BILLING CODE 4312-52

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

[NPS-WASO-REGS-9886; 2465-SYM]

RIN 1024-AD97

Vehicles and Traffic Safety - Bicycles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends current regulations for designating bicycle routes and managing bicycle use within park units throughout the National Park System. It authorizes park superintendents to open existing trails to bicycle use within park units under specific conditions, in accordance with appropriate plans and in compliance with applicable law. It also retains the current requirement for a special regulation to authorize construction of new trails for bicycle use outside developed areas.

DATES: The rule is effective August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Russel J. Wilson, Regulations Program Manager, 1849 C Street NW, MS-3122, Washington, D.C. 20240, (202) 208-4206.

SUPPLEMENTARY INFORMATION:

Background

Bicycling is a popular recreational activity in national parks. Bicycle riders of all skill levels and ages enjoy riding on park roads and designated bicycle trails for beautiful scenery, exercise, and adventure. People bicycle alone, with friends, or with family – they bicycle to visit points of interest, to be healthy, and because it's fun.

The National Park Service (NPS) believes that, with proper management, bicycling is an appropriate recreational activity in many park areas. In other areas, due to safety or other concerns, bicycling may not be appropriate. This rule provides park superintendents with a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate in the park unit they manage. The rule also offers guidance on trail sustainability and bicycle safety.

Regulations promulgated in 1987 provide for the use of bicycles on park roads, in parking areas, and on routes designated for bicycle use (36 CFR 4.30). According to the 1987 regulations, a special regulation, specific to the individual park, must be adopted if bicycles are to be used on routes outside a park's developed areas. The NPS adopted the special regulation requirement to ensure maximum public input on decisions to allow bicycle use on routes outside of developed areas.

The Final Rule

For existing trails and for new trails located in developed areas, this final rule requires enhanced planning and environmental compliance procedures and public notice and participation, but does not require promulgation of special regulations. In addition, existing trails may not be designated for bicycle use if doing so would result in a significant impact on the environment. The NPS will continue to require the promulgation of special regulations before

constructing bicycle trails outside of developed areas. The rule does not affect other existing statutory or regulatory protections for park resources and enhancement of visitor experiences.

Section 8.2 of NPS Management Policies 2006 states that "enjoyment of park resources and values by the people of the United States is part of the fundamental purpose of all [national] parks" and that the NPS "will maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society." However, the policies emphasize that the NPS "will allow only uses that are (1) appropriate to the purpose for which the park was established, and (2) can be sustained without causing unacceptable impacts. Recreational activities and other uses that would impair a park's resources, values, or purposes cannot be allowed." NPS Management Policies 2006, 8.1.1. NPS Management Policies establish a process for determining whether a particular use is appropriate in a park unit. NPS Management Policies 2006, 8.1.2.

In compliance with these policies, the final rule places greater emphasis on an individual park planning process that incorporates environmental compliance procedures and input from the public, rather than the special rulemaking process, to decide whether or not bicycle use is appropriate on a trail in a unit of the National Park System. The designation of a particular trail for bicycle use must be considered as part of a park plan addressing trail use, such as a recreation use plan. The final rule also requires that, at a minimum, the plan:

- Evaluates the suitability of existing trail surface and soil condition for accommodating bicycle use, or prescribes a sustainable trail design for the construction of new trails.
- Considers life cycle maintenance costs, safety considerations, strategies to prevent or minimize user conflict, methods of protecting natural and cultural resources, integration with commercial services and alternative transportation systems (if applicable).

The rule utilizes the public outreach aspects of the National Environmental Policy Act (NEPA) process by requiring, at a minimum, preparation of an Environmental Assessment (EA) for any decision to open existing hiking or horse trails to bicycles. The rule precludes the use of categorical exclusions for opening trails to bicycle use. The rule also:

- Requires a trail-specific analysis in the EA or Environmental Impact Statement (EIS). In order to authorize bicycle use on an existing trail, the EA must result in a finding of no significant impact. When an EIS is prepared, the trails must be specifically identified and evaluated within the EIS, and the Record of Decision, or an amended Record of Decision, must document that there will be no significant impacts. See NPS Management Policies 2006, 2.3.1.7.
- Requires that the superintendent must provide the public with notice of the availability of the EA and at least 30 days to review and comment on EAs for bicycle use.
- When there are no significant impacts, requires that public notice of the superintendent's determination (made pursuant to paragraph (d)(3) of the final rule) be published in the *Federal Register.* If the determination itself is not published in full, then the notice must state where to view or how to obtain a copy of the determination. This *Federal Register* notice must provide the public a 30-day period to consider and comment on the determination prior to the park opening any trails for bicycle use.
- The comment period for the written determination will be particularly important because it will allow for public comment contemporaneous with the decision to implement an earlier planning process.
- Requires that the superintendent, after considering public comment, submit to the appropriate NPS Regional Director for approval in writing the superintendent's

determination that bicycle use on a trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations, and management objectives and will not disturb wildlife or park resources. See NPS Management Policies 2006, 1.4.7.1 (discussing unacceptable impacts to NPS park resources). The requirement for Regional Director approval is a change from the proposed rule.

- The final rule clarifies that all planning and compliance must be completed before designation of trails for bicycle use.
- The rule also requires that the trail-specific, rigorous planning and compliance process applies to new trails, and continues to require promulgation of a special regulation for construction of a new bicycle trail outside developed areas.
- For existing trails, the final rule prohibits bicycle use where significant impacts would occur.
- For existing trails, even when the environmental compliance analysis has found no significant impacts, the appropriate NPS Regional Director may decide that bicycle use is not consistent with the resources, values, and purposes of the park area, and, after considering public comment on the written determination required by the final rule, withhold approval.

By adopting these requirements, the rule meets the public participation objectives of the NPS without the necessity for promulgating a special regulation in some cases.

Unlike the proposed rule, the final rule does not require that notice of an EA for bicycle use be published in the *Federal Register*. The NPS believes that NPS Director's Order-12, Conservation Planning, Environmental Impact Analysis, and Decision-Making, and the Department of the Interior NEPA regulations ensure a robust public involvement and notification

process without requiring a *Federal Register* notice. However, the final rule will continue to require that the notice of the availability of the superintendent's written determination be published in the *Federal Register* before the appropriate NPS Regional Director approves the determination. Because the final rule allows the designation of existing trails for bicycle use without rulemaking only where there are no significant impacts, the final rule departs from the proposed rule and does not apply 36 CFR 1.5 to the designation of trails for bicycle use, or (for reasons discussed below) to closures, conditions, limits and restrictions to bicycle use.

The NPS uses NEPA not only as a tool to look at whether to designate an existing trail or build a trail for bicycle use, but also as a guide in the larger aspects of NPS decision-making. Most NEPA requirements are compatible with or identical to requirements for sound management planning. In most cases, NEPA requirements are easily integrated into the planning process, and they provide the information that decision-makers need to make correct choices. Rather than create additional burdens in the planning process, following NEPA requirements should help facilitate prompt and well-informed decision-making. See NPS Handbook for Environmental Impact Analysis, § 1.5B. In some instances, particularly when bicycle trail planning and NEPA compliance is limited in scope, the superintendent's determination may also be integrated with and completed concurrently with the planning and compliance process.

