

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 294**

RIN 0596-AB77

Special Areas; Roadless Area Conservation**AGENCY:** Forest Service, USDA.**ACTION:** Notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service is proposing new regulations to protect certain roadless areas within the National Forest System. This proposed rulemaking would prohibit road construction and reconstruction in most inventoried roadless areas of the National Forest System and require evaluation of roadless area characteristics in the context of overall multiple-use objectives during land and resource management plan revisions. This proposal is in response to strong public sentiment for protecting roadless areas and the clean water, biological diversity, wildlife habitat, forest health, dispersed recreational opportunities, and other public benefits provided by these areas. This action also responds to budgetary concerns and the need to balance forest management objectives with funding priorities. The intent of this rulemaking is to provide lasting protection in the context of multiple-use management for inventoried roadless areas and other unroaded areas within the National Forest System. The Forest Service invites written comments on this proposed rule and will analyze and consider those comments in the development of a final rule.

DATES: Written comments must be received by July 17, 2000.

ADDRESSES: Send written comments to the USDA Forest Service—CAET, Attention: Roadless Areas Proposed Rule, P.O. Box 221090, Salt Lake City, Utah, 84122. Reviewers, who wish to send comment by e-mail, may do so by accessing the worldwide web at roadless.fs.fed.us and selecting the comment option. Comments may also be sent via fax to 877-703-2494.

Comments received in response to this rulemaking, including names and addresses when provided, will be considered part of the public record and will be available for public inspection and copying.

A copy of the Draft Environmental Impact Statement (DEIS), the DEIS Summary, and other information related to this rulemaking is available at the roadless.fs.fed.us website. Reviewers

may request printed copies or compact disks, as available, of the Draft Environmental Impact Statement and the Summary by writing to the Rocky Mountain Research Station, Publication Distribution, 240 West Prospect Road, Fort Collins, CO 80526-2098. Fax orders will be accepted at 800-777-5805.

When ordering, requesters must specify if they wish to receive the summary or full set of documents and if the material should be provided in print or on disk. Additional information is available at the roadless.fs.fed.us website as well as by calling the number listed under the **FOR FURTHER INFORMATION CONTACT** heading.

FOR FURTHER INFORMATION CONTACT: Scott Conroy, Project Director, (703) 605-5299.

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Background

The Forest Service is responsible for managing the lands and resources of the National Forest System, including 192 million acres of land in 42 states, the Virgin Islands, and Puerto Rico. The system is composed of 155 national forests, 20 national grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture. The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), direct that National Forest System lands are to be managed for a variety of uses on a multiple-use basis to provide a continued supply of products, services, and values without impairment of the productivity of the land.

National Forest System Land Designations

The Forest Service used the most recent inventory available for each national forest and grassland to identify the inventoried roadless areas addressed by this rulemaking. It used land and resource management plans, other assessments, and the Roadless Area Review and Evaluation (RARE) II inventory. The Forest Service began identifying roadless areas through RARE I in 1972. In 1979, the agency completed RARE II, a more extensive national inventory of roadless areas. RARE II built on the data in RARE I, and in most cases forest plans and other assessments were built on RARE II. In the limited circumstances where a forest plan or other assessment did not have a more recent inventory of roadless areas, the Forest Service used the RARE II inventory.

Using these inventories, the Forest Service has identified 54.3 million acres of inventoried roadless areas that are the subject of this rulemaking (Table 1). Road building is currently not allowed in 20.5 million of these 54.3 million acres. Many are designated as primitive or semi-primitive recreation areas in existing forest plans. Road building is allowed in the remaining 33.8 million acres of inventoried roadless areas subject to this rule. Within the total 54.3 million acres of inventoried roadless areas, an estimated 2.8 million acres have been roaded since they were inventoried. The remaining 51.5 million acres are the unroaded portions of inventoried roadless areas addressed in the rule.

Table 1 also displays the acreage of Congressionally designated areas and all other National Forest System lands. The National Forest System contains 42.4

million acres of Congressionally designated areas, such as Wilderness or Wild and Scenic Rivers. In addition to inventoried roadless areas and areas designated by Congress, there are 95.2 million acres of other National Forest System lands. There are approximately

386,000 miles of Forest Service roads, as well as other county, state, and federal roads, in these 95.2 million acres. However, some of these 95.2 million acres are unroaded areas where conservation of roadless characteristics may be desirable. Under current policy

and forest plan direction, road building continues to be allowed in a substantial portion of the 95.2 million acres of other National Forest System lands and the 33.8 million acres of inventoried roadless areas.

TABLE 1.—NATIONAL FOREST SYSTEM DESIGNATIONS

	Inventoried Roadless Areas			Wilderness ¹ and other areas designated by Congress	All other National Forest System Lands
	Total	Roads allowed	Roads not allowed		
Acres In Millions	54.3	33.8	20.5	42.4	95.2
Percentage of Total National Forest System	28.0	17.0	11.0	22.0	50.0

¹ Road construction is not allowed in the 35 million acres in the National Wilderness Preservation System.

Management of Roadless Areas

The Forest Service presently manages a 386,000-mile road system that supports a wide variety of uses, activities, and management actions. Areas without roads have inherent characteristics and values that are becoming scarce in an increasingly developed landscape. While National Forest System inventoried roadless areas represent only about two percent of the United States' land base, they provide significant opportunities for dispersed recreation, sources of public drinking water, and large undisturbed landscapes that provide privacy and seclusion. In addition, these areas serve as bulwarks against the spread of invasive species and often provide important habitat for rare plant and animal species, support the diversity of native species, and provide opportunities for monitoring and research. Roadless areas remain roadless due to the difficulties in developing facilities, roads, and trails in rugged terrain; the high cost of development; the environmental sensitivity and high ecological values of roadless areas; low suitability for timber production; designated use for unroaded forms of recreation; controversy associated with development of roadless areas; and other factors.

Under current agency management policies, local agency officials have the authority to make decisions about road construction in the national forests and grasslands on a case-by-case basis. Agency officials make such decisions at the local level either through the forest planning process or through site-specific, project-level decisions. These planning processes require comprehensive public notice and comment. Additional information about the current planning process is included

in the preamble discussion for proposed section 294.13.

Proposed Roadless Area Conservation Rule

The proposed roadless area conservation rule has a two-fold purpose. First, the Forest Service is proposing to immediately stop activities that have the greatest likelihood of degrading desirable characteristics of inventoried roadless areas, based on decisions made at the national level through this public rulemaking process. Second, the Forest Service is proposing to ensure that the significant characteristics of both inventoried roadless and other unroaded areas (that is, generally smaller areas never previously inventoried) are identified and considered through local forest planning efforts. The proposed rule would establish a framework whereby the Forest Service: (1) manages inventoried roadless areas partly by national decisionmaking and partly through local forest planning efforts, and (2) manages other unroaded non-inventoried areas exclusively through the local planning process.

At the national level, the rulemaking would apply to all National Forest System lands and would prohibit road construction in almost all inventoried roadless areas, with a few limited narrow exceptions. The national decision process would reduce the time, expense, and controversy associated with making case-by-case decisions at the local forest level concerning the construction and reconstruction of roads in inventoried roadless areas, and preserve options for dealing with these areas for the future.

The proposed rule also recognizes the role of local forest decisionmaking for management of both inventoried roadless and smaller or uninventoried unroaded areas. The rule would

establish procedures whereby local decisionmakers would consider social and ecological characteristics of inventoried roadless and other unroaded areas through their local forest planning efforts. With respect to inventoried areas, local responsible officials could not authorize the construction or reconstruction of roads but would retain discretion to consider appropriate additional management protection for inventoried roadless areas. For smaller uninventoried unroaded areas, the responsible official would evaluate the quality and importance of their characteristics, select those to be protected, and determine the level of protection through the forest planning process. Local officials' discretionary decisions would be informed by their evaluation of the quality and importance of the characteristics of the areas and their determination of whether these characteristics should be protected.

