

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Parts 212, 261, and 295**

RIN 0596-AB67

Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads**AGENCY:** Forest Service, USDA.**ACTION:** Notice of proposed rulemaking; request for comment.

SUMMARY: This proposed rule would revise regulations concerning the development, use, maintenance, and management of the national forest transportation system. This action is needed to reflect changes in public demand and use of National Forest resources; to better consider scientific information about the adverse environmental impacts of road construction; and to efficiently meet present and future management objectives in balance with available funding. In concert with the proposed revision of Forest Service road system administrative direction published elsewhere in this part of today's **Federal Register**, this rule will help ensure that additions to the Forest Service road system are those deemed essential for National Forest System resource management and use; that, to the extent practicable, construction, reconstruction, and maintenance of roads will minimize adverse environmental impact; and, finally, that unneeded roads are decommissioned and, where indicated, ecological processes are restored. The substantive changes are proposed to part 212, which addresses the forest transportation system. Proposed revisions to parts 261 and 295 are solely to conform terminology to that proposed to part 212. The Forest Service invites written comments and will analyze and consider those comments in development of the final rule.

DATES: Comments must be received in writing by May 2, 2000.**ADDRESSES:** Send written comments to USFS CAET, Attention: Roads, P.O. Box 221090, Salt Lake City, UT 84122.

Send comments electronically to roads/wo__caet-slc@fs.fed.us. All comments received, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Forest Service, 201 14th Street SW, Washington, D.C. 20250. Persons wishing to inspect the comments are

encouraged to call 202-205-1400 to facilitate building entrance.

FOR FURTHER INFORMATION CONTACT:

Heidi Valetkevitch, Office of Communication, 202-205-0914.

SUPPLEMENTARY INFORMATION:**Background**

On January 28, 1998, in an Advance Notice of Proposed Rulemaking (ANPR) (63 FR 4350), the Forest Service announced its intent to revise regulations concerning management of the national forest transportation system. Simultaneously, the Forest Service published a proposed interim rule (63 FR 4351) to temporarily suspend permanent and temporary road construction and reconstruction in certain unroaded areas of National Forest System lands. The purpose of the interim rule was to take a "timeout" for 18 months while the Forest Service developed a new long-term road management policy and new analytical tools to provide a more ecological approach to analyzing existing and future road needs.

A final interim rule, issued on February 12, 1999, (64 FR 7289), temporarily suspended permanent and temporary road construction and reconstruction in certain unroaded areas of National Forest System lands. The temporary suspension is effective pending development of a revised forest transportation system policy, or 18 months from the effective date of the interim final rule, whichever is sooner.

Section-by-Section Explanation of Proposed Revisions to 36 CFR Part 212

The Forest Service proposes to revise 36 CFR part 212 to shift the emphasis from transportation development to managing access within the capability of the land. The proposed revision reflects changes in public opinion, demand, and use of National Forest resources and considers not only possible economic and social benefits associated with road construction and use but also scientific information about the adverse environmental impacts of road construction. In the proposed revision, emphasis is placed on providing administrative and public access and safety within a context of maintaining and restoring healthy ecosystems. The proposal shifts the focus of road management from development and construction of new roads to maintaining needed roads and decommissioning unneeded roads.

Proposed Change in Nomenclature. Consistent with the intent to shift emphasis from road development to environmentally sound access, the term

"forest development transportation" is revised throughout Part 212 to remove the word "development."

Proposed § 212.1 Definitions. The term "forest transportation plan" is revised to refer to "forest transportation atlas" to more clearly reflect the nature and intent of this document. Also, definitions are added for "road, unclassified road, and classified road." These terms are necessary to understand and implement the requirements of proposed § 212.5 regarding the minimum Forest Service road system. The proposed definition of a road is a "A motor vehicle travelway over 50 inches, unless classified and managed as a trail. A road may be classified or unclassified." The 50-inch dimension was derived to generally distinguish between the largest of the motorized trail vehicles and the smallest of the highway vehicles. This definition would permit some trails to be over 50 inches wide as long as they are classified and managed as a trail. The terms "classified" and "unclassified" as used in the context of Forest Service roads are somewhat new. The term "unclassified" was first used in the September 1998 draft report, "The National Forest Road System and Its Use," which was posted on the Worldwide Web www.fs.us/new/roads. Its intent was to identify for management and analysis purposes the existence of those roads that were not intended to be a part of the permanent transportation system. The term "classified road" was used in the Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas Interim Rule, 36 CFR part 212 (64 FR 7289; Feb. 12, 1999) to describe those roads that were constructed or maintained for long-term highway use. These definitions were also used in the Road Analysis Report (August 1999). Finally, the definitions for the terms classified, unclassified, and road as used in this proposal have been modified slightly for clarity and to reflect comments received. The proposed new road terms and their definitions are not intended to have an effect on the disposition of particular roads, only on how they are characterized for the purposes of analysis and for documentation in the forest transportation atlas.

