

2. Roads most heavily used by the public will be safe and will promote efficient travel. These outcomes will be accomplished by aggressively updating roads (reconstruction, design and maintenance) and reducing environmental impacts in these areas.

3. New roads that are determined necessary for National Forest System management will be designed more carefully to minimize ecological damage, and limited funds will be spent appropriately. These outcomes will be achieved by carefully analyzing factors surrounding the decision to build new roads in roadless areas, as well as the decision to build new roads in roadless areas, to assure that managers make more informed decisions and that only necessary construction is taking place.

The agency invites comments and suggestions on procedures for improving management of the national forest road system.

Agency Actions

Several research efforts are underway to examine the National Forest road system and its uses; to synthesize scientific information on Forest Service roads; and to analyze attitudes toward roads as expressed in the news media. Drafts of these reports are available from Director, Pacific Northwest Research Station, P.O. Box 3890, Portland, OR 97208-3890, 503-808-2100 and also at pnw/r6pnw@fs.fed.us on the Internet.

An essential element of this comprehensive overhaul of forest road policy is to develop improved analytical tools for land managers and resource specialists. To that end, agency researchers and specialists are developing an improved analysis process that assures that the ecological, social, and economic impacts of proposed construction and reconstruction of National Forest System roads are objectively evaluated, and that there is a full consideration of public demand on National Forest System roads in the context of current scientific information. This process will undergo an independent technical and scientific peer review before adoption.

Until the effects of roads can be more rigorously assessed, the Forest Service is also proposing to issue an interim rule to temporarily suspend road construction and reconstruction in roadless areas for not more than 18 months. The proposed interim rule appears in the same separate part of today's **Federal Register** with a request for public comment and notice of the initiation of scoping under the National Environmental Policy Act of 1969.

Suggestions on the scope and nature of a proposed revision of the Forest

Service's road management policy, as well as comments on the agency's preliminary suggestions are invited. The agency will consider all comments in developing the proposed rule.

Dated: January 22, 1998.

Mike Dombeck,
Chief, Forest Service.

Appendix A—Facts About the National Forest Road System

1. The National Forest Road System is extensive and diverse; it includes an estimated 373,000 miles of forest roads.

a. One-fourth (23%) are called arterial or collector roads and they serve all users, including passenger cars.

b. Over one-half (57%) are roads that are only passable by high-clearance vehicles such as four-wheel drives.

c. One-fifth (20%) are closed by gates.

d. The Forest Service has identified an additional estimated 60,000 miles of "uninventoried roads" that were created by repeated use but never built or maintained to any standards. The actual number of miles of "uninventoried roads" is likely far greater than this estimate. There are also additional public roads on National Forest System lands, such as state and county roads that are typically maintained by others.

e. There are more than 7,000 bridges on forest roads, three-fourths of these are on the arterial and collector roads.

f. In 1996, new construction of National Forest System roads was 434 miles, or 0.1% of the total National Forest road system.

2. Roads are essential for public use and enjoyment of National Forests and Grasslands.

a. An estimated 15,000 logging trucks and vehicles associated with timber harvesting use National Forest roads each day, about the same number as in 1950.

b. An estimated 1.7 million vehicles associated with recreation activities travel forest roads each day, over 10 times more than in 1950. Recreation usage is projected to continue to increase.

c. An estimated 9,000 Forest Service administrative vehicles travel forest roads each day, conducting duties essential to the stewardship of forest resources, including special use administration, wildlife habitat improvement projects, maintenance and operation of recreation facilities, law enforcement, and fire suppression.

3. Public use and demands on National Forest System lands have shifted considerably during the past 10 years. The size and composition of the National Forest System road system has not been adjusted accordingly.

a. Recreation usage has increased from less than 250 million Recreation Visitor Days to almost 350 million and is projected to continue to increase.

b. Timber harvest has dropped to below 4 billion board feet from a high of about 12 billion board feet annually.

c. The need for, and understanding of, ecological benefits that these forest and rangelands provide has increased, such as clean water, wildlife habitat, and habitat for endangered species.

4. While a significant portion of the 191,000,000 acres of the National Forest System is roaded, a significant portion remains roadless.

a. An estimated 34,000,000 acres are currently designated as wilderness; an estimated 6,000,000 acres are designated as proposed wilderness in forest plans.

b. An estimated 33,000,000 acres are currently unroaded in blocks of 5,000 acres or more for which the existing forest plans have proposed management that could include building new roads.

c. Of the 33,000,000 acres that are unroaded and available for management activities that could include roading, an estimated 8,000,000 acres are classified as "suitable for timber production."