At the national level, the proposed rule covers inventoried roadless areas within the Tongass National Forest in a special provision. That provision postpones a decision regarding protection of these areas until April 2004, and specifically notes that the decision would be subject to existing statutory direction uniquely applicable to the Tongass National Forest.

Additional background information is included in the draft environmental impact statement accompanying this rulemaking. The draft statement discloses information about the physical, biological, social, and economic environments relevant to the proposed action. The entire draft environmental impact statement, or a summary, is available at the address listed in the **ADDRESSES** section of this proposed rule.

Regulatory Initiatives

On January 28, 1998, the Forest Service gave advance notice of its intent to propose revising the National Forest Transportation System regulations (63 FR 4350) to address needed changes in how the agency's road system is developed, used, and maintained. On the same date, the agency also proposed a rule to suspend temporarily road construction and reconstruction in certain areas (63 FR 4354) and requested comment. The agency received more than 119,000 responses. On February 12, 1999, the agency published an interim final rule, which temporarily suspended road construction and reconstruction in most roadless areas of the National Forest System (64 FR 7290). The interim rule is intended to provide time for the agency to develop a long-term road management strategy and to consider more fully public concerns about roadless areas and road management.

On October 13, 1999, President Clinton directed the Forest Service to engage in rulemaking to protect roadless areas that "represent some of the last, best, unprotected wildland anywhere in our Nation." On October 19, 1999, the agency published a notice of intent to prepare an environmental impact statement and to announce the initiation of a public rulemaking process to propose the protection of certain roadless areas within the National Forest System (64 FR 56306). To assist in the development of the rule and alternatives, the agency requested public comment on the scope of the environmental analysis, on the identification of alternatives to the proposal, and on whether the rulemaking should apply to the Tongass National Forest in Alaska.

As part of the scoping process, the agency conducted 10 regional and national public meetings and also held local meetings, which were hosted by the 127 national forest and grassland headquarters. Attendance at the public meetings ranged from as few as 5 people to over 700; typical registration was 50 to 100 people in most communities. Total attendance for all public meetings was approximately 16,000. The agency has received approximately 365,000 written responses to the notice of intent, including approximately 336,000 form letters, from individuals, groups, organizations, and other government agencies.

The agency has used these comments to further refine the scope of the decision to be made, identify significant issues, shape the alternatives, identify possible mitigation measures, and direct

the "effects analysis" in the draft environmental impact statement. The six major topics that were identified as a result of the scoping process include issues related to: (1) access; (2) identification of "other unroaded" areas; (3) exemptions; (4) environmental, social, and economic effects; (5) the degree of local involvement in roadless area decisions; and (6) the impacts to communities that depend on the use of National Forest System lands. The draft environmental impact statement, which accompanies this proposed rule includes a more complete description of the issues; alternatives; and environmental, social, and economic effects that were identified as a result of comments submitted in response to the notice of intent.

Having considered the scoping comments and having identified and analyzed alternatives and effects, the agency is proposing a rule to amend Part 294—Special Areas, of Title 36 of the Code of Federal Regulations. The provisions of the proposed rule include a national prohibition on road construction or reconstruction in the unroaded portions of inventoried roadless areas and, during forest plan revision, evaluation of roadless characteristics in the context of overall multiple-use objectives.

This rulemaking is not an effort to expand the National Wilderness Preservation System. The Forest Service recognizes that only Congress may designate wilderness. The Forest Service will continue managing inventoried roadless areas and other unroaded areas within the multiple-use framework required by law.

Other Regulatory Initiatives

The agency has also recently proposed other regulations and policies that address the management of the National Forest System and how the agency must make decisions about road construction in national forests and grasslands.

Proposed Land and Resource Management Planning Rule. The Forest Service proposed this rule on October 5, 1999 (64 FR 54074). This rule proposes to revise the agency's regulations under the National Forest Management Act. The proposed rule would provide for the long-term sustainability of national forests and grasslands, ensure collaboration with the public, and integrate science more effectively into the planning process. The proposed rule would allow the Forest Service to make special designations for roadless and unroaded areas.

Proposed Road Management Rule and Policy. The agency proposed this rule and administrative policy on March 3, 2000 (65 FR 11676). The administrative policy would establish procedures for making decisions about road construction, reconstruction, and decommissioning in national forests. The proposed policy would require that the Forest Service incorporate a science-based road analysis into other analyses and assessments and also conduct a science-based road analysis for any new proposed road construction. The proposed policy also would require the Forest Service to emphasize maintenance and decommissioning of roads over the construction of new roads. In addition, the policy proposes transitional procedures (FSM 7710.32, paragraphs 2 and 3) that address road construction in sensitive roadless and unroaded areas until forest plan revision. The transitional procedures require that responsible officials identify a compelling need and complete an environmental impact statement signed by the Regional Forester before road construction can occur in inventoried roadless and other unroaded areas. The proposed roadless area conservation rule, if adopted, would replace the road management policy's transition language regarding inventoried roadless areas and other unroaded areas.

Section-by-Section Discussion of the Proposed Rule

Authority

This proposed rule is within the scope of the Secretary of Agriculture's authority, as granted by the Organic Administration Act of 1897 (16 U.S.C. 551), "to regulate the occupancy and use and to preserve the forests thereon from destruction." Congress elaborated on this duty in the Multiple-Use Sustained-Yield Act of 1960 by directing the Secretary of Agriculture to administer National Forest System lands to achieve the multiple use and sustained yield of renewable resources "without impairment of the productivity of the land" (16 U.S.C. 528–531). Furthermore, National Forest System management must be accomplished in compliance with a host of administrative and environmental laws. Of particular relevance to this proposal is the Secretary of Agriculture's responsibility for the administration of an adequate system of roads and trails on the National Forest System authorized by the National Forest Roads and Trails Act (16 U.S.C. 532–538).

The Forest and Rangeland Renewable Resources Planning Act, as amended, directs the Secretary of Agriculture to install a proper system of transportation that is both economically and environmentally sound. Furthermore, all roads are to be "designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources" (16 U.S.C. 1608 (c)).

The Forest Service has regulations to guide road management, at 36 CFR part 212, in accordance with their responsibility for management of forest development roads and trails under the authority of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 201, 205). As mentioned previously, the agency has published a proposal to amend regulations at 36 CFR part 212. Also, the Secretary has been granted broad authority under the Forest and Rangeland Renewable Resources Planning Act, as amended, to establish such rules as he determines necessary and desirable to manage the national forests. (16 U.S.C. 1613).

Proposed § 294.10—Purpose

This section of the proposed rule identifies that the agency's goal is to provide lasting protection for inventoried roadless areas and other unroaded areas in the context of multiple-use management. That goal would be accomplished through the combination of limited national prohibitions set out in § 294.12 and the procedural mechanisms set out in § 294.13.

Proposed § 294.11—Definitions

This section of the rule sets out the terms and definitions used in this proposed regulation. The section first defines inventoried roadless areas. These areas were identified using various forest planning and assessment processes, including RARE II, forest plan revisions, and the Southern Appalachian Assessment. The 1996 Southern Appalachian Assessment was a state and federal interagency review of that region's environmental health and ecological problems. Roadless areas were inventoried as part of that assessment.

These plans and assessments resulted in the currently mapped configurations, referred to as "inventoried roadless areas." The maps are maintained at the national headquarters of the Forest Service and are the official maps for the proposed rule. In the event a modification to correct any clerical, typographical, or other technical error is needed, the change will be made to the national headquarters maps and the

corrected copies of the maps made available on the web at roadless.fs.fed.us/. Prior to finalizing this proposed rule, map adjustments may be made for forests and grasslands currently undergoing assessments or land and resource management plan revisions.

