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: Final rule.

SUMMARY: This final National Forest System Road Management rule revises regulations concerning the management, use, and maintenance of the National Forest Transportation System. Consistent with changes in public demand and use of National Forest System resources and the need to better manage funds available for road construction, reconstruction, maintenance, and decommissioning, the final rule removes the emphasis on transportation development and adds a requirement for science-based transportation analysis. In concert with the revision of National Forest System roads administrative direction published elsewhere in today's **Federal Register**, the intended effect of this final rule is to help ensure that additions to the National Forest System network of roads are those deemed essential for resource management and use; that, construction, reconstruction, and maintenance of roads minimize adverse environmental impacts; and, finally, that unneeded roads are decommissioned and restoration of ecological processes are initiated.

EFFECTIVE DATE: This rule is effective January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mike Ash, Deputy Director of Engineering, Engineering Staff, Forest Service, 202–205–1400.

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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 suspend temporarily 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 final rule and the new analytical tools needed to provide a more ecological approach to analyzing existing and future road needs.

On March 3, 2000, in Part III of the **Federal Register**, the Forest Service issued an overview notice to provide background information on the need for changes in the agency's national forest development transportation system. That notice outlined the three primary actions in a proposed new road management strategy that would help the Forest Service find an appropriate balance between safe and efficient access for all forest road users and the protection of healthy ecosystems. The three primary actions proposed were the following: (1) Develop new analytical tools to decide if, and when, new and existing roads are needed to meet resource management objectives; (2)

aggressively decommission roads that are determined, through forest planning, implementation of the National Environmental Policy Act, and other analyses, to be damaging to the environment or to be no longer necessary for achieving resource management objectives; and (3) maintain and improve those important roads that do not compromise healthy lands and waters and are needed for recreation, rural access, and the sustainable flow of goods and services. The overview notice made clear that both a proposed revision of Forest Service regulations on Administration of the Forest Development Transportation System and a proposed revision of administrative directives are necessary to achieve these three actions.

Published, also, in Part III of the **Federal Register** for March 3, 2000, the proposed rule clarified the transportation system information to be gathered and to be displayed in a new forest transportation atlas (formerly plan). The rule also proposed: (1) to remove the emphasis on ''road development'' that is in the current rules; (2) to set a standard that each forest identify the minimum road system required to balance access objectives with ecosystem health goals; and (3) to use a science-based roads analysis to identify the road network needed to serve the public and land administrators.

Comments were invited on the overview notice, the proposed rule, and the corollary administrative directive, all published in Part III of the March 3, 2000, **Federal Register**. Comments were due May 2, 2000. The comment period was then extended to May 17, 2000, resulting in a 77 day comment period. The Forest Service invited written comments and considered those comments in preparing this final rule.

The adoption of the final rule modifies 36 CFR part 212 to require the development of a transportation atlas for each National Forest System administrative unit, which displays the minimum system of roads, trails, and airfields needed for the management of National Forest System lands and for public access. The adoption of the final rule removes the term ''forest development road'' to signal the shift away from development and construction of new roads to maintaining needed roads and decommissioning unneeded roads. The adoption of the final rule also requires the use of a science-based analysis process to analyze the National Forest road system. The adoption of the final rule establishes a standard for the road system, requiring it to be in compliance with resource objectives, to reflect likely funding, and to minimize adverse environmental effects associated with road construction, reconstruction, and maintenance. Equally important is the rule's requirement to identify unneeded roads that should be decommissioned, giving priority to decommissioning those roads that pose the greatest risk to public safety or environmental degradation. Revisions to 36 CFR parts 261 and 295 are those needed solely to conform terminology revisions being adopted in 36 CFR part 212.

Analysis and Response to Public Comments

During the comment period, the Forest Service received approximately 5,900 letters, e-mails, faxes, petitions, postcards, and other responses to the proposed National Forest System Road Management rule and policy. The geographic distribution of responses received was as follows: Western States —2,105; Mountain States —1,607; Central (Midwestern) States —733; Southeastern States —279; Northeastern States —541; and Unknown—581. Of the nearly 5900 total responses, 5505 were received from individuals. Groups and organizations representing forest resource users (grazing, timber, oil/gas/mining, and recreation) accounted for 134 responses and conservation and preservation groups submitted another 97. Government agencies and elected officials accounted for 98 responses and are divided between: Tribal (6), Federal (16), State (28), county (37), and local (11). There were an additional 34 responses received from groups or organizations that do not fit into one of the previous categories.

A number of comments received were outside the scope of this rulemaking effort. These included matters such as comments on the Forest Service roadless initiative, that was also underway; suggestions to seek funding from Congress for recreation trails; suggestions to transfer all public land to the States; suggestions to designate more Wilderness areas; suggestions to solve jurisdictional disputes in Nye County, Nevada; suggestions that the agency emphasize public education to gain support for road needs; suggestions to protect the environment by land allocation; and a suggestion to conduct an environmental impact analysis on each road every 10 years. While these comments emerged as a result of respondents' reviews of the proposal, they are generally not germane to this regulation. A number of other comments received were not specific to a particular section, but to the overall proposed rule and administrative policy. A summary of those comments and the agency's response to them follows.

General Comments

Natural Resource Agenda

In the overview notice that preceded the proposed road management rule and proposed administrative policy (65 FR 11676), the Forest Service explained that the road management initiative was a key element of the Forest Service Natural Resource Agenda.

Comments concerning the Natural Resource Agenda: Some respondents were concerned that implementation of the Natural Resource Agenda would circumvent legal processes, Congressional intent, and public involvement processes. Others expressed concern that the Natural Resource Agenda would change the natural resource mission of the Forest Service and encourage off-budget trust funds.

Agency response: The Natural Resource Agenda identifies long-term program emphasis areas for the Forest Service. Specifically, it calls for the agency to emphasize watershed health and restoration, sustainable forest management, recreation, and roads. The Agenda is the cornerstone of the agency's Strategic Plan prepared pursuant to the Forest and Rangeland Renewable Resources Planning Act and the Government Performance Results Act. The actions and goals articulated in the Natural Resource Agenda all fall within the mission assigned to the Forest Service through the Multiple-Use Sustained-Yield Act, the National Forest Management Act, and the other laws that establish the agency's mission and activities. While the Natural Resource Agenda does place new emphasis on some resources and uses, it does not fundamentally alter the Forest Service's mission nor does it encourage off-budget trust funds.

Need for Public Access and Forest Management Access

In the preamble of the notice of proposed rulemaking (65 FR 11680), the Forest Service noted that the proposal gives emphasis to providing safe administrative and public access within the context of maintaining healthy ecosystems.

