

[3410-11-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212, 251, 261, and 295

Travel Management; Designated Routes and Areas for Motor Vehicle Use

RIN 0596-AC11

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is revising regulations regarding travel management on National Forest System lands to clarify policy related to motor vehicle use, including the use of off-highway vehicles. This final rule requires designation of those roads, trails, and areas that are open to motor vehicle use. Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule will prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations. The clear identification of roads, trails, and areas for motor vehicle use on each National Forest will enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The final rule is consistent with provisions of

Executive Order 11644 and Executive Order 11989 regarding off-road use of motor vehicles on Federal lands.

EFFECTIVE DATE: This rule is effective [30 days after publication in the **Federal Register** – anticipated publication date of Nov.4th]

ADDRESSES: The rulemaking record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, S.W., Washington, D.C., from 8:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Those wishing to inspect or copy these documents are encouraged to call Jerry Ingersoll, Recreation and Heritage Resources staff, at (202) 205-0931 beforehand to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, Recreation and Heritage Resources Staff, (202) 205-0931.

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1. Background

Travel Management Program

Forest Service regulations at 36 CFR part 212 governing administration of the forest transportation system and regulations at 36 CFR part 295 governing use of motor vehicles off National Forest System (NFS) roads are combined and clarified in this final rule as part 212, Travel Management, covering the use of motor vehicles on NFS lands. These regulations implement Executive Order (E.O.) 11644 (February 8, 1972), “Use of Off-Road Vehicles on the Public Lands,” as amended by E.O. 11989 (May 24, 1977). These Executive orders direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Nationally, the Forest Service manages approximately 300,000 miles of NFS roads open to motor vehicle use, and about 133,000 miles of NFS trails. Only a portion of the trails are open to motor vehicles. This transportation system ranges from paved roads designed for passenger cars to single-track trails used by dirt bikes. Many roads designed for high-clearance vehicles (such as log trucks and sport utility vehicles) also allow use by all-terrain vehicles (ATVs) and other off-highway vehicles (OHVs) not normally found on city streets. Almost all NFS trails serve nonmotorized users, including hikers, bicyclists, and equestrians, alone or in combination with motorized users. NFS roads often accept nonmotorized use as well.

In addition to this managed system of roads and trails, many National Forests contain user-created roads and trails. These routes are concentrated in areas where cross-country travel by motor vehicles has been allowed, and sometimes include dense, braided networks of criss-crossing trail. There has been no comprehensive national inventory of user-created routes (and continuing proliferation of such routes has made a definitive inventory difficult), but they are estimated to number in the tens of thousands of miles.

Wilderness areas are closed to motor vehicles by statute. On some National Forests, and portions of others, motor vehicles are restricted by order to the established system of roads and trails. On other Forests, cross-country travel is not currently restricted.

Need for Revised Rule

Most National Forest visitors use motor vehicles to access the National Forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or the many other multiple uses of NFS lands. For many visitors, motor vehicles also represent an integral part of their recreational experience. People come to National Forests to ride on roads and trails in pickup trucks, ATVs, motorcycles, and a variety of other conveyances. Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests – in the right places, and with proper management.

Current regulations at 36 CFR part 295, which provide for allowing, restricting, or prohibiting motor vehicle travel, were developed when OHVs were less widely available, less powerful, and less capable of cross-country travel than today's models.

The growing popularity and capabilities of OHVs demand new regulations, so that the Forest Service can continue to provide these opportunities while sustaining the health of NFS lands and resources.

From 1982 to 2000, the number of people driving motor vehicles off road in the United States increased over 109 percent (“Outdoor Recreation for 21st Century America: A Report to the Nation, The National Survey on Recreation and the Environment,” p. 37 (H. Cordell, 2004)). Recent decades have seen like advances in the power, range, and capabilities of OHVs. Whole new classes of vehicles have been introduced by manufacturers and are growing in popularity. From 1997 to 2001, the number of ATVs in use increased by almost 40 percent (statement by Dr. Edward J. Heiden at Consumer Products Safety Commission Field Hearing, June 5, 2003). These advances expand opportunities for Americans to enjoy Federal lands. However, the magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel. Soil erosion, water quality, and wildlife habitat are affected. Some National Forest visitors report that their ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles. A designated and managed system of roads, trails, and areas for motor vehicle use is needed.

Current regulations prohibit trail construction (§261.10(a)) and operation of vehicles in a manner damaging to the land, wildlife, or vegetation (§261.13(h)). However, these regulations have not proven sufficient to control proliferation of routes or environmental damage. This insufficiency is due in part to the nature of OHV travel. The first vehicle driving across a particular meadow may not harm the land. However,

by the time 50 vehicles have crossed the same path, there may be a user-created trail and lasting environmental impacts. Determining which particular vehicle caused the damage can sometimes represent a challenge to law enforcement officers.

In addition, the line between highway vehicles and OHVs has blurred. Vehicles created for specialized off-road use, such as military vehicles, are now marketed and purchased as family cars. Some States have recently enacted statutes governing OHV use, including vehicle registration requirements, limits on operator age, training and licensing requirements, equipment requirements, sound restrictions, and safety requirements.

Current agency policy varies from State to State and National Forest to National Forest. Sometimes one National Forest restricts motor vehicles to roads and trails, while an adjoining National Forest allows unrestricted cross-country travel. One State may prohibit ATVs on public roads, while an adjoining State generally allows such use. Revised regulations are needed to provide national consistency and clarity on motor vehicle use within the NFS. At the same time, the Department believes that designations of roads, trails, and areas for motor vehicle use should be made locally. The final rule provides a national framework under which designations are made at the local level.

Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. The agency must strike an appropriate balance in managing all types of recreational activities. To this end, a designated system of roads, trails, and areas for motor vehicle use, established with

public involvement, will enhance public enjoyment of the National Forests while maintaining other important values and uses on NFS lands.

2. Public Comments on Proposed Rule and Department Responses

Overview

On July 15, 2004, the Forest Service published a proposed rule in the **Federal Register** (69 FR 135) seeking public comment in amending regulations at 36 CFR parts 212, 251, 261, and 295 to clarify policy related to motor vehicle use on NFS lands, including the use of OHVs. The proposed regulation would require designation of those roads, trails, and areas that are open to motor vehicle use. Designations would be made by class of vehicle and, if appropriate, by time of year. The proposed rule would prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles that is not consistent with the designations.

During the 60-day comment period that ended on September 13, 2004, the agency received six requests for an extension of the comment period. Five of these were mailed during the last two business days of the comment period, and were received after the comment period closed. Respondents indicated that, due to the complexity of the proposed regulations, additional time was needed. The Forest Service did not extend the comment period because the agency does not agree that the proposed regulation was complex and because of the strong interest expressed in many other comments to expedite the rulemaking.

The proposed rule was posted electronically on the World Wide Web at the **Federal Register** site at www.gpoaccess.gov and at the FirstGov e-rulemaking site at www.regulations.gov. The agency also posted the proposed rule on its World Wide Web

site for OHVs at www.fs.fed.us/recreation/programs/ohv. The Forest Service received 81,563 letters or electronic messages in response to the proposed rule, of which 9,638 contained original text (the remainder were form submissions). More than 80 percent of the comments were submitted electronically. Responses submitting original text represent the following categories:

Academic	2
Business Association	11
Civic Group	1
Consultants/Legal Representatives	3
County Agency/Elected Official	16
Domestic Livestock Industry/Permit Holders	5
Federal Agency/Elected Official	2
Individual (unaffiliated or unidentifiable)	9,310
Mechanized Recreation Group (bicycling)	2
Mining Industry Association	2
Motorized Recreation Group	71
Multiple Use/Land Rights Organization	1
Nonmechanized Recreation Group	24
Oil, Natural Gas, Coal Industry (leasable)	2
Other or Unidentified Organization	1
Place-Based Group (homeowners association)	2
Preservation/Conservation Organization	98
Private Landowner	2

Recreational/Conservation Organization	14
Recreation Organization (non-specific)	5
Special Use Permit Holder	2
State Agency/Elected Official	21
Timber/Wood Products Industry	3
Town/City Agency/Elected Official	2
Tribal Agency/Elected Official	3
Tribal Member/Nongovernmental Organization	3
Single Responses Signed by Multiple Organizations	29

The respondents represented all 50 States, the District of Columbia, Puerto Rico, seven foreign countries, and two international U.S. Armed Forces bases. The largest number of responses containing original text came from California (1,308), Washington (565), and Oregon (392).

A summary report and searchable database of comments are available by contacting the Forest Service (see: **ADDRESSES**). The comments also are available for review in hard copy, but arrangements for viewing them should be made in advance as they are warehoused off site.

Many comments came from organizations and individuals concerned about impacts of OHVs on the environment and on nonmotorized uses. These comments included form letters and standard letters with additional specific information added by the commenter.

Many comments also came from organizations and individuals concerned about potential restrictions on OHV use. These comments included form letters and standard letters with additional information added.

Federal, tribal, State, and local agencies and elected officials also submitted comments. The Forest Service received comments from 2 Federal agencies, 21 State governments, 3 Federally recognized tribal governments, and 18 county, municipal, and local governments, representing a variety of points of view.

Many respondents offered general comments either supporting or not supporting the proposed rule, or supporting or opposing OHV use in general. Most also offered specific comments about sections of the proposed rule that they would like to see revised. Many respondents offered suggestions for implementation, funding, and enforcement of the rule at the local level. A few respondents submitted comments on other rulemaking efforts or existing Forest Service policy beyond the scope of this rulemaking.

General Comments

***Comment.** Many respondents supported multiple uses of NFS lands and recreational access for OHVs. These respondents believed that closures harm the public, private landowners, economic interests, and the environment by limiting and concentrating use. These respondents suggested that the agency support the public interest, rather than letting environmental and anti-access groups drive agency policy. These respondents were concerned that nonmotorized interests have an unfair advantage in public involvement due to better funding, organization, and access to decisionmaking.*

Many other respondents supported environmental protection and nonmotorized recreational uses of NFS lands and suggested confining OHVs to small, geographically isolated areas separated from nonmotorized users. These respondents believed that OHVs harm the environment, as well as people looking for quiet, peaceful recreation experiences. They suggested that the agency support the public interest, rather than letting manufacturers and user groups drive agency policy. These respondents were concerned that motorized interests have an unfair advantage in public involvement due to better funding, organization, and access to decisionmaking.

Response. The Department believes that National Forests should provide access for both motorized and nonmotorized users in a manner that is environmentally sustainable over the long term. The NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation. The Department believes such choices and evaluations are best made at the local level, with full involvement of Federal, tribal, State, and local governments, motorized and nonmotorized users, and other interested parties, as provided for in this final rule.

Comment. *Some respondents stated that OHVs should not be allowed on National Forests at all. These respondents suggested that National Forests should be managed primarily for preservation of natural values, water quality, wildlife habitat, endangered species, biological diversity, quiet, and spiritual renewal.*

Response. The Department disagrees. National Forests are managed by law for multiple use. They are managed not only for the purposes stated in these comments, but

for timber, grazing, mining, and outdoor recreation. These uses must be balanced, rather than one given preference over another.

***Comment.** Some respondents stated that Americans have an unrestricted right to unlimited access to National Forests with motor vehicles and insisted that the Forest Service restore this right.*

Response. The Department disagrees with this assertion. National Forests belong to all Americans, but Americans do not have a right to unrestricted use of National Forests. Congress established the Forest Service to provide reasonable regulation of the National Forests so that future generations can continue to enjoy them.

***Comment.** Some respondents requested improved Forest Service accountability, communications, and consistency in implementing rules governing motor vehicle use.*

Response. The final rule is intended to provide a consistent framework and consistent terminology for travel management decisions made at the local level. For greater clarity in terminology, the final rule adds a definition for “off-highway vehicle” and changes the term “use map” to “motor vehicle use map.”

***Comment.** Many respondents asked that decisions on motor vehicle use be based on high-quality scientific information, including review by independent scientists, and not on biased data. Some respondents suggested that motor vehicle use should be allowed only when it can be clearly proven to be harmless to the environment. Others suggested that motor vehicle use should be restricted only when it can be clearly proven to be harmful to the environment.*

Response. Designations of roads, trails, and areas for motor vehicle use should be based on accurate, pertinent, unbiased information. The Department does not believe

that it is necessary to have independent scientists review proposed designation decisions. The Department disagrees that motor vehicle use should be allowed only when it can be clearly proven to be harmless to the environment, and that motor vehicle use should be restricted only when it can be clearly proven to be harmful to the environment. Rather, designation decisions will be made in accordance with the criteria in §212.55 of the final rule.

***Comment.** Some respondents stated that access to private inholdings must not be restricted by this rule, and that reciprocal rights-of-way between the Forest Service and private landowners should be allowed.*

Response. The final rule requires responsible officials to recognize rights of access in designating roads, trails, and areas (§212.55(d)). Rights of access include valid existing rights and rights of use of NFS roads and NFS trails under §212.6(b). This final rule does not affect reciprocal rights-of-way between the Forest Service and private landowners.

***Comment.** Some respondents asked the Forest Service to encourage private landowners to open OHV trails and accommodate use on private lands.*

Response. Many private landowners allow recreational use of their lands, including use by OHVs. Some private landowners provide managed facilities for OHV enthusiasts. In some cases, trails on private land are part of a network including NFS lands. The Forest Service often works with private landowners to secure public rights-of-way for trails providing access to the National Forests. However, the Department believes that private landowners are the best judges of the proper uses for their land.

***Comment.** Some respondents asked the Forest Service to set aside nonmotorized “quiet use areas” across the NFS.*

Response. The final rule requires local agency officials, working with the public, to designate which roads, trails, and areas are available for motor vehicle use. The final rule prohibits use off the designated system. In designating roads, trails, and areas, local agency officials must consider minimization of conflicts among uses of NFS lands (§212.55(a)). In designating trails and areas, local agency officials must consider compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors (§212.55(b)(5)). A system of quiet use areas established outside the designation process is unnecessary.

***Comment.** Some respondents suggested that all routes closed to motor vehicles should also be closed to horses, bicycles, and all nonpedestrian access.*

Response. The Department disagrees. Some poorly located, unauthorized routes causing considerable environmental damage may have to be closed to all uses. However, other routes are better suited to some uses than others. In some areas of high concentrations of use, maintaining separate trail networks for different uses may reduce conflict and enhance public safety and the recreational experience. In other areas, multiple-use trails work well. The Department believes these decisions are best made at the local level, with public participation.

***Comment.** Some respondents asked the Forest Service to provide access to groups that maintain and improve roads and trails.*

Response. The Department is grateful to the many groups who provide volunteer assistance in constructing, improving, and maintaining roads and trails. Without the support of these groups, public access and recreational opportunities would be more limited. Most of these groups help maintain trails not to get special privileges, but to provide better access for everyone. The Department supports the general principle of equal public access to Federal lands.

Comment. Some respondents suggested limits on timber harvesting and grazing, and on road construction related to timber harvesting. Other respondents requested increased fuel treatment to protect communities from wildfire and construction of additional roads for fuel reduction, fire suppression, and timber management needs.

Response. These comments are beyond the scope of this rule. Road construction for timber harvesting, fuel treatment, or other purposes must be subjected to site-specific environmental analysis, which establishes road management objectives. Roads constructed as part of these projects could be added to the system of designated roads, trails, and areas open to motor vehicles, depending on the results of these local decisions.

Comment. Some respondents suggested that the Forest Service retain a right-of-way for public access in all land exchanges, and deny access to private landowners who block public access to Federal lands.