The NPS will continue to prohibit bicycle use in eligible, study, proposed, recommended, and designated wilderness areas as required by NPS policy. In accordance with Section 6.3.1 NPS Management Policies 2006, all categories of wilderness, including eligible, study, proposed and recommended wilderness, will be managed with the same level of protection and under the same requirements as designated wilderness. Therefore, a superintendent may not propose either use of bicycles on existing trails or propose new bicycle trails on any lands that meet the

Management Policies definition of wilderness unless this policy is specifically waived in writing by the Secretary, the Assistant Secretary, or the Director.

Paragraph (b) of the rule addresses bicycle use on administrative roads. The rule clarifies that an administrative road closed to motor vehicle use by park visitors is also closed to bicycle use unless the superintendent makes a written determination and opens the road to such use. Rather than having the determination address the general criteria for managing public use under 36 CFR 1.5 as proposed (73 FR 76987, December 18, 2008), the final rule directs that the superintendent's written determination for opening an administrative road must address the criteria required for bicycle route designation under the existing 36 CFR 4.30 regulations. The same determination -- that bicycle use is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations, and management objectives and will not disturb wildlife or park resources -- is required for authorizing bicycle trails in this rule.

After designating an administrative road as open, the superintendent may find it necessary to impose certain limits or restrictions on the use of bicycles on administrative roads to address safety considerations, avoid visitor use conflicts, or protect park resources and values. Paragraph (f) of the final rule clarifies and strengthens the superintendent's authority to close, limit, restrict, or impose conditions on bicycle use or terminate a closure or restriction on any trail or area designated as open for bicycle use, including administrative roads.

Although state law is already adopted in Part 4, specifically at 36 CFR 4.2 "State law applicable," paragraphs (g)(2) and (h)(6) of the final rule explicitly provide that state laws are adopted and apply to bicycle use. This is consistent with the NPS's response to public comments on bicycle use in its 1987 rulemaking:

> Several persons submitted comments indicating that various issues involving the use of bicycles such as speeding, reckless operation, conflicts with pedestrian use, operation

> against traffic, etc., were not specifically addressed by this section. The NPS intends such problems to be resolved by applying State law or paragraph (c) of this section [the provisions that now appear in paragraph (g) of this rule] which makes a bicycle operator subject to most of the other traffic regulations in Part 4.

52 FR 10675, April 2, 1987.

The rule eliminates the term “special use zone" because this term is no longer used in NPS planning documents and therefore has created unnecessary confusion in interpreting its meaning within the context of this regulation.

The NPS recognizes that some parks have completed bicycle trail planning or may have bicycle planning in progress that does not meet the new procedures in this rule for designation of trails without rulemaking. As stated, this rule is intended to provide a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate. Parks that have completed the planning process may still authorize bicycle use by supplementing their planning and compliance to conform to this rule or by concluding with a special regulation. This includes existing trails, provided that the appropriate NEPA document concludes that such use will have no significant impacts. Existing NPS special regulations authorizing bicycle routes, and routes in developed areas that have been designated through a written determination, remain in effect, and the new rule does not require that they be reissued or reauthorized.

Planning Topics

Trail Sustainability

NPS Management Policies 2006 describe backcountry as “primitive, undeveloped portions of parks. This is not a specific management zone, but rather refers to a general condition of land that may occur anywhere within a park.” NPS Management Policies 2006, 8.2.2.4. NPS Natural Resource Management Reference Manual #77 (RM #77) (2006) offers comprehensive guidance to NPS employees responsible for managing, conserving, and protecting the natural

resources found in National Park System units. To prevent trail deterioration, RM #77 counsels that backcountry trail corridors be sustainable:

> Sustainability of backcountry trail corridors is defined as the ability of the travel surface to support current and anticipated appropriate uses with minimal impact to the adjoining natural systems and cultural resources. Sustainable trails have negligible soil loss or movement and allow the naturally occurring plant systems to inhabit the area, while allowing for the occasional pruning and removal of plants necessary to build and maintain the trail. If well-designed, built, and maintained, a sustainable trail minimizes braiding, seasonal muddiness and erosion. It should not normally affect natural fauna adversely nor require re-routing and major maintenance over long periods of time.

Minimizing impacts to natural and cultural resources is a foundation of NPS management decisions and a management responsibility. The NPS Organic Act (16 U.S.C. 1, *et seq.*) mandates conservation of park resources for future generations and precludes impairment of park resources, and these requirements can best be met through sustainable trail design and practices.

Trampling of vegetation, compaction and erosion of trail tread materials, and trail muddiness are impacts associated with trail corridors. Trail erosion causes gullies and can cause impacts immediately adjacent to the trail corridor by exposing tree roots. Erosion of trail materials also dries out the soil substrate adjacent to trails, which is critical to ground cover, grasses, and understory plant health and success, causing further impacts and trail widening. Eroded materials can also be deposited downhill from trails and enter aquatic systems causing changes to water quality and related impacts. See ParkScience, 28(3), The Science of Trail Surveys: Recreation ecology provides new tools for managing wilderness trails, p. 60-65, Marion, Wimpey and Park, available online at http://www.nature.nps.gov/ParkScience/index.cfm?ArticleID=544.

To ensure that trails are sustainable, the NPS recommends an average trail profile grade of 10 – 12 percent, a maximum trail profile grade of 12 – 15 percent, and the relationship between the trail profile gradient and prevailing cross slope grade in the immediate vicinity along

the trail centerline at less than one quarter ("high slope alignment angle" (Marion, Jeffrey L., 2006)). Design techniques such as grade reversals and rolling contour trails will increase sustainability by ensuring prompt drainage of rainfall and snowmelt off the trail. Construction techniques such as retaining walls, switchbacks, stone paving, and bridges can improve trail surfaces, reduce impacts, increase sustainability, and improve the visitor experience. Trail project guidelines may be augmented by state-of-the-art scientific research and landscape architectural criteria to increase sustainability. See Developing Sustainable Mountain Trail Corridors: An Overview, National Park Service, Denver, Colorado. 1991; Guide to Sustainable Mountain Trails, Trail Assessment, Planning & Design Sketchbook (Sketchbook (2007)), National Park Service, Denver, Colorado. 2007 edition, and other resources available online at the NPS Sustainable Trails page at http://www.nps.gov/dsc/trails.htm.

The NPS must consider the cost of initial construction as well as on-going maintenance in its management decisions. Therefore, the NPS must carefully factor costs into all analyses of trailside decisions that enhance sustainability and minimize impacts to natural and cultural resources, and consider cost variables in the NEPA compliance processes.

The Sketchbook (2007) makes the case that the sustainability of backcountry trails is as much an art as it is a science. To ensure quality and sustainability, it is essential that the expertise of an interdisciplinary team of professionals with experience in backcountry trails be utilized in the NEPA compliance processes. Trails literature since the Civilian Conservation Corps era has emphasized that interdisciplinary teams are best qualified to provide trail sustainability expertise for trail projects. Landscape architects, civil engineers, soil scientists, natural resource specialists, cultural resource specialists, botanists, biologists, interpreters, restoration ecologists,

trail design specialists, and others are important members of interdisciplinary backcountry trail teams.