Comments concerning the need for access: The Forest Service received numerous comments questioning the agency's ability to effectively manage forest resources for long-term forest health and wildfire suppression, while reducing road access. Others were concerned about the potential reduction

in the number of roads open to the public and the effect fewer roads would have on public access and recreation use on national forests and grasslands. A few expressed concern that the agency would use road maintenance costs or a lack of funding to justify road closures. A few identified human and natural resource-related emergency access concerns. Still others were concerned with the concept of road decommissioning. Specifically, some expressed concern that roads analysis would delay road decommissioning, while others were concerned that the agency would not thoroughly analyze options for keeping roads open before deciding to decommission them.

Agency response: Scientific evidence compiled to date suggests that roads are a significant source of erosion and sedimentation and are, in part, responsible for a decline in the quality of fish and wildlife habitat. The agency recognizes that the National Forest Transportation System is vitally important for responsible management of the National Forest System lands and is essential to many rural communities and recreational users. The agency is responsible for finding a balance between the need for public and administrative access and the environmental costs associated with providing that access. The final rule and administrative policy require the use of a science-based roads analysis process to identify road needs, issues, and opportunities. The roads analysis process encourages the agency to actively engage the public and other state, federal, local and tribal partners in those discussions. The final rule at 36 CFR Part 212.5(b)(1) requires the identification of the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. The identification of the minimum road system needed includes considerations for forest health, emergency access, and public access needs. The final road management policy will improve access by allowing the agency to focus its limited resources on the roads people need and use.

Comments concerning access rights: Several individuals expressed concern over the effect of the proposed rule and policy on access rights, on roads managed by other agencies, and on roads under permit or other agreements, such as cost-share agreements and special use permits. Some States, such as North Dakota, were concerned the rule and policy could circumvent state laws and policies.

Agency response: The final rule and policy do not affect existing access rights provided by statute, treaty, or pursuant to reserved or outstanding rights. Moreover, the final rule and policy do not impose additional requirements on entities that possess access rights on roads owned privately or by state, county, tribal, or local jurisdictions. The final rule and policy provide direction regarding how the Forest Service intends to make road management decisions, not what those decisions must be. Road management activities on public roads with easements through the National Forest System, such as state and county roads, are not affected by this final rule. However, roadwork (such as realignment or widening) on National Forest System lands outside granted easements may require some level of roads analysis. The final rule and policy emphasize involvement with public, federal, state, local and tribal entities and in no way conflict with state laws.

Cooperating Agencies

Other federal agencies, States, tribal governments, and local governments are encouraged to participate with the Forest Service in implementing these regulations.

Comment concerning cooperating agencies: A respondent stated that the Forest Service continually denies requests for cooperating agency status for various States and counties.

Agency response: The agency is interested in maximizing cooperation with all agencies and interests and has established, within the policy, mechanisms with which to accomplish this objective. Both local agency and public involvement are key features of the roads analysis methodology and the National Environmental Policy Act (NEPA) environmental analysis process. These two public involvement mechanisms will ensure that local public issues and concerns are fully disclosed and addressed. The agency believes that participation by state, tribal, and local governments, as well as by individual citizens, will be critical to the long-term success in the implementation of this final rule and related administrative directive.

Forest Trails

The proposed rule did not propose many substantive changes to the agency's rules on the management of trails. As with the term ''forest development road,'' the term ''forest development trail'' would be revised by removing the term ''development.'' Otherwise, all references to trails were retained as adopted in the July 1, 1999, edition of Title 36, parts 200–299 of the Code of Federal Regulations.

Comments concerning the rule's impact on trails: Several respondents requested that the Forest Service explain the relationship between the proposed road management rule and the management of the National Forest Trail System. Others wanted to know the distinction between motorized roads and motorized trails.

Agency response: The road management rule and associated administrative policy provide direction for the management of the forest transportation facilities. While forest transportation facilities include roads, trails, and airfields, this final rule and administrative policy are specific to road management, not trails. Roads are managed for use by highway vehicles in compliance with state laws. Motorized trails are managed for off-highway vehicles not specifically excluded by local authority. Generaly these trails are used by motor bikes or all-wheel drive vehicles. The final rule defines a road as a motor vehicle travel-way more than 50 inches wide, unless designated and managed as a trail. A trail, therefore, may be more than 50 inches wide and motorized or non-motorized. The roads analysis process provides the means for the public and managers to address road and trail access relationships and opportunities.

Amount of Road To Be Decommissioned

The focus of the rule and policy is on determining the need for proper restoration, maintenance, and decommissioning of roads. The issue of decommissioning roads received substantial comment from the public.

Comments concerning road decommissioning: Respondents expressed a wide range of opinions on the amount of road decommissioning that should occur. Some stated strong feelings that all unauthorized and environmentally damaging roads should be decommissioned immediately. Others expressed strong concerns that if too many roads were decommissioned, public access needs and demands would not be met.

Agency Response: At about 380,000 miles of classified roads (plus an estimated additional 60,000 miles of unclassified roads), the forest transportation system is considered to be largely complete. National Forest System management's focus, therefore, through implementation of the roads rule and administrative policy, is shifting from developing new roads to managing access within the capability of the land. Through the rule's roads analysis process, responsible officials

can use local public involvement to identify roads that are needed for access and those roads that are no longer needed. These unneeded roads will be prioritized for decommissioning, either to return to a more natural state or to become a designated trail.

Relationship of the Roads Rule, the Roadless Area Conservation Rule, and the Planning Rule

In addition to the Road Management Rule, the Forest Service has two other ongoing and related rulemaking efforts: the Land and Resource Management Planning Rule and the Roadless Area Conservation Rule.

Comments concerning the relationship among the three rules: Many respondents expressed concern about the relationships among the proposed road management policy, the roadless area conservation rule, and the planning rule and questioned their cumulative effects. Others complained about the impacts of having to respond to these and other national policy efforts simultaneously.

Agency response: The proposed planning rule, road management policy, and roadless area conservation rule are three separate and distinct Forest Service initiatives that together form a coherent strategy for dealing with vital conservation issues. The Forest Service teams writing the rules have coordinated with each other to ensure that definitions and requirements are consistent across the policies. The proposed planning rule revisions will incorporate the principles of ecological, economic, and social sustainability into forest planning. The proposed roadless area conservation rule addresses how to protect inventoried roadless areas within National Forest System lands in the context of multiple-use management.

The planning rule provides the overall framework for planning and management of the National Forest System. The road management rule and policy which are implemented through the planning process must adhere to the sustainability, collaboration, and science provisions of the planning rule. For example, under the road management policy, national forests and grasslands must complete an analysis of their existing road system and then incorporate the analysis into their land management planning process. The analysis is accomplished by using a science-based analysis procedure and by working cooperatively with other agency partners and the public, as required by the planning rule. The road management rule and policy are intended to ensure that the National Forest Road System: (1) Meets current and future land and resource management objectives; (2) provides for public uses of National Forest System lands; (3) allows for economical and efficient management; and, (4) minimizes and begins to reverse adverse ecological impacts associated with the current transportation system.