Response. This comment is beyond the scope of this final rule. The Forest Service seeks, wherever possible, to secure or retain public access to Federal lands by purchasing or exchanging rights-of-way and reserving rights-of-way in land exchanges.

Comment. Some respondents requested additional scientific studies of the environmental impacts of motor vehicle use, the social and economic impacts of

restrictions on motor vehicle use, the impacts of road closures on firefighting and fuel reduction, the numbers of visitors using motor vehicles, and other related topics.

Response. In addition to the studies mentioned in the preamble to the proposed rule, ongoing studies by Forest Service researchers and monitoring by National Forest managers address several of these topics. The Department believes that these studies support the need for this final rule. As stated in the preamble to the proposed rule, the results of monitoring pursuant to §212.57 of the final rule could provide the basis for revision or rescission of designations made pursuant to §212.51, or for a determination of considerable adverse effects for purposes of implementing a temporary, emergency closure pursuant to §212.52(b)(2).

Comment. *One respondent asserted that the Forest Service must formally consult with the U.S. Fish and Wildlife Service on the effects of this rule on threatened and endangered species, as required by the Endangered Species Act (ESA).*

Response. The Department has determined that this final rule will have no effect on threatened or endangered species. The final rule establishes a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement and coordination with Federal, State, local, and tribal governments. Designation decisions at the local level will be accompanied by appropriate consideration of potential impacts to threatened and endangered species. If such decisions may affect threatened or endangered species, the Forest Service will consult with the U.S. Fish and Wildlife Service, as appropriate, under Section 7 of the ESA.

Forest Service Directives

***Comment.** Some respondents asked the Forest Service to issue proposed directives on implementation of the final travel management rule and requested that the agency seek public comment on these directives. One respondent stated that the final rule must be consistent with Forest Service Manual and Forest Service Handbook direction.*

Response. The Forest Service provides internal direction to field units through its directives system, consisting of the Forest Service Manual (FSM) and Forest Service Handbooks (FSH). The FSM and FSH assist field units in implementing programs established by statutes and regulations. The Forest Service plans to develop proposed directives implementing this final rule and to publish them in the **Federal Register** for public notice and comment.

***Comment.** Some respondents requested that officials responsible for implementation of this rule be properly identified, qualified, and free of conflict of interest. Others asked the agency to ensure that Forest Service officials do not play an active role in State or local legislation affecting OHVs.*

Response. Section 212.51 of the final rule provides that designations shall be made by the responsible official on administrative units or Ranger Districts of the NFS. Delegations of authority for designation decisions will be included in directives issued for purposes of implementing this final rule. The Department expects that designation decisions will generally be made by Forest Supervisors and District Rangers. Forest Supervisors and District Rangers are selected for their positions based on Federal civil service rules. Federal ethics and conduct rules protect the public and agency personnel

from conflicts of interest and limit the roles agency personnel may play in their official capacities in the State or local legislative process.

***Comment.** Some respondents requested standardized, easily available use maps and interagency signage to ensure consistent communication and enforcement of route designations.*

Response. The Forest Service plans to develop a standard national format for motor vehicle use maps issued under this final rule. In the final rule, the Department is changing the term “use map” to “motor vehicle use map.” Motor vehicle use maps will be available at local Forest Service offices and, as soon as practicable, on Forest Service web sites. The Forest Service plans to issue additional travel management guidance in its sign handbook to ensure consistent messages and use of standard interagency symbols.

***Comment.** Many respondents submitted suggestions on compliance with the National Environmental Policy Act (NEPA) in connection with designation of routes and areas for motor vehicle use. Some suggested including provisions on this topic in the rule itself. Others suggested specific direction related to the range of alternatives subject to consideration, the scope of analysis, the starting point for analysis, and the various environmental effects to be considered.*

Response. Regulations implementing NEPA are issued by the Council on Environmental Quality and are found at 40 CFR part 1500. Agency direction on NEPA compliance is found in FSH 1909.15. The Department believes that the scope, content, and documentation of NEPA analysis associated with designating routes and areas for motor vehicle use will ultimately depend on site-specific factors, including the local

history of travel planning, public input, and environmental impacts at the local level. Therefore, the Department is not addressing NEPA compliance in this final rule.

***Comment.** Many respondents addressed the status of user-created routes in areas currently managed as open to cross-country motor vehicle use, especially with regard to NEPA compliance (FSH 1909.15). Some respondents asked the Forest Service to acknowledge all such routes as legal, legitimate travel ways, and to require specific documentation and analysis to close them. Other respondents asked the Forest Service to treat all such routes as illicit and subject to immediate closure.*

Response. The Department rejects both of these approaches. User-created routes were developed without agency authorization, environmental analysis, or public involvement and do not have the same status as NFS roads and trails included in the forest transportation system.

Some user-created routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and nonmotorized users alike, involve less environmental impact than unrestricted cross-country motor vehicle use, and would enhance the system of designated routes and areas. Other user-created routes are poorly located and cause unacceptable environmental impacts.

The Department believes that evaluation of user-created routes is best handled at the local level by officials with first-hand knowledge of the particular circumstances, uses, and environmental impacts involved, working closely with local governments, users, and other members of the public.

***Comment.** Some respondents suggested reviewing and inventorying all roads, trails, and areas, without regard to prior travel management decisions and travel plans.*

Other respondents observed that land management plans, travel plans, and other recent agency documents already include a variety of decisions related to motor vehicle use and route designation. These respondents asked the agency to recognize existing plans and decisions in designating roads, trails, and areas for motor vehicle use.

Response. The Department believes that reviewing and inventorying all roads, trails, and areas without regard to prior travel management decisions and travel plans would be unproductive, inefficient, counter to the purposes of this final rule, and disrespectful of public involvement in past decisionmaking. Local responsible officials can and should take into account past travel management decisions.

Some National Forests have long restricted motor vehicles to designated routes under E.O. 11644, 36 CFR part 295, and FSM 2355. Other National Forests have recently issued comprehensive travel management decisions that restrict motor vehicle use to designated routes and issued orders that prohibit cross-country motor vehicle use. All National Forests have a system of NFS roads open to motor vehicle use, and many also have a system of NFS trails managed for motor vehicle use.

Nothing in this final rule requires reconsideration of any previous administrative decisions that allow, restrict, or prohibit motor vehicle use on NFS roads and NFS trails or in areas on NFS lands and that were made under other authorities, including decisions made in land management plans and travel plans. The final rule adds a new paragraph (b) to §212.50 to clarify that these decisions may be incorporated into designations made pursuant to this final rule.

Some National Forests or Ranger Districts have previous administrative decisions, made under other authorities with public involvement, which restrict motor

vehicle use over an entire Forest or District to designated routes and areas. In these cases, the responsible official may, with public notice but no further analysis or decisionmaking, establish that decision or those decisions as the designation pursuant to this rule for the National Forest or Ranger District, effective upon publication of a motor vehicle use map. In that situation, the only substantive change effected by this final rule would be enforcement of the restrictions pursuant to the prohibition in §261.13, rather than pursuant to an order issued under part 261, subpart B. The final rule includes additional language in §212.52(a) to clarify that no further public involvement is required in this special case.

Alternatively, responsible officials may choose to reconsider past decisions, with public involvement, as necessary to achieve the purposes of the final rule.

The final rule recognizes that designations of roads, trails, and areas for motor vehicle use are not permanent. Unforeseen environmental impacts, changes in public demand, route construction, and monitoring conducted under §212.57 of the final rule may lead responsible officials to consider revising designations under §212.54 of the final rule.

Designations must be consistent with the applicable land management plan. If a responsible official proposes a designation that would be inconsistent with the applicable land management plan, a proposed amendment to the plan must be included with the proposed designation so that the designation decision will conform with the land management plan.

***Comment.** Some respondents observed that NFS roads that are open to motor vehicle use are already in effect designated and need not be re-evaluated. Other*

respondents asked the agency to ensure that proposed changes to allowed uses, reconstruction, and changes in maintenance levels resulting in changes in type or level of use receive appropriate site-specific consideration.

Response. As recognized in the preamble to the proposed rule, to a certain degree, NFS roads are in effect already designated for some classes of motor vehicle use. These roads are included in a forest transportation atlas, and road management objectives may establish the appropriate vehicle classes and uses for each road segment. In recent years, the roads analysis process established under 36 CFR 212.5 and FSM 7712 has been used to evaluate the long-term management objectives for the passenger car road system in each National Forest.

This final rule does not require responsible officials to reconsider decisions authorizing motor vehicle use on NFS roads and NFS trails. After consulting with the public, responsible officials may choose to reconsider past decisions as necessary to achieve the purposes of this final rule. In addition, responsible officials may revise designations under §212.54 of the final rule. Revisions of designations, including revisions in the class of vehicle designated for use, must be made in accordance with the requirements for public involvement in §212.52 and the criteria in §212.55. Road reconstruction is beyond the scope of the designation provisions in subpart B of this rule.

Implementation

***Comment.** Many respondents requested a specific, enforceable deadline (most suggested two years) for completing route and area designation and ending cross-country motor vehicle use. Many other respondents asked the Forest Service not to*

establish a specific time frame for completing designations, and to allow enough time to complete a full and fair evaluation of all potential routes.

Response. The Department shares an interest in completing route and area designation as quickly as possible. The problems associated with unmanaged motor vehicle use are important and deserve immediate attention. The Forest Service will make every effort, within its available resources, to complete route and area designation as quickly as possible. However, the Department disagrees with establishing an enforceable deadline for completion of the process. Imposing an enforceable deadline for completing designations would subject the Forest Service to legal challenge if, despite its best efforts (perhaps due to the controversy involved in the process), the agency is unable to meet the deadline. The Department believes that cooperative work by responsible officials with State, tribal, county, and municipal governments, user groups, and other interested parties offers the best hope for long-term resolution of issues involving recreational use, including use of motor vehicles. An inflexible deadline can make collaborative solutions more difficult.

Comment. *Some respondents requested that the Forest Service complete a full inventory of all existing motor vehicle routes, regardless of origin, prior to making a designation decision. Many of these respondents asked the Forest Service to cooperate with user groups in conducting this inventory, but some also insisted that the agency take ultimate responsibility for including all user-created routes.*

Response. The Department disagrees that a complete inventory of user-created routes is required in order to complete the designation process. As a practical matter, such an inventory may never be fully complete, as new routes will continue to be created

during the inventory process. A complete inventory would be very time-consuming and expensive, delaying completion of route designation. Advance planning based on public involvement, careful design, and site-specific environmental analysis provide the best hope for a sustainable, managed system of motor vehicle routes and areas addressing user needs and safety with a minimum of environmental impacts.

As stated above, some user-created routes would make excellent additions to the system of designated routes and areas. The Forest Service is committed to working with user groups and others to identify such routes and consider them on a site-specific basis.

***Comment.** Some respondents asked the Forest Service to include potential future routes in the inventory and designation process, and to make provision for including additional user-created routes discovered after designation is complete.*

Response. Long-term planning may identify potential corridors suitable for consideration for future construction. However, the agency does not intend to designate routes on a motor vehicle use map until such routes actually exist, have been analyzed and evaluated, and are available for public use. Section 212.54 of the final rule provides for revision of designations as needed to meet changing conditions. New routes may be constructed and added to the system following public involvement and site-specific environmental analysis. Such revisions may also include closures or changes in designations.

***Comment.** Many respondents supported public involvement in the route designation process. Some requested that local residents and private landowners receive a greater voice in decisions affecting their use. Other respondents requested that county governments, State tourism offices, or other agencies receive formal recognition as*

participants in agency decisionmaking. One respondent asked that OHV access be subject to a public vote.

Response. The proposed and final rules require public involvement in the designation process (§212.52), and coordination with appropriate Federal, State, county, local, and tribal governments in designating roads, trails, and areas for motor vehicle use (§212.53). Designation of a system of motor vehicle routes and areas will be made with public involvement and coordination with Federal, State, local, and tribal governments. Most NFS roads are intertwined with networks of State and county roads (often crossing NFS lands), and cooperative planning among affected agencies is essential. Nothing in the final rule, however, can relieve the Forest Service of the ultimate responsibility for decisions regarding management of NFS lands.

***Comment.** Many respondents requested that the Forest Service allocate sufficient funds for management of motor vehicle use on National Forests, particularly for the process of route and area designation envisioned in the proposed rule. Many asked the agency to pursue all available sources of funding, including the Recreational Trails Program and gasoline tax revenues. Some respondents insisted that inadequate funding not be used as an excuse to close routes and restrict motor vehicle access. Others stated that the rule was pointless without adequate funding.*

Response. The issue regarding funding is beyond the scope of this final rule. Forest Service appropriations are authorized by Congress. The Forest Service is committed to using whatever funds it has available to accomplish the purposes of this final rule in a targeted, efficient manner. The agency makes appropriate use of all other sources of available funding, and has a number of successful cooperative relationships

with State governments. Volunteer agreements with user groups and others have proven successful in extending agency resources for trail construction, maintenance, monitoring, and mitigation. Regardless of the level of funding available, the Department believes that the final rule provides a better framework for management of motor vehicle use on National Forests and National Grasslands. While availability of resources for maintenance and administration must be considered in designating routes for motor vehicle use (§212.55), cooperative relationships and volunteer agreements may be included in this consideration.

***Comment.** Some respondents offered specific suggestions for consideration during route and area designation, including conversion of low-standard roads to motorized trails, provision of parking and trailhead facilities, reopening of closed roads, design of loop and long-distance trail systems to meet user needs, and integration of designated routes with roads and trails managed by local governments, States, and other Federal agencies.*

Some respondents suggested consideration of specific environmental impacts during route and area designation, including introduction of invasive species, impacts to cultural activities of American Indians, quality of the user experience, and Recreation Opportunity Spectrum (ROS) designations in land management plans. Other respondents suggested specific areas to avoid in route and area designation, including high alpine areas, wetlands, riparian areas, and roadless areas.

Response. The Department agrees that many of these considerations may be important in designating routes and areas at the local level. Section 212.55 of the final rule enumerates the criteria for designating roads, trails, and areas pursuant to the final

rule. Specific considerations (such as geography, user demands, and environmental impacts) will vary from place to place, and even route to route, across the NFS. Responsible officials, working closely with the public, should consider local circumstances in applying the criteria for designating roads, trails, and areas pursuant to the final rule.

***Comment.** Some respondents suggested a no-net-loss policy for motor vehicle routes (every route closed must be replaced by a new route of the same length and character), a specific goal for available routes (such as four miles of motor vehicle trail per square mile), or a general policy to develop all access opportunities close to urban areas.*

Response. The Department disagrees with establishing any of these principles as national policy. Designation decisions are best left to local managers, working closely with State, tribal, and local governments, users, and other members of the public and informed by site-specific evaluation of environmental impacts.

***Comment.** Some respondents stated that regulations are effective only if they are enforced, and questioned whether the agency was capable of enforcing motor vehicle restrictions due to limited numbers of law enforcement officers.*

Response. Forest Service law enforcement personnel play a critical role in ensuring compliance with laws and regulations, protecting public safety, and protecting National Forest resources. The Forest Service also maintains cooperative relationships with many State and local law enforcement agencies that provide mutual support across jurisdictional boundaries. Education and cooperative relationships with users support enforcement efforts by promoting voluntary compliance. The final rule will not increase

the agency's budget or the number of law enforcement officers. However, the final rule will enhance enforcement by substituting a regulatory prohibition for closure orders and providing for a motor vehicle use map supplemented by signage.

