

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 212**

[0596-AB68]

**Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas**

AGENCY: Forest Service, USDA.

ACTION: Adoption of interim rule.

**SUMMARY:** This final interim rule temporarily suspends decisionmaking regarding road construction and reconstruction in many unroaded areas within the National Forest System. Its intended effect is to retain resource management options in those unroaded areas subject to suspension from the potentially adverse effects associated with road construction, while the Forest Service develops a revised road management policy. The interim rule also will provide time to refocus attention on the larger issues of public use, demand, expectations, and funding surrounding the National Forest Transportation System. The temporary suspension of road construction and reconstruction will expire upon the adoption of a revised road management policy or 18 months from the effective date of this final interim rule, whichever is sooner.

**DATES:** This rule is effective March 1, 1999.

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

**SUPPLEMENTARY INFORMATION:** On January 28, 1998, the Forest Service published an Advance Notice of Proposed Rulemaking (ANPR) (63 FR 4350), giving notice of its intention to revise its regulations for managing roads within the National Forest Transportation System and to address changes in how the road system is funded, developed, used, and maintained. On that same date, at 63 FR 4351, the agency published a proposed interim rule to temporarily suspend road construction and reconstruction in certain roadless areas until new and improved scientific and analytical tools are developed to better evaluate the need for and effects of roads in sensitive areas. Comment was invited.

In response to requests from various individuals, organizations, and elected officials, on February 27, 1998, the

agency extended the public comment period on the proposed interim rule for an additional 30 days (63 FR 9980) and announced that it would hold 25 open houses to receive comments on the ANPR and proposed interim rule. An additional six open houses were held in response to local requests. An estimated 2,300 people attended these meetings generating approximately 1,800 comments. Over 53,000 letters, postcards, oral comments, and e-mail messages concerning the proposal were submitted during the 60-day comment period. Comments were received from all 50 states, the District of Columbia, and Puerto Rico. Most comments came from California (14,000 individuals or 26 percent of the total responses) followed by Montana, Oregon, Colorado, Illinois, Idaho, Pennsylvania, Alaska, and Georgia. Of the total written comments submitted on the proposed interim rule, 96 percent were from individuals. Responses from conservation oriented groups accounted for another one percent of comments analyzed, while the remaining three percent were from recreation user groups, wood products companies, other commodity groups, and county, State, and Federal agencies.

**Summary of Public Comments**

The variety of comments received represented widely differing perceptions and interpretations of the proposed interim rule and reflected regional and specific concerns. However, the majority of concerns fit into two categories: (1) A belief that the interim rule is a policy designed to preserve unroaded areas rather than a temporary measure to suspend road construction and reconstruction in unroaded areas, and (2) the interim rule will lead to fewer roads in the National Forest Transportation System and thus reduce access. Based on the perception that the proposed interim rule was a roadless-area policy, many comments focused on the positive and negative environmental, social, and economic attributes of unroaded areas.

The terms "wilderness" and "roadless areas" were often used interchangeably by respondents. Many respondents asked the agency to designate additional wilderness and suggested that exemptions and other stipulations in the proposed interim rule were concessions to special interest commodity user groups that allegedly influence Forest Service policy. Generally, those supporting the proposed interim rule primarily commented on specific aspects of the proposal, indicating that its measures would protect the environment. However, many

respondents that supported the rule opposed the exemption for forest plans that are in or have completed the administrative appeals process and the exemption to the Northwest Forest Plan. Those opposed wrote that the acreage requirements for suspensions or exemptions described in the proposed interim rule were inappropriate. Many respondents, who objected to the proposed interim rule, perceived it to be part of an ongoing process that excludes the public from legitimate uses of public lands. These respondents thought that the Forest Service multiple-use mandate was being substantially eroded.

Most opponents of the proposed interim rule wrote that it is fundamentally unnecessary. They asserted that a short-term suspension of road construction and reconstruction would have no positive or lasting effects. They commented less on specific parts of the proposal than on the general nature of their resource management concerns and perceived violations of law. Many expressed concern about the possible economic consequences to local communities, including loss of jobs, reduced Federal receipts to counties, and loss of road infrastructure.

Further analysis of public comments identified a number of issues that fit into one of the following categories: (1) Need for and purpose of the interim rule, (2) compliance with laws and regulations, (3) social and economic consequences, (4) environmental consequences, (5) public participation, and (6) suggested revisions to the proposed interim rule. The first five of these categories reflect public concern for the effects of implementing the proposed interim rule, while the last reflects concerns directly related to provisions of the proposed interim rule. A summary of these issues and the Department's response to them follows.