The planning rule, road management rule and policy, and roadless area conservation rule all seek to provide for long-term sustainability, to promote collaboration, and to integrate science into National Forest System land management decisions. The agency has provided various public involvement and information meetings, public hearings, use of draft documents for public, and other opportunities to engage the public in these rulemaking efforts.

Levels of Road Management Decisions

The Forest Service proposal to revise its national road management policy continues the practice of making decisions about road management activities at the local level.

Comments concerning the levels at which road management decisions will be made: Several individuals indicated a preference for road decisions to be made at the National level, in the belief that decisions at the national level would better ensure broad representation for all Americans. Others suggested that road decisions are best made at the local level by those most knowledgeable about resource issues, and these respondents objected to the proposed service-wide policy. Some were confused by the terms ''line officers,'' ''Forest officers,'' ''responsible officials,'' and other terms for those who would make agency decisions.

Agency response: The road management rule is an appropriate decision to be made at the national level. Also appropriate for issuance at the national level are policies that address national issues or service-wide directives, which establish standards that guide Forest Service field officials, who administer the funds and resources. Regional Foresters, Forest Supervisors, and District Rangers are responsible for implementation of this rule and policy. Within the national framework, the majority of road decisions, such as whether to build, close, or decommision a particular road, would likely be made at the Forest Supervisor level or lower. However, road decisions would be made using local public involvement to identify needed and uneeded roads. To help avoid confusion, the final rule uses the term ''Responsible Official.'' (See the subsequent preamble discussion of 36 CFR 212.5.)

Compliance With Applicable Laws and Regulations

Forest Service rules must be in compliance with applicable laws and regulations. The following comments and agency responses relate to those requirements.

Comments concerning the rule's compliance with various land management acts: Many respondents expressed concern that the roads rule, if implemented, would be contrary to the statutory requirements set forth in the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1601–1613), National Forest Management Act, the Organic Administration Act, National Forest Roads and Trails Act, and the Federal Land Policy and Management Act. These writers stated that the violations would be a result of the agency's shift away from the ''continued flow of products'' emphasized in the various land management acts. They also stated that the shift away from the term ''development,'' as used in regard to forest roads and trails, would conflict with § 10(b) of the Forest and Rangeland Renewable Resources Planning Act. In addition, some of these writers believed that the process being used to initiate the road management rule is outside the land management planning process and, therefore illegal.

Agency response: Generally, the respondents did not specify what aspects of the final rule would violate existing laws, nor did they provide suggestions for modifying or improving the regulations. Therefore, the agency is unable to address the respondents' concerns directly. However, the agency is confident that the proposed rule and policy are compliant with applicable laws. The final rule sets the guidelines for management of the forest transportation system, but does not make site-specific decisions or allocate resources. Rather, the final rule sets in place a process by which decisions about National Forest System roads are to be informed through a roads analysis approach that will include active public involvement. Allocation of forest-land resources will continue to be made through forest planning. The Forest and Rangeland Renewable Resources Planning Act, § 10(a) directs the ''installation of a proper system of transportation to service the National Forest System . . . to meet anticipated needs on an economical and environmentally sound basis.'' Section 10 (b) of the act addresses re-vegetation requirements for roads that are not a

part of the forest development road system. This final rule changes nomenclature by shifting from a ''forest development road system plan'' to a ''forest transportation atlas,'' but the agency must still comply with relevant statutes. The final rule and policy are in compliance with sections 10(a) and 10(b) of the Forest and Rangeland Renewable Resources Planning Act. This final rule, in fact, was developed in response to strong public concern about National Forest System road management issues.

Comments concerning compliance with environmental laws and regulations: The Forest Service also received several comments suggesting that if the agency were fully compliant with existing environmental laws and regulations, such as the Clean Water Act and the Endangered Species Act, the need to promulgate these regulations would be negated.

Agency response: As stated previously, the agency must comply with all applicable laws. The agency believes this final rule balances the need for public use and safe public access with the protection of healthy ecosystems.

Comments concerning the Transportation Efficiency Act for the Twenty-First Century: A few respondents suggested that any major shift in the road policy should include a reference to the Transportation Efficiency Act for the Twenty-First Century (TEA–21).

Agency response: The final rule and policy do not materially change the manner in which the Forest Service cooperates and participates in highway management programs of the Federal Highway Administration or the various State Departments of Transportation for highway development and management as envisioned under TEA–21.

Comments concerning the Multiple-Use Sustained-Yield Act of 1960: Some respondents felt that the proposed rule and administrative policy would result in restricting motorized access so broadly as to prevent sustained yields of forest products and would reduce other multiple uses and, thus, violate the Multiple-Use Sustained-Yield Act of 1960.

Agency response: The final rule does not alter the statutory multiple-use mandate or the agency's compliance with that mandate. Lands administered by the Forest Service must continue to be managed in consideration of the relative values of the various resource uses in accordance with land and resource management plans (forest plans), which are prepared in compliance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528), the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act of 1976 (16 U.S.C. et seq), and the National Environmental Policy Act.

Comments concerning the Administrative Procedures Act and the Federal Advisory Committee Act: A few respondents alleged that the agency had apparently colluded with environmental groups in drafting the notice of proposed rulemaking, and, if so, this collusion was a violation of the Administrative Procedures Act and the Federal Advisory Committee Act. Some felt a statement from the Chief's speech made at the Commonwealth Club of California and reported in the January 26, 2000, issue of a California newspaper— ''In the end there will be fewer roads''— was a clear indication that the agency had already made a decision without the opportunity for the public to provide comment.

Agency response: Section 553(c) of the Administrative Procedures Act directs agencies to give prior notice of proposed rules and to give an opportunity for the public to comment. The Act requires consideration of those comments in adoption of a final rule. In order to obtain that public comment, the agency identifies a proposed action. There is no prohibition on listening to citizens or groups and discussing issues or approaches prior to formulating a draft or final rule. In fact, the Forest Service continually receives correspondence from, or is asked to meet with, citizens, members of Congress, other public officials, and interest groups who are asking the agency to take action on many policy fronts. Letters from, and meetings with, interest groups can sometimes result in discussions of potential policy changes and help the agency formulate proposed policies. Moreover, the public has full opportunity to comment on proposed rules.

The Federal Advisory Committee Act (FACA) is not a bar to all formal and informal consultations between federal agencies and groups rendering advice. Recently, the Federal District Court for the District of Idaho rejected claims alleging violations of FACA regarding development of its roadless rulemaking and related actions (*Boise County, Idaho* v. *Glickman,* CV–OO–141–S–EJL (D.Id. decided Sept 8, 2000)). The requirements of FACA have not been violated.

Comments concerning the Rehabilitation Act of 1973 and the Americans with Disabilities Act: Many respondents expressed concern that eliminating roads would limit access for those not physically capable of hiking and that this would result in discriminatory action on the part of the Federal Government.