5. Current funding levels are inadequate to maintain the roads to planned standards that permit efficient and safe use and keep ecological impacts at acceptably low levels.

a. About 40% of National Forest System roads are fully maintained to the planned safety and environmental standards for which they were designed.

b. The backlog of reconstruction needs on National Forest System roads is considerable. For example, the backlog on arterial and collector roads alone is estimated to be over \$10 million, due to their age (three-fourths are over 50 years old) and their lack of adequate regular maintenance.

c. From 1991 to 1996, funding for decommissioning roads has only financed a reduction of about 0.5% of National Forest System roads per year.

6. New scientific information continues to increase our understanding of the ecological and social impacts from existing roads and associated management activities. In some instances, ecological impacts from existing roads are more extensive than previously thought. Examples of these impacts include: increased frequency of flooding and landslides; increased stream sedimentation and associated reduction in fish habitat productivity; increased habitat fragmentation and degradation which reduce the travel corridors needed by species requiring large home ranges; increased frequency of person-caused fires as a result of access; and invasion of exotic species that displace native species. In contrast, recently constructed roads that are better designed and better located than earlier roads, and result in fewer and less severe ecological impacts.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

RIN AB-68-0095

Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction in Roadless Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed interim rule; request for comment.

SUMMARY: In an Advanced Notice of Proposed Rulemaking (ANPR) published elsewhere in today's **Federal Register** the Forest Service has announced its intentions to revise its management of the National Forest Road System. In concert with that ANPR, the Forest Service proposes to suspend temporarily road construction and reconstruction in most roadless areas of the National Forest System. The intended effect is to safeguard the significant ecological values of roadless areas from potentially adverse effects associated with road construction, while new and improved analytical tools are developed to evaluate the impact of locating and constructing roads. The temporary suspension of road construction and reconstruction would expire upon the application of the new and improved analysis tools or 18 months, whichever is sooner. This rulemaking is a component of a larger effort to address a number of National Forest System transportation issues. Public comment is invited and will be considered in adoption of an interim rule.

DATES: Comments are due by February 27, 1998.

ADDRESSES: Send written comments to Director, Ecosystem Management Coordination Staff, MAIL STOP 1104, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090. Comments also may be sent via the Internet to roads/wo@fs.fed.us.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at the Forest Service National Headquarters Offices, 14th and Independence Avenue SW, Washington, D.C. Persons wishing to inspect the comments are encouraged to call ahead (202-205-0895) to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Gerald (Skip) Coghlan, Engineering Staff, 202-205-1400 or Rhey Solomon, Ecosystem Management Coordination Staff, 202-205-0939.

SUPPLEMENTARY INFORMATION: This proposed interim rule is being published in association with an Advance Notice of Proposed Rulemaking (ANPR) published elsewhere in this separate part in today's **Federal Register**. In the ANPR, the Forest Service is giving notice of its intention to revise the regulations concerning the management of the National Forest System transportation system to address changes in how the

road system is developed, used, maintained, and funded. As part of the ANPR, the agency also indicates that the development of improved scientific and analytical tools for land managers and resource specialists is an essential element of the comprehensive overhaul of forest road policy.

As noted in the ANPR, the road system on the National Forest System is extensive and diverse. It includes an estimated 373,000 miles of forest system roads. Roads are essential for the active management of the resources of the National Forests and Grasslands. These roads also are essential for public use and enjoyment of the National Forest System.

In addition, the agency estimates that there are more than 60,000 miles of roads created by repeated public use of the National Forests and Grasslands. Although these roads occur on National Forest System lands, they are not planned, managed or maintained by the agency or considered part of the forest road system.

A growing body of scientific information demonstrates that road construction in sensitive areas, such as roadless areas, may cause the introduction of exotic plant species, disrupt wildlife habitat, and otherwise compromise the attributes that make roadless areas ecologically important and often unique. Roadless areas are often aquatic strongholds for fish of great recreational and commercial value. These areas also often provide critical habitat and migration routes for many wildlife species, and they are particularly important for those species requiring large home ranges, such as the grizzly bear and the wolf.

The effects of road construction may persist for decades. Many of the remaining areas with the National Forest System are in areas with steep slopes that surround headwater streams. Road construction increases the risk of erosion, landslides, and slope failure, which may compromise critically important water quality. Until new and improved analytical tools can be developed and implemented to evaluate the positive benefits and adverse impacts of roads, the adoption of an interim rule to temporarily suspend road construction or reconstruction within National Forest System roadless areas is viewed as critical to preserve land and resource management options.