**Comments About the Need for and Purpose of Action**

*Issue 1: The need for an interim rule is unclear.* Many respondents doubted the need for an interim rule, others cited the environmental, social, or intrinsic values of unroaded areas, or the sheer size of the National Forest Transportation System, as reasons an interim rule is necessary. Some thought that an interim rule would provide a necessary "time-out" to allow for careful consideration of a long-term transportation system policy, while others wrote that a long-term policy could be developed without an interim rule. The latter cited the fact that 434 miles of new roads were constructed in 1997 and, because the National Forest

Transportation System includes 373,000 miles of classified roads, additional road construction would not add to problems associated with Forest Service roads.

*Response.* The interim rule will suspend very little overall planned road construction and reconstruction during the 18-month period and will have a negligible effect on user access and the environment. However, the suspension will apply to unroaded areas that are ecologically important where road construction and reconstruction could have disproportionate and long-term impacts. Therefore, the Department believes a temporary suspension is beneficial and will provide time to develop a revised road management policy.

*Issue 2: The interim rule appears to violate the multiple-use mandate.* The connection made between road access and use of National Forest System lands, whether for commodity extraction or recreation, led many respondents to broadly discuss the purposes of National Forest System and other public lands, the concept of multiple-use, and society's perceived changing values. They wrote that the national forests belong to and should be protected for everyone, not just those seen as motivated by short-term financial gain. These respondents argued that unroaded areas are the only remaining areas where ecosystem integrity can be preserved; a benefit, in their opinion, to the land and to future generations and satisfying multiple-use in the long-term. Others wrote that the national forests were set aside by the Federal Government to provide a sustained yield of natural resources, that these lands should continue to be managed for that purpose, and that the Forest Service is not sufficiently following that mandate by adopting the interim rule.

Some respondents held that national forest management must balance society's need for commodities, like lumber, beef, and minerals, with protection of water, air, and wilderness recreation opportunities. A few suggested that the multiple-use mandate is not valid because increased human demands for natural resources have exceeded the land's ability to provide all things for all people.

*Response.* The proposed interim rule does not alter the statutory multiple-use mandate nor the agency's compliance with that mandate. Lands administered by the Forest Service will continue to be managed for a balance of resource uses according to land and resource management plans (forest plans), which are prepared in compliance with the Multiple-Use Sustained-Yield Act of

1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*). The proposed interim rule is temporary, only addresses road construction and reconstruction within certain unroaded areas, and does not restrict multiple-uses, although some projects and activities dependent on road construction or reconstruction will be affected. Also, these unroaded areas are not the only areas of the National Forest System where lands are managed to protect their natural state; for example, 35 million acres are in congressionally designated wilderness areas.

*Issue 3: The interim rule will expand the Wilderness Preservation System.* Some respondents were concerned that the proposed interim rule is a "massive land grab" that will create de facto wilderness in areas otherwise designated for multiple-use management. Some respondents wrote that the proposed interim rule is an inappropriate attempt to create additional wilderness without designation by the Congress or endorsement by the general public. They suggested that the proposed interim rule would actually expand the Wilderness Preservation System. Such responses usually were accompanied by comments that land would be excluded from other uses, at the expense of public access, for the use of a select few.

However, some respondents asked that unroaded areas be given full protection under the Wilderness Act of 1964. These respondents wrote that unroaded areas are the last vestiges of a once vast area, which have somehow escaped inclusion in the Wilderness Preservation System. They suggested that there are not enough designated wilderness areas and advocated using unroaded areas to buffer designated wilderness areas from human activities or, ultimately, to include them in the Wilderness Preservation System. Requests for protection of specific unroaded areas often accompanied the general comments on unroaded area protection.

*Response.* The proposed interim rule is not a policy to expand the Wilderness Preservation System. It will temporarily suspend road construction and reconstruction in some unroaded areas; it sets no limits on other activities, including timber harvest which may be accomplished without the construction or reconstruction of roads. Recommendations for wilderness area designation and management standards and guidelines for roadless areas are decisions made during the forest planning process and are subject to special procedures under the

Wilderness Act. The proposed interim rule does not affect forest planning or land allocation decisions made in the land and resource management plans. It would be inappropriate and infeasible for the Secretary to recommend new wilderness areas in conjunction with this interim rule.

*Issue 4: The merits of a new roadless area review are of great concern and interest.* The possibility of a new inventory of roadless areas and roads generated more responses than any other topic. Most supporters of the proposed interim rule suggested that the Forest Service expand its suspension of road construction and reconstruction and protect what they view are irreplaceable resources. Some opined that the Roadless Area Review and Evaluation (RARE II), which was prepared in 1979, is an inadequate inventory and should not be used as a basis for identifying roadless areas. Others asked that the suspension not only provide protection of both inventoried and un-inventoried roadless areas, but also that the Forest Service prepare a new inventory.