Agency response: Title V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act both cover executive branch actions of the Federal Government. Title V prohibits discrimination in services and employment on the basis of handicap and has no bearing on this final rule, which would not affect employment of persons with disabilities nor the delivery of federal services to persons with disabilities. As to compliance with the Americans with Disabilities Act, it is likely that accessibility to some areas of National Forest System lands may change in the future, but any such change would follow an indepth public involvement process during which the concerns of the disabled wishing access to such areas would be taken into account. Moreover, a reduction in roads would result in a more focused use of Forest Service resources for reconstruction that could actually improve access for the disabled on those roads most suitable to their needs and desires.

Comments regarding the rule-making process and the National Environmental Policy Act: Many respondents expressed the belief that the National Environmental Policy Act mandates preparation of an environmental impact statement rather than an environmental assessment prior to this rule's promulgation.

Agency response: In this case, the National Environmental Policy Act does not require an environmental impact statement or an environmental assessment. Under the Council on Environmental Quality regulations at 40 CFR 1501.3(b), agencies may adopt regulations which establish categories of actions, known as categorical exclusions, which do not require the preparation of an environmental assessment or impact statement. Forest Service categorical exclusions are established in Forest Service Handbook 1909.15, chapter 30. As noted in the proposed rule, the Forest Service has established a categorical exclusion for documentation in an environmental assessment or impact statement for ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' Although the agency determined that the rule could be categorically excluded, to further the goals of the National Environmental Policy Act, the Forest Service has elected to prepare an environmental

assessment. The agency has updated the environmental assessment addressing the reasonably foreseeable environmental impacts of this final rule and associated policy in response to comments and new information, and has concluded that an environmental impact statement is not required.

Comments concerning the environmental assessment: The agency received numerous comments regarding the National Forest Service Road Management Strategy Environmental Assessment. Comments included: requests for clarification of terms, assertions that the environmental assessment violated the National Environmental Policy Act because a full range of alternatives was not analyzed, statements that the assumptions used in the analysis were biased in favor of closing roads, requests to consider the environmental effects of moving timber harvests to private lands and other countries, concern that the agency balance the social, economic, and environmental elements, and many others.

Agency response: Comments related to the content of the environmental assessment have been reviewed and addressed. Agency responses may be found in Appendix G of the National Forest System Road Management Strategy Environmental Assessment. Comments in that Appendix are categorized as follows: range of alternatives, adequacy of analysis, compliance with existing laws, need for environmental impact statement, and various editorial comments or suggestions.

Comments concerning the rule's requirement for National Environmental Policy Act analyses: A small number of respondents expressed the concern that the cost associated with an environmental impact statement during the transition period for the road policy, required prior to any road construction or reconstruction in roadless or specific unroaded areas, could exceed the total value of one's property or the cost of the road and, thus, constitute a taking of private land without just compensation.

Agency response: The Forest Service is obliged to comply with all environmental and administrative laws, including the National Environmental Policy Act (NEPA). The Council on Environmental Quality implementing regulations requires the Forest Service to promulgate procedures for compliance with NEPA, including instructions on the preparation of environmental impact statements and environmental assessments. Compliance with applicable laws and regulations in the review and approval of particular road construction decisions does not constitute a taking of private property.

Comments concerning No Takings implications and the Civil Justice Reform Act: Some respondents believe the No Takings implications and Civil Justice Reform Act statements are incorrect because of inaccurate RARE II inventories and resultant designations. They also believe the road management rule will result in taking of private property rights by restricting access to mining claims, private and native in-holdings, and other rights of ingress and egress by closing county and permitted roads through and within National Forest System lands. Others were concerned that access for other federal, state, and local agencies would be restricted by decommissioning roads.

Agency response: The agency recognizes that changes have occurred since the RARE II inventories were completed and that on some forests portions of inventoried roadless areas have been roaded. This final rule requires a science-based roads analysis that will identify needed and unneeded roads, road maintenance priorities, and other road related resource concerns. Updating existing road inventories will occur as part of the roads analysis process. The final road management rule and the accompanying final administrative policy honors access to private property pursuant to statute, treaty, and outstanding or reserved rights, including reasonable access to private land inholdings. Also, the final rule does not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands. Forest Service officials must conduct a roads analysis to determine the minimum road system needed to achieve management goals and objectives. As part of that analysis, the agency requires the responsible official to seek to involve interested and affected citizens and organizations, including businesses, in the roads analysis and subsequent National Environmental Policy Act processes. Road decommissioning decisions will be made on a local basis, with public involvement, and will take into account access needs of state, county, and tribal governments.

Funding for Implementation of the Final Roads Rule

In the discussion of the regulatory impact of the proposed rule (65 FR 11691), the agency stated that management costs are not expected to change significantly as a result of these proposals.

Comments concerning funding: Several respondents were concerned that the proposed roads analysis requirements would add to the cost of managing the National Forest Road system and that this would reduce available road maintenance funding. Others expressed concern that the agency does not consider roads as assets; and, therefore, the agency would not consider and compare the cost of maintenance to the cost of road decommissioning. Still others recognized that the Forest Service's reduced budgets do not allow for adequate road maintenance and suggested that avenues to enhance revenue for road maintenance, such as user fees, be considered. Still others suggested using volunteers or entering into cooperating maintenance agreements with user groups to accomplish the needed road maintenance. Some questioned why the agency requested less funding than what is needed for maintenance in Fiscal Year 2001.

Agency response: Roads are an integral part of the Forest Service Natural Resource Agenda and Strategic Plan. The final rule reflects the agency's realistic capability to manage the operation, use, and maintenance of the forest transportation system over the long term. The overview notice (65 FR 11676) acknowledged that the agency has a continuing problem adequately funding road maintenance. The agency is exploring the potential benefits of converting selected high use roads to public roads to qualify more roads for funding from the Federal Highway Trust Fund. Inventories of forest transportation system maintenance and restoration needs, which are to be conducted under the rule and administrative policy, are intended to provide a basis for future funding requests for road management activities. The Forest Service is proud of the volunteer relationships that have been developed and strengthened over time and will continue to use volunteers as appropriate. Issues of revenue enhancement are beyond the scope of this final rule.

Specific Comments on Proposed Revisions to 36 CFR Part 212

On March 3, 2000, the Forest Service proposed to revise 36 CFR Part 212 to shift emphasis from transportation development to managing administrative and public access within the capability of the land. The proposal would shift the focus of National Forest System road management from development and construction of new roads to maintaining and restoring

needed roads and decommissioning unneeded roads within the context of maintaining, managing, and restoring healthy ecosystems.

The following is a summary of substantive comments received pertaining to the proposed rule and the agency's response, including any changes made in the final rule.

Comments concerning removing the term ''development'': Consistent with the intent to shift emphasis from road development to managing access, the proposed rule removed the words ''forest development roads'' and replaced them with the words ''National Forest System roads.''