For the purposes of this rulemaking, the agency is proposing definitions for various categories of roads. These definitions reflect the agency's best efforts to coordinate the use of these terms with other initiatives that use similar terminology. The defined road terms are: road, classified road, unclassified road, road construction, and road reconstruction. The Forest Service encourages reviewers to closely scrutinize these definitions with the understanding that the terms and definitions used in the final rule will be coordinated with the terminology used in other agency initiatives.

An unroaded area is defined as any area without the presence of a classified road, which is of a size and configuration sufficient to protect the inherent characteristics associated with its unroaded condition. This definition also is similar to the definition used in the proposed road management policy (also called transportation rule).

A definition is proposed for the term "unroaded portion of an inventoried roadless area." This definition clarifies that the prohibition and evaluation requirements of this proposed rule are not intended to apply to the portions of inventoried roadless areas that have had classified roads constructed since the area was inventoried. It should be noted that the criteria used to identify and inventory roadless areas in forest planning (Forest Service Handbook 1909.17, chapter 7) allowed the presence of certain types of classified roads, as long as the area, otherwise, met certain minimum criteria.

Proposed § 294.12—Prohibition on Road Construction and Reconstruction in Inventoried Roadless Areas.

Paragraph (a) of this section proposes to prohibit road construction or reconstruction in the unroaded portions of inventoried roadless areas, except for the circumstances listed in proposed paragraphs (b)(1) through (b)(4) and paragraph (c). Nothing in this section is intended to prohibit the authorized construction or maintenance of motorized or non-motorized trails of any size that are classified and managed as trails pursuant to agency direction (FSM 2350).

Proposed paragraph 294.12 (b) would allow certain limited exceptions to the road construction prohibition. The

exceptions in proposed paragraphs (b)(1) and (b)(3) parallel the exceptions used in the interim roads rule (64 FR 7290). The public health and safety exception at proposed paragraph (b)(1) would apply only when needed to protect public health and safety in cases of an imminent threat of a catastrophic event that might result in the loss of life or property. It is not intended to be construed as permission to engage in routine forest health activities, such as temporary road construction for thinning to reduce mortality due to insect and disease infestation.

The exception in proposed paragraph (b)(2) would permit entry for activities undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) and other identified statutes. An example of a Superfund activity is to correct the bleeding of toxic chemicals from an abandoned mine.

Proposed paragraph (b)(3) would permit the construction and reconstruction of a road pursuant to valid existing rights granted in statute or treaty, or pursuant to a reserved or outstanding right. These include, but are not limited to, rights of access provided in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), highway rights-of way granted under R.S. 2477, and rights granted under the General Mining Law of 1872, as amended.

Proposed paragraph (b)(4) would permit realignment of an existing road when it is causing irreparable resource damage in its current location. The road must be essential for public or private access, management, or public health and safety, and the damage cannot be corrected by maintenance.

Proposed paragraph (c) specifies that inventoried roadless areas in the Tongass National Forest will be addressed in a different way, as proposed in paragraph 294.13 (e). The notice of intent indicated that the Forest Service would determine whether or not the proposed rule should apply to the Tongass National Forest. The Forest Service is proposing to delay consideration of protecting inventoried roadless areas for the Tongass National Forest until April 2004, in light of recent Forest Plan decisions that conserve roadless areas and a Southeast Alaska economy that is in transition. The amount and distribution of roadless areas figured prominently in a 1997 Regional Forester decision for the Tongass Land Management Plan. In 1999, the Under Secretary for Natural Resources and the Environment issued a Record of Decision for the Tongass

Land Management Plan in response to several appeals that identified issues related to roadless areas and the qualities they provide. The 1999 decision administratively protected additional lands from road construction and extended harvest rotation in some areas, thus slowing the rate of road construction and harvest. Currently, 82 percent of the Tongass National Forest's approximate 17 million acres is allocated for land use prescriptions that prohibit or limit road construction.

With the recent closure of pulp mills and the ending of long-term timber sale contracts, the timber economy of Southeast Alaska is transitioning to a competitive bid process. About two-thirds of the total timber harvest planned on the Tongass National Forest over the next 5 years is projected to come from inventoried roadless areas. If road construction is prohibited in inventoried roadless areas, approximately 95 percent of the timber harvest within those areas would be eliminated. Under current circumstances, use of the Tongass National Forest's inventoried roadless areas for timber production contributes to the Forest Service's effort to seek to meet (within the meaning of section 101 of the Tongass Timber Reform Act) market demand for timber in the Tongass National Forest, consistent with providing for the multiple use and sustained yield of all renewable forest resources. However, with the continuing transition of the southeast Alaska timber market to an independent bid market, coupled with the long-term projected decline in timber demand for southeast Alaska timber, it is also possible that, by 2004 (when a review of the revised Tongass Land Management Plan is required), the long term demand for timber may be substantially reduced and market demand could be met consistent with protecting existing inventoried roadless areas. Hence, protection of these areas is excluded from proposed § 294.12 and, as noted in subsequent discussion, the decision of whether to prohibit road construction is deferred until 2004, as provided in proposed paragraph 294.13 (e).

Proposed paragraph (d) would permit maintenance activities for classified roads included in an inventoried roadless area; however, reconstruction that would expand road size or use beyond the current level would not be permitted. The responsible official is expected to apply a science-based roads analysis when determining whether an unclassified road is needed for long-term management of National Forest System lands and should be classified and maintained.

Proposed § 294.13—Consideration of Roadless Area Conservation During Forest Plan Revision

This section of the proposed rule would require that the responsible official evaluate the quality and importance of the roadless area characteristics and determine whether and how the characteristics should be protected in the context of overall multiple-use objectives during forest plan revision. Under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (NFMA), the Secretary of Agriculture is required to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System" (16 U.S.C. 1604(a)). Land and resource management plans (also referred to as forest plans), in large part, furnish overall programmatic guidance for the management of individual national forests and grasslands. An approved land and resource management plan is the product of a comprehensive notice and comment process, which was established by Congress in the National Forest Management Act (NFMA). The land and resource management plan provides direction to ensure coordination of multiple uses (such as, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness) and the sustained yield of products and services (16 U.S.C. 1604(e)).

Forest plan approval, amendment, and revision does not authorize, fund, or carry out any projects, unless specifically addressed in the document that discloses the decision. Projects are implemented through project-level, site-specific decisions, which are analyzed and disclosed to the public. The proposed rule would not alter this staged decisionmaking system for forest planning and project decisionmaking. However, the proposed rule would no doubt influence decisions made at each stage by requiring the consideration of roadless values and characteristics in the forest planning process. The prohibition against road construction and reconstruction in inventoried roadless areas, as described in proposed paragraph 294.12 (a), would establish a constraint on local decisionmaking, whether at the planning or project decisionmaking stage with respect to these areas. In contrast, the language in proposed § 294.13 imposes no specific, substantive constraint on local decisionmaking, but does add additional considerations at the time of the revision of forest plans. These

supplemental requirements do not alter the forest planning and project decisionmaking processes.

Currently, all national forests and grasslands operate under land and resource management plans developed under the existing forest planning regulations at part 219 of title 36 of the Code of Federal Regulations. Plans are changed by revision and amendment. The National Forest Management Act requires revision of plans at least every 15 years, although revision may occur whenever circumstances affecting the entire plan area or major portions of the plan have changed significantly.

Proposed paragraph (a) provides that, during plan revision, the responsible official must evaluate the quality and importance of specified roadless area characteristics. Proposed paragraph (b) (1) would require that the evaluation be applied to the unroaded portions of inventoried roadless areas to determine whether additional management restrictions, over and above those required in proposed paragraph 294.12 (a), are appropriate. Proposed paragraph (b) (2) of this section sets out criteria for selecting other unroaded areas to be considered. At the time of forest plan revision, the responsible official must determine what unroaded areas are of a sufficient size, shape, and location to merit review. It is not the intent of the agency to create a situation where all unroaded areas, or areas of a certain size, must be mapped. The agency believes that the method of selection or delineation of unroaded areas for evaluation under § 294.13 (b) (2) is best left to the local official's judgment.