Draft Proposed Interim Rule

The agency proposes to temporarily suspend road construction activities, including the construction of temporary roads on National Forest System roadless areas, through issuance of an

interim rule to a new § 212.13 of Part 212 of Title 36 of the Code of Federal Regulations. Specifically, the interim rule would apply the temporary suspension to roadless areas of 5,000 acres or more inventoried in RARE II (Roadless Area Review and Evaluation) and other unroaded areas, regardless of size, identified in a forest plan; unroaded areas greater than 1,000 acres contiguous to Congressionally-designated Wilderness or contiguous to federally-administered components of the National Wild and Scenic Rivers System that are classified as "Wild"; and all unroaded areas greater than 1,000 acres contiguous to roadless areas of 5,000 acres or more on other federal lands. In addition, the suspension would apply to two other categories: (1) any National Forest System (NFS) area of low-density road development or (2) any other NFS area that retains its roadless characteristics which the Regional Forester subsequently determines have such special and unique ecological characteristics or social values that no road construction or reconstruction should proceed. The agency does not anticipate that Regional Foresters will create a new inventory of roadless areas that meet the criteria of these latter two categories. Rather, it is expected that Regional Foresters will apply these categories on a project-by-project basis. Examples of areas that might be considered under these latter categories are areas needed to protect the values of municipal watersheds, including public drinking water sources, or to provide habitat for listed or proposed endangered and threatened fish, wildlife, or plants. Another example might be the National Forest System roadless areas listed in Table 5.1 of the Southern Appalachian Area Assessment, Social/Cultural/Economic Technical Report, Report 4 of 5, July 1996.

The suspension would remain in effect until any suspended road construction could be evaluated using the new analytical tools that are being developed, but no longer than 18 months from the effective date of the interim rule.

The proposed interim rule would expressly exempt four categories of roadless areas from the temporary suspension of road construction and reconstruction:

1. Roadless areas within National Forests that have a signed Record of Decision revising their forest plans and have completed the administrative appeal process as of the effective date of the rule.
2. Roadless areas within National Forests that have a signed Record of

Decision revising their forest plans on which the administrative appeal process is underway, but not completed as of the effective date of the rule.

3. Roadless areas in Washington, Oregon, and California within those portions of National Forests encompassed by the Northwest Forest Plan; and

4. Road construction or reconstruction in roadless areas needed for public safety or to ensure access to private lands pursuant to statute or outstanding and reserved rights.

The exemptions for final revised forest plans and for the Northwest Forest Plan recognize the currency of the scientific information, evaluations, public participation, and decisions made in these plans and the need to minimize disruption in programs of work. The proposed interim rule also recognizes the necessity to ensure public safety and access to private property. The exemption for revised plans currently under appeal also honors exiting decisionmaking and administrative appeal processes and seeks to avoid undue interruptions or interference with established planning processes. We specifically request comment on whether additional measures are needed to implement exemption (b)(2).

The proposed interim rule would not modify, suspend, or cause to be re-examined any existing permit, contract, or other instrument authorizing occupancy and use of the National Forest System, any land and resource management plan, any land allocation decision, or other management activity or use within roadless areas in which road construction or reconstruction are temporarily suspended. The intent is not to halt active management of roadless areas but to protect their values while improved analytical tools are developed to better assess the impacts of road construction on roadless area values.

Regulatory Impact

Under the proposed interim rule, some currently planned land management projects that are dependent on new road construction, such as timber sales and ecosystem restoration activities, may not be implemented in the timeframe currently planned. During the interim period, some projects may proceed in an altered form and some may be postponed until such time that the road assessment process is implemented. Those projects may eventually be altered as a result of new information provided by the forest road assessment process. It is difficult to estimate with precision the costs and

benefits associated with deferring projects due to considerable variation in site-specific factors; the fact that projects are in various stages of development and readiness to execute; the fact that planning and analysis often take much longer to complete than originally anticipated; and the fact that some project work can be shifted to other sites outside roadless areas.

Nationwide, the agency estimates that of the total 3.8 billion board feet planned for FY 1998, the volume of timber actually offered for sale will be reduced by 100–275 million board feet. Although the actual amounts are very difficult to estimate, this reduction in timber volume offered could lead to corresponding reductions in employment and in payments to states. It is expected that the Intermountain and Northern Regions of the National Forest System will experience a disproportionately higher effect from the suspension than other geographic regions of the country, due to the higher dependence on roadless areas for timber production in these regions.

While the delay in these projects will have some adverse economic impact in the short term, these impacts are offset by the benefits to be gained from the temporary suspension of road construction and reconstruction in these areas. The benefits would include the prevention of an increased risk of erosion, landslides, and slope failure, all of which may compromise critically important water quality in the headwater streams that are found in many of the covered roadless areas. The temporary suspension would also help to prevent introduction of exotic plant species into these areas. The development of a new road analysis process would also allow currently proposed and future projects requiring road construction to reflect current scientific information and resource use trends. This will help managers and the public better understand the consequences of locating and building roads in roadless areas.