*Response.* Road construction and reconstruction in unroaded portions of roadless areas identified in RARE II, as well as those additional roadless areas identified in land and resource management plans, are subject to suspension under the final interim rule. The rule does not change those inventories nor any land allocations made with regard to these lands. The interim rule is not a roadless area inventory process, nor does it propose a new inventory. Land and resource management planning under the National Forest Management Act of 1976 is the established mechanism for determining the need for conducting inventories and facilitating decisionmaking with regard to specific areas.

#### **Comments About Compliance With Laws and Regulations**

*Issue 5: An environmental impact statement (EIS) should have been prepared.* Because the suspension of road construction and reconstruction will be national in scope and was perceived to affect many aspects of forest use, many respondents expressed their expectation that the Forest Service should follow mandated processes of the National Environmental Policy Act (NEPA) and conduct assessments of potential impacts. Some asserted that the agency should have prepared an environmental impact statement before publishing the proposed interim rule.

*Response.* To determine whether an environmental impact statement is

needed, Forest Service officials have prepared an environmental assessment of the possible effects of implementing the proposed interim rule and alternatives. Based on the analysis, the Chief of the Forest Service has made a Finding of No Significant Impact (FONSI). The FONSI discusses the significance of the environmental consequences of the final interim rule and addresses why an EIS is not required. The environmental assessment is available on the World Wide Web at [www.fs.fed.us/news/roads/](http://www.fs.fed.us/news/roads/). Copies are also available upon request by writing the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, D.C. 20090, or by calling 202-205-0895.

*Issue 6: The interim rule appears to violate laws and regulations.* Several individuals expressed strong concern about a perceived disregard for natural resource management laws and administrative rulemaking procedures. They wrote that the proposed interim rule violates Constitutional law, including the Fifth and Tenth Amendments that address being deprived of property without compensation and limits of Federal power, respectively. These respondents also alleged violation of various environmental and administrative laws including the Wilderness Act, the National Forest Management Act, the Alaska National Interest Land Conservation Act, the Americans with Disabilities Act, and the Paperwork Reduction Act. Laws most often cited as being violated and the Department's response follows.

The Wilderness Act. Although only Congress may designate wilderness areas, some respondents viewed the proposed interim rule as a step toward circumventing congressional authority. These respondents contend that unroaded lands were released for multiple-use under various wilderness legislation, as well as RARE II, and they see the proposed interim rule as a breach of those laws. Some expressed concern that the proposed interim rule violates release language in State Wilderness Acts, specifically those in Wyoming and Colorado.

*Response.* The proposed interim rule was not intended as a policy to evaluate or consider National Forest System lands for recommendation as potential wilderness areas. The land and resource planning process under NFMA is the appropriate vehicle for making recommendations for congressional wilderness area designation. The interim rule does not make decisions or recommendations regarding wilderness potential. The interim rule also does not

affect activities in unroaded areas except road construction and reconstruction for a temporary period. Unroaded areas released by congress under wilderness statutes are still released for multiple-use management in accordance with the applicable land and resource management plan.

National Forest Management Act (NFMA) Planning. Some respondents indicated that the proposed interim rule alters forest plans without going through the NFMA amendment process. Some also were confused about integration of the proposed interim rule with the forest planning process.

*Response.* Adoption of the interim rule does not violate NFMA. Together with other applicable laws, NFMA authorizes the Secretary of Agriculture to promulgate regulations governing the administration and management of the National Forest Transportation System and regulations to govern forest plan approval, amendment, and revision (16 U.S.C. 1604, 1608 and 1613). These laws complement the long standing authority of the Secretary to regulate the occupancy and use of national forests (16 U.S.C. 551).

Forest planning and management occur at distinct administrative levels of decisionmaking under the structure established by the NFMA and its implementing regulations. At the programmatic level, and in response to specific public concerns, the Forest Service develops various management options, or alternatives, for an entire national forest. When a land and resource management plan is approved, the project initiation phase begins in which managers propose site-specific actions and assess their environmental consequences and feasibility. The interim rule does not alter the programmatic framework established in land and resource management plans, nor does it amend any plan allocation, standard, or guideline. Although the interim rule may alter the immediate feasibility of some projects, it will not alter the premises on which those projects are based. (For a more detailed discussion of forest plans and project-level decisionmaking see 58 FR 19370-19371.)

Americans with Disabilities Act (ADA). Some respondents were concerned that the proposed interim rule would deny access to National Forest System lands by persons with physical disabilities caused by age, health, or handicaps. Some people rely solely on vehicle access to enjoy their favorite sites and experience the outdoors away from crowded, high-impact camping areas. Respondents wrote that the proposed interim rule

could violate the intent of the ADA by denying safe access to the most remote facilities.