***Comment.** Some respondents questioned the use of contractors and volunteers to map and maintain trails, and to report violations of motor vehicle regulations.*

Response. The Forest Service utilizes a mix of agency personnel, contractors, volunteers, and cooperators to accomplish many elements of its mission. Without the support of cooperators and volunteers and the services of contractors, the agency would be unable to provide the same level of service to the public or care for the lands entrusted to it within its current budget. Like all law enforcement agencies, the Forest Service depends on citizen reports of violations as a critical component of its enforcement program.

***Comment.** Some respondents asked the Forest Service to ensure representation of OHV enthusiasts and riders among agency staff responsible for OHV management.*

Response. The Forest Service uses competitive civil service procedures to select the best qualified applicant for each position, based on the knowledge, skills, and abilities necessary to perform the job. While ability to use government equipment may be a selective factor for some positions, the agency does not hire personnel based on their outside recreational interests. Nevertheless, there are Forest Service employees who are OHV riders.

***Comment.** Some respondents asked the Forest Service to ensure adequate maintenance for motor vehicle trails, rather than closing them.*

Response. The Forest Service maintains NFS roads and NFS trails in accordance with their management objectives and the availability of funds. Volunteers and cooperators maintain many trails. The agency collects fees for use of some developed recreational facilities, most of which are retained and spent at the site where they are collected. Unfortunately, resources are still limited, and the Forest Service has a substantial backlog of maintenance needs, even before adding many user-created routes to the system. In some cases, an extended lack of maintenance can lead to deterioration of a road or trail to the point that it must be closed to address user safety or to prevent severe environmental damage. The Forest Service actively tries to avoid closures by encouraging volunteer agreements and cooperative relationships with user groups.

Comment. Some respondents requested clarification of the rules applicable to motor vehicle use while designation is pending. Some asked that current rules remain in effect. Others requested immediate closure of all user-created routes. Some respondents sought to continue using and maintaining existing trails while designation is pending.

Response. The final rule's prohibition on motor vehicle use off the designated system (§261.13) goes into effect on an administrative unit or Ranger District once that unit or District has designated those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use and published a motor vehicle use map identifying those roads, trails, and areas (§212.56). Until designations for a unit or District are complete and a motor vehicle use map identifying those designations is published, existing travel management policies, restrictions, and orders remain in effect. Forest Supervisors may continue to issue travel management orders pursuant to part 261, subpart B, and impose temporary, emergency closures based on a determination of considerable adverse effects

pursuant to §212.52(b)(2) of the final rule. The Department does not believe that immediate closure of all user-created routes, without local evaluation and public input, is necessary or appropriate. Use and maintenance of NFS roads and NFS trails consistent with current travel management policies and management objectives may continue. Construction and maintenance of roads or trails without a permit are prohibited by existing regulations (§261.10(a)).

The Department expects that some administrative units or Ranger Districts will complete route and area designation before others and that the prohibition on cross-country motor vehicle use in §261.13 will go into effect on different units and Ranger Districts at different times. This variation in travel management mirrors the existing situation, in which some units are open to cross-country motor vehicle use, while others restrict motor vehicles to designated routes and areas. Over the next few years, all administrative units and Ranger Districts will institute a system of designated routes and areas.

***Comment.** Some respondents suggested that the Forest Service require vehicle registration, license plates, noise abatement, and safety equipment for all motor vehicles using NFS lands. Others suggested requiring licensing and safety training for all riders.*

Response. State traffic laws apply on NFS roads as provided for in 36 CFR 212.5(a)(1). State governments have long taken the lead in establishing registration, safety, and licensing requirements for motor vehicles and motor vehicle operators, providing a consistent framework for users within State boundaries. The Department wholeheartedly supports this framework. The Department believes a separate

registration or licensing process for operators for the NFS would be confusing, inefficient, and intrusive.

The Department notes that some States have no requirements regarding minimum age, safety equipment, and noise levels for OHVs. Some National Forests have experienced serious injuries and fatal accidents involving OHVs, some of which involve young children. The Forest Service will continue to regulate OHV riders to a certain degree in existing regulations at §261.13, recodified as §261.15 in the final rule (for example, by requiring a headlight and taillight when riding after dark and by providing for incorporation of State law pertaining to use of motor vehicles off roads). At this time, however, the Department is not prepared to issue or enforce new national standards for operators or equipment on NFS lands. As designations are completed and management of designated roads, trails, and areas continues, the Department may consider developing some national safety standards for OHVs at a later date.

Noise is a particularly important issue affecting OHV use nationally. The Forest Service anticipates developing a national standard for OHV noise levels in a future rulemaking.

***Comment.** Some respondents suggested that the Forest Service charge a fee for OHV use on NFS lands and retain the funds for route maintenance and enforcement. Other respondents objected to any fees for public access to Federal land. One respondent suggested a surcharge on OHV manufacturers.*

Response. These comments are beyond the scope of this final rule, which governs designation of roads, trails, and areas for motor vehicle use. Forest Service authority to charge and retain fees for use of recreational facilities and services is

contained in the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814).

The agency has no authority to tax manufacturers.

Proposed Rule Preamble

***Comment.** Some respondents disagreed with the Forest Service’s rationale for the proposed rule and urged the agency not to adopt a final rule. These respondents stated that a prohibition on cross-country motor vehicle use will harm small businesses, recreation users, the tourism industry, local governments, local economies, low-income residents, families with children, and people with disabilities, and reduce public access to Federal lands. Some respondents stated that any environmental impacts and other problems associated with cross-country motor vehicle use result from poor Forest Service management and should be addressed by better implementation and enforcement of existing rules, rather than additional regulation. Others contended that natural forces, such as fire and flood, have far greater environmental impact than OHVs and that the motor vehicle regulation is not needed.*

Response. The Department disagrees with these assertions. Unregulated cross-country motor vehicle use may have been appropriate on some National Forests when these vehicles were less numerous, less powerful, and less capable of cross-country travel. Today, however, the proliferation of user-created routes is a major challenge on many National Forests and examples of significant environmental damage, safety issues, and user conflicts are well established. The Department believes that a well-planned, well-designed system of designated roads, trails, and areas, developed in coordination with Federal, State, local, and tribal governments and with public involvement, offers

better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and communities.

***Comment.** Some respondents stated that the proposed rule will harm the nonmotorized recreation industry by encouraging OHV use. Other respondents stated that the proposed rule does not do enough to address the threat of OHVs, unauthorized routes, and continuing damage to the environment, and should be strengthened. Some asked the Forest Service to explain how its maintenance backlog can be reconciled with the stated goal of enhancing opportunities for motorized recreation.*

Response. This final rule does not encourage or discourage motor vehicle use, but rather requires designation of roads, trails, and areas for motor vehicle use. The Department believes that a well-designed system of routes and areas designated for motor vehicle use can reduce maintenance needs and environmental damage, while enhancing the recreational experience for all users, both motorized and nonmotorized.

***Comment.** Some respondents called for clear and consistent national standards for motor vehicle use and route and area designation. They stated that the proposed rule allows too much discretion for local Forest Service managers to make designation decisions, which may result in inconsistent and ineffective decisionmaking. Other respondents stated that the final rule should retain flexibility in local decisionmaking, rather than establishing a one-size-fits-all national policy.*

Response. The final rule provides a national framework for local decisionmaking. The rule includes definitions, procedures, and criteria for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, and a prohibition on motor vehicle use that occurs off the designated system or that is inconsistent with

motor vehicle designations. The Department expects the roughly 300,000 miles of NFS roads currently open to highway-legal motor vehicle use to be designated for that purpose. However, the rule retains flexibility at the local level to determine, with public involvement, appropriate motor vehicle use on local NFS roads, on NFS trails, and in areas on NFS lands. The Department believes that decisions about specific routes and areas are best made by local officials with knowledge of those routes and areas, the local environment, and site-specific tradeoffs, with public involvement and in coordination with appropriate Federal, State, local, and tribal governments.

***Comment.** Some respondents asked the Forest Service to commit to designating enough OHV routes to accommodate current and future demand.*

Response. Provision of recreational opportunities and access needs are two of several criteria the responsible official must consider under §212.55 of the final rule in designating routes for motor vehicle use. National Forests are popular with many Americans for many uses. It is not possible to accommodate all user demands on all National Forests while also protecting water quality, wildlife habitat, and other natural resources that people come to enjoy. Forest Service managers must balance user interests against the other criteria for designating routes and areas under the final rule.

***Comment.** Some respondents stated that local government, not the Forest Service, should decide where roads and vehicle access are needed to serve local communities and protect public health and safety.*

Response. The Department believes that coordination with local governments is essential in designating a system of motor vehicle routes and areas on NFS lands. The final rule requires coordination with appropriate local governmental entities when

designating routes and areas for motor vehicle use and provides for designation decisions to be made by Forest Service officers at the local level to ensure that they take local needs into account. However, the Forest Service retains ultimate responsibility, as provided by Congress, for management of uses on the NFS.

Forest Service policy (FSM 7703.3) is to seek to transfer jurisdiction of NFS roads to public road authorities when (1) more than half of the use is likely to be non-Forest Service-generated traffic; (2) the road is necessary and used for mail, school, or other local government purposes, or (3) the road serves year-long residents within or adjacent to the National Forests.

***Comment.** Some respondents stated that the language of the preamble to the proposed rule, particularly the shift of regulations governing OHV use from part 295 (Use of Motor Vehicles Off National Forest System Roads) to part 212 (Administration of the Forest Transportation System), reflects a change in the agency's perception of motor vehicle use on NFS lands. These respondents asked the Forest Service to recognize motor vehicle use as a legitimate recreational pursuit, not just as a transportation issue.*

Response. The Department recognizes this concern. Motor vehicles serve a variety of functions on National Forests. Motor vehicles are used in commercial and natural resource management activities, including maintaining utility corridors, mining, and timber sales. Motor vehicles on NFS lands provide access to private land, recreation destinations, and destinations off NFS lands. Motor vehicles are used in support of other recreational activities, such as hunting and camping. Motor vehicles are also used as a recreational experience in their own right, such as for trail riding and driving for pleasure. These uses overlap and are not always clearly distinguishable. To create a

comprehensive system of travel management, the final rule consolidates regulations governing motor vehicle use in one part, 212, entitled “Travel Management.” Motor vehicles remain a legitimate recreational use of NFS lands.

***Comment.** Some respondents objected to the preamble’s use of the term “off-road vehicle” in reference to E.O. 11644 and E.O. 11989, and asked the agency to use “off-highway vehicle.” Other respondents objected to the latter term and preferred “off-road vehicle.” Some respondents requested that specific classes of vehicles, such as side-by-sides, sport utility vehicles, and motorcycles, be included or excluded from the definition of OHV.*

Response. The final rule addresses all motor vehicle use on NFS roads, on NFS trails, and in areas on NFS lands, from passenger cars to ATVs to motorcycles. The final rule is not limited to OHVs, in part because OHVs are not always clearly distinguishable from passenger vehicles (today the family car may be quite capable of off-highway travel). Local units are responsible for designating routes and areas for motor vehicle use, including which routes and areas are designated for which vehicle classes. In response to comments, and because the agency has used the term extensively in communications, the final rule has added a definition of “off-highway vehicle.” This definition is consistent with the definition of “off-road vehicle” used in E.O. 11644.

***Comment.** Some respondents asked the Forest Service to include bicycles and horses within the definition of “off-highway vehicle” and regulate these uses like motor vehicles.*

Response. OHVs are motor vehicles. Since bicycles and horses are not motor vehicles, they are not included in the definition of “off-highway vehicle.” Similarly, this

rule governs designation of routes and areas for motor vehicle use and does not apply to nonmotorized uses, such as bicycles and horses.

At this time, the Department does not see the need for regulations requiring establishment of a system of routes and areas designated for nonmotorized uses. Local Forest Service officials may choose to designate routes and areas for nonmotorized uses and enforce those designations with an order issued under 36 CFR part 261, subpart B. On some National Forests, and portions of others, bicycles and/or equestrians are restricted to designated routes, or even prohibited altogether. On other National Forests, cross-country use of bicycles and horses is permitted.

***Comment.** Some respondents suggested that E.O. 11644 and E.O. 11989 conflict with the Federal Land Policy and Management Act (FLPMA) and the Multiple Use-Sustained Yield Act (MUSY), are outdated, and do not reflect changes in use and technology of motor vehicles. These respondents asked the Forest Service not to rely on the E.O.s in promulgating regulations governing designation of routes and areas for motor vehicle use.*

Response. The Department disagrees that the E.O.s conflict with FLPMA and MUSY. Both statutes give the Forest Service broad authority to manage NFS lands for multiple uses. MUSY defines “multiple use” in part as “management of all the various . . . resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people” MUSY specifically provides “that some land will be used for less than all of the resources” (16 U.S.C. 531(a)). Neither Act directs that all NFS lands be open to all uses.

E.O. 11644 and E.O. 11989 broadly direct Federal land management agencies to regulate OHVs in conformance with certain criteria. As discussed in the preamble, the environmental concerns that prompted the E.O.s are more, not less, pressing with changes in OHV use and technology.

Executive orders issued by the President of the United States provide policy direction to all Federal agencies. The Department conforms its policy to executive orders and believes that it is appropriate to take applicable executive orders, such as E.O. 11644 and E.O. 11989, into account in promulgating regulations and issuing directives.

***Comment.** Some respondents stated that the proposed rule is not consistent with the letter and spirit of E.O. 11644 and E.O. 11989, and must not convert their mandatory language to discretionary language.*

Response. The Department disagrees with this assertion. Section 3(a) of E.O. 11644 directs the Forest Service to develop and issue regulations “to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted. . . .” Section 9(b) of E.O. 11644 specifically authorizes the Forest Service to adopt the policy to designate those areas or trails that are suitable for motor vehicle use and to close all other areas and trails to that use. Consistent with these provisions, the final rule requires establishment of a system of routes and areas designated for motor vehicle use and prohibits motor vehicle use off the designated system. The provisions in the final rule governing exemptions from designations, public involvement, criteria for designations, designations in wilderness areas, identification of designated routes and areas, monitoring, and over-snow use track E.O. 11644 and E.O.

11989. See the response to comments on §§212.52 and 212.55 for the relationship between specific sections of the rule and the Executive orders.

***Comment.** Some respondents interpreted the preamble to the proposed rule to imply that every National Forest must designate areas for motor vehicle use. Some respondents supported this idea. Others asked the agency to clarify that there is no such requirement.*

Response. The proposed rule was never intended to require each National Forest to have areas designated for motor vehicle use. To clarify this point, the summary for the final rule states that it requires designation of those roads, trails, and areas that are open to motor vehicle use. Some National Forests do not allow motor vehicle use off NFS roads. This final rule does not require them to change their policy.

***Comment.** Several respondents addressed the preamble's discussion of use of OHVs on NFS roads managed at various maintenance levels. Some respondents asked the Forest Service to allow and some asked the agency to prohibit non-highway-legal vehicles on NFS roads at maintenance levels 3, 4, and 5.*

Response. Road designation decisions will determine road management objectives and maintenance levels, rather than vice versa. However, in many cases, existing road management objectives and maintenance levels, established through travel planning and roads analysis in consultation with State and local governments, already establish appropriate motor vehicle use. The Department anticipates the need to mix highway-legal and non-highway-legal traffic on some NFS roads at maintenance levels 3, 4, and 5. Such designation decisions will be advised by professional engineering judgment, and will include design features deemed appropriate by engineering studies.

***Comment.** Some respondents objected to the agency’s rationale for exempting snowmobiles from designations made under §212.51 of the proposed rule, on the grounds that snowmobiles have documented impacts on wildlife, skiers, and other resource values. Some respondents asked the agency to include a noise level limit for snowmobiles and other provisions specific to snowmobiles. Other respondents asked the Forest Service to remove provisions governing snowmobiles from the rule and exclude snowmobiles from the definition of “off-highway vehicle.”*

Response. Snowmobiles are “off-road vehicles” under E.O. 11644 and subject to the direction “to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted” (E.O. 11644, Sec. 3(a)). Moreover, snowmobiles are “motor vehicles” under this final rule. Since this rule regulates motor vehicle use, the rule must address snowmobiles.