Several respondents objected to the removal of the word ''development'' from the rule as they felt this change indicated a shift from sustainable forest management and public access. Others agreed that the change was in alignment with the proposed direction of the road management policy. Others objected to the use of the terms ''Forest Service'' roads since the respondents felt that roads on National Forest System lands were not owned by the Forest Service, but rather are managed by the Forest Service and ''owned'' by the public.

Agency response: The agency believes that this shift from ''development'' to improved stewardship of the transportation system is both realistic and appropriate. Therefore, as proposed, the term ''development'' is removed in the final rule. In considering comments on this issue, the agency discovered two other places where the term ''development'' needed to be removed: in the heading of § 212.1(c) and in the heading and text of § 212.1(d). Also, with regard to the proposed rule's reference to ''Forest Service'' roads, the agency agrees with the comments and has changed the terminology in the final rule from ''Forest Service roads'' to ''National Forest System roads.'' Forest roads are administrative roads, authorized by the National Forest Road and Trail Act. Many of these roads are open to public travel. However, they are not public roads as defined in 23 U.S.C. 101. National Forest System roads is a more accurate term since it covers national grasslands as well as other lands that are part of the National Forest System.

Comments concerning changes to those sections of 36 CFR Part 212 not mentioned in the proposed rule: Some respondents wanted to know whether other sections of 36 CFR Part 212 not specifically mentioned in the proposed rule (such as § 212.3, § 212.8, § 212.9 and § 212.21) would be adopted as unchanged.

Agency response: Those sections of 36 CFR Part 212 not specifically mentioned in the proposed rule and this final rule, remain unchanged.

Comments Regarding Proposed § 212.1 Definitions

The proposed rule added new definitions and updated and revised existing definitions. The agency proposed to remove the term ''forest transportation plan'' and instead, add the term ''forest transportation atlas'' to more clearly reflect the nature and intent of the transportation information being collected. Definitions also were proposed for ''road,'' ''classified road,'' and ''unclassified road.'' These terms are necessary to understand and implement the requirements of § 212.5 that provide direction for the identification of needed and unneeded National Forest System roads.

Overall comment: Several respondents requested that the definitions be simplified for clarity and understanding. Others were concerned with apparent conflicts among the definitions of federal, state, and local jurisdictions. The area of most concern was the definition of a ''road.'' Many people stated that the Forest Service should clarify its definition of a road and offered suggestions as to what the definition should be.

Agency response: In the final rule at § 212.1, the definitions for ''forest transportation atlas,'' ''forest transportation facility,'' and ''road'' have been revised in response to comments. The term ''temporary roads and other temporary facilities'' has been defined and added to the definition of a road. The previous definition of ''construction'' was replaced with a definition for ''new road construction'' to be consistent with the revised administrative policy.

Comments concerning the term ''Forest transportation atlas'': Some respondents expressed the concern that the *agency* was violating the Forest and Rangeland Renewable Resources Planning Act by replacing the term ''forest development transportation plan'' with ''forest transportation atlas.'' Others wanted to know what the difference was between a forest transportation atlas and a forest transportation plan.

Agency response: The Agency has not only changed the name from ''forest transportation development plan'' to ''forest transportation atlas'' but also has more clearly identified the requirements of the atlas. The forest transportation atlas serves as the repository of road related information. As part of this final rule, each administrative unit must prepare and maintain a forest transportation atlas, which must contain information about the transporation system, such as inventories, descriptions, and geo-spatial displays of the forest roads, trails, and airfields. The forest transportation atlas will be updated, as needed, through ongoing inventories or via project planning and must be available to the public.

Comments concerning the term ''Forest transportation facility'': Many respondents felt the proposed revisions in terminology and definitions were consistent with the change in proposed philosophy. Other respondents wanted to know how the definition for forest transportation facility would apply to particular roads, trails, and airfields.

Agency response: The definition of ''forest transportation facility'' has been modified to add the word ''designated'' to describe trails and airfields. The change was necessary because ''classified'' is a term used to describe needed roads and does not apply to trails and airfields. The description of facility types has been revised by adding ''devices and other transportation network'' before the word ''appurtenances.'' The description of the lands affected was modified to include those facilities that are ''wholly or partially within or adjacent to National Forest System lands'' for consistency with the administrative policy.

Addition of the term ''new road construction'': No comments were received regarding the specific definition of construction; however, for clarity, the definition for ''construction'' has been replaced in the final rule with the term ''new road construction'' and minor changes were made to the definition.

Comments concerning the term ''Road'': There were many comments requesting clarification of the terms ''road,'' ''classified road,'' and ''unclassified road,'' as well as questions about where temporary roads should be categorized. Others offered suggestions as to what the definition of ''road'' should be.

Agency response: The agency has revised terms related to roads to more clearly delineate various categories of roads. The definition for road has been modified to replace the word ''classified'' with the word ''designated'' when referring to trails. The term ''classified'' describes a needed road and does not apply to trails or airfields. In addition, the term ''temporary roads'' was added to identify temporary roads as a subcategory of a road.

Modification of the definition for ''classified roads'': The definition for classified roads has been modified to

better describe which roads are classified roads and to fully conform to the definition of ''Forest Road'' (23 U.S.C. 101) of which classified roads are a subset.

Modification of the definition for ''unclassified roads'': The definition for unclassified roads has been modified in the final rule to clarify that these roads are not managed as part of the forest transportation system. In addition, the term ''temporary roads'' has been removed from the definition of unclassified road and has been set out as a separate subcategory of road to acknowledge that temporary roads are managed differently than unclassified roads. An example of a temporary road would be those needed for short-term access to forest areas for restorative efforts after fires.

Other Changes

In addition to changes made in response to comments, the agency discovered that it had failed to include a definition for the term ''road decommissioning'' in the proposed rule. A definition had been included in the final rule and administrative policy at FSM 7705.

Concerns Regarding Proposed § 212.2—Forest Transportation Program

The proposed rule recommended revising § 212.2 to require a transportation atlas for each National Forest System administrative unit in lieu of the current ''forest transportation plan.''

Comments concerning which lands are affected by the rule: Some respondents did not understand what constituted the ''National Forest System'' and wanted the Forest Service to clarify the lands to which the rule applied. Others wanted the Forest Service to clarify whether the proposal applied to National Grasslands as well as National Forests.

Agency response: Paragraph (a) of proposed § 212.2 identifies the lands for which transportation atlas must be prepared. Grasslands are specified when describing the administrative units to which the final rule applies. However, to ensure that readers understand what constitutes the ''National Forest System,'' that term has been added at § 212.1 in the final rule including the definition set out in the Forest Rangeland Renewable Resources Planning Act. Additionally, for clarity, the term ''national grassland'' rather than ''grassland,'' is used in § 212.2(a) of the final rule.