*Response.* Executive branch actions of the Federal government are covered by Title V of the Rehabilitation Act of 1973 and not the Americans with Disabilities Act. A model for the requirements of the ADA, Title V prohibits discrimination in services and employment on the basis of handicap. The proposed interim rule would not violate the letter or the spirit of the ADA. It is possible that users may be denied new road access into some areas because of the temporary suspension of road construction in unroaded areas; however, this would affect all users equally.

Alaska National Interest Land Conservation Act (ANILCA). A number of respondents claim ANILCA will be violated by denying access to private land in-holdings or limiting access through unroaded areas. These respondents also believe that the proposed interim rule violates ANILCA by establishing additional roadless areas without approval of Congress or without going through the land and resource management planning process.

*Response.* The proposed and final interim rule, expressly state that road construction and reconstruction needed to ensure access provided by statute or pursuant to reserved or outstanding rights will be protected and not subject to provisions of the rule that would suspend road construction or reconstruction. Additionally, as stated previously, this interim rule does not change land and resource management planning decisions or land allocations nor result in a new roadless area inventory.

Revised Statute 2477. Revised Statute 2477 is a reenactment of section 8 of the Mining Act of 1866, which was the primary authority under which many State and county highways in the western United States were constructed and maintained. Such highway construction required no approval from the Federal Government and no documentation in public lands records. With passage of the Federal Land Policy and Management Act of 1976, Revised Statute 2477 was repealed; however, certain rights-of-way granted before 1976 were preserved.

Some respondents expressed concern about the potential loss or restriction of current or future access to private or State lands that border or are intermingled with National Forest System lands. They expressed fear of the potential loss of traditionally used access routes, many of which they claim should be exempt under Revised Statute 2477.

*Response.* The proposed interim rule expressly stated that road construction and reconstruction needed to ensure access provided by statute or pursuant to reserved or outstanding rights will be protected. The final interim rule will not limit nor interfere with the exercise of valid existing rights-of-way granted prior to 1976 pursuant to Revised Statute 2477.

Unfunded Mandates Reform Act. A few respondents believe the interim rule violates the Unfunded Mandates Reform Act by shifting economic burdens to local communities, primarily by reducing the timber harvest. These respondents believe that the reduction in direct revenues from payments-to-States and other indirect revenue losses, such as reduced employment, are unfair burdens to local communities and violate the law.

*Response.* Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Department has assessed the possible effects of the final interim rule on State, local, and Tribal governments, and the private sector. The Department recognizes that there will be some level of economic impacts to some communities as a result of the interim rule. The loss of payments-to-States is expected to be \$6 to \$8 million annually, far less than the threshold of \$100 million, and it is not expected to otherwise adversely affect the economy. The interim rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or any person or entity in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### **Comments About Social and Economic Consequences**

*Issue 7: Intrinsic values of unroaded areas.* Reflecting an erroneous belief that roadless areas, unroaded areas, and Congressionally designated wilderness areas are the same, many respondents asserted that unroaded areas have a value more important than can be measured economically and, therefore, should be protected. Some wrote that the Forest Service should take every opportunity to expand the Wilderness Preservation System to meet the nation's future needs for watershed protection, wildlife habitat, and recreation. Noting that a suspension of road construction in unroaded areas provides only short-term protection, they worried that a loss of roadless areas will reduce their opportunities to pursue spiritual and emotional renewal. A perception that wild places are disappearing led many reviewers to call for a halt to timber

harvesting practices and associated road building projects.

*Response.* The stated purpose of the proposed interim rule is to ensure that when managers consider proposals to construct or reconstruct roads, they use the best available science in the decisionmaking process. As already noted, the final interim rule will not make land allocation decisions. The Department recognizes the important and unique qualities of unroaded areas and believes that management decisions for those areas are most appropriately addressed in land and resource management plans.

*Issue 8: Economic and cumulative economic effects.* Some respondents suggested that overall costs to Federal, State, and local governments, as well as to industries that depend on commodity extraction, will surpass \$100 million annually, which is the threshold for an economically significant and major rule, especially if direct and indirect cumulative effects on local communities are considered. Further, these reviewers asserted that an economic impact analysis must be completed before a final interim rule is adopted and that the analysis should consider specifically the cumulative effects of other land management planning decisions that have adversely affected rural communities.

Adverse impacts cited include the Northwest Forest Plan, the Interim Strategies for Managing Anadromous Fish Producing Watersheds (PACFISH), the Inland Fish Aquatic Strategy (INFISH), the North American Free Trade Agreement (NAFTA), and new air- and water-quality regulations. Respondents wrote that implementation of decisions like these have adversely affected the economic base of many cities, towns, and rural areas in the Western United States and that past decisions have not adequately considered cumulative economic effects.

