken place in the Old Park. Under the definition, recreational use of snowmachines is not a traditional activity. There are no villages, homesites or other valid occupancies within the Old Park. Access by snowmachine through the Old Park in transit to homesites, villages and other valid occupancies was not lawful prior to the enactment of ANILCA and is

available through routes outside the Old Park that have been historically used for that purpose. Therefore, the use of snowmachines is not authorized by section 1110(a) for such travel. Further, Congress did not authorize subsistence activities in the Old Park. In addition, the National Park Service has determined that the use of even a few snowmachines in the Old Park would be detrimental to the resource values of the area. Therefore, because no usage is authorized in the Old Park by section 1110(a) the Old Park remains closed to all snowmachine use in accordance with 36 CFR 2.18.

(3) *Where can I operate a snowmachine in Denali National Park and Preserve?* You can use a snowmachine outside of the Old Park for traditional activities or travel to and from villages and homesites and other valid occupancies as authorized by 43 CFR 36.11(c), or when lawfully engaged in subsistence activities authorized by § 13.46.

(4) *What types of snowmachines are allowed?* The types of snowmachines allowed are defined in § 13.1(q) under *snowmachine* or *snowmobile*.

(5) *What other regulations apply to snowmachine use?* Snowmachine use is governed by regulations at § 2.18(a) of this chapter, traffic safety, § 2.18(b) of this chapter, state laws, and § 2.18(d) and (e) of this chapter, prohibited activities; and 43 CFR 36.11(a)(2) adequate snow cover, and 43 CFR 36.11(c) traditional activities.

(6) *Who determines when there is adequate snow cover?* The superintendent will determine when snow cover is adequate for snowmachine use. The superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(7) Nothing in this section shall limit the authority of the superintendent to restrict or limit uses of an area under other statutory authority.

Dated: June 7, 2000.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00-14754 Filed 6-16-00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[OH-132-2; KY-116-2; KY-84-2; FRL-6717-1]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky

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

**ACTION:** Final rule.

**SUMMARY:** We are determining that the Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by its extended attainment date. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area, as well as the most recent 3-year period of data from 1997-1999, which shows the area is continuing to attain. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the Clean Air Act (CAA), are not applicable to the Cincinnati-Hamilton area.

We are also approving an exemption for the Cincinnati-Hamilton area from the nitrogen oxides (NO<sub>x</sub>) requirements as provided for in section 182(f) of the CAA. Section 182(f) establishes NO<sub>x</sub> requirements for ozone nonattainment areas. However, it also provides, in subsection 182(f)(1)(A), that these requirements shall not apply to an area if the Administrator determines that additional NO<sub>x</sub> reductions would not contribute to attainment of the ozone NAAQS in that area. Because the Cincinnati-Hamilton area is currently attaining the ozone NAAQS without benefit of additional NO<sub>x</sub> reductions, we are granting the area a NO<sub>x</sub> exemption. As a result, the Cincinnati-Hamilton area will no longer be subject to the section 182(f) NO<sub>x</sub> requirements; however, all NO<sub>x</sub> controls previously approved for the area by EPA must continue to be implemented.

We are also approving the State of Ohio Environmental Protection Agency's (OEPA) and the Commonwealth of Kentucky Natural

Resources and Environmental Protection Cabinet's (Cabinet) requests to redesignate the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. The original redesignation request from OEPA, dated June 28, 1999, was received on July 2, 1999, and completed on December 22, 1999. The Cabinet's redesignation request to EPA was dated October 29, 1999. In approving these redesignation requests, EPA is also approving, as revisions to the Ohio and Kentucky State Implementation Plans, the States' plans for maintaining the 1-hour ozone standard for the next 10 years.

**EFFECTIVE DATE:** This action will be effective on July 5, 2000.

**ADDRESSES:** Copies of the OEPA's and the Cabinet's submittals and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. The reference file numbers are OH-132, KY-116 and KY-84.

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR-18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

#### FOR FURTHER INFORMATION CONTACT:

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Allison Humphris, Environmental Scientist, United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562-9030, (humphris.allison@epa.gov).

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