This proposed interim rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is a significant rule because of the importance of road policy issues. While this proposed interim measure would create some costs associated with temporarily suspending actions on road construction or reconstruction, the suspension is limited to roadless areas and some low-density roaded areas and is temporary, not to exceed 18 months. This proposed interim rule will not have an annual effect of \$100 million or more on the

economy nor have a significant adverse effect on productivity, competition, jobs, the environment, public health or safety, nor State or local governments. Accordingly, this proposed interim rule has been reviewed by OMB under Executive Order 12866.

Moreover, this proposed interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Unfunded Mandates Reform

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

Environmental Impact

Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The agency’s assessment is that this proposed interim rule falls within this category of actions. Nevertheless, in furtherance of the purposes of the National Environmental Policy Act, the agency has elected to undertake environmental analysis and documentation prior to publication of the final interim rule. As part of the agency scoping under its NEPA procedures, public comment is invited.

No Takings Implications

This proposed interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed interim rule does not pose the risk of taking of Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected, since the proposed interim rule applies only to federal lands and explicitly ensures access to private property pursuant to statute or to outstanding or reserved rights.

Civil Justice Reform Act

This proposed interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed interim rule (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation, (2) has no retroactive effect on existing permits, contracts, or other instruments authorizing the occupancy and use of the National Forest System, and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This proposed interim rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 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.

List of Subjects in 36 CFR Part 212

Highways and roads, National forests, Rights-of-way, and Transportation.

Therefore, the Forest Service proposes an interim rule amending 36 CFR part 212 as follows:

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

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

Authority: Sec. 1, 30 Stat. 35, as amended sec. 205, 72 Stat. 907; 16 U.S.C. 551, 23 U.S.C. 205, unless otherwise noted.

2. Add a new § 212.13 to read as follows:

§ 212.13 Temporary suspension of road construction in roadless areas.

(a) *Suspensions.* Except as provided in paragraphs (b) and (c) of this section, new road construction projects, including temporary roads, and road reconstruction projects are suspended within the following areas of the National Forest System:

(1) ALL RARE II inventoried roadless areas of 5,000 acres or more within the

National Forest System and all other roadless areas, regardless of size, identified in a land and resource management plan;

(2) All National Forest System roadless areas greater than 1,000 acres that are contiguous to Congressionally-designated Wilderness Areas or that are contiguous to federally-administered components of the National Wild and Scenic River System (16 U.S.C. 1274) which are classified as Wild;

(3) All National Forest System roadless areas greater than 1,000 acres that are contiguous to roadless areas of 5,000 acres or more on other federal lands;

(4) Any National Forest System area, regardless of size, with low-density road development that essentially retains its roadless characteristics on which the Regional Forester subsequently determines that road construction or reconstruction should not proceed, because of the area's special and unique ecological characteristics or social values; and

(5) Any other National Forest System area, regardless of size, that essentially retains its roadless characteristics on which the Regional Forester subsequently determines that road construction or reconstruction should not proceed, because of the area's special and unique ecological characteristics or social values.

(b) *Exemptions.* Road construction and reconstruction projects within the following roadless areas are exempt from the suspension required by paragraph (a) of this section:

(1) Roadless areas within National Forests that have a signed Record of Decision revising their land and resource management plans prepared pursuant to the National Forest Management Act (16 U.S.C. 1604(f)(5)) on which the administrative appeals process under 36 CFR Part 217 has been completed as of the effective date of the final interim rule;

(2) Roadless areas within a National Forest that has a signed Record of Decision revising the land and resource management plan prepared pursuant to the National Forest Management Act (16 U.S.C. 1604(f)(5)) on which the administrative appeals process under 36 CFR Part 217 is underway as of the

effective date of the final interim rule. (For these forests, issues related to the construction of roads in roadless areas will be addressed in the appeal decision, when appropriate.);

(3) Roadless areas within National Forest System lands in Washington, Oregon, and California, that are encompassed by the Northwest Forest Plan which is described in the "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, April 13, 1994;" and

(4) Road construction or reconstruction in roadless areas needed for public safety or to ensure access provided by statute or provided pursuant to reserved or outstanding private rights.

(c) *Scope and applicability.* (1) This section does not suspend or modify any existing permit, contract, or other instrument authorizing the occupancy and use of National Forest System land. Additionally, this section does not suspend or modify any existing National Forest System land allocation decision, nor is this section intended to suspend or otherwise affect other management activities or uses within roadless areas in which road construction or reconstruction projects are suspended pursuant to paragraph (a) of this section.

(2) The suspensions provided by paragraph (a) of this section remain in effect until any suspended road construction in roadless areas can be evaluated using new analytical tools, or 18 months, whichever is first.

(d) *Effective date.* The suspension of road construction and reconstruction projects in roadless areas as provided in paragraph (a) of this section is effective upon the date of publication of the final interim rule.

Dated: January 22, 1998.

Mike Dombeck,
Chief, Forest Service.

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