Proposed paragraphs (c) and (d) state that, following the evaluation of characteristics required in paragraph (a), the responsible official must determine, in the context of overall multiple-use objectives, whether and, if so, how the characteristics should be protected. Proposed paragraphs 294.13 (c) and (d) are set out in separate paragraphs to clarify that the requirement to determine whether the characteristics merit protection applies to the unroaded portions of inventoried roadless areas, in addition to the prohibitions in § 294.12, as well as to other unroaded areas. During plan revision, responsible officials would be required to evaluate the characteristics in the unroaded portions of inventoried roadless areas to determine whether additional protection is warranted over and above the prohibition on new roads. In addition, with respect to other unroaded areas, as identified in paragraph (b) (2), the responsible official must select areas in which the characteristics merit protection.

Proposed paragraph (e) identifies special review provisions for the Tongass National Forest. The responsible official would determine whether the prohibitions and provisions of paragraphs (a), (b), and (d) of § 294.12 should apply to any or all of the unroaded portions of inventoried roadless areas on the Tongass National Forest. In making that determination, the responsible official must consider, among other things, the provisions of section 101 of the Tongass Timber Reform Act. This section, amending Section 705 of the Alaska National Interest Lands Conservation Act, requires the agency to seek to provide a supply of timber from the Tongass National Forest that meets market demand, consistent with providing for the multiple use and sustained yield of all renewable resources, subject to appropriations, other applicable laws, and requirements of the National Forest Management Act of 1976. The responsible official's evaluation would be conducted in association with the 5-year review (beginning in April, 2004) of the April 1999 Tongass Land and Resource Management Plan, pursuant to 36 CFR 219 (10)(g). A forest plan amendment or revision would be initiated, including full opportunity for public involvement, if the responsible official determines that some or all of the inventoried roadless areas on the Tongass National Forest merit the protection provided by section 294.12.

Proposed paragraph (f) is intended to clarify that nothing in this section requires or allows a responsible official to overrule the § 294.12 prohibition on road construction or reconstruction in inventoried roadless areas during plan revision. The prohibitions established in proposed § 294.12 are permanent limitations, which may only be changed through rulemaking, not through forest plan amendment or revision.

The agency has identified eight broad characteristics of roadless areas.

Proposed Roadless Characteristics

(1) *Soil, water, and air.* These three key resources are the foundation upon which other resource values and outputs depend. Healthy watersheds provide clean water for domestic, agricultural, and industrial uses; help maintain abundant and healthy fish and wildlife populations; and are the basis for many forms of outdoor recreation. Healthy watersheds provide a steady flow of high quality water, maintain an adequate supply of water, and reduce flooding. Managing land uses to keep watersheds properly functioning and in natural balance is critical to maintaining watershed health and productivity.

Roadless areas generally have attributes that promote watershed health, primarily because minimal ground-disturbing activities have occurred. Ground disturbing activities can accelerate erosion, increase sediment yields, and disrupt normal flow processes. Roadless areas maintain healthy and productive soils, which promote water entry into aquifers, minimize accelerated runoff, and provide for a diverse and abundant plant community important to both human and animal health. Roadless areas are less likely to suffer from human-caused landslides and other soil movement that fill streams with sediment and debris and disrupt normal stream processes. Roadless areas also have less dust and vehicle emissions, which reduce air quality, elevate human health risks, and diminish water quality. Roadless areas help maintain the high quality visibility that forest users seek when visiting the national forests.

(2) *Sources of public drinking water.* National Forest System lands contain watersheds that are important sources of public drinking water. Careful management of these watersheds is crucial in maintaining the flow of clean, cool water to a growing population. While some land management activities are already restricted in designated municipal watersheds, multiple-use management is a common practice in most watersheds that serve as source areas for public drinking water. Allowing management activities that promote roadless characteristics while minimizing activities that increase pollution risk are critical steps in protecting public drinking water sources and in saving local communities the financial burden of the additional water filtration and treatment costs.

(3) *Diversity of plant and animal communities.* The diversity of plant and animal communities and the overall biodiversity supported by these areas represent an important part of the nation's natural heritage. Unroaded areas are more likely than roaded areas to support greater ecosystem health, including the diversity of native and desired non-native plant and animal communities, due to the absence of disturbances caused by roads and accompanying activities. Healthy ecosystems can be characterized by the degree to which ecological factors and their interactions are reasonably complete and functioning for continued resilience, productivity, and renewal of the ecosystem. Native plant and animal communities tend to be more intact in these less disturbed areas. Roadless areas also conserve native biodiversity,

by providing a buffer against the spread of invasive species.

Conserving biodiversity offers many benefits to society. The public has recognized the importance of protecting species and ecosystems for their utilitarian, subsistence, and intrinsic values. Important benefits provided by healthy ecosystems, with diverse organisms and intact natural processes, include: (1) conservation of air, water, and soil quality and (2) sustainable levels of goods and services, including viable and desired levels of both game and non-game species. In addition to these important reasons for maintaining healthy ecosystems with a full component of biodiversity, many species are valuable for medicinal and agricultural purposes.

Protecting and maintaining biodiversity also provides the opportunity for the appreciation and enjoyment of natural beauty and gives future generations the chance to experience wild places, with their unique living plant and animal communities.

(4) *Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land.* Roadless areas function as biological strongholds and refuges for many species. These areas help to maintain native species viability and biodiversity. Based on scientific estimates, over 500 United States species are known, or are suspected, to be extinct. Of the nation's species currently listed as threatened, endangered, or proposed for listing under the Endangered Species Act, approximately 25 percent of animal species and 15 percent of plant species are likely to have habitat within inventoried roadless areas in the National Forest System. Many of these areas, individually and cumulatively, play an important role in maintaining habitat that provides for species viability and biological diversity, and may be instrumental in preserving many threatened, endangered or sensitive species.

(5) *Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation.* In roadless areas, people have the opportunity to enjoy unique recreational experiences that are usually not available in more developed areas. These opportunities include the chance to experience renewal, isolation, independence, and closeness to nature in mostly undisturbed settings. The Forest Service manages environmental settings to provide, among other things, opportunities for recreational

experiences. The Recreation Opportunity Spectrum (ROS Users Guide, FSM 2311 and FSH 2309.27) was developed to provide a framework for classifying and defining segments of outdoor recreational environments, potential activities, and experiential opportunities.

The Recreation Opportunity Spectrum's settings, activities, and opportunities represent a continuum that is divided into six classes: primitive, semi-primitive non-motorized, semi-primitive motorized, roaded natural, rural, and urban. Inventoried roadless and other unroaded areas are characterized mainly by the primitive, semi-primitive non-motorized, and semi-primitive motorized classes.

Primitive and semi-primitive non-motorized classes often have many wilderness attributes; however, unlike wilderness, the use of mountain bikes and other mechanized means of travel, such as those used by people with disabilities, can be permitted. In addition, these classes have fewer restrictions on motorized tools, search and rescue operations, and aircraft use than in wilderness areas.

In semi-primitive motorized settings, there is little evidence of managerial control, yet these areas allow some motorized activities, such as: off-highway vehicle, over-snow vehicle, motorboat, and helicopter use; chainsaw and other motorized tool use; and appropriate motor vehicle use for other resource management activities. In addition, persons with disabilities have enhanced access capability in semi-primitive motorized class areas.

Inventoried roadless and other unroaded areas may provide outstanding opportunities for other dispersed recreational activities, such as hiking, fishing, camping, hunting, picnicking, wildlife viewing, cross-country skiing, and canoeing. All of these activities and those mentioned for the semi-primitive motorized class may occur in areas on the developed end of the spectrum, but the experience is different. Roaded natural, rural, and urban classes are characterized by increased interactions with other people, more sights and sounds of human development and activity, more management restrictions and controls, and more landscape modification resulting from resource management activities.