However, the Department believes that cross-country use of snowmobiles presents a different set of management issues and environmental impacts than cross-country use of other types of motor vehicles.

Therefore, the final rule exempts snowmobiles from the mandatory designation scheme provided for under §212.51, but retains a manager’s ability to allow, restrict, or prohibit snowmobile travel, as appropriate, on a case-by-case basis (§212.81). Restrictions and prohibitions on snowmobile use will be enforced under §261.14, rather than through issuance of an order under part 261, subpart B.

The definition of “snowmobile” in the proposed rule encompassed large vehicles not commonly referred to as “snowmobiles,” but excluded over-snow vehicles also

capable of summer travel. In order to improve clarity and ensure equitable treatment of over-snow vehicle use, the final rule replaces the exemption for snowmobiles with an exemption for “over-snow vehicles,” a broader term that includes snowmobiles, as well as other vehicles designed for over-snow travel. The final rule adds language to §212.81(c) to clarify that the designation process applies to over-snow vehicles only where the local responsible official proposes to establish restrictions or prohibitions on use of over-snow vehicles under this subpart.

The Department expects that management of winter recreational use will continue to be an important issue on many National Forests. Nothing in this final rule limits the ability of Forest Service managers to take appropriate action to regulate snowmobile use, or other winter uses, or precludes the Department from promulgating regulations on snowmobile use at some point in the future.

Specific Sections by Part

Part 212 – Travel Management

Subpart A – Administration of the Forest Transportation System

Section 212.1. This section of the rule includes the definitions for part 212, which governs administration of the forest transportation system, designation of roads, trails, and areas for motor vehicle use, and use by over-snow vehicles.

Definition for “administrative unit.”

Comment. Respondents suggested clarifying that this definition embraces all NFS lands, including National Recreation Areas and other Congressionally designated areas.

Response. National Forests and National Grasslands include many classifications, including National Recreation Areas and Congressionally Designated Areas. The purpose of including a definition for administrative unit was not to delineate the types of areas within the NFS, but rather to refer to a discrete management unit within the NFS for purposes of triggering designation of motor vehicle use under the final rule. To ensure that the definition for “administrative unit” encompasses all NFS lands, the final rule adds purchase units, land utilization projects, and the Columbia River Gorge National Scenic Area to the list of administrative units. The final rule also adds “or other comparable units of the National Forest System” to the definition so that if Congress establishes new administrative units of the NFS, they will be included within this definition.

Definition for “all-terrain vehicle,” “considerable adverse effects,” “motorcycle,” and “off-highway vehicle.”

Comment. *Although not included in the proposed rule, respondents suggested including these definitions in the final rule.*

Response. The Department agrees that it would be helpful to add a definition for “off-highway vehicle,” since cross-country travel by OHVs is a major concern of this final rule. Therefore, the Department is adding a definition for “off-highway vehicle” to the final rule. The Department is not adding a definition for “all-terrain vehicle” and “motorcycle” because they are only two of many different types of OHVs and because the final rule does not distinguish among types of OHVs. The Department also is not adding a definition for “considerable adverse effects” because a determination of considerable adverse effects caused by motor vehicle use for purposes of effecting a

temporary, emergency closure under §212.52(b)(2) of the final rule depends on specific factual circumstances in certain contexts. Specific circumstances may include public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with a particular road, trail, or area.

Definition for “area.”

Comment. *Some respondents stated that the final rule should allow large areas to be designated for motor vehicle use and should provide for consideration of all NFS lands as designated areas.*

Other respondents stated that the final rule should not allow designation of areas for motor vehicle use. If such designation is allowed, these respondents believed that only areas much smaller than a Ranger District should be designated, after site-specific analysis demonstrating no environmental impacts, and no Forest should be required to have a designated area.

Response. Areas designated for motor vehicle use are not intended to be large or numerous. The Department agrees that the definition in the proposed rule, “a discrete, specifically delineated space that is smaller than a Ranger District,” is too broad to effectuate this intent. Therefore, the Department has revised the definition of “area” in the final rule to read, “a discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.” Only a few areas currently designated for motor vehicle use, such as the Oregon Dunes National Recreation Area on the Siuslaw National Forest, encompass a significant portion of a Ranger District. Other designated areas are expected to be much smaller.

While areas are not intended to be large or numerous, the Department believes that it is appropriate to designate some areas for motor vehicle use. These areas would have natural resource characteristics that are suitable for motor vehicle use, or would be so significantly altered by past actions that motor vehicle use might be appropriate. Routes and areas under the final rule will be designated at the local level, based upon appropriate environmental analysis. Federal law does not require the Forest Service to demonstrate that there are no environmental impacts from designation of areas.

Under the final rule, no administrative unit or Ranger District will be required to designate an area.

***Comment.** Some respondents stated that the final rule should not include a presumption for designation of previously disturbed sites. Instead, these respondents believed the rule should provide examples of sites that would not be appropriate.*

Response. Neither the proposed nor the final rule establishes a presumption for designation of previously disturbed sites. Rather, the preamble to the proposed rule generally discussed possible characteristics of an area. The characteristics of an area are not enumerated in the definition of an area to give the agency the flexibility to designate areas for motor vehicle use as appropriate, given the variety of natural features, resources, and uses on NFS lands.

***Comment.** Some respondents stated that the final rule should expand the definition of area to encompass specific uses, such as grazing, hunting, firewood gathering, camping, and religious, customary, and cultural practices.*

Other respondents asked the agency to encourage designation of areas wherever there is a high density of existing routes, to save time in conducting an inventory of existing routes.

Response. It is not necessary to expand the definition of area to encompass specific uses, such as grazing. The final rule provides for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, and prohibits motor vehicle use other than in accordance with those designations. Motor vehicle use that is specifically authorized pursuant to a written authorization issued under Federal law (§261.13(h) of the final rule) is exempted from this prohibition. In addition, in making these designations, the responsible official must recognize valid existing rights (§212.55(d) of the final rule).

To address specific local needs for limited cross-country motor vehicle use for big game retrieval or dispersed camping, the Department is adding a paragraph to §212.51 of the final rule. This new paragraph provides that in designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of big game retrieval or dispersed camping.

Some areas of high route density may be appropriate for designation as areas. Others will not. The Department believes that designation decisions should be made at the local level, based on site-specific evaluation of local conditions and public involvement.

Definition for “designated road, trail, or area.”

Comment. *Some respondents stated that the final rule should not make a use map a part of the travel management atlas due to confusion that may result if the atlas is not updated. Respondents further commented that this requirement is redundant, since the definition of “use map” already states that it is part of a travel management atlas.*

Response. The Department disagrees that including a use map in a travel management atlas will lead to confusion if the atlas is not updated because in the final rule revisions to designations will be reflected on a motor vehicle use map (§251.56).

The Department agrees that it is unnecessary to state in the definition for designated road, trail, or area that a motor vehicle use map is contained in a travel management atlas because the definition for travel management atlas states that it includes the motor vehicle use map or maps. Therefore, the Department is removing the phrase, “contained in a travel management atlas” from the definition for designated road, trail, or area. For the same reason, the Department is removing the phrase “that is part of a travel management atlas” from the definition for “motor vehicle use map.” Similarly, the Department is removing the phrase “that is [or ‘are’] included in a forest transportation atlas” from the definitions for “forest road or trail” and “forest transportation system” because the definition for “forest transportation atlas” states that it displays the system of roads, trails, and airfields of an administrative unit.

Comment. *Some respondents requested that the final rule address designation of routes for nonmotorized as well as motorized uses and stated that the proposed rule text contradicts the preamble in this regard.*

Response. The purpose of this rule is to provide better and more consistent management of motor vehicle use on National Forests and National Grasslands. Regulation of nonmotorized use is beyond the scope of this rulemaking. The Department agrees that discussion of nonmotorized use in the preamble may have led to some confusion in this regard. For management and enforcement purposes, it would be better for the use map to be dedicated to motor vehicle uses. As stated above, in the final rule, the Department is changing the term “use map” to “motor vehicle use map.” Only motor vehicle uses will be reflected on this map.

The Department wishes to clarify that designation of a road, trail, or area for motor vehicle use does not establish that use as dominant or exclusive of other uses of that road, trail, or area.

Comment. Some respondents asked the final rule to clarify whether OHV use on designated roads is permissible.

Response. In the final rule, designation decisions, including designations by vehicle class, will be made at the local level. The Department anticipates the need to mix highway-legal and non-highway-legal traffic on some NFS roads. These designation decisions will be advised by engineering judgment or an engineering study, as appropriate.

Definition for “forest transportation atlas.”

Comment. Some respondents stated that a forest transportation atlas should include all open roads and trails, closed roads and trails, user-created roads and trails, rights-of-way, and public and private roads.

Response. The final rule is not substantively changing the definition of a forest transportation atlas. However, the final rule simplifies the definition by deleting the list of possible forms (such as geospatial and tabular) the data might take and the reference to the data's purpose. In the final rule, a forest transportation atlas is defined as a display of the system of roads, trails, and airfields of an administrative unit.

Forest roads and forest trails are included in a forest transportation atlas. Forest roads and forest trails are wholly or partly within or adjacent to and serving the NFS that the Forest Service determines are necessary for the protection, administration, and utilization of the NFS and the use and development of its resources.

Roads, trails, and areas designated for motor vehicle use under the final rule will be reflected on a motor vehicle use map. Under the final rule, motor vehicle use off designated routes and outside designated areas will be prohibited by §261.13.

A travel management atlas will contain a forest transportation atlas and a motor vehicle use map or maps.

Definition for “motor vehicle.”

Comment. *Some respondents stated that the final rule should clarify that both tracked and wheeled vehicles are included in this definition.*

Response. The definition for motor vehicle is broad enough to include both tracked and wheeled vehicles. The definition excludes only vehicles operated on rails and wheelchairs and mobility devices that meet certain criteria.

Definitions for “new road construction,” “road reconstruction,” and “forest transportation facility.”

Definitions for “new road construction” and “road reconstruction” were not included in the proposed rule. However, the Department is making a technical change to conform these definitions in §212.1 to the definition for “construction” in the Federal Highway Act, 23 U.S.C. 101(a)(3). Consistent with that statute, “road construction or reconstruction” will be defined in §212.1 as "supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road." This change is consistent with other technical changes made to definitions in part 212 to make them conform to 23 U.S.C. 101.

The Department is also making a technical change to conform the definition for “forest transportation facility” to the other definitions in this final rule by replacing the reference to “classified roads” with “forest roads.” In addition, the Department is changing the term “log transfer facilities” to “marine access facilities” in this definition because these facilities, which connect roads to the Pacific Ocean, are used for more than transferring logs. These facilities are used for marine access generally, including access for recreational purposes.

Definition for “road.”

Comment. *Some respondents stated that the final rule should include in the definition for a road the phrase, “constructed, receiving regular mechanical maintenance, and suitable for use by a standard passenger car.” Other respondents expressed support for the flexibility to identify and manage a road as a trail.*

Response. The definition for a road in part 212 applies to subpart A, Administration of the Forest Transportation System, subpart B, Designation of Roads,

Trails, and Areas for Motor Vehicle Use, and subpart C, Use by Over-Snow Vehicles. Given the broad application of the definition, the Department believes it would be unduly restrictive and inaccurate to add the phrase, “constructed, receiving regular mechanical maintenance, and suitable for use by a standard passenger car,” to the definition for a road. Not all roads on NFS lands are constructed. Not all roads on NFS lands need regular mechanical maintenance, and not all roads on NFS lands are suitable for use by a passenger car.

The definitions for roads and trails give the agency the flexibility to identify and manage as a trail routes that are wider than 50 inches. Some trails on NFS lands are wider than 50 inches and may have the physical characteristics of a road. Some trails are open to some full-sized vehicles. Four-wheel-drive travel ways and trails originally constructed as roads or railroad grades are all part of the Forest Service trail system. The current definitions for a road and trail, which embrace the diverse array of trail opportunities, are retained in the final rule.

Definition for “road or trail under Forest Service jurisdiction.”

Comment. *Some respondents expressed concern that this definition would unnecessarily limit Forest Service authority to enforce traffic laws and regulate use on valid rights-of-way and State and county roads. Other respondents observed that the Forest Service has the authority and a duty to protect NFS lands underlying these routes.*

Response. The final rule provides for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use. The Department wishes to clarify that this final rule does not in any way affect the Forest Service’s jurisdiction to enforce traffic

laws, to protect NFS lands underlying routes, or to regulate use, including use on valid rights-of-way. To simplify the definitions in the final rule, the Department has moved the phrase “other than a road or trail that has been authorized by a legally documented right-of-way held by a State, county, or local public road authority” from the definition for “road or trail under Forest Service jurisdiction” to the definitions for “National Forest System road” and “National Forest System trail,” and deleted the definition for “road or trail under Forest Service jurisdiction.”

Motor vehicle use on State, county, or municipal roads and trails authorized by a legally documented right-of-way is subject to the control of that State, county, or local public road authority. These roads and trails are not subject to designations made under the final rule, or to the prohibition on motor vehicle use off designated routes and outside designated areas.

***Comment.** Some respondents stated that private rights-of-way should be excluded from the definition of a road or trail under Forest Service jurisdiction.*

Response. Section 212.55(d) of the final rule requires responsible officials in making designations to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. The Forest Service may not regulate uses within the scope of these rights-of-way if the agency has not acquired the right to do so. However, the agency may regulate use on these rights-of-way if it has obtained the right to do so. Some private rights-of-way may be forest roads. Others may not be “necessary for the protection, administration, and utilization of the National Forest System,” and are not forest roads. Because there are many different local permutations involving different rights, some of which include Forest Service regulation of some uses, the Department

does not believe it would be appropriate to exclude these rights-of-way from the definition of a NFS road or NFS trail.

In the definition of “road” in the final rule, the Department is removing the sentence, “A road may be a forest road, a temporary road, or an unauthorized or unclassified road,” and is making a corresponding change in the definition of “trail.” Some private roads are not forest roads, temporary roads, or unauthorized roads. These roads may be included in a forest transportation atlas, but are not NFS roads and will not be subject to designation under this final rule.

***Comment.** Some respondents objected to proposed language regarding roads or trails “which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477.” These respondents asserted that this language would violate the Congressional moratorium on rulemaking concerning recognition of these rights-of-way. Other respondents requested clear delegation of authority for applying this exclusion, and clarification of the process and criteria to be used in ascertaining whether such a right-of-way exists. Some respondents suggested that the final rule establish that all routes in existence before 1976 are R.S. 2477 rights-of-way.*

Response. The exemption for a road or trail “which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477” has been removed from the definition for a road or trail under Forest Service jurisdiction in the final rule. As stated above, the remaining text in that definition has

been moved to the definitions for “National Forest System road” and “National Forest System trail” in the final rule. The exemption for legally documented rights-of-way held by State, county, or other local public road authorities covers rights-of-way under R.S. 2477 that have been adjudicated through the Federal court system or otherwise formally established. The Department does not want to give the appearance of establishing the validity of unresolved R.S. 2477 right-of-way claims in determining the applicability of this final rule.

***Comment.** Some respondents stated that the final rule should address routes that cross private property or otherwise change jurisdiction. These respondents expressed concern that popular, user-created routes on NFS lands could be closed under the final rule if they are accessible only from private land.*

Response. Many roads and trails on NFS lands originate on or cross private property. Where the United States holds a right-of-way across private property providing access to the National Forest, these routes are NFS roads and NFS trails, and subject to possible designation under the final rule.