Safety – Bicycle Helmet use in National Parks

In 1987, states began adopting bicycle laws which require children 18 years of age or younger to wear a helmet. Currently, 22 states and the District of Columbia have enacted these laws. Thirteen states have no state helmet laws (Arkansas, Colorado, Idaho, Indiana, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, South Carolina, Utah, Vermont, and Wyoming). Studies show that helmet use while riding decreases the risk of head and brain injury by 70 – 88 percent (Thompson et al., 1989) and facial injury to upper and mid-face areas by 65 percent (Thompson et al., 1996).

See http://depts.washington.edu/hiprc/practices/topic/bicycles/helmeteffect.html.

Among parks where statistically meaningful injury data is available, bicycling is one of the leading causes of injuries – particularly in urban parks and parks frequented by local visitors. To enhance the safety of visitors who bicycle in parks, the adoption of state law in paragraph (g)(2) includes state helmet-use laws and regulations, and parks will enforce these requirements. Also, as part of an effort to support the Healthy Parks, Healthy People initiative and safe adventures, park superintendents should consider using their authority under 36 CFR 1.5 to mandate helmet use where state laws do not exist, particularly in parks where bicycle use is prevalent in highly populated or other at-risk areas. This effort by superintendents would be consistent with NPS Management Policies, which state:

> The Service will strive to identify and prevent injuries from recognizable threats to the safety and health of persons and to the protection of property by applying nationally accepted codes, standards, engineering principles, and the guidance contained in Director's Orders . . . and their associated reference manuals. . . . These management policies do not impose park-specific visitor safety prescriptions. The means by which

> public safety concerns are to be addressed is left to the discretion of superintendents and other decision-makers at the park level . . . .

NPS Management Policies 2006, 8.2.5.1.

Both the National Highway Traffic Safety Administration (NHTSA) and Centers for Disease Control and Prevention, partners in traffic injury prevention, support the use of bicycle helmets by all bicyclists, every ride. Bicycle helmets are proven to be the single most important piece of safety equipment to prevent head injuries and fatalities resulting from bicycle crashes. Despite the fact that nearly 60 percent of all fatal bicycle crashes involve head injuries, only about 19 percent of adults and 15 percent of children wear bicycle helmets. According to NHTSA, in 2009 the average age of bicyclists killed and injured was 41 and 31 years old, respectively. This emphasizes the need for all riders, children and adults, to wear a bicycle helmet. NHTSA advocates that adults should be role models by following the same safety principles that they insist be followed by their children. See http://www.cdc.gov/program/performance/fy2000plan/2000xbicycle.htm; and National Strategy for Advancing Bicycle Safety, http://www.nhtsa.gov/people/injury/pedbimot/bike/bicycle_safety/index.htm.

Other Planning Considerations

Concession contracts and commercial use authorizations (CUA) give the NPS the ability to regulate commercial bicycle tours. CUAs may be issued to authorize a qualified person to offer suitable commercial services to park area visitors if the superintendent determines that the commercial services will have minimal impact on the park area's resources and values; are consistent with the purposes for which the park area was established; and are consistent with all applicable park area management plans, policies and regulations. A decision to issue a CUA (or to limit the number of CUAs to be issued) must be made in accordance with park area planning

policies and procedures, including compliance with NEPA. If a concession contract authorizes the provision of bicycle services or if CUAs are issued, the NPS may include operating standards that limit numbers, require insurance, specify safety standards, and require reports from the operators to help the NPS monitor the effects of the use. Superintendents should refer to the NPS, November 18, 2005, Interim Guidelines for Commercial Use Authorizations.

The planning process can help determine if bicycling opportunities may increase overall visitation, generate youth interest in parks, or expand appreciation for our national parks. Proper planning with public participation also provides the opportunity to consider a range of alternatives to avoid or minimize impacts on natural, historic, and cultural resources and reduce conflicts with other user groups. No matter what type of planning is conducted, "(i)n its role as steward of park resources, the National Park Service must ensure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources and values." NPS Management Policies 2006, 1.5.

Summary of and Responses to Public Comments

The NPS published the proposed rule at 73 FR 76987 (December 18, 2008) and a correction was made in 73 FR 78680 (December 23, 2008). We accepted comments through the mail, hand delivery, and through the Federal eRulemaking Portal at http://www.regulations.gov. Comments were accepted through February 17, 2009, and a total of 6,576 comment documents were received. A summary of comments and NPS responses is provided below, followed by a table that sets out, section-by-section, the changes we have made from the proposed rule to the final rule based on the analysis of the comments.

Impacts to Natural Resources

1. *Comment:* The proposed rule should be rejected because bicycle use on trails increases soil erosion and damages trails and nearby vegetation. The proposed rule does not adequately protect natural resources (including wildlife and wildlife habitats) from adverse impacts and would dramatically change the character of the parks. Bicycle use causes greater impacts to wildlife and habitats than other uses, such as hiking and horseback riding.

Response: The NPS has considered this issue and reviewed studies that gauge the environmental impacts of bicycling. It should be noted that this rule does not authorize any trails for bicycle use. This rule revises the procedure for authorizing bicycle use on certain existing trails. Individual parks that use these procedures will have to demonstrate, consistent with NPS Management Policies 2006, 1.4.7.1, that authorizing bicycle use will not cause unacceptable impacts to natural resources, including soils, vegetation, and wildlife. Generally, impacts to soils, vegetation, and wildlife from bicycles are similar to impacts from hiking and less than impacts from horseback riding or motorized vehicle use. When a trail is sustainably located, designed, and constructed, it can support low-impact uses such as hiking and biking with minimal maintenance and with no degradation of the natural resources.

The final rule requires, among other prerequisites for bicycle use, a trail suitability determination for existing trails and the sustainable design of new trails. Superintendents are required to follow NPS Management Policies 2006, including Chapter 8, Use of the Parks (see e.g., sections 8.1 through 8.2.2.4). This rule also provides planning guidelines.

2. *Comment:* If bicycling on a trail is misused, abused, or disruptive to the environment, the NPS should maintain the right to shut the trail down through a process of public hearings.

Response: We agree, and the final rule provides superintendents with a restriction and closure authority in paragraph (f) that is independent of the general 36 CFR 1.5 “Closures and

public use limits" authority. This will allow superintendents to take actions to mitigate or eliminate unforeseen safety issues, resource damage, or other management problems should they arise. Public notice of limits, restrictions, or closures must be provided under 36 CFR 1.7.

3. *Comment:* An EA should not be required for designating existing trails for bicycle use because bicycles cause no significant environmental impacts (including impacts upon soil and topography), and cause less impacts that horseback riding and no more impacts than hiking. Impacts from bicycle use can be decreased by effective NPS management and visitor education.

Response: Because impacts from bicycle use can vary depending on where a trail is located, an EA or an EIS with a specific finding of no significant impact for a bicycle trail(s) is required to designate an existing trail for bicycle use. When trails are sustainably located, designed, and constructed, impacts are normally insignificant. However, there may be cases where impacts are significant, including soil erosion, safety, and conflicts with other visitors. Consequently, this rule will preclude the use of a categorical exclusion for designating existing trails for bicycle use.

4. *Comment:* The NPS should evaluate the impact of increased biking and trail construction on wildlife, streams, and fisheries before changing the existing rule which works well.