Comments concerning use of science-based transportation analysis: Paragraph (a) of proposed § 212.2 indicated that the identification of transportation facilities was required by science-based analysis. There were many comments in support of the requirement of a science-based transportation analysis. One organization submitted a ''best science'' document and requested that this document be given consideration in the final rule. Other respondents were concerned that the requirement to carry out a science-based analysis prior to any new road construction would hamper the ability of the agency to respond quickly to conditions requiring immediate action, such as fire emergencies.

Agency response: The *agency is pleased with the support for science-based* roads analysis. The requirement to use science-based analyses has been moved to paragraph § 212.5(b)(1) Identification of road system to clarify how the analysis would be used.

Comments concerning emergency activities: A number of respondents wrote to state that emergency activities should be exempt from roads analysis.

Agency response: The agency has provided for exemptions from roads analysis for emergency activities in Forest Service Manual 7712.16 [Interim Requirements for road construction/reconstruction in inventoried roadless and contiguous unroaded areas].

Concerns Regarding the Proposed § 212.5—Road System Management

Paragraph (b) (1) of this section of the proposed rule directed responsible officials to identify the minimum transportation system needed to administer, protect, and utilize National Forest System lands. This section also established a standard that the road system on each unit must be commensurate with the resource objectives adopted in forest plans, must reflect likely funding, and, to the extent practicable, must minimize the adverse environmental impacts associated with road construction, reconstruction, and maintenance. Finally, to provide the information necessary to meet these requirements, the proposed rule required Forest Service officers to conduct a roads analysis at appropriate scales with opportunities for public involvement and consultation with state, local, and tribal governments.

Proposed paragraph (b) (2) addressed identification and decommissioning of roads not needed to meet forest plan resource objectives. The proposed paragraph also gave direction on scheduling of decommissioning, giving priority to decommissioning those roads posing the greatest risk to public safety or to environmental quality.

Comments concerning the references to officials: Several reviewers found the various references to decision makers, such as ''line officers,'' ''forest officers,'' and ''responsible official'' confusing.

Agency response: The agency understands how these terms, which are well understood by Forest Service employees, can be confusing to others. As a result, in the final rule only the term ''responsible official'' is used to indicate the decisionmaker.

Comments concerning the order of road management options: A respondent noted that the order of possible road management options varied: from construction, reconstruction, decommissioning, and maintenance in the Roads Analysis document to decommissioning, reconstructing, maintaining, and then constructing in the proposed policy and rule. The respondent stated that though a subtle change, such a change might be significant.

Agency response: The ordering of road management activities in the various documents was random and does not signify any importance or priority of one type of activity over another.

Comments concerning use of science-based roads analysis: There were many comments in support of the requirement to use a science-based roads analysis process to identify needed and unneeded roads. One environmental organization submitted a document that identified the ''latest'' science-based research on roads and related environmental effects and requested the document be given consideration in the final rule.

Agency response: This final rule does not establish any specific science-based roads analysis process as the standard to be used; rather, it preserves Forest Service flexibility to further describe science-based roads analysis in conjunction with other ecosystem analyses and to adjust the process in response to new scientific information about road and resource management interactions. Appropriate portions of § 212.5 have been revised to provide clarifying direction for using a science-based analysis to identify those transportation facilities needed for the management and access of National Forest System lands. Science-based roads analysis is discussed further in the final administrative policy published elsewhere in today's **Federal Register**.

Comments concerning the identification of minimum road systems: Concerned about the proposed direction to identify the minimum road system needed, many respondents questioned

the ability of the agency to effectively manage forest resources long-term while reducing road access. Others objected strongly to the reduction in roads open to public use because of the effect on public access and recreation opportunities on National Forest System lands. Still, others favored and expected to see a reduction in roads on National Forest System lands as a result of the final rule and administrative policy. Most of these concerns were linked to opinions about negative environmental impacts of road construction and to concerns that roads may not be maintained to safe standards.

Agency response: In the final rule, the agency has clarified the phrase ''minimum road system'' to mean the road system necessary to meet resource and other management objectives adopted in the land and resource management plan, to meet applicable statutory and regulatory requirements, and, to the extent practicable, to minimize the adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance. When identifying the minimum road system, responsible officials also must consider and be responsive to expected long-term road funding.

Comments Concerning Coordination With Tribal Governments

Some respondents expressed concern that the proposed rule did not sufficiently emphasize the importance of communication between agency and tribal governments.

Agency response: The agency agrees, and in the final rule, the agency has added ''tribal governments'' § 212.5(b)(1) to the list of other government entities with whom the responsible official must consult when conducting a roads analysis.

Comments concerning road management and uses: Some respondents questioned the need for a process to identify whether new roads are needed, or to identify which existing roads should be reconstructed, maintained, or decommissioned. Other respondents questioned whether and how the road management policy and use of the roads analysis would allow for the consideration of other motorized and non-motorized uses.

Agency response: The final rule directs the agency to use a roads analysis to determine the minimum road system needed to meet resource and other management objectives adopted in forest plans. The roads analysis is a critical component of the overall road strategy that will help to ensure that road issues and concerns are fully disclosed and analyzed. In response to the query about how the roads analysis would allow for consideration of other travel means, text has been added to paragraph § 212.5(b)(2) to recognize that roads may be converted to other uses.

Comments concerning road decommissioning: Some respondents felt that the term needed to be clarified or better defined. A few respondents requested more specific information about the end objectives of decommissioning a road. Others equated decommissioning to road closure and restricted access to public lands and restricted use of forest resources.

Agency response: In the final rule, § 212.5(b)(2) has been expanded to more accurately describe the activities and treatments encompassed within the term ''decommissioning''. Decommissioning is described as an activity that restores roads to a more natural state. Activities used to decommission a road include the following: (1) reestablishing former drainage patterns, stabilizing slopes, and restoring vegetation; (2) blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, and removing unstable fills; (3) pulling back road shoulders; (4) scattering slash on the roadbed; (5) complete elimination of the roadbed by restoring natural contours and slopes; and (6) other methods designed to meet the specific conditions associated with the land around the unneeded road. Therefore, the agency has adopted § 212.5 as proposed except for the changes noted. It should be noted that in addition to decommissioning roads, the responsible official may also convert roads to other uses such as trails.

Proposed Changes to § 212.6, § 212.7, § 212.10

The final rule removes the words ''forest development roads'' from part 212 and replaces them with the words ''Forest Service roads.''

Proposed § 212.13—Temporary Suspension of Road Construction in Unroaded Areas

Section 212.13 is the requirement set out in the interim rule (63 FR 4351) that adopted a temporary road building suspension on certain unroaded lands. The interim rule was designed to expire after 18 months or upon the publication of a final road management rule, whichever occured first. Therefore, this section is removed by this final rule.

Proposed § 212.20—National Forest Trail System Operation

The agency proposed a revision to the rule on National Forest development trail system to remove the reference to development.

Overall comment on the trail system: Some respondents wanted the Forest Service to clarify the relationship between the road management rule and management of the National Forest trail system.