Some user-created roads and trails on NFS lands cross private property. The agency generally will not consider a road or trail on NFS lands for designation unless there is legal public access to that road or trail. Where access to NFS lands from private property is needed, the Forest Service will seek rights-of-way from willing sellers. If public access cannot be secured, these routes generally will be closed to motor vehicles under the final rule.

The Department supports public access to Federal land and supports the rights of private landowners to control access to their land. A designated system of motor vehicle routes should be based on legal public access.

Definition for “snowmobile.”

Comment. *Some respondents suggested that the definition for snowmobile in the proposed rule be broadened to include other over-snow vehicles, such as tracked ATVs and grooming machines.*

Response. The proposed rule defined snowmobile as “A motor vehicle that is designed exclusively for use over snow and that runs on a track or track and/or a ski or skis.” This definition encompassed large vehicles, such as snow cats, not commonly referred to as snowmobiles. However, the proposed definition excluded vehicles capable of conversion to over-snow use, such as ATVs with tracks. Since the proposed definition refers only to the vehicle itself, and not to its use, the proposed rule could be read to allow use of snowmobiles in the absence of snow off routes and outside areas designated for motor vehicle use. The Department believes that over-snow use by tracked vehicles has similar environmental effects, regardless of whether the vehicle is designed exclusively for use over snow.

Consequently, the final rule replaces the exemption and definition for snowmobiles with an exemption and definition for over-snow vehicles (which would include snowmobiles). The final rule also removes the word “exclusively” from the definition, while adding “while in use over snow,” so that the final definition for over-snow vehicle includes motor vehicles that are designed for use over snow and that run on

a track or track and/or a ski or skis, while in use over snow. Use by over-snow vehicles may be allowed, restricted, or prohibited under part 212, subpart C.

Definition for “temporary road or trail.”

Comment. *Some respondents stated that roads and trails in this category must be managed as temporary and removed as soon as their purpose is served. Otherwise, these respondents believed that they should be included in the forest transportation atlas. Other respondents stated that the final rule should clarify use and designation of temporary routes and explicitly prohibit unauthorized motor vehicle use.*

Response. The Department agrees that temporary roads and trails must be managed as temporary. In the rule, a temporary road or trail is defined as a road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization. The Forest Service requires that temporary roads and trails be decommissioned once the emergency that justified them or their written authorization is no longer in effect.

NFS roads and NFS trails are the only types of routes that will be designated for motor vehicle use under this final rule. Temporary roads and trails by definition are not forest roads or trails and therefore cannot be NFS roads or NFS trails. Therefore, temporary roads and trails will not be designated under the final rule.

Some motor vehicle use on temporary roads may be exempted from designations and the corresponding prohibition under the rule, since §212.51(a)(5) and (a)(8) and §261.13(e) and (h) of the final rule exempt emergency motor vehicle use and motor vehicle use allowed under a written authorization.

After designations are complete on an administrative unit or a Ranger District, motor vehicle use on that unit or District that is inconsistent with the designations will be prohibited under §261.13 of the final rule.

Definition for “trail.”

Comment. *Some respondents requested that the final rule define trails as nonmotorized, or at least clarify whether motor vehicle use is permitted on trails. Other respondents asked that the definition of trails not exclude use by full-sized vehicles.*

Some respondents stated that the final rule should clearly distinguish between roads and trails and suggested a variety of criteria for that purpose, including setting a 60-inch width for roads to accommodate newer side-by-side vehicles on trails, or defining trails as having only a single track. Other respondents stated that the distinction between roads and trails should not be based on width.

Respondents suggested several new terms to identify designated routes that are open to motor vehicles, but narrower than a road. These terms included “routes,” “ways,” and “two-track trails” (as opposed to single-track trails). Some respondents suggested that the final rule adopt definitions for categories of trails from the FSM and FSH.

Response. The Department has retained the proposed definitions of road and trail in the final rule.

Section 212.51 of the rule explicitly authorizes responsible officials to designate NFS trails for motor vehicle use. No clarification on this point is needed. The agency has long managed some trails as nonmotorized and others as open to a variety of motor vehicles.

The definitions for part 212 distinguish roads from trails based on width and management. The Department believes that this distinction is clear and objective and makes sense in terms of the way the agency manages roads and trails. There is no need to change the definition of a trail because the rule already provides the responsible official discretion to designate roads and trails for appropriate classes of motor vehicles, depending on the circumstances. Some roads may be designated for use by non-highway-legal vehicles. Some routes over 50 inches wide are identified and managed as trails and can accommodate wider vehicles.

The definitions for trails in the rule are keyed to management of the forest transportation system, designation of routes and areas for motor vehicle use, and management of use by over-snow vehicles. The definitions for trails in the FSM and FSH are appropriate for trail management in the field and are not needed for the broader purposes of part 212. Definitions based on the types of use on trails, such as single versus double track or motorized versus nonmotorized, are not necessary in the rule, since designations based on vehicle class will be made through implementation of the rule at the local level.

Definition for “travel management atlas.”

Comment. *Some respondents suggested expanding the definition for travel management atlas to encompass nonmotorized routes in order to serve a wider number of public and administrative needs.*

Response. Under the final rule, the travel management atlas consists of the forest transportation atlas and the motor vehicle use map or maps. The forest transportation atlas includes the entire system of roads, trails, and airfields of an administrative unit.

Therefore, the travel management atlas encompasses all NFS roads and NFS trails, regardless of whether they are designated for motor vehicle use. However, only NFS roads and NFS trails designated for motor vehicle use will appear on the motor vehicle use map. Since motor vehicle use maps may be developed at the Ranger District level, the final rule recognizes that the travel management atlas for a National Forest may include one or more motor vehicle use maps.

Definition for “unauthorized or unclassified road or trail.”

Comment. *Some respondents suggested that these roads and trails be called “unauthorized motorized routes” to ensure they are not given official status as roads or trails without site-specific analysis. Respondents also recommended that the reference in the definition to a forest transportation atlas be removed or explained to eliminate the implication that a route can be authorized simply by including it in the atlas. Other respondents stated that the definition should include penalties for creation and use of unauthorized or unclassified routes.*

Response. The Department believes that the term “unauthorized or unclassified road or trail” is cumbersome and that “unauthorized” more accurately captures the nature of these routes than “unclassified.” Accordingly, in the final rule, the Department is changing “unauthorized or unclassified road or trail” to “unauthorized road or trail.”

The definition for unauthorized road or trail (a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas) makes clear that unauthorized roads and trails are not part of the forest transportation system and are not officially recognized by the Forest Service.

Stating that an unauthorized road or trail is not included in a forest transportation atlas does not imply that it can be authorized simply by including it in the atlas.

As stated in the preamble to the proposed rule, user-created roads and trails may be identified through public involvement and considered in the designation process. After public consideration and appropriate site-specific environmental analysis, some user-created routes may be designated for motor vehicle use pursuant to §212.51 of the final rule. These routes would become NFS roads or NFS trails and would be included in a forest transportation atlas and reflected on a motor vehicle use map.

The final rule contains a prohibition at 36 CFR 261.13 pertaining to motor vehicle use. Under this provision, after NFS roads, NFS trails, and areas on NFS lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District, it is prohibited to possess or operate a motor vehicle on NFS lands in that unit or District other than in accordance with those designations. At that point, motor vehicle use off designated routes and outside designated areas will be prohibited under §261.13.

Section 212.2(a). This section of the rule governs the travel management atlas.

Comment. Some respondents suggested that the travel management atlas be available at Ranger Districts and on the internet.

Response. The current rule provides that the forest transportation atlas is to be available to the public at the headquarters of each administrative unit of the Forest Service. Likewise, the final rule provides that the travel management atlas, consisting of the forest transportation atlas and the motor vehicle use map or maps, is to be available to the public at the headquarters of each administrative unit of the Forest Service. The

Department believes it is unnecessary to require each Ranger District to maintain a complete travel management atlas (which encompasses all forest roads and trails for the entire National Forest). The motor vehicle use map will be available at the corresponding Ranger District. The Forest Service also intends to post motor vehicle use maps on the internet and gradually to post travel management atlases (a more complicated job) on the internet. The Department is adding language in §212.56 to require that motor vehicle use maps be made available on appropriate websites as soon as practicable.

Section 212.2(b). This section of the rule governs the forest transportation atlas.

Comment. Some respondents commented that updating the forest transportation atlas to reflect new information should be mandatory, rather than discretionary. Respondents also stated that all long-standing roads should be shown on a forest transportation atlas. Other respondents stated that temporary roads should be shown on a forest transportation atlas while they exist.

Some respondents stated that the final rule should require National Forests to create a forest transportation atlas, so that they cannot close all routes by failing to create the atlas.

Response. Section 212.2(b) of the final rule allows a forest transportation atlas to be updated, rather than requiring it to be updated. Under the final rule, forest roads and trails are included in a forest transportation atlas. Temporary roads and trails are not forest roads and trails and therefore are not included in a forest transportation atlas and

are not designated for motor vehicle use. It would be cumbersome to add temporary roads and trails to the atlas and remove them once they are no longer authorized.

The current rule at §212.2(a) requires the responsible official for every administrative unit of the Forest Service to develop and maintain a forest transportation atlas. Likewise, §212.2(a) of the final rule requires the responsible official for every administrative unit of the Forest Service to develop and maintain a travel management atlas, which consists of a forest transportation atlas and a motor vehicle use map or maps.

The Department has removed the citation to §200.1 after the reference to the Forest Service's directive system in §212.2(b) of the final rule.

Section 212.5(a)(1). This section of the rule governs traffic rules in general.

Comment. *Some respondents stated that the final rule should not allow preemption of State traffic laws and that the Forest Service should not allow uses that are illegal on public, State, or county roads. One respondent maintained that the proposed rule would revoke water rights for miners. Other respondents asked the Forest Service to retain the authority to preempt State law.*

Response. Under the current rule, traffic on roads is subject to State traffic laws where applicable, except when in conflict with the Forest Service's prohibitions at 36 CFR part 261. If there is a conflict, the agency's prohibitions preempt State traffic laws. To ensure that the agency's intent with respect to designation of roads, trails, and areas is fully effectuated, the proposed and final rules also provide for preemption of State traffic laws when they conflict with those designations. No other preemption of State laws is authorized. The final rule does not revoke water rights for miners.

Section 212.5(a)(2)(ii). This section of the rule contains specific traffic rules.

***Comment.** Some respondents suggested that the final rule include and distinguish among varieties of OHVs, including ATVs, motorcycles, and buggies, and recognize different needs of users of different vehicles. Respondents also suggested providing national definitions of vehicle classes. Respondents recommended recognizing ATVs as a specific class of OHV.*

Response. This section of the rule in part 212, subpart A, which authorizes restricting use of roads by certain classes of vehicles or types of traffic as provided in 36 CFR part 261, is separate from the provisions for designation of roads, trails, and areas for motor vehicle use in part 212, subpart B. Part 212, subpart B, provides for designation of roads, trails, and areas for motor vehicle use by vehicle class. Since new classes of vehicles are introduced on a regular basis and designations will be made at the local level, the rule does not need to define different types of OHVs at a national level.

The vehicle classes enumerated in §212.5(a)(2)(ii) are illustrative, rather than exhaustive. The Department agrees that ATVs are a common type of OHV and has added “all-terrain vehicles” to the list of vehicle classes in §212.5(a)(2)(ii). The Department has removed “automobiles” from the list, since “passenger cars” are already included.

Section 212.7. This section of the rule governs access procurement by the United States.

There were no comments received on this section of the proposed rule. However, the Department is changing the heading and text of §212.7(a) to conform to terminology used elsewhere in part 212 and in the definitions for “forest road,” “National Forest System road,” and “National Forest System trail” in the final rule.

Section 212.10. This section of the rule governs maximum economy NFS roads.

No comments were received on this section of the proposed rule. The Department has not made any changes to this section.

Subpart B – Designation of Roads, Trails, and Areas for Motor Vehicle Use

Section 212.50. This section governs the purpose and scope of part 212, subpart B.

Comment. Some respondents stated that the final rule should specify whether current land management plans, closures, and open areas remain in effect while designation decisions are pending.

Respondents suggested that the purpose and scope section summarize available information on monitoring and other aspects of management of motor vehicle use in National Forests.

Some respondents requested clarification that State law governs motor vehicle use on legally documented rights-of-way held by States, counties, or local public road authorities.

Response. The prohibition pertaining to motor vehicle use in the final rule at §261.13 explicitly states that it is not triggered until NFS roads, NFS trails, and areas on NFS lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District and those designations are identified on a motor vehicle use map. Until those designations are complete for the entire administrative unit or Ranger District and identified on a motor vehicle use map, existing authorities and orders regarding motor vehicle use remain in effect.

The purpose and scope section of subpart B provides for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use and a prohibition to enforce those designations. Available information on monitoring and other aspects of management of motor vehicle use in National Forests is more appropriately addressed in the preamble to the proposed and final rules.

Designations and prohibitions under this rule do not apply to legally documented rights-of-way held by States, counties, or other local public road authorities. Only NFS roads and NFS trails may be designated for motor vehicle use under the final rule. The definitions of “National Forest System road” and “National Forest System trail” exclude legally documented rights-of-way held by States, counties, or other local public road authorities. In addition, the prohibition pertaining to motor vehicle use specifically exempts use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

As previously described, the final rule includes a new paragraph (b) in §212.50 to clarify that previous travel management decisions may be incorporated in designations.

Section 212.51. This section of the rule governs designation of roads, trails, and areas for motor vehicle use.

Comment. *Some respondents commented that the final rule should require a designation decision to be consistent with the applicable land management plan. Other respondents stated that the final rule should provide for reconsideration of decisions made in land management plans.*

Response. Under the National Forest Management Act, project-level decisions, including designation of routes for motor vehicle use, must be consistent with the

applicable land management plan. If a proposed designation is not consistent with the land management plan, the responsible official must either change the proposed designation or propose an amendment to the plan.

Since under some land management plans, large areas of NFS lands are open to cross-country motor vehicle travel, the Department expects that some land management plan amendments will be proposed and considered during implementation of the final rule. However, the Department does not believe that the final rule should provide for reconsideration of all travel management decisions made in land management plans. Reconsideration of all these decisions would waste public resources, disrespect public participation in development of the plans, and expand the scope of this travel management rule beyond its purposes.

***Comment.** Some respondents stated that the final rule should encourage designation decisions to be made case by case at the Ranger District level. Other respondents stated that the final rule should not allow designation at the Ranger District level to avoid inconsistency, to promote enforceability, and to ensure that cumulative effects are evaluated. These respondents believed that designation decisions should be made only at the National Forest or Regional level.*

Response. The Department believes it is appropriate to give Forest Service field officers the flexibility to designate routes and areas for an entire administrative unit or for a single Ranger District. Designation at the Ranger District level may make sense, given the size of some Ranger Districts, which, at over three million acres, are more than ten times the size of the smallest administrative units. The Department believes that local evaluation and consideration of routes, with public involvement and coordination with

Federal, State, local, and tribal governments, will lead to better decisions and better compliance with them.

Enforcement at these two scales is feasible because the regulation specifically authorizes designation at these two levels and triggers the prohibition pertaining to motor vehicle use once a designation decision has been made at either of these levels.

Administrative units and Ranger Districts are discrete management and geographic units within the NFS. The Department believes that Ranger Districts are large enough to permit adequate effects analysis for designation decisions and that field officers should be given the flexibility to determine the appropriate scope for that analysis. The Department believes that it would be unwieldy to make designation decisions and comply with the associated legal requirements at a Regional scale.