*Response.* In accordance with Departmental requirements, the Forest Service has completed an economic analysis as part of the environmental analysis for the final interim rule. That analysis reveals that the overall effects of the final interim rule will be minor, although some local communities may be affected more than others, specifically some areas in Idaho. Some social and economic effects will occur as an indirect result of temporarily suspending road construction and reconstruction, primarily those associated with timber harvest. Analysis indicates that the final interim rule will have an annual direct effect of \$6 to \$8 million in lost revenues to local

communities from payments-to-States, which is substantially less than \$100 million and will not significantly compromise productivity, competition, employment, the environment, public health or safety, or State and local governments. This interim rule is expected to reduce annual employment nationwide by 270 to 420 direct timber jobs per year over 3 years. To the extent that workers who would otherwise fill these jobs do not find alternative employment, local and county revenues would be decreased. However, provisions of the 1998 Supplemental Appropriations Rescission Act (Pub. L. 105-174) will, to some extent, compensate for shortfalls in payments-to-States from revenues generated on National Forest System lands.

Recent trends of declining timber volumes from National Forest System lands have been recognized in the environmental assessment. The national forests lands encompassed by the Northwest Forest Plan amendments are exempt from suspension of road construction and reconstruction and are, therefore, unaffected by the interim rule. However, national forests within the Columbia River Basin that have experienced a decline in timber harvesting of 7 percent since 1986 and are expected to decline another 5 percent by the end of the decade are also impacted by the interim rule with a further small increment of potential decline in timber production. The impacts from NAFTA on the economics of communities affected by this interim rule are highly speculative and, therefore, have not been accounted for when developing this interim rule. The cumulative economic effects of this interim rule are primarily related to decreases in timber harvesting, but analysis shows that those effects are not significant.

*Issue 9: Effects on dependent local communities.* Many respondents were concerned that a suspension of decisionmaking with regard to timber sale road construction and reconstruction under the proposed interim rule would adversely affect the financial health of their communities. Lost revenue, fewer new jobs, and escalating unemployment with its attendant social costs were cited as potential negative effects. Noting the loss of high paying jobs and a rising cost of living, many respondents wrote that reduced timber harvest and, to a lesser extent, reduced oil and gas development, will prohibit them from maintaining their lifestyles, lead to a loss of revenue for community infrastructure maintenance, and result in a loss of local community control.

Many asserted strongly that national forests were set aside to provide a sustained yield of goods and services and should continue to do so. Some respondents expressed an opinion that the proposed interim rule will be used by some groups to lobby for a ban on all logging on Federal lands. They asserted that Federally administered lands are economically vital, not just for resource-producing communities, but also for a resource-consuming nation.

Many small communities in resource-dependent counties with substantial acreage in national forest or other Federal ownership responded that they rely on the 25 percent payments-to-States for funding of public schools and for road maintenance. Many wrote that reductions in the amount of Federal timber and other receipts resulting from the proposed interim rule will drastically affect the quality of life in rural communities by shifting a greater financial burden to counties and taxpayers.

Other respondents asserted that jobs will not be lost or that any losses will be offset by the creation of recreation and tourism jobs and employment opportunities from watershed and wildlife habitat restoration efforts. They suggested that communities focus on those opportunities rather than on potential job losses.

*Response.* As noted earlier, the possible effects of implementing the final interim rule have been evaluated in the environmental assessment and an associated benefit/cost economic analysis. Under the rule, payments-to-States could be reduced by about \$6 to \$9 million nationally; however, these estimates are uncertain and are greatly dependent on possible changes in planning priorities, budgets, and the timing of implementing projects on the ground. Additionally, the 1998 Supplemental Appropriations Rescission Act (Pub. L. 105-174) requires the Forest Service to compensate States for the loss of revenues from scheduled activities that are suspended by this interim rule. It is uncertain what mitigating effect this law will have on payments-to-States until the rule is implemented and scheduled projects are assessed.

The Forest Service anticipates no long-term effects on the production of forest resources as a result of implementing the final interim rule, although some short-term effects are identified and examined in the environmental assessment and benefit/cost analysis. The anticipated temporary effects on local employment supported by national forest timber harvest and other commodity resource production

are expected to be minor, but, as stated previously, relatively greater impacts are probable in some Idaho communities. The environmental assessment does anticipate some employment offsets within the same employment sectors in some areas of the country. For instance, where timber harvest reductions occur in the southern States, the Forest Service expects that many of these reductions can be offset by temporary increases in production from non-federal lands. However, in other areas of the country, such as the Pacific Northwest, there is little opportunity for such offsets.

*Issue 10: Loss of infrastructure.* Many respondents said the interim rule should address the obliteration and decommissioning of roads. They suggested that many classified roads are in poor repair and should be obliterated to prevent further deterioration of and impacts to the environment from runoff and soil erosion. Others wrote that roads are vital to responsible management of the national forests. They asserted that implementation of the proposed interim rule would be a waste of money and a loss of a public investment. Still others said that obliterating roads is unwise, because the Forest Service will return in a few years and possibly construct roads in these same suspension areas at the taxpayers' expense. Many wrote that roads are investments and should not be obliterated.