Agency response: The Forest Transportation System is composed of forest roads, trails, airfields, and related facilities. The final roads management rule and administrative policy focuses on the road management system because of the intense public controversy surrounding forest road management and because of the environmental impacts associated with roads. In addition, there is a critical need to address the road maintenance backlog on many National Forests. The National Forest trail system, while an important component of the overall Forest Transportation System, is not nearly as controversial, nor as environmentally impacting. Moreover, this rule was designed specifically to address road management issues. However, the final rule modifies § 212.20 to require that Forest Service trails be identified in the forest transportation atlas in recognition of the importance of displaying the overall forest transportation network. In the final rule, this section was revised to change the heading from ''National Forest development trail system operation'' to ''National Forest trail system operation'' to conform to the language in the remaining sections of part 212.

Conforming Amendments to 36 CFR Parts 261 and 295

The rules at 36 CFR part 261 list prohibited acts on National Forest System lands. Violations of these acts may lead to a citation or an arrest, depending on the case and its severity. There were numerous references in these regulations to ''forest development roads.'' This final rule replaces ''forest development road(s)'' with ''National Forest System road(s)'' to conform to the terminology in part 212. The final rule also replaces ''Forest Development Road System Plan'' at § 261.2 with ''Forest Transportation Atlas'' to conform with the terminology in part 212.

The rules at 36 CFR part 295 govern use of motor vehicles off forest development roads. This final rule replaces the term ''National Forest development roads'' with ''National Forest System roads'' in the heading and

sections of part 295 to conform with the terminology in part 212. No substantive revisions are proposed to these parts.

No comments were received on 36 CFR part 261 or 295, and, consequently, the final rule adopts the text of these sections as proposed.

Conclusion

The Forest Service is adopting this final rule and corresponding changes in administrative policy to help govern National Forest Transportation System planning and management. This action is necessary for the following reasons: (1) to ensure that the National Forest Transportation System meets current and future land and resource management objectives and provides for attendant public uses of National Forest System lands; (2) to provide for safe public access and travel; (3) to allow for economical and efficient management; and (4) to the extent practicable, to minimize and begin to reverse adverse ecological impacts from roads. This revision reflects shifts in public opinion and changes in demand and use of the National Forest System, considers possible economic and social benefits associated with road construction and uses, and utilizes scientific information about the environmental impacts of road construction. Also, all of the action items called for in the report to the President on wildlandfires of 2000 are compatible with the final road management policy. The final road management policy provides local decisionmakers adequate discretion to authorize needed access to meet resource management objectives and, is therefore, consistent with the agency's cohesive fire strategy; ''Protecting People and Sustaining Resources in Fire Adapted Ecosystems, a Cohesive Strategy.''

Regulatory Impact

This final rule was reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) 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 and final rules. A cost-benefit analysis has been prepared as part of the environmental assessment of this rule.

Issuing new regulations consistent with emerging road management policy will provide a transportation system that best serves current and anticipated management objectives and public uses, including access, of National Forest System lands. This final rule emphasizes investing in the reconstruction and maintenance of the most heavily used roads and establishing priorities for decommissioning unneeded roads. This final rule requires that the agency use a roads analysis prior to making decisions about road construction, reconstruction, and decommissioning. The agency currently conducts transportation analysis in association with forest planning, ecosystem assessments, and other analyses. Thus, the agency does not expect an incremental increase of administrative costs due to new administrative requirements under this final rule.

The costs and benefits associated with this final rule were described primarily in qualitative terms. Since the rule does not result in any land management decisions, the effect of the rule on the flow of goods and services will be further evaluated in the roads analysis and other planning analyses. Implementation of the final rule is expected to improve water quality, air quality, and wildlife and fish habitat. The spread of noxious weeds and invasive plants should be reduced. Increased emphasis on road decommissioning may reduce recreation access in some situations. However, this reduction in access would likely be offset by increased emphasis on maintaining existing roads and improving access in other areas. Remote recreation settings found in contiguous unroaded areas will be protected during the interim requirement period.

During the interim requirement period, access that requires roads will be limited in contiguous unroaded areas. Timber harvest and exploration and development of minerals are likely to be impacted in this interim period. If all planned timber harvest in contiguous unroaded areas was foregone, approximately 65 million board feet of timber per year could be affected. Up to 433 direct and 797 total jobs could be affected. These effects would expect to be of short duration, since the interim requirements period ends once comprehensive road inventory and forest-scale roads analysis is completed and incorporated as appropriate into the forest plan.

The cost-benefit analysis can be found in: National Forest System Road Management Strategy Environmental Assessment. This document can be obtained from the Internet at *www.fs.fed.us/news/roads* for 1 year following publication of the final rule or by writing to the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, D.C. 20090.

In summary, this final rule provides direction that emphasizes a science-based approach to addressing road management activities. While the agency cannot quantify many of the impacts of this final rule, the agency thoroughly considered both the potential and qualitative costs and benefits. Pursuant to requirements of Executive Order 12866, the agency carefully assessed alternative regulatory approaches and made a reasoned determination that the benefits justify the costs.

This final rule also has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule primarily involves revising agency terminology and broad principles to guide the planning and management of the Forest Service road system and has no significant direct or indirect financial or other impact on small businesses. Therefore, it is hereby certified that this action does 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 agency has assessed the effects of this final rule on State, local, and tribal governments, and on the private sector. This final 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 statment under § 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 environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Forest Service's assessment is that this final rule falls within this category of exclusion. Nevertheless, the agency has prepared an environmental assessment. The agency received numerous comments regarding the National Forest Service Road Management Strategy Environmental Assessment. Comments included: requests for clarification of terms, assertions that the environmental assessment violated the National Environmental Policy Act because a full range of alternatives was not analyzed, statements that the assumptions used in the analysis were biased in favor of closing roads, requests to consider the environmental effects of moving timber

harvests to private lands and other countries, concern that the agency balance the social, economic, and environmental elements, and many others.

Comments related to the content of the environmental assessment have been reviewed and addressed. Agency responses may be found in Appendix G of the National Forest System Road Management Strategy Environmental Assessment. The agency has updated the environmental assessment addressing the environmental effects of this rule and associated policy in response to the comments and new information, and has concluded that an environmental impact statement is not required.

The environmental assessment can be obtained from the Internet at *www.fs.fed.us/news/roads* for 1 year following publication of the final rule or by writing to the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, D.C. 20090.

No Takings Implications

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

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The 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 final rule does not contain any record keeping 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 USC 3501, *et seq.*) and implementing regulations at 5 CFR Part 1320 do not apply.