Proposed § 212.2 Forest Transportation Program. The proposed rule would revise this section to update and clarify the required information to be collected and displayed in the forest transportation atlas (formerly called the transportation plan). Additionally, the section would require the use of a science-based analysis to identify

needed transportation facilities. The proposed rule also would remove paragraph (c), which addresses allocation of funds, because the statute on which this paragraph was based has been repealed.

Proposed § 212.5 Road System Management. This section of the proposed rule would direct agency officials to identify the minimum transportation system needed to administer and protect National Forest System lands using a science-based transportation analysis and recognizing likely, realistic funding estimates. Previously, forest transportation policy focused on road development and maintenance, and only limited attention has been paid to “decommissioning” roads. Given the shift in the focus of road management, new direction is needed to ensure that agency officials identify and decommission unneeded roads. This proposed revision to § 212.5 would require that if roads are determined to be unneeded, priority should be given to decommissioning those roads that pose the greatest risk of environmental damage.

The proposed rule does not establish any specific science-based analysis as the standard to be used; rather, it preserves Forest Service flexibility to further describe science-based transportation analysis in conjunction with other ecosystem analyses and to adjust the process in response to new scientific knowledge of road and resource management interactions. Science-based road analysis is discussed further in the proposed administrative direction published elsewhere in this part of today’s **Federal Register**.

Proposed Conforming Amendments to 36 CFR Parts 261 and 295

The rules at 36 CFR part 261 give notice of prohibited acts on National Forest System lands. There are numerous references in these prohibitions to “forest transportation development roads.” This proposed rule would remove the term “development” from various sections to conform the terminology to that proposed in part 212. Also, the rules at 36 CFR part 295 govern use of motor vehicles off forest development roads. This proposed rule would remove the term “development” from the heading and sections of Part 295 to conform the terminology to that proposed in Part 212. No substantive revisions are proposed to these parts.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of

Management and Budget (OMB) has determined that this is a significant rule as defined by E.O. 12866 because of the importance of the Forest Service road system and the level of public interest expressed in the promulgation of the interim rule. Accordingly, OMB has reviewed this proposed rule. A cost-benefit analysis has been prepared as part of the environmental assessment on this proposal.

The basic approach is to issue new regulations consistent with emerging road management policy which encourages investing limited road management funds in a transportation system that best serves the current and anticipated management objectives and public uses of National Forest System lands. This new policy emphasizes investing in the process of decommissioning unneeded roads and reconstructing and maintaining the most heavily used roads. New road construction must be supported by rigorous analysis. Agency road management costs are not expected to change. Although this rule requires that the Agency use a new science-based roads analysis when making decisions about road construction, the Agency currently conducts some transportation analysis in the context of NEPA requirements or other forest planning assessments. Thus, the Agency does not expect an incremental increase of administrative costs due to new administrative requirements under this proposal. Most of the economic effects have not been quantified. They have been discussed and evaluated on a qualitative basis. Timber harvesting is an exception where quantitative data was reasonably available. A summary of the economic effects of the proposed change in road management strategy are as follows:

Roaded Areas: The differences between the no action alternative and the proposed action alternative tend to be minor. No significant difference in economic benefits or costs is expected for ease of access, public safety, law enforcement, timber management, and wilderness or heritage resources. Potential positive economic effects are expected for fire management, insect and disease management, noxious weed control, water and air quality, wildlife and fish values, and passive use values. These positive effects result from road decommissioning. Different types of recreation use are affected in different ways—some positive and some negative.

Roadless Areas (inventoried roadless and other unroaded areas): The differences between the no-action alternative and the proposed action

alternative would be greatest during the transition phase. No differences are expected for access, public safety, and law enforcement. The only negative effects expected during the transition period would be from reduced timber harvest and mineral exploration and extraction. If all road construction were delayed during the transition in all of the roadless areas, the maximum potential total reduction in timber harvest would be 351 million board feet of timber per year. The cost associated with this reduced timber harvest would be \$42 million annually. Also lost, as a result of decreased timber production, would be approximately 3,700 jobs and \$10 million in payments-to-states each year. This loss in payments-to-states would be partially offset by Payments in Lieu of Taxes. Positive effects are expected for fire prevention, insect and disease management, noxious weeds, watershed and air quality, wildlife and fish, wilderness, and passive use values. These positive effects result from lack of new road development. The effects on recreation and heritage resources are complex and ambiguous and depend upon the type of activity—some are positive and some are negative. Less access reduces the level of participation. However, the quality of wilderness type recreation use is protected and vandalism of heritage sites is lessened.