Inventoried roadless and other unroaded areas are the last remaining relatively undisturbed landscapes outside of wilderness and similarly designated areas. The demand for motorized and non-motorized recreation

opportunities is increasing. As these lands continue to be developed, the supply of unroaded lands that are available for dispersed recreation is reduced.

(6) *Reference landscapes.* An objective on National Forest System lands is to create and maintain sustainable ecosystems that can support human needs indefinitely. To reach that goal, both human and ecological processes and their interactions must be understood. The body of knowledge about the effects of management activities over long periods of time and on large landscapes is very limited. However, there is an increasing emphasis on the importance of obtaining information about large-scale ecological patterns, processes, and the impact of management activities.

Reference landscapes can provide comparison areas for evaluation and monitoring. These areas provide a natural setting that may be useful as a comparison to study the effects of more intensely managed areas.

Reference areas are not intended to exclude all management activities. The management approach used for these lands should be directed by the assessment of local conditions and the questions and solutions sought by scientists, managers, and the public. For example, reference areas may provide useful long-term information about approaches to restoring historical fire regimes and fuel loads in the intermountain West. In this case, various management scenarios can be applied: some areas may be allowed to burn only by wildland fire, some allowed to use prescribed fire, others allowed a combination of thinning and prescribed fire, and yet still other areas selected for fire suppression. By applying various management scenarios, the agency may better understand how to more effectively manage healthy diverse ecosystems.

(7) *Landscape character and scenic integrity.* High quality scenery, especially scenery with natural-appearing landscapes, is a primary reason that people choose to recreate. In addition, quality scenery contributes directly to real estate values in neighboring communities and residential areas.

Scenic quality is based on two definable elements—landscape character and scenic integrity. "Landscape character" is the overall visual impression of landscape attributes that provides a landscape with an identity and sense of place. It consists of the combination of physical, biological, and cultural attributes that makes each landscape identifiable and

distinct. "Scenic integrity" is a measure of the wholeness or completeness of the visual landscape, including the degree of deviation from the overall landscape character. A landscape that is perceived to have minimal to no deviation from its natural landscape is rated as very high or high scenic integrity. Those landscapes that are heavily altered may have low to very low scenic integrity.

The scenic integrity of landscapes in inventoried roadless areas and other unroaded areas is generally high. However, altered landscapes, which exist in some of these areas due to activities such as mining, timber harvesting, grazing, and special uses, tend to have lower levels of scenic integrity.

(8) *Traditional cultural properties and sacred sites.* Traditional cultural properties are places, sites, structures, art, or objects that have played an important role in the cultural history of a group. Sacred sites are places that have special religious significance to a group. Traditional cultural properties and sacred sites may be eligible for protection under the National Historic Preservation Act. However, many of them have not yet been inventoried, especially those that occur in roadless areas.

Roadless areas may have traditional cultural properties and sacred sites, which are in a relatively unaltered state, thereby, maintaining their original character. There is reduced opportunity for vandalism, human disturbance, and unintended damage to these properties and sites in roadless areas because of the lack of disturbance in those areas.

Roadless areas also enhance the ability of groups to continue customary uses of traditional cultural properties and sacred sites. For example, many sacred sites are used by Native Americans for ceremonial purposes. These ceremonies may require privacy, which is possible due to the relative remoteness of roadless areas.

(9) *Other locally identified unique characteristics.* This optional provision is proposed to provide local officials, in partnership with interested members of the public, the opportunity to identify characteristics that are unique to a specific area. Inventoried roadless areas and other unroaded areas may offer unique characteristics and values, which are not covered by the other characteristics. Examples of additional characteristics might be uncommon geological formations, which are valued for their scientific and scenic qualities, or unique wetland complexes. While some of the unique characteristics may only have local importance, others could have regional or even global

significance, such as roadless areas that provide important stopover spots for long-ranging migratory birds. Such unique areas may become increasingly important, as other areas are developed.

Roadless areas may have unique social, cultural, or historical characteristics, which are dependent on the roadless character of the landscape. Examples of these characteristics include ceremonial sites, places for local events, areas prized for collection of non-timber forest products, exceptional hunting and fishing opportunities, or areas of historic significance.

In addition, the national requirement to evaluate characteristics of roadless areas, would safeguard many of the social values that are associated with those characteristics. These social values include: (1) the quality of human health through such actions as protecting air and water quality; (2) experiential values, such as appreciation of scenic beauty, solitude, and attachment to places or historical or cultural sites; (3) natural areas used for scientific research and teaching; and (4) other aspects, such as valuing the natural areas for their own sake or desiring to leave a legacy for future generations.

Proposed § 294.14—Scope and Applicability

If the proposed rule is adopted, it would apply prospectively, not retroactively. This provision is essential to avoid disruption and confusion among Forest Service officials and the public. Any project or activity decision signed prior to the effective date of the final regulation would be allowed, but not required, to proceed. The date of the responsible official's record of decision, decision notice, or decision memorandum would be the authorization date.

Furthermore, road construction or reconstruction associated with ongoing implementation of long-term special use authorizations would not be prohibited. For example, all activities anticipated in an authorized ski area's master plan, including associated road construction, would not be barred even if a specific decision authorizing road construction has not been made as of the effective date of the final regulation. Subsequent authorizations would remain subject to all applicable laws, regulations, and permit requirements. Requests to expand permitted use would be subject to the prohibition in § 294.12.

The proposed regulation also clarifies that forest plan amendments would not be required when the final rule becomes effective. Just as development and

approval of forest plans must conform to existing laws and regulations, forest plan management direction can be superseded by new laws or regulations. The Forest Service believes that requiring "conforming amendments" to forest plans would be redundant of the rulemaking process.

Local responsible officials' discretion to initiate land and resource management plan amendments, as deemed necessary, would not be limited by this provision. There may be instances where local officials elect to initiate amendment or revision of forest and grassland plans following final promulgation of this rule. Forest Service officials have several mechanisms that allow for evaluation of forest and grassland plan implementation, including plan-specific monitoring requirements, the 5-year review, the amendment and revision process, and, of course, project-level decisionmaking. A determination to amend or revise a land and resource management plan is based on a variety of factors. Forest Supervisors and Regional Foresters have substantial discretion in determining whether or not to initiate plan amendments or revisions.

Summary

The Forest Service believes that it is important to protect the roadless characteristics of unroaded areas within the context of its multiple-use mandate. The agency seeks to protect these characteristics in two ways. First, the proposed rule proposes to place a national prohibition on road construction or reconstruction in inventoried roadless areas. Second, responsible officials would be required to consider and evaluate the characteristics of all roadless areas, including inventoried areas and smaller or uninventoried areas, in the context of forest plan revisions. Although the proposed rule emphasizes the importance of the characteristics of unroaded areas, it does not propose to direct local managers to reach particular results. Rather, it is intended to allow them the flexibility to consider the values of these areas in the larger context of multiple-use management. The Forest Service invites written comments on both the draft environmental impact statement and the proposed rule and will consider those comments in developing the final environmental impact statement and the final rule. The final rule will be published in the **Federal Register**.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive

Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant rule as defined by Executive Order 12866 because of the level of public interest expressed in response to the notice of intent to prepare a draft environmental impact statement. Accordingly, OMB has reviewed this proposed rule. A cost-benefit analysis has been prepared and is summarized in the following discussion.

Summary of the Results of the Cost-benefit Analysis

The agency has conducted a cost-benefit analysis on the impact of this proposed rulemaking. Table 2 presents the costs and benefits that the agency was able to quantify or qualitatively describe. The agency is soliciting public comment on all categories of costs and benefits and welcomes information to further describe these effects. Comments containing specific data to support estimates of potential costs and benefits will be most useful and are more likely to be incorporated into the agency's final cost-benefit analysis. The agency will make a reasonable effort to further pursue estimating the costs and benefits of this rulemaking, and will use the information gained in public comment to finalize the cost-benefit analysis to the extent feasible and appropriate.