*Response.* The National Forest Transportation System infrastructure is vitally important to responsible management of the national forests. The transportation system is essential to many rural communities, and recreational use of classified roads is also important. The Department recognizes the effects of deferred road maintenance and reconstruction that have occurred in recent years. These deferrals are part of the reason the Forest Service is reexamining the role of roads and developing a new long-term transportation system policy. The interim rule is a temporary measure designed to maintain options for management of certain unroaded areas that are ecologically sensitive to help focus on managing the entire National Forest Transportation System. The agency's long-term transportation system policy will ensure that only necessary roads are constructed and that road maintenance and obliteration priorities are established through public involvement and use of other appropriate planning tools. This rule will have no effect on projects designed to obliterate or decommission roads.

*Issue 11: Effects on timber supply.* Many respondents believe that reduced

timber harvest resulting from implementation of the interim rule will be detrimental to forest health and to the communities that depend on commodity extraction. They wrote about the legal mandate that national forests provide timber resources and suggested that the proposed interim rule will force consumers to use more imported timber products.

However, many individuals believe that placing the remaining unroaded areas off-limits to road construction, reconstruction, will not result in timber supply shortages. Instead, these reviewers suggested that the proposed interim rule will have a negligible effect on timber supply because private ownership and other National Forest System lands can meet the nation's needs.

*Response.* Production of timber volume from the National Forests accounts for less than 5 percent of the total volume of timber produced in the United States. Implementation of the interim rule may reduce timber harvest volume by 170 to 260 million board feet, which is less than 5 percent of the total volume estimated to be offered from National Forest System lands during an 18-month period. The final interim rule's effect on wood products imports, therefore, is expected to be negligible; less than 1 percent of current total wood fiber imports. Varying levels of substitution of timber from non-federal sources is expected across the country, which should prevent any significant national shortfall. The environmental assessment associated with the interim rule found no significant impacts to commodity production or impacts to communities. However, there are a few local communities, primarily in Idaho, where the amount of timber volume offered could be reduced more than 15 percent from levels initially planned.

*Issue 12: Subsidies to commercial users.* Many respondents said that road construction and reconstruction projects constitute a subsidy to logging companies and that such subsidies should cease. Some suggested that the 18-month suspension should be extended to ensure that additional public funds are not spent on such subsidies. Others wrote that the construction or reconstruction of purchaser-credit roads serves a larger purpose than to subsidize timber interests. They pointed out that roads facilitate public access to recreation resources, increase the agency's ability to administer programs and policies, and aid in preventing or suppressing wildfire.

*Response.* Road systems are vital to meet the access needs within each

national forest. The 18-month suspension should provide adequate time for land managers to study the related issues and develop analytical tools and adopt a revised road management policy to ensure that road construction and reconstruction projects are useful, safe, environmentally sound, and cost efficient. Additionally, the Omnibus Appropriation Act for fiscal year 1999 eliminated purchaser credit. For these reasons, the Department finds no need to extend the interim rule beyond the 18-month period.

*Issue 13: Access into or through unroaded areas.* Many people were concerned that the proposed interim rule would preclude public access to recreational opportunities and industry access to national forest timber and other commodities; others suggested that it would deny or interfere with rights-of-way and jeopardize public safety.

Those citing reduced recreational opportunities cited the importance of roads in providing off-highway vehicle access to remote, pristine, scenic, or wilderness areas. Some argued that navigating undeveloped roads is a desired recreational activity. They wrote that road closures will lead to an overcrowding of available roads and trails, increased environmental consequences to a smaller land base, and a reduced quality of recreational experiences.

In contrast, many respondents referred to unroaded areas as national treasures that should be considered precious because they offer recreational experiences removed from the presence of machines. They wrote that too many of the remaining unroaded areas have been penetrated, leaving less and less land free of disruptive human activity. They suggested that increased motorized access will ruin important wildlife habitat and plant ecosystems and cause an increase in the occurrence of wildfire, poaching, and dumping.

Many others believe that timber harvest, mining, oil exploration, and other commodity extraction activities would be severely curtailed by the proposed interim rule. They wrote that without roads, resource extraction could not continue or would be significantly reduced, causing economic hardship for industry and small rural communities.

*Response.* The final interim rule does not alter the use of existing roads for multiple-use purposes nor does it limit activities that do not require the construction or reconstruction of roads in unroaded areas. Road construction or reconstruction in unroaded areas needed for legal rights-of-access will be provided in accordance with provisions

of all applicable laws. Additionally, in response to public comment requesting exemptions for impending threat to life and property from flood, fire, insect infestation, or forest disease, paragraph (c)(4) has been revised to permit all such access for flood, fire, and other catastrophic events that, without intervention, would cause the loss of life or property.