Section 212.52. This section governs public involvement.

The Department has changed the title of this section from “Public involvement in the designation process” to “Public involvement,” since this section addresses public involvement in the designation process (§212.52(a)) and the absence of public involvement in the case of temporary, emergency closures (§212.52(b)).

Section 212.52(a). This section of the rule governs public involvement in the designation process.

Comment. *Some respondents suggested that the final rule require consultation with user groups. Other respondents requested that the final rule include detailed requirements for public involvement in route and area designation, including publication of a **Federal Register** notice, legal notices, 60-to-90-day public comment periods, mailings, postings on bulletin boards, and postings on internet sites. Some respondents*

requested that the final rule provide for public notice and comment on inventories of routes and areas, as well as on designation decisions.

Response. Consistent with E.O. 11644, E.O. 11989, and §212.52 of the proposed rule, the final rule requires public participation generally rather than consultation with specific parties in the designation of roads, trails, and areas pursuant to the rule. Also consistent with the E.O.s and §212.52 of the proposed rule, the final rule does not enumerate specific requirements for public involvement, so as to give field officers flexibility in meeting the requirement to give advance notice to allow for public comment on proposed designations and revisions to designations.

The Department believes that public involvement associated with the NEPA process will often fulfill the requirements of §212.52(a). Rather than duplicating existing requirements for public involvement, the Department is adding language to §212.52(a) of the final rule to establish that advance notice and public comment will be consistent with agency procedures under NEPA.

The Department does not believe it is necessary to provide for public notice and comment on inventories of routes and areas. NFS roads and NFS trails are reflected in the forest transportation atlases. User-created routes on NFS lands that have resulted from cross-country motor vehicle use may be identified through public involvement and considered in the designation process under the final rule. These routes will not necessarily be inventoried. The decision about which routes and areas to designate, rather than the gathering of information prior to designation, is the decision point with substantive effects on users and the environment. Designation decisions will be subject to public notice and comment as provided in §212.52(a).

Section 212.52(b)(1). This section of the rule addresses temporary, emergency closures without advance public notice.

Comment. Some respondents suggested that the final rule allow cooperative work, volunteer work, or mitigation to address environmental problems associated with motor vehicle use of routes as an alternative to temporary, emergency closures.

Response. Section 212.52(b)(1) of the proposed and final rules restates existing authority in §295.3 to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B. This authority augments other measures that might be taken to address resource protection or to protect public health and safety, including cooperative work, volunteer work, and mitigation.

Section 212.52(b)(2). This section of the rule governs temporary, emergency closures based on a determination of considerable adverse effects.

Comment. Some respondents stated that the final rule should restore “including public input,” from 36 CFR 295.5, after “If, based on monitoring pursuant to §212.57,” and before “the responsible official determines that motor vehicle use on a National Forest System road or a National Forest System trail or in an area on National Forest System lands is causing or will cause considerable adverse effects.”

Response. There is no legal obligation to obtain public input in connection with monitoring the effects of motor vehicle use, or in making a determination of considerable adverse effects for purposes of §212.52(b)(2). The public is welcome to provide information to the responsible official regarding motor vehicle use on routes and in areas and to highlight potential problems associated with motor vehicle use on particular routes and in particular areas. The Forest Service values this input as an important adjunct to

agency monitoring efforts. However, the Department believes it is not appropriate, and could be counter-productive, to imply that public input is required in connection with a determination of considerable adverse effects pursuant to §212.52(b)(2).

To track the language of E.O. 11644 more precisely and to clarify that monitoring pursuant to §212.57 is not the only potential source of information about “considerable adverse effects,” the Department is removing “based on monitoring pursuant to §212.57” from the final rule. This section now begins “If the responsible official determines that motor vehicle use...”

***Comment.** Some respondents requested that the word “mitigated” be removed from §212.52(b) in the final rule, or that the final rule include a standard for mitigation, such as “to a level of insignificance.” These respondents contended that the addition of “mitigated” in §212.52(b) weakens the strong wording of E.O. 11644 and E.O. 11989 which, according to these respondents, require such effects to be eliminated. These respondents maintained that the explanation for the addition of “mitigated” in the preamble to the proposed rule is contradictory.*

Response. The Department believes that temporary, emergency closures based on a determination of considerable adverse effects should remain in place until the effects have been mitigated or eliminated. Use of only the term “eliminated” could be read to imply that the closure must stay in place until there is no effect whatsoever, a practical impossibility in some situations. By “mitigated,” the Department means the effects will be reduced to the point where they are not considerable adverse effects. The Department believes that the inclusion of both terms, “mitigated or eliminated,” better expresses the intent of the E.O.s. Where motor vehicle use directly causes or will directly cause

considerable adverse effects, use must be stopped until the considerable adverse effects have been mitigated or eliminated. The final rule further requires that the closure remain in place until measures have been implemented to prevent future recurrence.

***Comment.** Some respondents stated that the final rule should limit temporary, emergency closures to one year as in §295.3 of the current rule and should require documentation of impacts and consideration of alternatives before closure. Respondents suggested changing “considerable adverse effects,” which they believed is vague and open to interpretation, to “irreversible physical harm.”*

Response. The Department believes it is appropriate to retain the flexibility to implement a temporary, emergency closure for a period that is longer than a year, if warranted by the situation. E.O. 11644, as amended by E.O. 11989, requires that the closure remain in place until the considerable adverse effects have been eliminated (mitigated or eliminated in the final rule). Setting a mandatory expiration date could conflict with this requirement.

Requiring formal documentation of impacts and consideration of alternatives also could frustrate the purpose of the E.O.s and this final rule, which require the responsible official to close a road, trail, or area immediately when motor vehicle use on that route or in that area is causing considerable adverse effects. However, the Department is adding “directly” before “causing” and “cause” in §212.52(b)(2) of the final rule to clarify that the motor vehicle use must directly cause a considerable adverse effect to be subject to this section. The Department is also including a requirement for public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

The Department does not believe that it would be appropriate to substitute “irreversible physical harm” for “considerable adverse effects” as the trigger for a temporary, emergency closure under the final rule. The E.O.s provide that a determination of considerable adverse effects will trigger a temporary, emergency closure. In addition, the E.O.s and this final rule provide for the closure to be lifted when the considerable adverse effects have been redressed. If irreversible harm, which is permanent, is the trigger, the closure could never be lifted.

For consistency with §212.51, the Department is removing “Forest Supervisor or other” before “responsible official” in §212.52(b)(2) of the final rule. The Department is making the same change in §§212.53 and 212.57 of the final rule. In addition, the Department is changing the phrase “cultural or historic resources” in §212.52(b)(2) to “cultural resources” because the phrase “cultural resources” includes historic resources for purposes of the National Historic Preservation Act.

Section 212.53. This section of the rule governs coordination with Federal, State, county, and other local governmental entities and tribal governments.

Comment. *Some respondents stated that the final rule should require consultation with gateway communities and State tourism offices.*

Response. Section 212.53 of the final rule requires coordination with appropriate Federal, State, county, and other local governmental entities and tribal governments in implementing the final rule. State governments are organized differently across the country. While the Department relies on States to identify the appropriate points of contact, State tourism offices generally would fall into this category. “Gateway communities” is a broad term encompassing county and local governments in the vicinity

of a National Forest. The Department believes that coordination with State, local, and tribal governments is critical to the success of this final rule. Not only can their programs be affected by designation of NFS roads, NFS trails, and areas on NFS lands under the final rule, but they often maintain their own networks of roads intertwined with the Forest Service's system of roads and trails.

Section 212.54. This section of the rule governs revision of designations.

Comment. Some respondents stated that the final rule should make designations permanent, rather than subject to future review and reconsideration. Other respondents suggested that the rule provide for development of new trails, and avoid the implication that the system designated pursuant to this final rule represents all the routes that will ever be approved for motor vehicle use. Some respondents stated that the final rule should allow users to continue to develop new trails independent of the Forest Service.

Response. The Department believes that field officers need to be able to revise designations made pursuant to the final rule to meet changing conditions. This flexibility is consistent with E.O. 11644, which provides for closure of designated routes based on environmental impacts. Section 212.54 of the final rule will allow for revisions to designations to reflect changes in environmental conditions, recreation demand, and other factors identified through monitoring pursuant to §212.57 of the final rule. These revisions may include additions to the system of designated routes, as well as route closures. New motor vehicle routes can be planned, constructed, and designated after appropriate public involvement and environmental analysis. The Department does not agree that users should construct new routes without agency approval. Trail construction without a written authorization from the Forest Service is prohibited by §261.10(a).

The Department has added language to §212.54 of the final rule to clarify that revision of designations shall include coordination with Federal, State, county, and other local governmental entities and tribal governments as provided under §212.53.

Section 212.55. This section of the rule governs the criteria for designation of roads, trails, and areas for motor vehicle use.

Comment. *Some respondents suggested consolidating §212.55(a), (b), and (c) to reduce redundancy and to provide the same standards for motor vehicle use on roads and trails.*

Response. The general criteria of §212.55(a) and the specific criteria of §212.55(b) are taken directly from E.O. 11644. The E.O. applies only to trails and areas designated for motor vehicle use. However, the Department believes that the general criteria cited in the E.O. are of such universal applicability that they should be considered in designating roads, as well as trails and areas. Therefore, §212.55(a) describes criteria to be considered in all designations.

Section 212.55(b), on the other hand, reflects the specific criteria to be used in designating trails and areas under the E.O. Section 212.55(c) contains specific criteria for designation of roads drawn from existing Forest Service transportation policy. The Department believes that consolidating these sections into a single set of criteria for roads, trails, and areas would not provide the opportunity to address the different management challenges and opportunities in different contexts.

Section 212.55(a). This section of the rule contains general criteria for designation of NFS roads, NFS trails, and areas on NFS lands.

***Comment.** Some respondents suggested removing “minimization of conflicts among uses of NFS lands” and other criteria unrelated to physical and biological impacts. These respondents stated that the government should not eliminate one use to avoid conflict with another and asked that the final rule specify that motorized and nonmotorized use on the same route does not represent a conflict.*

Response. The references to use conflicts in this section are taken from E.O. 11644. In issuing this E.O., President Nixon directed agencies to take conflicts among uses into account in designating trails and areas for motor vehicle use. The Department believes that some trails can accommodate both motorized and nonmotorized uses. However, the Department also believes that some trails are better managed for one use or the other, and that providing separate trail systems can sometimes result in better recreational experiences for all users.

The Department is changing the phrase “National Forest System resources” in §212.55(a) to “National Forest System natural and cultural resources” to make it clear that this criterion includes cultural, as well as natural, resources on NFS lands. To emphasize consideration of effects through a public process, the Department is replacing “protection of” prior to “National Forest System resources” with “effects on” and removing “promotion of” before “public safety” and “minimization of” before “conflicts among uses.”

***Comment.** Some respondents stated that the final rule should ensure that no routes are designated unless there is funding for maintenance and enforcement. Other respondents asked field officials to consider the availability of volunteers and cooperators in evaluating resources available for maintenance.*

Response. The Department agrees that availability of resources should be a consideration in designating routes for motor vehicle use. Section 212.55(a) of the proposed and final rules include as a criterion for designation “the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.” The Department believes, however, that this determination involves the exercise of judgment and discretion on the part of the responsible official. At times, resources are scarce, and the Department does not believe that this scarcity should lead to blanket closures of NFS lands to recreational users. Volunteers and cooperators can supplement agency resources for maintenance and administration, and their contributions should be considered in this evaluation.

Section 212.55(b). This section of the rule contains specific criteria for designation of trails and areas.

Comment. Some respondents suggested rewriting the criteria in this section to make clear that some level of impacts is acceptable. Other respondents stated that the final rule should retain what they characterized as the mandatory language from E.O. 11644 with respect to application of the specific criteria for trails and areas (“Designation of these areas and trails shall be in accordance with the following: areas and trails shall be located to minimize. . .”), rather than what they viewed as the discretionary language in the proposed rule (“In designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing. . .”).

Response. The Department has retained the proposed language, “the responsible official shall consider effects on the following, with the objective of minimizing,” in the final rule. The retained language is mandatory with respect to addressing environmental and other impacts associated with motor vehicle use of trails and areas. The Department believes this language is consistent with E.O. 11644 and better expresses its intent. It is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of “minimize” would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple use of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes “shall consider . . . with the objective of minimizing . . .” will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use.

Section 212.55(c). This section of the rule contains specific criteria for designation of roads.

Comment. Some respondents stated that the final rule should clarify the application of the criteria in §212.55(c) to user-created and temporary roads. Other respondents suggested that the final rule make road management objectives dependent on designation rather than designation dependent on road management objectives.

Response. Only NFS roads, NFS trails, and areas on NFS lands will be designated for motor vehicle use under the final rule. Temporary roads are not NFS roads and may not be designated. Temporary roads are used for emergency purposes or under a written authorization for a particular time frame and then decommissioned. Motor vehicle use on a temporary road is exempted from designations under §212.51(a)(5) and (a)(8). User-created roads may be considered for designation under the criteria in §212.55 of the final rule. Those that are not designated will be closed to motor vehicle use by operation of the final rule.

The Department does not expect road and trail management objectives to remain static over time. Road and trail management objectives document prior decisions regarding the role of roads and trails in providing access to implement land management plans. This information about the intent and purpose of roads and trails should be considered when making designation decisions under the final rule. However, road and trail management objectives must be revised when designations under the final rule change motor vehicle use on roads and trails. Consequently, the Department has deleted “consistency with road management objectives” from §212.55(c) of the final rule. Likewise, the Department has deleted “consistency with trail management objectives” from §212.55(b) of the final rule. In addition, the Department has added compatibility of vehicle class with road geometry and road surfacing as a specific criterion for designation of roads because this criterion is an important factor in assessing public safety in designating roads for motor vehicle use.

***Section 212.55(d).* This section of the rule addresses rights of access in the context of the designation process.**

***Comment.** Some respondents stated that the final rule should provide clear protection of tribal treaty rights. Other respondents stated that the final rule must not revoke valid existing rights-of-way held by miners.*

Some respondents stated that the final rule must not interfere with rights of access to private property and should recognize private use by right for inholders, rather than requiring private use by inholders to be authorized by a permit.

One respondent requested that the proposed rule be revised to reflect other provisions of the Alaska National Interest Lands Conservation Act (ANILCA) besides sections 811 and 1110(a).

Response. Nothing in the final rule revokes any rights-of-way held by miners or others or alters or is inconsistent with any treaty rights held by tribal governments. In the final rule, the Department clarifies this intent by substituting “recognize” for “take into account” with regard to rights of access. Responsible officials will consult with affected tribal governments when designating NFS roads, NFS trails, and areas on NFS lands, pursuant to FSM 1563.11.

Section 212.55(d) of the final rule requires responsible officials in designating roads, trails, and areas to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. Examples include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States, and a right-of-way for a road or trail acquired by the United States where the owner of the underlying land may have retained control of the right-of-way and may have reserved the right to allow others to use it. The Forest Service may not regulate uses within the scope of these rights-of-way if the agency has

not acquired the right to do so. However, the agency may regulate use on these rights-of-way if the agency has obtained the right to do so.

Section 1323(a) of ANILCA provides property owners within the boundaries of the NFS certain rights of access across NFS lands. According to the terms of ANILCA, such access shall be “subject to such terms and conditions as the Secretary of Agriculture may prescribe,” and “as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: *Provided*, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System” (16 U.S.C. 3210(a)). While ANILCA provides certain rights to property owners, those rights are subject to such reasonable terms and conditions as the Forest Service may prescribe in a written authorization.