Few of the benefits and costs associated with the proposed rule were quantifiable, and; therefore, many of the costs and benefits are described qualitatively. Although the analysis does not provide a quantitative measure of net benefits, the agency believes the benefits of the rule, as proposed, would outweigh the costs. Local level analysis cannot easily incorporate the economic effects associated with nationally significant issues. Therefore, the agency believes the aggregate transactions costs (costs associated with the time and effort needed to make decisions) of local level decisions would be much higher than the transactions costs of a national policy, because of the controversy surrounding roadless area management.

Most of the benefits of the rule result from maintaining roadless areas in their current state, and therefore maintaining the current stream of benefits from these areas. The costs are primarily associated with lost opportunities, since the proposed rule, if finalized as proposed, would limit some types of activities that might have occurred in the future without this rule. Table 2 summarizes the potential benefits and costs of the rule, as proposed. The benefits and costs, described in Table 2, are associated with the requirement to

prohibit road construction and reconstruction in the approximately 43 million acres of unroaded inventoried roadless areas.

Potential Benefits of the Prohibition on Road Construction

Undisturbed landscapes provide a variety of monetary and non-monetary benefits to the public. Many of these benefits are associated with the protection of ecological, social, and economic values in roadless areas.

Air and water quality would be maintained at a higher level than at the baseline (current management conditions). Higher water quality provides a higher level of protection for drinking water sources, reduces treatment costs at downstream facilities, and maintains the value of water-based recreation activities. Higher air quality protects values associated with visibility, including recreation and adjacent private property values.

A greater degree of protection of biological diversity and threatened and endangered species would occur if roads were prohibited in inventoried roadless areas as opposed to the baseline. As a result, ecological values would be maintained. Passive use values related to the existence of biological diversity and threatened and endangered species would be maintained, as well as values associated with protecting these areas for future generations.

A number of other benefits are associated with maintaining healthy wildlife and fish populations at a level higher than at the baseline. Some game species are likely to benefit from this protection, which would maintain quality hunting and fishing experiences both within the unroaded portions of inventoried roadless areas and beyond. Other types of recreation experiences, such as wildlife viewing, also would benefit.

Roadless areas are important in providing remote recreation opportunities. A greater number of acres in these recreation settings would be maintained than at the baseline. Remote areas are also important settings for many outfitter and guide services. Maintaining these areas increases the ability of the agency to accommodate additional demand for these types of recreation special use authorizations.

Roadless areas provide a remote recreation experience without the activity restrictions of wilderness use (for example, off-highway vehicle use and mountain biking). Maintaining roadless areas would likely lessen pressure on wilderness areas compared to the baseline.

The risk of introducing non-native invasive species would be reduced if road access were not available. This is beneficial to grazing permittees with allotments in roadless areas, and to collectors of non-timber forest products because forage quality and quantity, and forest products that cannot compete with invasive species would be maintained. The reduced probability of introduction would also be beneficial to forest health in inventoried roadless areas, and would contribute to the maintenance of biological diversity.

Some planned timber sales into the unroaded portions of inventoried roadless areas would likely be below cost. To the extent that these sales would not take place, a financial efficiency savings would be realized.

Implementing the rule, as proposed, could result in agency cost savings. First, local appeals and litigation about some management activities in roadless areas could be reduced, which would avoid future costs. Secondly, the reduction in miles of roads constructed would reduce the number of miles the agency is responsible for maintaining, resulting in avoiding up to an additional \$565,000 per year of costs.

Potential Costs of the Prohibition on Road Construction

The prohibition on road construction and reconstruction would reduce roaded access to resources within the unroaded portions of inventoried roadless areas compared to the baseline. Roads are required for most timber sales to be economically feasible. For those sales that are financially profitable, the proposed rule would reduce net revenues. In addition to lost revenue, there would be fewer jobs (250 direct timber jobs) and less income (\$11.7 million in timber-related labor income per year) generated from timber harvest.

Receipts from timber sales would also decline, which would reduce payments to states by about \$1.4 million per year. Jobs associated with road construction and reconstruction for timber harvest and other activities would also be less than at the baseline. Somewhere between 6 and 32 direct jobs could be affected by reduced road construction and reconstruction.

The impact on mineral resources is expected to be greatest for leasable (such as oil, gas, coal, and geothermal) and saleable (such as sand, gravel, stone, and pumice) minerals, since development might not be economically feasible without road access. The agency also has more management discretion regarding whether to allow access to these commodities than locatables (metallic and nonmetallic minerals on

public domain land). Exploration costs for locatable minerals may increase under the restrictions of this rule as well. The increase in exploration and development costs may reduce the number of leases relative to the baseline, which reduces the number of jobs, income, and payments to states associated with these activities. In the near term the impact is expected to be minimal, since there has been limited industry interest in most leasables on National Forest System lands.

New roads have the potential to reduce operating costs for other users, for example, grazing permittees and collectors of non-timber forest products by allowing faster and easier access. These potential cost reductions would not be realized if road construction is prohibited. However, it is unknown whether planned roads would in fact be useful to these groups, since their proximity to grazing allotments and desirable products is unknown.

New roads built for other purposes also provide additional access for recreationists, including hunters and anglers. The agency builds few roads for recreation purposes, and this pattern is unlikely to change. However, the costs imposed on these groups by not building new roads would be minimal, since the agency would close most of the roads built for resource extraction once the extraction is complete. Therefore, the number of road miles that would be available for recreational or other uses would be small.

Opportunities for some types of recreation special uses may be limited in the future. Developed recreation use and roaded recreation uses in general are likely to occur at higher densities than under the baseline, since expansion into the unroaded portions of inventoried roadless areas would not occur. However, this expansion would be a small area in any particular year. The development of new ski areas would be unlikely.

Other, non-recreation special uses may be limited in the future as well. Such special uses include communication sites, and energy-related transmission uses (such as ditches and pipelines, and electric transmission lines).

Fewer acres of inventoried roadless areas would likely be treated for forest health purposes. Most moderate and high risk forests in inventoried roadless areas would be given a low priority for treatment, unless there was an imminent threat to public safety, private property, water quality, or threatened and endangered species. The change in the number of acres that potentially would be treated is small relative to the

total acres at risk, but there could be a slight increase in the risk from catastrophic fire or insect and disease from reduced treatment opportunities.

Agency costs would increase compared to the baseline for some types of activities. Fuel treatment and other forest health treatment costs in the unroaded portions of inventoried roadless areas would increase.

The goods and services that could not be produced on the unroaded portions of inventoried roadless areas without road construction are likely to be produced either on other parts of National Forest System lands, or on other lands. Substitute production could result in adverse environmental effects on these other lands.

Potential Costs and Benefits of the Requirement to Consider Roadless Characteristics

The procedural provisions in the proposed rule do not directly implement or prohibit any ground-disturbing activity. The procedures are designed to give local decision-makers direction in design and implementation of local projects. The exact location and acreage of each potentially affected area is unknown. The procedural provisions would be applied to the 54 million acres of inventoried roadless areas, as well as up to 95 million acres of other National Forest System lands. The procedures would add about \$11 million to planning costs over the next 5–15 years.

Since individual project proposals and local roadless characteristics are highly variable, estimating associated benefits and costs of implementing procedures would be speculative. Since it is reasonable to assume that the proposed procedural requirements would reinforce the effects achieved by the proposed requirements to prohibit road construction and reconstruction and that the procedural requirements would apply to a greater area than inventoried roadless areas, the economic effects are likely to be somewhat greater than the effects described by resource area.