Response: This new rule clarifies and strengthens planning and NEPA procedural requirements by which bicycle use may be considered on both existing and newly constructed trails. The previous rule simply required promulgation of a special regulation to allow bicycle use on existing or new trails outside of a developed area. This revision requires that bicycle use on trails must be addressed in a planning document that addresses specific key criteria. Some of these criteria are trail suitability or sustainable trail design, lifecycle maintenance costs, safety

considerations, methods to prevent or minimize user conflict, and integration with commercial services and alternative transportation systems (if applicable). Bicycle use must also be addressed with a site-specific NEPA analysis. The site-specific EA or EIS would address impacts to wildlife, streams, and fisheries from increased bicycle use and trail construction.

Impacts to Visitor Use and Experience

5. *Comment:* Bicycle use should not be allowed on existing trails in order to avoid conflicts and accidents with established users of such trails (e.g. hikers, equestrians). Each trail should be limited to a single use (e.g. bicycles, hiking, or horseback riding) to avoid user conflicts. The NPS should be more concerned with the safety of hikers and equestrians than the promotion of bicycle use. The proposed rule does not adequately prevent user conflicts and ensure safety on multi-use trails. The proposed rule will displace existing users of trails.

Response: The NPS is concerned with the safety of all park visitors. This rulemaking places more emphasis on planning and impact analysis and requires that safety and user conflict must be evaluated. Specifically, the rule requires that an existing trail cannot be designated for bicycle use unless it is determined that there will be no significant impacts, including impacts to visitor safety. The final rule also requires that "safety considerations [and] methods to prevent or minimize user conflicts" be considered as part of the planning process in paragraph (d)(1)(ii).

6. *Comment:* Bicycle use should be limited to existing paved roads and should not be permitted on any trails. There are many trails open to mountain bike use in national forests and other federally-owned lands.

Response: Bicycling is a family-oriented activity that contributes to the health and well-being of those that enjoy it, and the NPS believes that bicycle use need not be limited to existing paved roads. In many park areas bicycling on various types of trails, fire roads, abandoned

railroad right-of-ways, and canal towpaths is an appropriate method of touring, sightseeing, and otherwise enjoying National Park System resources. In other park areas bicycling may not be appropriate. This determination is best made at the park level with appropriate NPS regional level review. Currently, the NPS has a variety of bicycle use trails in a variety of park areas around the country, including Golden Gate National Recreation Area, Saguaro National Park, Grand Teton National Park and Delaware Water Gap National Recreation Area.

7. *Comment:* Trails should be open to specific uses at assigned times based upon the amount of traffic on the trails.

Response: This rule implements procedural changes that will provide an opportunity to consider specific uses at assigned times and the appropriateness of other local rules and mitigation measures during the bicycle use planning process undertaken by the individual park areas.

8. *Comment:* The proposed rule should include rules of the road for bicycle use on roads and trails open to other uses (e.g., hiking, horseback riding). There should be a national standard for "appropriate use" of bicycles on backcountry trails and administrative roads that complies with NPS Management Policies and emphasizes slow-paced sightseeing rather than thrill-seeking at fast speeds.

Response: This rule contemplates consideration of locally crafted rules of the road and equipment restrictions during planning and compliance with NEPA. Time-of-day or alternate-day authorization of uses, one-way riding requirements on loop trails, and requiring bicyclists to dismount and walk their bicycle through congested areas are some options for consideration during planning processes. Paragraph (f) of the rule also authorizes the superintendent to impose use restrictions should the need arise. When implementing this rule, individual parks may, for

example, consider ways to accommodate the safe use of bicycle trails for slow to moderate paced access, sightseeing, and exercise. Generally speaking, thrill-seeking at fast speeds would not be an appropriate activity in National Park System units. This issue is also addressed in the trail sustainability discussion of this rule and through NPS service-wide requirements in paragraph (g)(1) and state requirements (where a state has laws that regulate bicycle use) adopted in paragraph (g)(2).

9. *Comment:* All existing hiking trails should also be designated for bicycle use in order to spread out the amount of traffic on certain trails.

Response: This rule implements procedural changes to the process by which bicycle trails may be authorized. For a number of reasons, including safety and visitor conflicts, all existing hiking trails are not appropriate for bicycle use. As the rule provides, whether an existing trail is appropriate for such use is best determined through an impact analysis of the activity as part planning and environmental compliance on a park-specific, trail-specific basis.

Policy and Compliance Issues

10. *Comment:* Bicycle use should be allowed in Wilderness Areas and will not affect their wilderness qualities.

Response: Section 2(a) of the Wilderness Act states:

> In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.

Section 4(c) of the Wilderness Act generally prohibits mechanization within designated wilderness areas, stating that "there shall be . . . no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, [and] no other form of mechanical transport . . . ." The

Wilderness Act emphasizes that mechanization, including mechanical transport, is not compatible with wilderness qualities and is contrary to preservation of the wilderness character of an area. As a result, the use of bicycles is already prohibited by law in wilderness areas.

11. *Comment:* In order to comply with section 6.4.3.3 of NPS Management Policies, the NPS should revise the proposed rule to clarify that bicycle use is prohibited in eligible, studied, proposed, recommended, and designated Wilderness Areas.

Response: The NPS will continue to prohibit bicycle use in eligible, study, proposed, recommended, and designated wilderness areas as a matter of NPS policy. In accordance with Section 6.3.1 of NPS Management Policies 2006, all categories of wilderness, including eligible, study, proposed, and recommended wilderness, will be managed with the same level of protection and under the same requirements as designated wilderness, unless specifically waived or modified in writing by the Secretary, the Assistant Secretary, or the Director.

12. *Comment:* The proposed rule has no rational basis and it discriminates against bicycle use by presuming with no scientific justification that bicycle use has a greater potential to cause adverse resource impacts than heavy animals like horses or pack stock.

Response: Similar to other uses in parks, bicycle use does have impacts on resources and other visitor activities that must be considered before allowing the use. Bicycle use also has different types of impacts in park areas (such as safety concerns as a result of speed differential) than horses and pack stock. Conflicts between various user groups, including conflicts between hikers and equestrians, hikers and bicyclists, equestrians and bicyclists, and between bicyclists and other bicyclists, are well documented in social-scientific studies and were well represented in the public comments submitted on the proposed rule. See Federal Highway Administration Report Number PD-94-031 (Moore 1994).

This rule addresses visitor use conflicts by requiring that an existing trail cannot be designated for bicycle use unless it is determined that there will be no significant impacts, including impacts to visitor safety. The final rule also requires that "safety considerations [and] methods to prevent or minimize user conflicts" be considered as part of the planning process in paragraph (d)(1)(ii).

13. *Comment:* Publication in the *Federal Register* is not an adequate means of notifying the public. The NPS should proactively notify interested members of the public by email and USPS, in addition to notification in local newspapers.

Response: The NPS agrees that notice in the *Federal Register* is not the only approach to reach interested members of the public. The NPS policy for NEPA compliance encourages parks to use various other methods of notifying the public, including creating mailing lists of interested persons, publication in local newspapers, and the use of new media.