Federalism and Consultation with Tribal Governments

The agency has considered this final rule under the requirements of Executive Order 12612 and concluded that the final rule does 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 of 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 order calls for enhanced consultation with federal, state and local governmental officials and emphasizes increased sensitivity to their concerns. In the spirit of these requirements, the agency has carefully considered, in the development of this final rule, the comments received from States, federal agencies, tribal governments, and local governments in response to the Advanced Notice of Proposed Rulemaking published January 28, 1998 (63 FR 4350) and National Forest System Road Management and Transportation System; Proposed Rule and Notices published March 3, 2000 (65 FR 11680). In § 212.2, the definition of ''forest transportation atlas'' recognizes the need to consider forest resources upon which communities depend. Section 212.5 of the final rule requires agency officials to use a science-based roads analysis process and actively engage the public in identifying the Forest Service road system. The final rule at § 212.5(b)(1) calls for consultation with affected federal agencies, State, tribal, and local governments in identifying transportation needs. In addition to public comments on the proposed rule and policy, the agency also contacted many federal, state, tribal, and local government officials to clarify provisions of the proposed rule and to understand their concerns.

Although the Forest Service did not mandate that evey field unit had to consult with other government agencies and tribes, many Regional Foresters and Forest Supervisors met with representatives of these governmental entities to discuss their ideas and concerns about the proposals. Some 98 governmental entities submitted formal comments on the road management proposals. In the final rule, the agency has added ''tribal governments'' § 212.5(b)(1) to the list of other governmental entities with whom the responsible official must consult when conducting a roads analysis.

This final rule provides the broad framework for managing National Forest System roads. Instructions for complying with these revisions are set out in a final revision of the Forest Service Manual Title 7700 that appears elsewhere in this part of today's **Federal Register**. The final revisions to 36 CFR parts 212, 261, and 295, in conjunction with final administrative direction published elsewhere in this notice today, provide the framework for achieving this new emphasis.

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 amends Chapter II of Title 36 of the Code of Federal Regulations to read 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 (c) heading
b. § 212.1 (d) heading, text
c. § 212.1(e) heading;
d. § 212.1(i) text;
e. § 212.1(j) text;
f. § 212.1(k) text;
g. § 212.2 heading;
h. § 212.2(a) text;
i. § 212.2(b) text;
j. § 212.2(c) text;
k. § 212.4(a) text;
l. § 212.4(b) text.

4. Amend § 212.1 as follows:

a. Remove the paragraph designations (a)–(k) and arrange the terms in alphabetical order.

b. Remove the definition for ''forest transportation plan'', add the definition for ''forest transportation atlas'' and revise the definition for ''forest transportation facility.''

c. Remove the term and definition for ''construction'' and add definitions in alphabetical order, for ''new road construction,'' ''National Forest System,'' ''road decommissioning'', ''road reconstruction,'' and ''road'' to read as follows:

§ 212.1 Definitions.

* * * * *

Forest Transportation Atlas. An inventory, description, display, and other associated information for those 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.

Forest Transportation Facility. A classified road, designated trail, or designated airfield, including bridges, culverts, parking lots, log transfer facilities, safety devices and other transportation network appurtenances under Forest Service jurisdiction that is wholly or partially within or adjacent to National Forest System lands.

National Forest System. As defined in the Forest Rangeland Renewable Resouces Planning Act, the ''National Forest System'' includes all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tennant Act (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system.

New Road Construction. Activity that results in the addition of forest classified or temporary road miles.

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

(1) *Classified Roads.* Roads wholly or partially within or adjacent to National Forest System lands that are determined to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.

(2) *Temporary Roads.* Roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the forest transportation system and not necessary for long-term resource management.

(3) *Unclassified Roads.* Roads on National Forest System lands that are not managed as part of the forest transportation system, such as unplanned roads, abandoned travelways, and off-road vehicle tracks that have not been designated and managed as a trail; and those roads that were once under permit or other authorization and were not decommissioned upon the termination of the authorization.

Road Decommissioning. Activities that result in the stabilization and restoration of unneeded roads to a more natural state.

Road Reconstruction. Activity that results in improvement or realignment of an existing classified road as defined below:

(1) *Road Improvement:* Activity that results in an increase of an existing road's traffic service level, expands its capacity, or changes its original design function.

(2) *Road Realignment:* Activity that results in a new location of an existing road or portions of an existing road and treatment of the old roadway.

* * * * *

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

§ 212.2 Forest transportation system.

(a) For each national forest, national grassland, experimental forest, and any other unit of the National Forest System as defined in § 212.1 and listed in 36 CFR part 200, subpart A, the Forest Supervisor or other responsible official must develop and maintain a forest transportation atlas, which is to be available to the public at administrative headquarters units. The purpose of the atlas is to display the system of roads, trails, and airfields of the unit. The atlas consists of the geo-spatial, tabular, and other data to support analysis needs and resource management objectives identified in land management plans. The atlas is a dynamic document that changes in response to new information on the existence and condition of roads, trails, and airfields of the unit. The atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for the atlas are identified in the Forest Service directive system (36 CFR 200.1).

* * * * *

§ 212.5, 212.6, 212.7, 212.10 [Amended]

6. Remove the words ''forest development roads'' and, in their place, add the words ''National Forest System roads'' 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.

(a) * * *

(b) Road system—(1) *Identification of road system.* For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§ 212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

(2) *Identification of unneeded roads.* Responsible officials must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails. Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. Forest officials should

give priority to decommissioning those unneeded roads that pose the greatest risk to public safety or to environmental degradation.

* * * * *

§ 212.13 [Removed]

8. Remove entire § 212.13.

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

§ 212.20 National Forest trail system operation.

(a) *National Forest System trails.* National Forest System trails must be identified in the forest trail atlas and on maps, which are to be available to the public at Forest Supervisor and District Ranger offices. Trails must be clearly marked on the ground.

* * * * *

PART 261—PROHIBITIONS

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

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

11a. Remove the words ''forest development'' and in their place add the words ''National Forest System'' in the following:

Subpart A—General Prohibitions

a. 261.1(a)(1) text;
b. 261.1(a)(3) text;
c. 261.10(d)(2) text;
d. 261.12 heading;
e. 261.13 introductory text;

Subpart B—Prohibitions in Areas Designated by Order

f. 261.50(b) text;
g. 261.50(f) text;
h. 261.54 heading;
i. 261.56 heading and text.

11b. In § 261.2, remove the definitions for ''forest development road'' and ''forest development trail,'' and add the following definitions in correct alphabetical order:

§ 261.2 Definitions.

* * * * *

National Forest System road means a road wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in a forest transportation atlas.

National Forest System trail means a trail wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in a forest transportation atlas.

* * * * *

PART 295—USE OF MOTOR VEHICLES OFF FOREST SERVICE ROADS

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

13. 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).

§ 295.1 [Amended]

14. In § 295.1, replace the words ''National Forest development roads'' with ''National Forest System roads.''

15. Replace the words ''forest development roads'' with ''National Forest System roads'' in the following places:

§ 295.2 [Amended]

(a) § 295.2 heading, and

§ 295.5 [Amended]

(a) § 295.5 heading.

Dated: January 4, 2001.

Mike Dombeck,

Chief, Forest Services.

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