TABLE 2.—SUMMARY OF COSTS AND BENEFITS OF THE PROHIBITION ON ROAD CONSTRUCTION IN THE PROPOSED ROADLESS AREA CONSERVATION RULE COMPARED TO CONTINUATION OF CURRENT MANAGEMENT PRACTICES

Category	Assessment method
Potential Benefits:	
Air quality maintained at higher level in roadless and unroaded areas	Qualitative discussion.
Water quality maintained at higher level in roadless and unroaded areas	Qualitative discussion.
Larger land base for dispersed recreation activities in remote settings in roadless and unroaded areas ...	Qualitative discussion.
Quality of fishing and hunting maintained at higher level for recreation, commercial, and subsistence users in roadless and unroaded areas.	Qualitative discussion.
Forage quality for livestock grazing and some non-timber forest products maintained at higher level due to smaller probability of introduction of non-native invasive species.	Qualitative discussion.
Existence and bequest values maintained at higher levels because of increased protection of biological diversity and threatened and endangered species..	Qualitative discussion.
Agency costs savings from reduced appeals and litigation on roadless management	Qualitative discussion.
Agency cost savings of up to \$565,000 per year from reduced road maintenance costs	Agency estimate based on previous expenditures.
Potential Costs:	
Fewer timber related jobs: about 250 direct and 480 total jobs	Agency estimate using TSPIRS ¹ data and IMPLAN ² model multipliers.
Less timber related income per year: \$11.7 million direct income and \$21 million total income	Agency estimate using TSPIRS data and IMPLAN ² model multipliers.
Less timber-related payments to states, up to \$1.4 million per year	Agency estimate using TSPIRS data and National Forest Fund receipts data.
Fewer jobs associated with road construction, ranging from 6–36 jobs	Agency estimate using previous expenditures and IMPLAN model multipliers.
Increased exploration and development costs for leasable minerals (such as oil, gas, coal, geothermal) ..	Qualitative discussion.
Increased exploration costs for locatable minerals (metallic or nonmetallic minerals)	Qualitative discussion.
Increased exploration costs for saleable minerals (such as sand, stone, gravel, pumice)	Qualitative discussion.
Increased operating costs for grazing permittees and collectors of non-timber products	Qualitative discussion.
Reduced opportunities for roaded recreation	Qualitative discussion.
Decline in special-use authorizations (such as communications sites, electric transmission lines, pipelines).	Qualitative discussion.
Fewer opportunities for forest health treatments	Qualitative discussion.

¹ TSPIRS is the Forest Service's Timber Sales Program Information Reporting System.

² IMPLAN (Impact Analysis for Planning) is the input-output model used by the Forest Service.

Summary of the Results of the Initial Regulatory Flexibility Analysis

For any agency that is subject to the notice and comment requirements of 5 U.S.C. 553 or any other law, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) directs that the agency prepare and make available for public comment

an initial regulatory flexibility analysis. If the agency determines that the rulemaking will not have a significant impact on a substantial number of small entities, the initial regulatory flexibility analysis requirement does not apply, but the agency must make a certification of no significant impact.

The Forest Service expects that this roadless area conservation rulemaking will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA). Moreover, because the proposed rule does not directly regulate small entities, the Forest Service does not believe that an initial regulatory

flexibility analysis is required. Nevertheless, given the significant public interest in the rulemaking and the comment received on this specific issue during the scoping process, the agency has prepared an initial regulatory flexibility analysis. Public comment is invited on the initial regulatory flexibility analysis, a summary of which follows. The full analysis is available upon request by calling the telephone number noted in the **FOR FURTHER INFORMATION CONTACT** section of this document and on the world wide web at roadless.fs.fed.us/.

Data for linking the proposed rule to effects on small businesses is limited. The agency does not typically collect information about the size of businesses that seek permission to operate on National Forest System lands.

The rulemaking has the potential to affect a subset of small businesses that may seek opportunities on National Forest System lands in the future. The primary effect of the rule, when finalized, is the potential to affect the future supply of outputs or opportunities for businesses. The effect of the rulemaking on local governments is tied to any possible reductions in commodity outputs in cases where some portion of federal receipts is returned to the states for distribution to counties.

Small businesses in the wood products sector most likely to be affected are logging and sawmill operations. Reductions in the harvest of softwood sawtimber, particularly in the western United States are most likely to affect small businesses, since these sectors are dominated by small business. With the exception of the Forest Service Intermountain Region (Utah, Nevada, western Wyoming, and southern Idaho), reductions in harvest are estimated to range from less than 1 percent to 2 percent. The reduction in the Intermountain Region is estimated to be 8 percent.

Small businesses in the mineral sector most likely to be affected are businesses that develop saleable minerals such as sand and gravel, and leasable minerals such as oil, gas, and coal. The prohibition on road construction and reconstruction could reduce opportunities in the future to develop mineral commodities that cannot be extracted without road access. Small businesses are more likely to be involved in the development of saleable minerals, and less likely to be involved in development of energy minerals.

The potential effects on small businesses involved in livestock grazing and the collection of non-timber forest products are expected to be negligible. There will be fewer roads available for

their future use under the proposed rule, but the number of miles is minor compared to the entire National Forest System road system.

Special use authorizations on National Forest System land could be affected by the proposed rule, if road access is required. Most of the special uses potentially affected are dominated by large businesses, such as businesses in communication, electric services, gas production and distribution, and resort development. Small businesses with outfitter and guide permits are expected to benefit from the proposed rule, since these businesses are often dependent on providing services to recreation users interested in remote recreation activities that are often found in inventoried roadless and other unroaded areas.

The proposed rule is also likely to affect small governments that qualify as small entities. Many small communities around National Forest System lands receive a portion of receipts from commodity sales on National Forest System lands. A reduction in commodity production is likely to reduce revenues to these entities, although the estimated reduction is expected to be small in most regions. The estimated reduction in payments to states related to timber receipts would be about 1 to 2 percent, except in the Intermountain Region, where the reduction is estimated to be 8 percent.

The agency is soliciting comment and information on the potential impacts that this proposed rule and the alternatives to this rule (detailed in the Draft Environmental Impact Statement) might have on small entities. (Pursuant to the Regulatory Flexibility Act, these entities include small businesses, small organizations, and small governmental jurisdictions.) The agency welcomes information on the number and types of small entities potentially impacted and the significance of these potential impacts, specifically information about potential costs, changes in revenue or prices, regional or community-level impacts, and characteristics of the potentially impacted entities. The agency also welcomes suggestions from the public on how alternatives to this rule may minimize the impacts on small businesses. For more information on the agency's small entity impact analysis, including a list of specific questions on small entity impacts to which the agency is seeking responses from the public, please see the Initial Regulatory Flexibility Analysis, available at the website address listed under **ADDRESSES** or by calling the telephone number listed under the **FOR FURTHER INFORMATION CONTACT** sections of the preamble. The agency will use the

information provided to make a determination on the regulatory flexibility analysis needed at the final rule stage.

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

The agency has elected to prepare a draft environmental impact statement in concert with this proposed rule. This document may be obtained from various sources as indicated in the **ADDRESSES** section of this document. Reviewers are encouraged to include comments on the draft environmental impact statement along with any comments submitted 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: (1) Preempts all state and local laws and regulations that are found to be in conflict with or that would impede its full implementation; (2) does 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 proposed 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 government officials and emphasizes increased sensitivity to their concerns.

In the spirit of these new requirements, Forest Service line officers in the field were asked to make contact with tribes to ensure awareness of the initiative and of the rulemaking process. Outreach to tribes has been conducted at the national forest and grassland level, which is how Forest Service government-to-government dialog with tribes is typically conducted.

Outreach to state and local governments has taken place both in the field and Washington offices. Forest Service officials have contacted state and local governmental officials and staffs to explain the notice of intent and the rulemaking process. The agency has met with and responded to a variety of information requests from local officials and state organizations, such as the National Governors Association and the Western Governors Association.