#### **Comments About Environmental Consequences**

Many respondents expressed concerns about old-growth forests, fisheries, and noxious weeds. Many wrote about possible adverse effects on forest health and biological diversity, citing impacts to State and Federally-listed threatened, endangered, or sensitive species. Some, however, wrote that access to unroaded areas is needed to allow managers to effectively respond to changing conditions or catastrophic events, such as insect infestation, the spread of tree diseases, and wildfire.

*Issue 14: Impacts to soil erosion, sedimentation, and fish.* Many respondents cited timber harvest and the road construction associated with resource extraction as reasons for soil erosion, stream sedimentation, and declining fish populations. They mentioned poor engineering design, improper road placement, and degradation of existing roads as leading causes of these adverse effects. They consider roads to be harmful sources for sediment deposition in prime trout and salmon habitat. Many suggested that the proposed interim rule should become permanent policy. Generally, these respondents supported road obliteration, decommissioning, and reconstruction to mitigate soil erosion.

By contrast, some expressed a belief that roads and road construction are not the primary cause of soil erosion and that logging and associated activities, such as road obliteration, are the major causes.

*Response.* Science and history have shown that roads and road construction can have adverse effects on biological diversity, wildlife habitat, noxious weed infestation, soils, and watersheds. Poor engineering design, improper road placement, and the degradation of existing roads are all causes of soil erosion and sedimentation. For many wildlife and fish species, core habitat and genetic isolation are intricately tied to lands within the National Forest System.

Scientific evidence compiled to date suggests that, depending on their geologic setting and topography, roads are a significant source of increased erosion, sedimentation, and declining

fish habitat. This evidence was an important consideration in formulating the proposed interim rule, as well as in publishing the advance notice of proposed rulemaking for the National Forest Transportation System. The final interim rule offers an important safeguard for protecting unroaded areas for 18 months or when a revised road management policy is adopted, whichever is sooner. Such policy will help ensure that possible environmental effects, including soil erosion and sedimentation, are more thoroughly evaluated before roads are constructed or reconstructed or decommissioned. For example, analytical tools will provide scientific information to inform the decisionmaker whether road decommissioning will produce additional disturbance or halt continuing disturbance.

*Issue 15: Impacts from noxious weeds.* Road construction and timber harvest are believed to increase the spread of noxious weeds. Respondents wrote that logging equipment and other motorized equipment introduce seeds into formerly pristine areas along roadbeds and in areas where resources have been extracted. Others expressed concern that noxious weeds on Federal lands will spread to adjacent private and State lands. On the other hand, some respondents suggested that limiting road construction may limit the ability of Federal and county agencies to manage the spread of noxious weeds.

*Response.* Invasion of noxious weeds was recognized as a problem in the preamble to the ANPR (63 FR 4350) and in the proposed interim rule. The Department believes that the suspensions established in the final interim rule provide a measure of safeguards to protect unroaded areas against invasion by noxious weeds until a revised road management policy for assessing the possible effects of road construction or reconstruction is adopted. Management of noxious weeds on the entire National Forest Transportation System will be made under the long-term transportation policy announced in the ANPR. In addition, the Forest Service has an established noxious weed policy intended to reduce the invasion and dissemination of noxious weeds to and from the national forests (FSH 2080).

*Issue 16: Impacts to old-growth.* Many respondents wrote that protection and preservation of old-growth ecosystems within unroaded and wilderness areas of the National Forest System is a good reason to implement the proposed interim rule and subsequent management policies. Others distinguished the proposed suspension

of road construction and reconstruction from protection of old-growth, noting that insect, disease, and fire events naturally affect changes in the forest environment and make preservation of old-growth ecosystems problematic. In addition, they wrote that the absence of management plans for old-growth forests has created unhealthy stands that are thick with fuels.

*Response.* Protection of old-growth forests is not an objective of the proposed interim rule. Issues germane to management of old-growth ecosystems are most appropriately addressed in Regional guides, individual forest plans, and during project planning at the local level.

*Issue 17: Impacts to wildlife and plants.* Some respondents wrote that protection of plants and animals on undisturbed National Forest System lands should be the purpose of the interim rule and also should be incorporated into agency policy. They expressed a belief that survival of most forest species is ensured in unroaded areas and that an absence of motor vehicle noise, trampling of sensitive plants, littering, and excessive hunting would protect plants and animals. Others suggested that the Forest Service should better balance its management focus between mature and early successional species, placing less emphasis on those species dependent on wilderness and unroaded areas. They wrote that early successional forest management contributes to stratification and diversity among the many species that depend on young forests.