In summary, the proposed regulations will permit a reallocation of funds to management activities that are consistent with present resource management direction. While the agency could not quantify or monetize many of the impacts of this proposed rule, the agency thoroughly considered both the potential quantified and qualitatively-discussed costs and benefits. Pursuant to requirements of Executive Order 12866, the agency carefully assessed alternative regulatory approaches and is proposing this rule only upon making a reasoned determination that the benefits justify the costs. See the “Environmental Impact” section which follows for availability of the full cost-benefit analysis.

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 USC 601 et seq.). This proposed rule primarily involves agency terminology and broad principles to guide the planning and management of the Forest Service road system and has no direct or indirect financial or other impact on small businesses. Therefore, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments, and on the private sector. This proposed rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Forest Service’s assessment is that this proposed rule falls within this category of exclusion. Nevertheless, to further the intent of the National Environmental Policy Act, the agency has elected to prepare an environmental assessment. This document may be obtained from the internet at www.fs.fed.us/news/roads/ea2.htm or by writing to the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, DC 20090. Comments on the environmental assessment should be submitted with any comments on the proposed rule.

No Takings Implications

This proposed rule has been reviewed for its impact on private property rights under Executive Order 12630. It has been determined that this proposed rule does not pose a risk of taking Constitutionally-protected private property; in fact, the proposed rule honors access to private property pursuant to statute and to outstanding or reserved rights.

Civil Justice Reform Act

This proposed rule revision has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed revision would (1) Preempt all State and local laws and regulations that are found to be in conflict with or that would impede its full implementation; (2) would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands; and (3) does not require administrative proceedings before parties may file suit in court challenging these provisions.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 12612 and has made a preliminary assessment that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time. In addition, the agency has reviewed the consultation requirements under Executive Order 13132, effective November 2, 1999. This new Order calls for enhanced consultation with State and local governmental officials and emphasizes increased sensitivity to their concerns.

In the spirit of these new requirements, the agency has already carefully considered in the development of this proposed rule the comments received from States, tribes, and local governments in response to the Advanced Notice of Proposed Rulemaking published January 28, 1998 (63 FR 4350). In proposed section 212.1, the definition of “forest transportation atlas” recognizes the need to consider forest resources upon which communities depend. Section 212.5 of the proposed rule would require agency officials to use a science-based road analysis process and involve the public in identifying the Forest Service road system. Also, the proposed rule at section 212.5(b)(1) calls for consultation with affected State, tribal, and local governments in identifying transportation needs. In addition to public comments on this Notice, the agency will meet with State, tribal, and local government officials to clarify understanding of the proposed rule and to understand their concerns. Prior to adopting a final rule, the agency will consider the extent to which additional consultation is appropriate under Executive Order 13132.

Conclusion

The Forest Service proposes to revise its regulations concerning the national forest transportation system to shift emphasis from transportation development to managing access within the capability of the land. The proposed revisions to 36 CFR parts 212, 261, and 295, in conjunction with proposed administrative direction published elsewhere in this part today, will provide the framework for achieving this new emphasis. The Forest Service invites written comments and will consider those comments in developing the final rule that will be published in the **Federal Register**. Additionally, Forest Supervisors may hold meetings to provide an opportunity for local comment and clarification of this proposed rulemaking.

List of Subjects

36 CFR Part 212

Highways and roads, National forests, Public lands—rights-of-way, and Transportation.

36 CFR Part 261

Law enforcement, Investigations, National forests, and Seizures and forfeitures.

36 CFR Part 295

National forests and Traffic regulations.

For the reasons set forth in the preamble, the Forest Service proposes to amend Chapter II of Title 36 of the Code of Federal Regulations as follows:

PART 212—ADMINISTRATION OF THE FOREST TRANSPORTATION SYSTEM

1. The authority citation for Part 212 continues to read as follows:

Authority: 16 U.S.C. 551. 23 U.S.C. 205.

2. Revise the heading for Part 212 as set out above.

3. Remove the words “forest development” and, in their place, add the word “forest” in the following places:

- a. § 212.1(e) heading;
- b. § 212.1(h) text;
- c. § 212.1(i) text;
- d. § 212.1(j) text;
- e. § 212.1(k) text;
- f. § 212.2 heading;
- g. § 212.2(b) text;
- h. § 212.4(a) text; and
- i. § 212.4(b) text.

4. Amend § 212.1 as follows:

a. Remove the paragraph designations and arrange the terms in alphabetical order.

b. Remove the definitions for “forest development transportation plan” and

“forest development transportation facility,” and add definitions, in alphabetical order, for “forest transportation atlas,” “forest transportation facility” and “road” to read as follows:

§ 212.1 Definitions.