Some property owners also may possess reserved or outstanding rights-of-way or other rights providing access across NFS lands, which may or may not require a written authorization from the Forest Service. Those rights must be recognized under §212.55(d). The Department believes that questions of valid existing rights are best examined at the local level, where they can be individually evaluated.

The Department is moving the requirement in §212.55(d)(2) of the proposed rule to take into account the provisions concerning rights of access in sections 811 and 1110(a) of ANILCA to §212.81(c) of the final rule, governing establishment of restrictions and prohibitions on use by over-snow vehicles, because these sections of ANILCA specifically refer to snowmobile use. In addition, the Department is changing “take into account” to “recognize” in §212.81(c) of the final rule. In the final rule, the Department is citing section 811(b), rather than section 811, because section 811(b)

contains the reference to snowmobile use. To the extent other provisions of ANILCA may address rights for motor vehicle access, they are covered by §212.55(d)(1), which requires that the responsible official recognize valid existing rights in making designations under the final rule. It is not feasible for the Department to list every right that may be implicated in any given situation in designating roads, trails, and areas for motor vehicle use under the final rule.

Section 212.55(e). **This section of the rule addresses wilderness areas and primitive areas in the context of the designation process.**

Comment. *Some respondents commented that the final rule should retain the more comprehensive ban on motor vehicle use in wilderness areas contained in the current rule, and drop the exception for motor vehicle use authorized in enabling legislation for wilderness areas.*

Response. Mechanical transport and motor vehicles are prohibited in wilderness areas unless they are necessary to meet minimum requirements for administration of the areas or they are expressly authorized under individual statutes designating wilderness areas. The language in §212.55(e) proscribing designation of roads, trails, and areas for motor vehicle use in wilderness areas, unless motor vehicle use is authorized by the applicable enabling legislation for those areas, is required for consistency with those statutes.

To avoid confusion with designated roads, trails, and areas, the Department has removed “Congressionally designated” before the phrase “wilderness areas” in §212.55(e) of the final rule.

Comment. Some respondents requested specific direction on protection of wilderness study areas and inventoried roadless areas to preserve their roadless, nonmotorized character. Respondents also suggested prohibiting motor vehicle use within a buffer zone surrounding wilderness areas.

Response. Management of wilderness study areas established by Congress is generally governed by their authorizing legislation. Management of inventoried roadless areas is governed by the applicable land management plan and Forest Service policy. The Department does not believe that additional direction for management of these areas is necessary or required in this final rule. Nor does the Department believe that it would be appropriate to prohibit motor vehicle use within a buffer zone surrounding wilderness areas. Responsible officials will consider impacts to nearby wilderness areas, wilderness study areas, and inventoried roadless areas during the designation process.

Section 212.56. This section of the rule governs identification of designated roads, trails, and areas.

The Department is making a technical change in the final rule to clarify that motor vehicle use maps will be available at Ranger District headquarters and as soon as practicable on appropriate websites, as well as at administrative unit headquarters.

Section 212.57. This section of the rule governs monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

Comment. Some respondents recommended reinstating the requirement for annual review of OHV management from §295.6 of the current rule and including public participation in these reviews to allow for adaptive management. Other respondents

suggested requiring regular updates of motor vehicle use maps and signs marking designated roads, trails, and areas.

Response. The Department supports the concept of adaptive management and agrees that monitoring and, if needed, revision of motor vehicle designations will be an ongoing part of travel management. Since the system of designated routes and areas will change over time, the Department anticipates that local units will publish new motor vehicle use maps annually and update signs as necessary or appropriate.

The Department does not believe that a regulatory requirement for annual review of OHV management, having no basis in law or the E.O., should be imposed. Local review of designations should be conducted as needed, and the Department favors providing local officials with discretion in determining how often they are conducted.

The Department is adding “consistent with the applicable land management plan, as appropriate and feasible” to §212.57 of the final rule to clarify that monitoring should be incorporated into land management plans under 36 CFR 219.11 to the extent possible to avoid redundant monitoring requirements.

Subpart C – Snowmobile Use

Comments on snowmobile use are addressed in the response to comments on §261.13 of the proposed rule and the corresponding discussion in the preamble to the proposed rule. No specific comments were received on this subpart.

Section 212.81. This section covers over-snow vehicle use.

The Department has added “If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart” to the beginning of §212.81(c) in the final rule to stress that the requirements governing the designation

process apply to over-snow vehicles only if the responsible official proposes to establish restrictions or prohibitions on over-snow vehicle use.

Part 251 – Land Uses

The Department is making a technical change to conform the definitions for “National Forest System road” and “National Forest System trail” in part 251 with corresponding definitions in part 212 of this final rule.

Part 261 – Prohibitions

Section 261.2. This section contains the definitions for part 261.

In addition to the revised definition for “motor vehicle,” §261.2 of the final rule contains new definitions for “administrative unit” and “area” and revised definitions for “National Forest System road” and “National Forest System trail” to match the definitions added to §212.1. Comments associated with these definitions are addressed under §212.1. No specific comments were received on this section of the proposed rule.

Section 261.13. This section of the rule prohibits use of motor vehicles not in accordance with designations and provides for exemptions.

Comment. *Some respondents suggested that bicycles should be included in the prohibition on use of motor vehicles off designated roads and trails and outside designated areas.*

Response. The Department disagrees that bicycles should be regulated under the same provisions as motor vehicle use. The Department believes that bicycles are distinct from motor vehicles and should be managed separately from them and that a nation-wide prohibition on cross-country bicycle use is unwarranted at this time. Noise (and its impacts on wildlife and other users) is a critical distinction between bicycles and motor

vehicles. Other differences can (depending on the vehicle) include speed, power, weight, and tread width.

Like all uses, including hiking, horseback riding, and motor vehicle use, bicycling has environmental impacts and can affect the experience of other users. Local Forest Service officials retain authority to regulate bicycle use according to their local situation and needs. Some National Forests, through travel plans and orders, restrict bicycles to particular roads and trails. Others allow cross-country bicycling.

***Comment.** Some respondents suggested that the rule specify penalties for violations of §261.13 and that fines for violations be substantially increased.*

Response. Penalties for violations of §261.13 are beyond the scope of this rulemaking and are established by Federal statute. Violations of prohibitions in part 261 are Class B misdemeanors, which are punishable by a prison term of up to six months (18 U.S.C. 3559(a)(7); 36 CFR 261.1b). Pursuant to 18 U.S.C. 3571(e), the \$500 maximum fine specified in §261.1b is superseded by the \$5000 maximum fine established for Class B misdemeanors in 18 U.S.C. 3571(b)(6). However, the maximum penalties are rarely imposed for violations of the Forest Service's criminal regulations.

Each Federal judicial district implements a schedule of collateral forfeiture amounts for violation of each Federal agency's criminal regulations. The applicable collateral forfeiture amount is normally entered on a citation issued to violators of Forest Service criminal regulations. The applicable collateral forfeiture amount may be paid by the violator to end the case without appearing in court. Except for serious offenses or those for which a court appearance is mandatory, these collateral forfeiture amounts generally are less than \$1,000, and most are less than \$100.

Restitution also may be required for criminal violations involving environmental damage (18 U.S.C. 3663A).

***Comment.** Some respondents observed that the rule's prohibition does not require signage to take effect and that users are responsible for using motor vehicles in accordance with designations reflected on a motor vehicle use map. These respondents asked the Forest Service to amend the rule to require signage of roads, trails, and areas closed to motor vehicle use.*

Response. The Department disagrees with this suggestion. The Forest Service will continue to use signs widely to provide information and inform users on a variety of topics, including regulations and prohibitions. However, the agency has found that posting routes as open or closed to particular uses has not always been effective in controlling use. One of the reasons is that new unauthorized routes continue to proliferate, even in areas closed to cross-country motor vehicle use. Requiring each undesignated route and area to be posted as closed would be an unreasonable and unnecessary burden on agency resources and would tend to defeat the purpose of the final rule. Signs have also proven difficult to maintain and subject to vandalism. The final rule places more responsibility on users to get motor vehicle use maps from Forest Service offices or websites and to remain on routes and in areas designated for motor vehicle use.

The Department has added language to the final rule clarifying that the prohibition on motor vehicle use other than in accordance with designations does not go into effect until designations have been identified on a motor vehicle use map.

***Comment.** Some respondents suggested replacing the prohibition in §261.13 with a provision restricting motor vehicle use in certain areas to people with specific training and endorsement from organizations promoting environmental ethics, such as Tread Lightly! or the National Off-Highway Vehicle Conservation Council.*

Response. The Department appreciates the long-standing work of nongovernmental organizations, including user groups, to promote environmental ethics and responsible behavior on the part of motor vehicle users. These groups make vital contributions to sustainable motor vehicle recreation. Nevertheless, the Department declines to adopt this suggestion, which would make these nongovernmental organizations gatekeepers for Federal lands and resources. Moreover, the prohibition in §261.13 is needed because in many situations cross-country motor vehicle use, and in some situations motor vehicle use on routes, can cause unacceptable impacts, regardless of driver training and endorsement of the driver by organizations promoting environmental ethics.

***Comment.** Some respondents asked that motorcycles be exempted from the prohibition regarding motor vehicle use in §261.13.*

Response. The Department disagrees with this suggestion. Motorcycles are motor vehicles under E.O. 11644 and §212.1 of this final rule. Noise and other impacts of motorcycles can be similar to those of other motor vehicles. The final rule seeks to establish a common regulatory framework for management of all motor vehicles to increase consistency and reduce confusion and lack of compliance. At the same time, the Department recognizes that user demands and environmental impacts vary by class of vehicle. Many motorcyclists prefer to ride on single-track trails too narrow for ATVs

and larger vehicles. Similarly, some ATV riders prefer to ride on trails not used by larger sport utility vehicles. Local Forest Service managers, with input from the public, will take these differences into account when designating roads, trails, and areas for motor vehicle use. The Department anticipates that many National Forests will designate some single-track trails for motorcycles, but not for other motor vehicles.

***Comment.** Some respondents asked the Forest Service to remove the exemption for snowmobiles from the prohibition regarding motor vehicle use in §261.13 and consolidate §§261.13 and 261.14. Others suggested making the exemption seasonal or limiting it to specific dates or snow conditions.*

Response. Use by over-snow vehicles, including snowmobiles, presents a distinct suite of issues. A snowmobile traveling over snow results in different impacts to natural resource values than motor vehicles traveling over the ground. Unlike other motor vehicles traveling cross-country, over-snow vehicles traveling cross-country generally do not create a permanent trail or have a direct impact on soil and ground vegetation. Therefore, the Department believes that use by over-snow vehicles should be addressed in separate regulatory provisions and that mandatory designation of use by over-snow vehicles is not appropriate.

Nevertheless, since there are impacts associated with use by over-snow vehicles, and since they are included in the definition of off-road vehicle in E.O. 11644 and E.O. 11989, the Department is preserving the authority currently in part 295 to allow, restrict, or prohibit use by over-snow vehicles, including snowmobiles, on a discretionary basis in part 212, subpart C. Local Forest Service officials retain authority to manage use by over-snow vehicles to address local situations and concerns and may establish

restrictions based on the season of use or local snow conditions that might not make sense nationally. In addition, the final rule establishes a prohibition regarding use by over-snow vehicles in §261.14 that is very similar to the prohibition regarding motor vehicle use in §261.13.

The final rule clarifies that over-snow vehicles qualify as such only while in use over snow.

***Comment.** Some respondents asked the Forest Service to continue to allow motor vehicle use, where appropriate, for activities authorized under a written authorization, such as livestock operations, mining, logging, firewood collection, and maintenance of pipelines and utility corridors.*

Response. The Department agrees that motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations should be exempted from designations made under §212.51 and restrictions and prohibitions established under §212.81, as well as from the prohibitions in §§261.13 and 261.14 of the rule. To clarify this intent, the Department is changing the exemption from designations in §212.51(a)(8) and the corresponding prohibition in §261.13(h) from “use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations” to “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.” Likewise, the Department is changing the exemption from restrictions and prohibitions in §212.81(b)(5) and the corresponding prohibition in §261.14(e) from “use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations” to “use by over-snow vehicles that

is specifically authorized under a written authorization issued under Federal law or regulations.”

If a written authorization for such activities as livestock operations, mining, logging, firewood collection, and maintenance of pipelines and utility corridors specifically provides for motor vehicle use, that use is exempted from designations and the prohibition regarding motor vehicle use and may continue. Local Forest Service officials retain the authority to regulate uses under a written authorization and to determine whether and under what conditions to authorize motor vehicle use on routes and in areas not generally open to motor vehicle use.

The Forest Service expects to provide additional guidance on application of these exemptions, including the exemption for “limited administrative use by the Forest Service,” in agency directives which will be published for public notice and comment.

***Comment.** Some respondents asked the Forest Service to provide for limited cross-country travel by motor vehicles for dispersed camping and big game retrieval.*

Response. The Department believes that some discretion should be provided to local agency officials to consider limited use of motor vehicles within a specified distance of certain designated routes for these specific purposes. Consequently, the final rule includes a new provision in §212.51(b), which allows the responsible official to include in the designation of a road or trail the limited use of motor vehicles within a specified distance of certain designated routes solely for the purposes of big game retrieval or dispersed camping.

The Department expects the Forest Service to apply this provision sparingly, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to

promote consistency in implementation. Provision for cross-country travel for big game retrieval and dispersed camping will be at the discretion of the responsible official. Nothing in this final rule requires inclusion of either activity in a designation, or reconsideration of any decision prohibiting motor vehicle use while engaging in these activities.

On some units, it may be possible to administer motor vehicle use associated with dispersed camping or big game retrieval through a permit system, rather than as a component of a designation. Motor vehicle use specifically authorized under a permit is exempt under §261.13(h) from the prohibition on motor vehicle use other than in accordance with designations.

***Comment.** Some respondents asked the Forest Service to provide for permits or exemptions for cross-country motor vehicle use by people with disabilities. Some respondents stated that denying access to people with disabilities constitutes discrimination.*

Response. Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all NFS lands that are open to foot travel and are specifically exempted from the definition of motor vehicle in §212.1 of the final rule, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest

Service's travel management program (7 CFR 15e.103). Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory.

***Comment.** Some respondents observed that under §261.13(h), the responsible official could still issue permits for competitive cross-country motor vehicle events, including motorcycle observed trials (an event in which a rider, under observation, has to navigate natural obstacles without putting a foot down). These respondents requested a specific prohibition of such events on the grounds that they violate the purposes of the rule.*

Other respondents sought specific recognition for motorcycle observed trials and other organized events as a legitimate cross-country use that is not subject to the prohibitions of the rule. These respondents requested provisions in the rule authorizing creation of temporary trails for a single event.

Response. The Department declines to establish either a blanket prohibition or a blanket allowance for motor vehicle events. The Department believes that such decisions are best made at the local level, based on public involvement and appropriate environmental analysis. The exemption in §261.13(h) of the final rule provides local Forest Service officials the discretion to continue to consider requests for permits involving motor vehicle use on a site-specific basis.

Section 261.14. This section of the rule prohibits use of snowmobiles in violation of restrictions or prohibitions established under part 212, subpart C.

Comments related to the prohibition on snowmobile use are addressed in the response to comments on §261.13 of the proposed rule and in response to comments on

the corresponding discussion in the preamble to the proposed rule. No specific comments were received on this section.

Section 261.55. This section of the rule governs NFS trails.

This section was not included in the proposed rule. However, the Department is making technical changes to this section to conform the terminology in the title and introductory text to terminology used elsewhere in the Forest Service’s regulations. Specifically, the Department is changing “forest development trails” to “National Forest System trails.”