Also, the agency has carefully considered, in the development of this proposed rule, the comments received from states, tribes, and local governments in response to the Notice of Intent to Prepare an Environmental Impact Statement published October 19, 1999 (64 FR 56306). Following publication of this proposed rule, the agency will meet with state, tribal, and local government officials to explain and clarify the proposed rule and the accompanying environmental impact statement. Finally, 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 prohibit road construction in inventoried roadless areas with certain limited exceptions. In addition, the agency proposes to require responsible officials to consider and evaluate roadless characteristics at the time of forest plan revision. The Forest Service invites written comments and will consider those comments in developing the final rule that will be published in the **Federal Register** and in preparing the Final Environmental Impact Statement.

List of Subjects in 36 CFR Part 294

National forests, Navigation (air), Recreation and recreation areas, Wilderness areas.

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 294—SPECIAL AREAS

1. Designate §§ 294.1 and 294.2 as subpart A and add a subpart heading to read as follows:

Subpart A—Special Areas

2. Add subpart B to part 294 to read as follows:

Subpart B—Protection of Roadless Areas

Sec.

294.10 Purpose.

294.11 Definitions.

294.12 Prohibition on road construction and reconstruction in inventoried roadless areas.

294.13 Consideration of roadless area conservation during forest plan revision.

294.14 Scope and applicability.

Authority: 16 U.S.C. 472, 551, 1131, 1608, 1613; 23 U.S.C. 201, 205.

Subpart B—Protection of Roadless Areas

§ 294.10 Purpose.

The purpose of this subpart is to provide lasting protection in the context of multiple-use management for inventoried roadless areas and other unroaded areas within the National Forest System.

§ 294.11 Definitions.

The following definitions apply to this subpart:

Inventoried roadless areas.

Undeveloped areas typically exceeding 5,000 acres that met the minimum criteria for wilderness consideration under the Wilderness Act and that were inventoried during the Forest Service's Roadless Area Review and Evaluation (RARE II) process, subsequent

assessments, or forest planning. These areas are identified in a set of inventoried roadless area maps, contained in *Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2*, dated May 2000, which are held at the National headquarters office of the Forest Service.

Responsible official. The Forest Service line officer with the authority and responsibility to make decisions regarding protection and management of inventoried roadless areas and other unroaded areas pursuant to this subpart.

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.* A road within the National Forest System planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads.

(2) *Unclassified road.* A road 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.

Road construction. A capital improvement that results in the addition of new road miles to the forest transportation system.

Road maintenance. The ongoing minor restoration and upkeep of a road necessary to retain the road's approved traffic service level.

Road reconstruction. A capital improvement that requires the alteration or expansion of a road and usually results in realignment, improvement, or rebuilding as defined as follows:

(1) *Realignment.* Construction activities that result in the new location of an existing road or portions of roads in order to expand its capacity, change its original design function, or increase its traffic service level. The investment may include decommissioning the abandoned sections of roadway.

(2) *Improvement.* Construction activities that are needed to increase a road's traffic service level, expand its capacity, or change its original design function.

(3) *Rebuilding.* Construction activities that are needed to restore a road to its approved traffic service level and that result in increasing its capacity or changing its original design function.

Unroaded area. Any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its unroaded condition.

Unroaded portion of an inventoried roadless area. A portion of an

inventoried roadless area in which no classified road has been constructed since the area was inventoried.

§ 294.12 Prohibition on road construction and reconstruction in inventoried roadless areas.

(a) Roads may not be constructed or reconstructed in the unroaded portions of inventoried roadless areas of the National Forest System, except as provided in paragraphs (b) through (c) of this section. This prohibition covers classified and unclassified roads.

(b) Notwithstanding the prohibition in paragraph (a) of this section, a road may be constructed or reconstructed in an inventoried roadless area if the responsible official determines that one of the following circumstances exists:

(1) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(2) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA (42 U.S.C. 9601, 9603, 9607, 9620), section 311 of the Clean Water Act (33 U.S.C. 1251, 1254, 1323, 1324, 1329, 1342, 1344), or the Oil Pollution Act (33 U.S.C. 2701 *et seq.*);

(3) A road is needed pursuant to reserved or outstanding rights or as provided for by statute or treaty; or

(4) Road realignment is needed to prevent irreparable resource damage by an existing road that is deemed essential for public or private access, management, or public health and safety, and such damage cannot be corrected by maintenance.

(c) The prohibition in paragraph (a) of this section does not apply to the Tongass National Forest, except as provided for in § 294.13(e).

(d) The responsible official may maintain classified roads that were constructed in inventoried roadless areas prior to the effective date of this rule.

§ 294.13 Consideration of roadless area conservation during forest plan revision.

(a) At the time of land and resource management plan revision, for the areas listed in paragraph (b) of this section, the responsible official must evaluate the quality and importance of the following characteristics:

- (1) Soil, water, and air;
- (2) Sources of public drinking water;
- (3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Landscape character and scenic integrity;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

(b) The evaluation of characteristics required in paragraph (a) of this section applies to the following areas:

(1) The unroaded portions of inventoried roadless areas; and

(2) Unroaded areas (other than inventoried roadless areas) that, in the judgment of the responsible official, are of a sufficient size, shape, and position within the landscape to reasonably achieve the long-term conservation of the characteristics in paragraph (a) of this section. Such areas may include those that provide important corridors for wildlife movement, or areas that share a common boundary of considerable length with an inventoried roadless area, with a component of the National Wild and Scenic River System, or with unroaded areas of 5,000 acres or more on lands administered by Federal agencies. In selecting areas, the responsible official should consider the distance from, and the scarcity of, other unroaded areas, particularly for those areas east of the 100th meridian.

(c) At the time of land and resource management plan revision, based on the evaluation required by paragraph (a) of this section, the responsible official must determine, in the context of overall-multiple use objectives, whether management protections, in addition to those set forth in § 294.12, should apply to the unroaded portions of inventoried roadless areas.

(d) At the time of land and resource management plan revision, based on the evaluation required by paragraph (a) of this section, the responsible official must determine with respect to unroaded areas, other than inventoried roadless areas, in the context of overall multiple-use objectives, which areas warrant protection and the level of protection to be afforded.

(e) As part of the 5-year review of the April 1999 revised Tongass Land and Resource Management Plan pursuant to § 219.10 (g) of this chapter, the responsible official must initiate an evaluation pursuant to paragraph (a) of this section for the unroaded portions of

inventoried roadless areas in the Tongass National Forest and must determine whether the prohibitions and provisions in § 294.12 (a), (b), and (d) should be applied to any or all of such inventoried roadless areas. In making that determination, the responsible official must consider the provisions of section 101 of the Tongass Timber Reform Act (Public Law 101-626, 104 Stat. 4426).

(f) No provision in this section authorizes the responsible official to reconsider or set aside the prohibition established in § 294.12.

§ 294.14 Scope and applicability.

(a) This subpart does not suspend or modify any existing permit, contract, or other legal instrument authorizing the occupancy and use of National Forest System land.

(b) This subpart does not compel the amendment or revision of any land and resource management plan.

(c) This subpart does not suspend or modify any decision made prior to [Effective date of final rule].

(d) If any provision of the regulations in this subpart or its application to any person or circumstances is held invalid, the remainder of the regulations in this subpart and their application remain in force.

Dated: April 21, 2000.

Mike Dombeck,

Chief.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596-AB77

Special Areas; Roadless Area Conservation

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; public meetings.

SUMMARY: The Forest Service gives notice of public meetings to be held to address the proposed Roadless Area Conservation rule that appears elsewhere in this separate part of today's **Federal Register**. The agency will host two separate sets of regional and local public meetings: Informational meetings and public comment forums held later in the public comment period. In addition to sending written comment on the proposed rule, the draft environmental impact statement, and other accompanying documents to the address listed in the proposed rule,