For NEPA compliance, the NPS guidelines for public involvement require an early and open process to determine the scope of environmental issues and alternatives to be addressed in an EA or EIS. EAs are sent out for review by the interested and affected public, including affected agencies and tribes, for a minimum of 30 days. The notice that an EA is available for review will be published in a visible location in the local newspaper of record and posted on the NPS website. Publication in the *Federal Register* may also be appropriate and will be considered by superintendents on a case-by-case basis. Public notice is also accomplished by mail and anyone may request a copy of the EA or EIS for specific bicycle trail designations in park units. If you are interested in actions taking place in a particular park, you can inform the park that you would like to be notified of any proposed action or any environmental impact analysis that might be prepared for that area. The NPS requires that draft EISs be available for public review for a

minimum of 60 calendar days from the day the Notice of Availability (NOA) is published in the *Federal Register*.

In the final rule, the NPS has retained the requirement in the proposed rule that an EA be open for public comment for a minimum of 30 days. In a change from the proposed rule, the NPS will not require that the availability of the EA be published as a notice in the *Federal Register*. The NPS will instead adhere to its existing guidelines for public notice of the availability of an EA. The final rule also retains the requirement in the proposed rule that, when rulemaking is not required, a NOA of the superintendent's written determination be published in the *Federal Register* with a 30-day public comment period. It is our intent that this procedure should function similar to the period of public comment provided for in rulemaking.

14. *Comment:* By allowing increased bicycle use in the parks, the proposed rule violates the conservation mandate of the Organic Act "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."

Response: The final rule clearly provides that bicycle use may be allowed on existing trails only if the NPS has determined that there will be no significant impacts to natural and cultural resources and visitor enjoyment. This rule provides protection for resources and values through more uniform and improved planning and NEPA procedures before a bicycle trail designation. The NPS agrees that it cannot take any action that would impair park resources in violation of its 1916 Organic Act. Accordingly, a non-impairment determination would be necessary before any trail could be designated for bicycle use.

15. *Comment:* Government-to-government consultation with tribes is required and cannot be satisfied by determining that tribes will not be affected by the proposed rule.

Response: This rule implements procedural changes to the methods by which bicycle routes are authorized at individual park areas and does not make any changes to consultation requirements. The Council on Environmental Quality (CEQ) regulations implementing NEPA require agencies to contact affected Indian tribes and provide them with opportunities to participate at various stages in the preparation of an EA or EIS. The Secretary of the Interior's Order No. 3317 (December 1, 2011) requires meaningful consultation early in a planning process. The National Historic Preservation Act requires consultation with Indian tribes regarding places of traditional religious and cultural significance within the area potentially affected by a proposed project activity or program. Consultation is also required with tribes on the effects to historic and sacred places on federal land. Should a park's proposal to authorize bicycle use trigger consultation, the affected tribe(s) will be consulted.

16. *Comment:* The proposed rule is subject to a categorical exclusion under NEPA and does not require an environmental review rising to the level of an EA or EIS.

Response: We agree. This regulation has been determined to be categorically excluded under 43 CFR 46.210(i). No extraordinary circumstances have been found under 43 CFR 46.215.

17. *Comment:* The proposed rule should require that the NPS comply with NEPA before designating any trails for bicycle use.

Response: We agree. The proposed rule and the final rule require that NEPA compliance be completed through an EA or an EIS evaluating bicycle use on trails within the park unit, including the specific trail(s) being considered, before the trail may be designated for bicycle use.

18. *Comment:* Performing NEPA analysis concurrently with the process of accepting public comments is illegal and inappropriate. The NPS should reopen the public comment period for the proposed rule after NEPA analysis is made available for review by the public.

Response: The rulemaking process is governed by the Administrative Procedure Act, and the impact analysis process is governed by NEPA. Nothing in either statute prohibits the NPS from analyzing the impacts of a proposed rule concurrently with consideration of public comments on that proposed rule. The NPS has conducted NEPA analysis subsequent to receiving and analyzing comments on the proposed rule and determined that the final rule is categorically excluded from NEPA under 43 CFR 46.210(i).

19. *Comment:* The rationale for requiring rulemaking for opening existing backcountry trails to bicycle use applies today as it did when the existing rule was published in 1987. The NPS should keep the current rule to ensure transparency and public engagement in the rulemaking process. The process set forth in the existing rule is workable and should be maintained instead of the proposed rule which would impose additional requirements upon the parks. The requirement of a special regulation in the existing rule provides a needed safeguard against damage to natural resources.

Response: Whether or not bicycle use is an appropriate activity in a unit of the National Park System, and if so on what trail(s), should be considered through an individual park's planning process. Parks can accomplish this either in a specific plan for bicycle use in the park or as part of another plan, such as a recreation use plan. The designation of bicycle use on any particular trail should ideally be considered as part of a comprehensive plan for trail use in a park area, which also involves environmental compliance and input from the public. This rule requires bicycle use planning as part of the authorization process. The NPS believes that the rule achieves

a primary benefit of the special regulations process – public notice and comment – by providing two opportunities for public input, while eliminating the time consuming procedural requirements of the rulemaking process when designating existing trails with no significant impacts for bicycle use. The NPS would continue to require the promulgation of special regulations for bicycle trails involving new trail construction outside developed areas.

Park Planning and Management of Bicycle Use

20. *Comment:* The NPS should require the purchase of a permit or season pass for bicycle use and use the receipts for trail maintenance. Permits would help keep bicycle riders on designated trails and reduce impacts to sensitive areas.

Response: Bicycle riders will pay entrance fees in those parks that have an established entrance fee. Entrance fees are often used to support trail construction and maintenance. The NPS does not believe establishing a uniform, nationwide bicycle permit and fee in this rule is appropriate. Consideration of such a fee may or may not be appropriate at an individual park area and could be considered as a part of that area's planning process.

21. *Comment:* The proposed rule transfers too much discretion and decision-making authority to park superintendents which will lead to a loss of uniformity in the way bicycle trails are designated and managed. This could result in adverse consequences as superintendents are vulnerable to political pressure and local pressure which lead to decisions which are not in the best interests of the American taxpayer and the National Park System.

Response: The proposed rule required a more uniform and improved bicycle use planning and NEPA compliance (EA or EIS) with public notice and comment, including review and approval by the respective NPS Regional Office. In response to public comment, the final rule adds a requirement that, before implementing a decision to designate a trail for bicycle use, the

respective Regional Director must approve in writing the superintendent's written determination that bicycle use on the specific park trail(s) is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations, and management objectives, and will not disturb wildlife or park resources. Except for new trails outside of developed areas where rulemaking is required, notice of the written determination must be published in the *Federal Register* with an opportunity for public review and comment for at least thirty (30) days. Following review of the comments, the respective Regional Director may consider approving the determination. If the determination is approved, then the superintendent would be authorized to designate the trail(s) for bicycle use. The appropriate NPS Regional Director may instead decide that bicycle use on a trail is not consistent with the resources, values, and purposes of the park area and withhold approval – in which case bicycle use would be prohibited.

22. *Comment:* The NPS should use the recently published "Guide to Sustainable Mountain Trails: Assessment, Planning & Design Sketchbook, 2007 Edition" as the trail planning and design tool for mountain bike trails. This would significantly improve achievement of sustainability (minimum impact to natural and cultural resources) and the least cost over the long term. Proposed design and construction techniques should be transparent and open to public review and comment.