Part 295 – Use of Motor Vehicles Off National Forest System Roads

The proposed rule removed part 295 and integrated its requirements, except for the annual review under §295.6, into part 212. Comments and responses related to specific changes in the existing rule’s language are addressed in this preamble under the corresponding sections of part 212.

Regulatory Certifications in the Proposed Rule

Environmental Impact

Comment. *Some respondents asserted that this rulemaking is a major Federal action with significant effects on the human environment that requires preparation of an environmental impact statement.*

Response. The Department has determined that this final rule falls within the category of actions excluded from documentation in an environmental assessment or environmental impact statement under FSH 1909.15, section 31.1b. This provision 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. No extraordinary circumstances enumerated in the Forest Service NEPA procedures exist that would preclude reliance on this categorical exclusion. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Specific decisions associated with designation of routes and areas at the local level may trigger the need for documentation of environmental analysis on a case-by-case basis under NEPA.

Regulatory Impact

Comment. *Some respondents asserted that the proposed rule would have an annual economic impact of over \$100 million on private landowners, local communities, the recreation industry, small businesses, and State and local governments and therefore should be considered a significant regulatory action under E.O. 12866. Respondents cited statistics on the overall size of the OHV industry in support of this statement.*

Response. In light of the substantial interest expressed in the proposed rule, the Office of Management and Budget (OMB) has determined that the final rule is significant under E.O. 12866. Accordingly, the Department has prepared a cost-benefit analysis for the final rule. This documentation is available in the rulemaking record.

The Department disagrees that the final rule will have annual economic impacts of over \$100 million. The final rule requires National Forests to designate which roads, trails, and areas are open to motor vehicle use. Once designation is complete, the rule will restrict motor vehicle use to designated roads, trails, and areas and prohibit motor vehicle use on those routes and in those areas that is inconsistent with the designations. Until designation is complete for a particular administrative unit or Ranger District, the

rule will have no impact on motor vehicle use on NFS lands. Even after designations are complete, the rule will have no direct economic impact because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands.

The Department expects that some user-created routes will become designated roads and trails, after site-specific evaluation. The overall network of routes designated for motor vehicle use would then expand. These designated routes will form a more stable base for long-term management and will receive increased maintenance, through agency resources and cooperative relationships, thereby expanding opportunities for motor vehicle users.

At the same time, unregulated cross-country motor vehicle use will no longer be permitted. Unauthorized routes that are not designated will be closed to motor vehicle use, which would limit opportunities for motor vehicle users but might expand opportunities for other recreational visitors seeking a nonmotorized experience.

The Department does not question respondents' assertion that the OHV industry as a whole has an annual impact of over \$100 million on the national economy. However, only a fraction of this economic activity is associated with use on National Forests and National Grasslands. Moreover, only a fraction of that use represents cross-country motor vehicle travel. Over the long-term, the rule will result in a shift from unregulated, cross-country OHV use to OHV use on a system of designated routes and areas. This shift might have minor impacts on local users and economies, but the national economic impact will be far less than \$100 million annually.

Regulatory Flexibility Act

***Comment.** Some respondents asserted that the proposed rule would have a significant economic impact on a substantial number of small entities, including OHV dealerships and livestock operations, pursuant to the Regulatory Flexibility Act.*

Response. The final rule establishes a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Even after designations are complete, the rule will have no direct impact on small entities because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands. The Department has determined that the final rule will not have a significant economic effect on a substantial number of small entities because the final rule will not impose recordkeeping requirements on them, nor will it affect their competitive position in relation to large entities or their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

***Comment.** One respondent stated that the proposed rule could cause takings of private property when areas closed to motor vehicle use are then established as wilderness areas. Another respondent asserted that the rule revokes or modifies rights-of-way held by miners, inholders, and others, thereby effecting a taking of private property.*

Response. There is no taking of private property from implementation of this final rule. The final rule applies only to NFS roads, NFS trails, and areas on NFS lands.

Any NFS lands that will be closed to motor vehicle use will be Federal lands. Nothing in this rule creates wilderness areas, which can be established only by Congress.

Nothing in the final rule revokes or alters any rights-of-way held by miners, inholders, or others. The final rule merely requires responsible officials to designate which NFS roads, NFS trails, and areas on NFS lands are open to motor vehicle use. In making designations, responsible officials must recognize valid existing rights, including valid reserved and outstanding rights-of-way for a road or trail (§212.55(d)).

Civil Justice Reform

No comments were received on this section of the proposed rule.

Federalism and Consultation and Coordination with Indian Tribal Governments

Comment. One respondent asserted that the proposed rule has tribal implications and may pose a taking of treaty rights guaranteeing access to certain lands.

Response. The proposed rule does not have tribal implications pursuant to E.O. 13175. Nothing in the final rule alters or is inconsistent with any treaty rights held by tribal governments.

Energy Effects

No comments were received on this section of the proposed rule.

Unfunded Mandates

No comments were received on this section of the proposed rule.

Controlling Paperwork Burdens on the Public

No comments were received on this section of the proposed rule.

3. Regulatory Certifications for the Final Rule

Environmental Impact

The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Section 31.1b of FSH 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 Department’s conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

This final rule is essentially procedural. It has no direct environmental effects, and consideration of extraordinary circumstances would be meaningless at this level. This rule will be implemented through travel management decisions at the administrative unit or Ranger District level, which may have environmental impacts. These site-specific decisions will involve appropriate environmental analysis and documentation.

Regulatory Impact

This final rule has been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the

environment, public health and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs.

However, in light of the substantial interest expressed in the proposed rule and the important policy issues involved, OMB has determined that the final rule is significant under E.O. 12866. Accordingly, the Department has prepared a cost-benefit analysis for the final rule. This documentation is available in the rulemaking record.

Regulatory Flexibility Act

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630. It has been determined that the final rule will not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Department has considered this final rule under the requirements of E.O. 13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes is not required.

Energy Effects

This final rule has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will 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.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

4. Text of the Final Rule

List of Subjects

36 CFR Part 212

Highways and roads, National Forests, Public lands – rights-of-way, and Transportation.

36 CFR Part 251

Administrative practice and procedure, Electric power, National Forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 261

Law enforcement, National Forests.

36 CFR Part 295

National Forests, Traffic regulations.

Therefore, for the reasons set out in the preamble, amend part 212, subpart B of part 251, and subpart A of part 261, and remove part 295 of title 36 of the Code of Federal Regulations as follows:

PART 212—TRAVEL MANAGEMENT

1. Amend part 212 to change the heading to “Travel Management” and revise the table of contents for the addition of new subparts A, B, and C as follows:

Subpart A—Administration of the Forest Transportation System

Sec.

212.1 Definitions.

212.2 Forest transportation program.

212.3 Cooperative work.

212.4 Construction and maintenance.

212.5 Road system management.

212.6 Ingress and egress.

212.7 Access procurement by the United States.

212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

212.9 Principles for sharing use of roads.

212.10 Maximum economy National Forest System roads.

212.11–212.20 [Reserved]

212.21 Pacific Crest National Scenic Trail.

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

212.50 Purpose and scope.

212.51 Designation of roads, trails, and areas.

212.52 Public involvement.

212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.

212.54 Revision of designations.

212.55 Criteria for designation of roads, trails, and areas.

212.56 Identification of designated roads, trails, and areas.

212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

Subpart C—Use by Over-Snow Vehicles

212.80 Purpose and scope.

212.81 Use by over-snow vehicles.

2. Add new subpart A and move the authority citation from part 212 to subpart

A, which continues to read as follows:

Part 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

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

* * * * *

3. Amend §212.1 as follows:

a. In alphabetical order, add the following definitions: administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle; motor vehicle use map; National Forest System road; National Forest System trail; off-highway vehicle; over-snow vehicle; road construction or reconstruction; temporary road or trail; trail; travel management atlas; and unauthorized road or trail; and

b. Revise the definitions for forest transportation atlas, forest transportation facility, and road, and remove the definitions for classified road, new road construction, road reconstruction, temporary road, and unclassified road.

§212.1 Definitions.

Administrative unit. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

Area. A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

* * * * *

Designated road, trail, or area. A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to §212.51 on a motor vehicle use map.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

Forest transportation atlas. A display of the system of roads, trails, and airfields of an administrative unit.

Forest transportation facility. A forest road or trail or an airfield that is displayed in a forest transportation atlas, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system.

Forest transportation system. The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands.

* * * * *

Motor vehicle. Any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

Motor vehicle use map. A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the National Forest System.

* * * * *

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

National Forest System trail. A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

Off-highway vehicle. Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

Over-snow vehicle. A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.

* * * * *

Road. A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

* * * * *

Road construction or reconstruction. Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

* * * * *

Temporary road or trail. A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas.

Trail. A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

Travel management atlas. An atlas that consists of a forest transportation atlas and a motor vehicle use map or maps.

Unauthorized road or trail. A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

4. Amend §212.2 by revising and redesignating paragraph (a) as paragraphs (a), (b), and (c) and by redesignating paragraph (b) as (d) to read as follows:

§212.2 Forest transportation program.

(a) *Travel management atlas.* For each administrative unit of the National Forest System, the responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) *Forest transportation atlas.* A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation 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 a forest transportation atlas are identified in the Forest Service directives system.

(c) *Program of work for the forest transportation system.* A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

5. Amend §212.5 as follows:

a. Revise paragraphs (a)(1) and (a)(2)(ii);

b. Change the heading for paragraph (c) from “Cost recovery on Forest Service roads” to “Cost recovery on National Forest System roads”; and

c. Change the heading for paragraph (d) from “Maintenance and reconstruction of forest service roads by users” to “Maintenance and reconstruction of National Forest System roads by users.”

§212.5 Road system management.

(a) *Traffic rules.* * * *

(1) *General.* Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) *Specific.* * * *

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

* * * * *

(c) *Cost recovery on National Forest System roads.* * * *

(d) *Maintenance and reconstruction of National Forest System roads by users.*

* * * * *

6. Amend §212.7 by revising the heading and text of paragraph (a) to read as follows:

§212.7 Access procurement by the United States.

(a) *Existing or proposed forest roads that are or will be part of a transportation system of a State, county, or other local public road authority.* Forest roads that are or will be part of a transportation system of a State, county, or other local public road authority and are on rights-of-way held by a State, county, or other local public road authority may be constructed, reconstructed, improved, or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local public road authority under 23 U.S.C. 205 and the construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to National Forest System lands.

* * * * *

7. Amend §212.10 by revising paragraph (d) to read as follows:

§212.10 Maximum economy National Forest System roads.

* * * * *

(d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard – consistent with applicable environmental laws and regulations – that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrangements to achieve this end as may be appropriate.

8. Remove and reserve §212.20.

9. Add a new subpart B to read as follows:

Subpart B–Designation of Roads, Trails, and Areas for Motor Vehicle Use

Authority: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

§212.50 Purpose and scope.

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

§212.51 Designation of roads, trails, and areas.

(a) *General.* Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

- (1) Aircraft;
- (2) Watercraft;

- (3) Over-snow vehicles (see §212.81);
- (4) Limited administrative use by the Forest Service;
- (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (6) Authorized use of any combat or combat support vehicle for national defense purposes;
- (7) Law enforcement response to violations of law, including pursuit; and
- (8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

§212.52 Public involvement.

(a) *General.* The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including

public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

(b) Absence of public involvement in temporary, emergency closures.

(1) *General.* Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

§212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National

Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

§212.54 Revision of designations.

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to §212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in §212.52, the requirements for coordination with governmental entities in §212.53, and the criteria in §212.55, and shall be reflected on a motor vehicle use map pursuant to §212.56.

§212.55 Criteria for designation of roads, trails, and areas.

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

- (1) Damage to soil, watershed, vegetation, and other forest resources;
- (2) Harassment of wildlife and significant disruption of wildlife habitats;
- (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and
- (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

- (5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

- (1) Speed, volume, composition, and distribution of traffic on roads; and
- (2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

- (1) Valid existing rights; and
- (2) The rights of use of National Forest System roads and National Forest System trails under §212.6(b).

(e) *Wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section,

unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

§212.56 Identification of designated roads, trails, and areas.

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the website of corresponding administrative units and Ranger Districts. The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

§212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

For each administrative unit of the National Forest System, the responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that responsible official, consistent with the applicable land management plan, as appropriate and feasible.

10. Add a new subpart C to read as follows:

Subpart C—Use by Over-Snow Vehicles

Authority: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

§212.80 Purpose and scope.

The purpose of this subpart is to provide for regulation of use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands.

§212.81 Use by over-snow vehicles.

(a) *General.* Use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) *Exemptions from restrictions and prohibitions.* The following uses are exempted from restrictions and prohibitions on use by over-snow vehicles:

- (1) Limited administrative use by the Forest Service;
- (2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (3) Authorized use of any combat or combat support vehicle for national defense purposes;
- (4) Law enforcement response to violations of law, including pursuit; and
- (5) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.

(c) *Establishment of restrictions and prohibitions.* If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions. In establishing restrictions or prohibitions on use by over-snow vehicles,

the responsible official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

PART 251—LAND USES

Subpart B—Special Uses

11. Amend the authority citation for part 251, subpart B, to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460l-6a, 460l-6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

* * * * *

12. Amend §251.51 by revising the definitions for “forest road or trail” and “National Forest System road” to read as follows:

§251.51 Definitions.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

* * * * *

PART 261–PROHIBITIONS

13. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460l-6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

14. Amend §261.2 to revise the definitions for “motor vehicle,” “forest road or trail,” “National Forest System road,” and “National Forest System trail,” and add definitions in alphabetical order for “administrative unit” and “area,” to read as follows:

Subpart A–General Prohibitions

* * * * *

§261.2 Definitions.

* * * * *

Administrative unit. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

* * * * *

Area. A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

Motor vehicle means any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

* * * * *

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

National Forest System trail. A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

* * * * *

15. Add a new §261.13, Motor vehicle use, and a new §261.14, Use by over-snow vehicles, and redesignate the current §§261.13 through 261.21 as §§261.15 through 261.23, to read as follows:

§261.13 Motor vehicle use.

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or

Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

- (a) Aircraft;
- (b) Watercraft;
- (c) Over-snow vehicles;
- (d) Limited administrative use by the Forest Service;
- (e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (f) Authorized use of any combat or combat support vehicle for national defense purposes;
- (g) Law enforcement response to violations of law, including pursuit;
- (h) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and
- (i) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

§261.14 Use by over-snow vehicles.

It is prohibited to possess or operate an over-snow vehicle on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided that the following uses are exempted from this section:

- (a) Limited administrative use by the Forest Service;
- (b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

§261.15 Use of vehicles off roads.

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§261.16 Developed recreation sites.

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§261.17 Admission, recreation use and special recreation permit fees.

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§261.18 National Forest Wilderness.

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§261.19 Boundary Waters Canoe Area Wilderness.

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§261.20 Pacific Crest National Scenic Trail.

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§261.21 National Forest primitive areas.

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§261.22 Unauthorized use of “Smokey Bear” and Woodsy Owl” symbol.

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§261.23 Wild free-roaming horses and burros.

* * * * *

16. Amend §261.55 to revise the title and introductory text to read as follows:

§261.55 National Forest System trails.

When provided by an order issued in accordance with §261.50 of this subpart, the following are prohibited on a National Forest System trail:

* * * * *

**PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM
ROADS**

17. Remove the entire part 295.

(Dated)

DRAFTING HISTORY:

Travel Management; Designated Routes and Areas for Motor Vehicle Use (36 CFR parts 212, 251, 261, and 295)

(Final Rule)

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