* * * * *

Forest transportation atlas. An inventory, description, and display of roads, trails, and airfields that are important to the management and use of National Forest System lands or to the development and use of resources upon which communities within or adjacent to the National Forests depend and associated information.

Forest transportation facility. A classified road, trail, airfield, bridge, culvert, parking lot, log transfer facility, road safety and other appurtenances in a national forest or grassland transportation network and under Forest Service jurisdiction that is all or partly within or adjacent to National Forest System lands.

* * * * *

Road. A motor vehicle travelway over 50 inches wide, unless classified and managed as a trail. A road may be classified or unclassified.

(1) *Classified road.* Roads within National Forest System lands planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads.

(2) *Unclassified roads.* Roads not intended to be part of, and not managed as part of, the forest transportation system, such as temporary roads, unplanned roads, off-road vehicle tracks, and abandoned travelways.

* * * * *

5. Amend § 212.2 by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 212.2 Forest transportation program.

(a) For each national forest, grassland, and experimental forest and any other unit of the National Forest System, the Forest Supervisor or other responsible official must prepare and keep current a forest transportation atlas. The purpose of the atlas is to display the system of roads, trails, and airfields of the unit. The identification of transportation facilities needed for management and public access must be based upon a science-based analysis, as cited in the agency directive system (36 CFR 200.4). In order to be used to identify National Forest System transportation facilities, a science-based analysis must provide for consideration of environmental, social, and economic effects and also provide for

consideration, at various ecological scales, of transportation facilities needed to meet resource management objectives.

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§§ 212.5, 212.6, 212.7, 212.10 [Amended]

6. Remove the words “forest development roads” and, in their place, add the words “Forest Service road” in the following places:

- a. § 212.5(a) text;
- b. § 212.6(b) text;
- c. § 212.6(c) text;
- d. § 212.7(a) text; and
- e. § 212.10 heading and text.

7. Amend § 212.5 by adding paragraph (b) to read as follows:

§ 212.5 Road system management.

* * * * *

(b) *Forest Service road system.*

(1) *Identification of system.* In planning for the management of the Forest Service road system for each national forest and grassland, agency officials shall identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. The road system for each unit of the National Forest System must be commensurate with the resource objectives adopted in the land and resource management plan, reflect likely funding expectations, and, to the extent practicable, minimize the adverse environmental impacts associated with road construction, reconstruction, and maintenance. To provide essential information about road management opportunities within a national forest or grassland and to help identify the road system that best meets applicable statutory and regulatory requirements, Forest Service officials shall conduct a science-based analysis at appropriate scales which includes opportunities for public involvement and consultation with state, local, and tribal governments.

(2) *Identification of unneeded roads.* In identifying the forest road system, forest officers also shall identify those roads under Forest Service jurisdiction that are not needed to meet forest resource management objectives and that, therefore, should be decommissioned. Decommissioning roads involves restoring them to a more natural state through activities such as reestablishing former drainage patterns, stabilizing slopes, and restoring vegetation. In scheduling the decommissioning of roads, forest officials shall give priority to decommissioning those roads that pose the greatest risk to public safety or to environmental quality. Other unneeded

roads should be scheduled for decommissioning commensurate with their potential risk and available funding.

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8. Amend § 212.20 by revising the heading and paragraph (a) to read as follows:

§ 212.20 National Forest trail system operation.

(a) *Forest Service trails.* Forest Service trails shall be identified on a map available to the public at the offices of the Forest Supervisors and District Rangers and shall be marked on the ground by appropriate signs which reasonably bring their location to the attention of the public.

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PART 261—PROHIBITIONS

9. The authority citation for Part 261 continues to read as follows:

Authority: 16 U.S.C. 551, 16 U.S.C. 472.

10. In the following places, remove the words “forest development road” or “forest development roads” and, in their respective places, add the words “Forest Service road” or “Forest Service roads”:

- a. § 261.1(a)(1) text;
- b. § 261.1 (a)(3) text;
- c. § 261.2 text;
- d. § 261.10(d)(2) text;
- e. § 261.12 heading;
- f. § 261.50(b) text;
- g. § 261.50(f) text; and
- h. § 261.56 heading and text.

PART 295—USE OF MOTOR VEHICLES OFF FOREST SERVICE ROADS

11. Revise the heading for Part 295 as set out above.

12. The authority citation for Part 295 continues to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7 U.S.C. 1011) E.O. 11644, 11989 (42 FR 26959).

13. In § 295.1, remove the words “National Forest development roads” and, in their place, add the words “Forest Service roads.”

14. Remove the words “forest development roads” and, in their place, add “Forest Service roads” in the following places:

- (a) § 295.2 heading, and
- (b) § 295.5 heading.

Dated: February 25, 2000.

Mike Dombeck,
Chief.

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