Response: We agree. The NPS supports and encourages the use of the Sketchbook (2007) as a guide for assessing, planning, designing, and implementing trails with minimum impact to natural and cultural resources at a lower cost for all trails in National Park System units. The Sketchbook (2007) and other resources are available online at the NPS Sustainable Trails page at http://www.nps.gov/dsc/trails.htm.

The Sketchbook (2007) presents a rational and sensible process for: assessing existing trails for sustainability criteria; planning, establishing and designing new trails; and maintaining, rehabilitating and armoring trails to bring them up to sustainable condition. The Sketchbook (2007) builds upon the language of RM #77, which defines sustainability of natural surface trails, and explains the purpose and means of achieving it. Using the Sketchbook (2007) as the trail planning and design tool reference for backcountry trails would significantly improve sustainability (minimum impact to natural and cultural resources) at a lower cost over the long term. The Sketchbook (2007) was written for use by trail planners for use on all trails, not just hiking and equestrian trails, and principles in the Sketchbook (2007) can be applied to create new backcountry bicycle trails or to adapt existing hiking and equestrian trails for bicycle use. Graphics in the Sketchbook (2007) support and illustrate the concepts presented.

The interdisciplinary team for each park or trail project should apply the NPS sustainable trail principles and guidelines generally, but sufficiently so that the proposed design and construction techniques can be available for comment as a part of the NEPA process. The Sketchbook (2007) shows a hierarchy for design solutions on page 51, which can be a starting point for the interdisciplinary team when developing alternatives. The NPS will continually look for best ideas and best practices to promote sustainable trail design and maintenance.

23. *Comment:* The proposed rule should include requirements for monitoring and evaluating the resource impacts and visitor use conflicts caused by opening trails to bicycle use. Monitoring records should be open to the public upon request.

Response: The final rule requires that planning for bicycle use includes the consideration of methods for protecting natural and cultural resources. Monitoring for resource impacts is a

key component of this requirement. NPS monitoring records are generally open to the public and available on request.

24. *Comment:* The proposed rule should be abandoned because the NPS does not have the funding and staff needed to effectively enforce, monitor, and maintain the designation of additional trails for bicycle use. Accordingly, the NPS will not be able to meet the needs of public safety and protect natural and cultural resources. The NPS should evaluate the costs of implementing the proposed rule, particularly of rescue and medical response, which is necessary for visitor access to the backcountry. Mountain bike damage in parks costs taxpayers and agencies thousands of dollars per year in additional policing and repairs.

Response: This rule changes the process for authorizing bicycle trails at individual parks. Issues such as funding, staffing, costs, monitoring, enforcement, and emergency medical services, and whether it is provided by the NPS or others, are best resolved through planning and impact analysis on a park-specific, trail-specific basis. The rule's planning requirements ensure that these issues will be analyzed. The NPS recognizes that trails require maintenance and policing; however, bicycle use does not necessarily significantly increase costs for maintenance or ranger services if the trails are well planned and constructed. The NPS will not approve any bicycle use that cannot be properly managed.

The NPS Office of Public Health data from Golden Gate National Recreation Area (2004-2011), a National Park System unit that allows bicycling on park roads and also on backcountry trails, recorded 445 biking accidents. On-road accidents accounted for 90 percent of the total; off-road (mountain) biking 5 percent; and 5 percent were unspecified. Of the road accidents, 20 percent were with rented bicycles.

25. *Comment:* The proposed rule should stipulate that where two or more parks share one or more common boundaries (e.g., federal and state), all of the adjoining park units must agree before bicycle use is allowed in that area.

Response: The NPS generally agrees, but believes this situation will only arise in a very limited number of circumstances. Section 8.1.2 of NPS Management Policies 2006 requires that the NPS "coordinate with appropriate state authorities regarding activities that are subject to state regulation or to joint federal/state regulation." The rule's planning requirements will ensure that, where it exists, the issue will be considered.

26. *Comment:* The proposed rule does not require comprehensive recreation planning and there are no existing NPS planning standards for the development of such plans.

Response: This final rule establishes minimum requirements for bicycle use planning. The current regulations simply require promulgation of a special regulation to allow bicycle use on existing or new trails outside of a developed area. This revision requires that not only must bicycle use on trails be addressed in a planning document which will evaluate key planning criteria (such as sustainable trail design, lifecycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and integration with commercial services and alternative transportation systems (if applicable)), bicycle use must also be addressed by a site-specific NEPA analysis.

Structure and Clarity of Proposed Rule

27. *Comment:* Section 4.30(e) of the proposed rule suggests that existing trails are presumed to be open to bicycle use unless and until a superintendent closes them pursuant to 36 CFR 1.5 and 1.7. The proposed rule should be revised to clarify that bicycle use on existing or new trails will not be permitted unless and until the requirements of 36 CFR 4.30 are met.

Response: That was not the intent, and in the final rule the NPS has added the phrase "[b]efore [designating a trail for bicycle use] the superintendent must ensure that all of the following requirements [of § 4.30] have been satisfied" to paragraph (d) to clarify that designating bicycle use on existing or new trails will not be permitted unless and until the requirements of 36 CFR 4.30 are met.

28. *Comment:* The designation of new trails for bicycle use outside of developed areas should not require the promulgation of a special regulation, but instead should be treated the same as designating existing trails for bicycle use. New trails offer the greatest opportunity to mitigate environmental and social impacts.

Response: The NPS agrees that constructing new trails using sustainable principles and guidelines provides opportunities to mitigate environmental impacts adjacent to the trail and could provide separation of user groups and consequently reduce conflicts. Nevertheless, constructing trails in undeveloped areas of a park can have significant impacts and result in significant long-term modification in the resource management objectives of a park area. Accordingly, the NPS believes that new trails for bicycle use outside of developed areas should continue to be authorized only through special regulations.

29. *Comment:* The proposed rule could allow bicycle use on a new trail outside of developed areas without a special regulation. This could happen if a new trail is initially designated for non-bicycle uses only (e.g., hiking) and then, once built and deemed an existing trail, is designated also for bicycle use. This loophole should be closed.

Response: Although the commenter is correct that a special regulation may not be required in such circumstances, we believe that the process required under the regulations remains fully protective of park resources and will fully engage the public in any decision to

designate such a trail. A decision to build a new trail for any non-biking purpose (e.g., hiking) would still have been subject to appropriate NEPA compliance. Later, if a designation of that trail for bicycling use is to be made, this regulation requires specific bike use planning, compliance with NEPA (including public notice and comment), and a written determination that park resources will be protected (including public notice and comment) by the superintendent and approved by the respective Regional Director. To the extent the commenter is suggesting that some park officials might seek to utilize such a process to avoid the rulemaking requirement, although we believe that is unlikely, the required processes will ensure that the public is fully engaged and the potential for controversy as a result is itself a check on any such misuse. Accordingly, we have declined to adopt this recommendation in the final rule.

30. *Comment:* The proposed rule should provide guidance on what types of uses would trigger federal rulemaking under the criteria set forth in 36 CFR 1.5(b).

Response: In a change from the proposed rule, the NPS does not intend 36 CFR 1.5(b) to apply to the designation of trails for bicycle use under 36 CFR 4.30, and has accordingly deleted the reference to 36 CFR 1.5(b) in the regulatory text. The final rule authorizes designation of existing trails without rulemaking, if the enhanced planning and compliance requirements have been met, including public notices and opportunities for public comment, and if there are no significant impacts. The NPS believes that this requirement, in addition to a written determination that bicycle use on the trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources, make the application of 36 CFR 1.5 to the designation of bicycle use on existing trails repetitive and unnecessary.

31. *Comment:* The proposed rule should include a definition of "administrative road" and distinguish between administrative roads within and outside of developed areas. Designation of bicycle use on administrative roads which are closed to the public and outside of developed areas should require public comment and a decision according to NEPA. The proposed rule should state that administrative roads are closed to bicycle use until opened.

Response: The rule defines administrative roads as "roads closed to motor vehicle use by the public, but open to motor vehicle use for administrative purposes" (e.g., service roads, fire roads). The rule provides that administrative roads may be designated for bicycle use following a determination by the superintendent that such bicycle use is consistent with protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources. Once the rule is effective, administrative roads are closed to bicycle use unless opened. Opening an administrative road to bicycle use requires compliance with NEPA, although under some circumstances a categorical exclusion may apply. The NPS does not see a need to distinguish between administrative roads within and outside of developed areas for the purpose of allowing bicycle use. Roads wide enough to accommodate vehicular traffic are generally capable of safely accommodating multiple non-motorized user groups, and this must be specifically determined by the superintendent in writing prior to designating administrative roads for bicycle use.

32. *Comment:* The proposed rule should be amended to clarify that designations can only be made after completion of the park planning document referenced in paragraph (b)(1) and both of the 30-day public review and comment periods referenced in paragraphs (b)(2) and (3).

Response: The NPS agrees and has made this change. The NPS intended the proposed rule to require completion of the steps in paragraphs (b)(1)-(3) before designation could occur. In

the final rule, the NPS has split the requirements of proposed paragraph (b)(3) into (d)(3) and (d)(4)(i), and has added the phrase "[b]efore [designating a trail for bicycle use] the superintendent must ensure that all of the following requirements [of § 4.30] have been satisfied" to paragraph (d) to clarify that bicycle use on existing or new trails will not be permitted unless and until the requirements of 36 CFR 4.30 are met.

33. *Comment:* The proposed rule should be amended to clarify that the EA or EIS required under paragraph (b)(2) be performed on a trail-specific (not park-wide) level.

Response: The final rule (now at paragraph (d)(2)) requires that an impact analysis must be conducted on bicycle use in the park as well as on the specific trails proposed to be designated for bicycle use. The NPS declines to limit the scope of the impact analysis to only those trails considered for bicycle use, as a broader analysis may be required to address indirect and cumulative impacts, and avoid segmentation of an action. For example, a park plan and associated NEPA document may consider bicycle use among a wider range of visitor uses, which would require an impact analysis beyond that suggested by the commenter.

34. *Comment:* The 30-day public review and comment period after the issuance of an EA under paragraph (b)(2) should be eliminated. This is duplicative with the 30-day public review and comment period in paragraph (b)(3) which is sufficient.

Response: The first opportunity for public comment on the EA, in the final rule at paragraph (d)(2), is important and appropriate for this regulation. The CEQ regulations require the NPS to involve environmental agencies, applicants, and the public, to the extent practicable, in preparing EAs. Moreover, the NPS encourages the public to use this opportunity to make thoughtful, rational suggestions on the impacts and alternatives in the EA. Some of the most constructive and beneficial interaction between the public and the NPS occurs when citizens

identify or develop other reasonable alternatives or mitigation strategies that the agency can consider and evaluate in the EA process. The second opportunity for public comment provided by this rule in paragraph (d)(4)(i), follows release of the superintendent's written determination that bicycle use is consistent with the resources, values, and purposes of the park area. Similar to the period of public comment allowed for in rulemaking, it gives the public an opportunity to comment on the agency's decision to implement the bicycle use plan before the decision is made final.

In response to public comment, the final rule has eliminated the requirement for publication of a *Federal Register* notice announcing the first 30-day opportunity for public comment on the EA. The NPS will instead follow its policy guidelines that encourage a variety of other notification methods. However, because the written determination process is an alternative to special regulation rulemaking, the NPS will retain the *Federal Register* notice requirement to announce the second 30-day opportunity for public review and comment on the determination.

Socioeconomic Impacts

35. *Comment:* The proposed rule will improve opportunities for biking in the parks which will increase park visitation and provide economic benefits to the parks and nearby communities.

Response: This rule changes the methods by which bicycle trails are authorized at individual park areas. It does not actually designate a bicycle trail in any park. Nevertheless, this rule will generate positive benefits through procedural specificity and clarity and improved management of bicycle use within parks.

36. *Comment:* The proposed rule will increase bicycle use in the parks. This will have a negative economic impact as parks will lose revenue from hikers and equestrians who will visit other areas where they can enjoy the outdoors safely and in solitude, without interference from mechanical devices.

Response: According to a U.S. Forest Service study, "Updated Outdoor Recreation Use Values on National Forests and Other Public Lands." General Technical Report PNW-GTR-658. U.S. Department of Agriculture, Forest Service (Loomis, J. 2005.), the net economic benefits of mountain biking generally exceed those of either hiking or horseback riding. Nevertheless, the rule provides that new bicycle use on existing trails can be designated only if there will be no significant impacts, including impacts to visitor safety and user conflict. Therefore, any increased bicycle use resulting from this rule can only happen if the park determines that the designation of bicycle use will not impose significant impacts on other users, including hikers and equestrians.

Changes from the Proposed Rule

After taking the public comments into consideration and after additional review, the NPS made the following changes in the final rule:

36 CFR 4.30 Paragraph in the Final Rule	Substantive Changes from the Proposed Rule in the Final Rule
(a)	No change
(b)	Provision regarding administrative roads moved from (d) to (b); superintendent's determination required instead of 36 CFR 1.5 to designate for bicycle use
(c)	Reserved
(d)	Provision regarding existing trails moved from (b) to (d); reference to 36 CFR 1.5 deleted
(d)(1)	Minimum requirements for plan established
(d)(2)	Requires evaluating the effects of bicycle use on specific trail(s); Federal Register notice requirement deleted
(d)(3)	Requirement of superintendent's determination moved from (b)(3)
(d)(4)	Introductory text added
(d)(4)(i)	30-day public review and comment of superintendent's determination moved from (b)(3); no significant impact required; and Regional Director must approve determination by superintendent for designation
(d)(4)(ii)	Requires statement documenting bicycle use cannot be authorized when there may be significant impacts
(e)	Provision regarding bicycle use on new trails moved from (c) to (e); NPS sustainable trail guidelines required
(e)(1)	Consolidated requirements from (c)(1) and (c)(2)(ii); clarified requirements for constructing new trails in parks' developed areas
(e)(2)	Consolidated requirements from (c)(1) and (c)(2)(i); clarified requirements for constructing new trails outside of parks' developed areas
(f)	Superintendents given separate authority from 36 CFR 1.5 to impose or terminate closures, restrictions or conditions
(g)(1)	Clarified applicability of Part 4 on roads and trails; adds § 4.15 exception
(g)(2)	Consolidates (f) and authority of 36 CFR 4.2 to clarify that state bicycle laws apply
(h)(1)	Clarified that off-road bicycling is prohibited unless authorized; implicit in proposed rule, explicit in existing regulation at 36 CFR 4.30(a)
(h)(2)-(5)	Renumbered as (h)(2)-(5) from (g)(1)-(4); no other changes
(h)(6)	Specifies that violations of state law are prohibited

Compliance with Other Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report titled, "Benefit-Cost/Unfunded Mandates Act Analysis, Small Business and Regulatory Flexibility Act Analysis" (U.S. Department of the Interior, National Park Service, Environmental Quality Division) available on-line at:

http://www.nature.nps.gov/socialscience/docs/RegulatoryAnalyses2012.pdf.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

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

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on information contained in the report titled "Benefit-Cost/Unfunded Mandates Act Analysis, Small Business and Regulatory Flexibility Act Analysis" (U.S. Department of the Interior, National Park Service, Environmental Quality Division) available online at http://www.nature.nps.gov/socialscience/docs/RegulatoryAnalyses2012.pdf.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The designated bicycle routes will be located entirely within NPS Units and will not result in direct expenditures by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. No taking of real or personal property will occur as a result of this rule. Access to private property located within or adjacent to National Park Service parks will not be affected by this rule, and this rule does not regulate uses of private property. Therefore, a takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Summary Impact Statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

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

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

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

Consultation with Indian tribes (Executive Order 13175).

Under the criteria in Executive Order 13175 we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule is administrative, legal and procedural in nature. The effect on tribes is too speculative for analysis at this stage,

and will be evaluated later on a case-by-case basis as new bicycle trail designations are considered.

Paperwork Reduction Act (PRA).

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

National Environmental Policy Act (NEPA).

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the NEPA.

Effects on the Energy Supply (Executive Order 13211).

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

Drafting Information:

The primary author of this rule is Russel J. Wilson, Chief, Regulations and Special Park Uses, National Park Service. Michael Tiernan, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior; Michael B. Edwards, Environmental Protection Specialist, Environmental Quality Division, Planning and Compliance Branch, National Park Service; Hugh Duffy, PLA, ASLA, PMP, LEED Green Associate, Project Manager, Denver Service Center, National Park Service; and CDR Sara B. Newman, DrPH, MCP, US Public Health Service, Deputy Chief, Office of Risk Management, National Park Service, also contributed.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

For the reasons stated in the preamble 36 CFR Part 4 is amended as set forth below:

PART 4--VEHICLES AND TRAFFIC SAFETY

1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 4.30 is revised to read as follows:

§ 4.30 Bicycles.

(a) *Park roads.* The use of a bicycle is permitted on park roads and in parking areas that are otherwise open for motor vehicle use by the general public.

(b) *Administrative roads.* Administrative roads are roads that are closed to motor vehicle use by the public, but open to motor vehicle use for administrative purposes. The superintendent may authorize bicycle use on an administrative road. Before authorizing bicycle use on an administrative road the superintendent must:

(1) Make a written determination that such bicycle use is consistent with protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources; and

(2) Notify the public through one or more methods listed in § 1.7(a) of this chapter.

(c) [Reserved]

(d) *Existing trails.* The superintendent may authorize by designation bicycle use on a hiking or horse trail that currently exists on the ground and does not require any construction or significant modification to accommodate bicycles. Before doing so, the superintendent must ensure that all of the following requirements have been satisfied:

(1) The superintendent must complete a park planning document that addresses bicycle use on the specific trail and that includes an evaluation of:

(i) The suitability of the trail surface and soil conditions for accommodating bicycle use. The evaluation must include any maintenance, minor rehabilitation or armoring that is necessary to upgrade the trail to sustainable condition; and

(ii) Life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, methods to protect natural and cultural resources and mitigate impacts, and integration with commercial services and alternative transportation systems (if applicable).

(2) The superintendent must complete either an environmental assessment (EA) or an environmental impact statement (EIS) evaluating the effects of bicycle use in the park and on the specific trail. The superintendent must provide the public with notice of the availability of the EA and at least 30 days to review and comment on an EA completed under this section.

(3) The superintendent must complete a written determination stating that the addition of bicycle use on the existing hiking or horse trail is consistent with the protection of the park area's

natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources.

(4)(i) If under paragraph (d)(2) of this section, the resulting Finding of No Significant Impact, Record of Decision (ROD), or an amended ROD concludes that bicycle use on the specific trail will have no significant impacts, the superintendent must publish a notice in the *Federal Register* providing the public at least 30 days to review and comment on the written determination required by paragraph (d)(3) of this section. After consideration of the comments submitted, the superintendent must obtain the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; or

(ii) If under paragraph (d)(2) of this section, the conclusion is that bicycle use on the specific trail may have a significant impact, the superintendent with the concurrence of the Regional Director must complete a concise written statement for inclusion in the project files that bicycle use cannot be authorized on the specific trail.

(e) *New trails*. This paragraph applies to new trails that do not exist on the ground and therefore would require trail construction activities (such as clearing brush, cutting trees, excavation, or surface treatment). New trails shall be developed and constructed in accordance with appropriate NPS sustainable trail design principles and guidelines. The superintendent may develop, construct, and authorize new trails for bicycle use after:

(1) In a developed area, the superintendent completes the requirements in paragraphs (d)(1) through (d)(3) of this section, publishes a notice in the *Federal Register* providing the public at least 30 days to review and comment on the written determination required by paragraph (d)(3) of this section, and after consideration of the comments submitted, obtains the

Regional Director's written approval of the determination required by paragraph (d)(3) of this section; or

(2) Outside of a developed area, the superintendent completes the requirements in paragraphs (d)(1), (2), and (3) of this section; obtains the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; and promulgates a special regulation authorizing the bicycle use.

(f) *Closures and other use restrictions.* A superintendent may limit or restrict or impose conditions on bicycle use or may close any park road, parking area, administrative road, trail, or portion thereof to bicycle use, or terminate such condition, closure, limit or restriction after:

(1) Taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives; and

(2) Notifying the public through one or more methods listed in § 1.7(a) of this chapter.

(g) *Other requirements*. (1) A person operating a bicycle on any park road, parking area, administrative road or designated trail is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11, 4.14, and 4.15.

(2) Unless specifically addressed by regulations in this chapter, the use of a bicycle within a park area is governed by State law. State law concerning bicycle use that is now or may later be in effect is adopted and made a part of this section.

(h) *Prohibited acts.* The following are prohibited: (1) Bicycle riding off of park roads and parking areas, except on administrative roads and trails that have been authorized for bicycle use.

(2) Possessing a bicycle in a wilderness area established by Federal statute.

(3) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light

or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector that is visible from at least 200 feet to the rear.

(4) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(5) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

(6) Any violation of State law adopted by this section.

_____ _June 20, 2012__

Rachel Jacobson

Acting Assistant Secretary for Fish and Wildlife and Parks Date

[FR Doc. 2012-16466 Filed 07/05/2012 at 8:45 am; Publication Date: 07/06/2012]