*Response.* The purpose of and need for the interim rule concerns roads and the problems associated with their construction and reconstruction. Issues related to protection and management of wildlife and plants are best addressed through the agency's established planning process, which includes land and resource management plans and project-level decisionmaking. However, the environmental assessment accompanying the final interim rule does evaluate the possible effects of its implementation on wildlife and plant species and concludes that those effects will be minimal.

*Issue 18: Impacts on habitat fragmentation and wildlife corridors.* Many respondents welcomed the proposed interim rule as a step toward protecting and preserving critical habitat for numerous species. These respondents wrote that protection of relatively undisturbed ecosystems would help maintain sufficient habitat for viable bird, fish, and animal populations and provide wildlife corridors. A few respondents noted that

neotropical birds require contiguous forest cover, which occurs in unroaded areas, and that those species depend on such habitat to nest and reproduce. They wrote that large, pristine, and unmanaged areas maintain critical genetic diversity and species viability. Although many favored the proposed interim rule, they felt that the 5,000-acre guideline would exclude important habitat in the Eastern United States where unroaded areas tend to be smaller than those in Western United States. Some respondents disputed the need to mitigate ecosystem fragmentation, and others questioned the validity of analyses that consider home range or expressed doubt that roads are solely to blame for population declines or the demise of certain species.

*Response.* The maintenance and protection of large blocks of forest land to prevent habitat fragmentation and retain wildlife corridors is a short-term benefit of the interim rule. Long-term management measures to protect corridors and prevent fragmentation are evaluated in land and resource management planning documents and may be considered in the comprehensive revision of the long-term National Forest Transportation System policy announced in the January 28, 1998, ANPR (63 FR 4350).

*Issue 19: Impacts on Threatened, Endangered, or Sensitive (TES) species.* A number of comments reflected public awareness of TES species requirements. Many mentioned large predators and carnivores, focusing on the need to monitor and preserve grizzly bear and its habitat in the 48 contiguous States, the brown bear in Alaska, and large cats like the cougar and the lynx. Because neotropical birds are particularly susceptible to habitat fragmentation, some respondents wrote that the proposed interim rule would help increase and improve migratory corridors and critical nesting habitat for those species. Sedimentation from roads and fragmented drainages were blamed most often for the decline of trout, salmon, and other important fish populations. Numerous comments reflected a belief that the proposed interim rule recognizes species that have special interest to people and responds to this interest with increased habitat protection.

*Response.* The final interim rule does provide short-term assurance that unnecessary road construction will be avoided. This ensures that TES species that require habitats associated with unroaded areas are also better protected. Section 7 consultation with the Fish and Wildlife Service and the National Marine Fisheries Service has been

completed for this interim rule. Additionally, when new and improved analytical tools are adopted and applied, protection of TES species will be integrated into those requirements.

### Comments About Public Participation

*Issue 20: Disregard for public involvement in planning.* Many respondents wrote that the proposed interim rule would interfere with local forest planning where intensive collaboration and tough compromises have resulted in well-balanced management direction. Many expressed anger that a suspension of road construction and reconstruction would disregard their hard work and invalidate current forest plans. They were concerned that the proposed interim rule would undermine the trust and collaboration gained through effective forest planning. Some questioned the legality of ignoring the forest planning process in 36 CFR part 219 by means of a "top-down" administrative action. They asserted that the proposed interim rule ignores recent analyses conducted at the national forest and regional levels and that current plans have adequately assessed the possible effects of road construction and reconstruction.

*Response.* By providing exemptions for revised forest plans, the proposed interim rule recognizes and validates specific planning that has occurred through collaboration at the local level. The proposed interim rule does not alter or overturn land management prescriptions, guidelines, or standards contained in land and resource management plans; it merely defers some activities that might be implemented during the next 18-month period. The Department believes the integrity of the NFMA forest planning process has been protected and that the interim rule does not affect that process.

*Issue 21: Insufficient public involvement.* Officials from all levels of government, including Tribal, Federal, State, county, and local expressed concern about a perceived deliberate attempt to circumvent their authority and bypass the ongoing forest planning processes. Many believe that the authority of Congress and the will of the American people are not reflected in the proposed interim rule. They asserted that the proposed interim rule is a misguided attempt to appease special-interest groups at the general public's expense. Questioning the Forest Service's motives, a few respondents asserted that the agency is party to a broad, hidden agenda that would deny public access to public lands.

*Response.* The purpose of the interim rule was clearly stated in the **Federal**

**Register** notice of January 28, 1998 (63 FR 4351). Given the widespread public interest in National Forest System management, the Forest Service gave advance notice of the proposal and invited comment. In response to requests from various individuals, organizations, and elected officials, on February 27, 1998, the agency extended the public comment period on the proposed interim rule for an additional 30 days. Additionally, the agency hosted 31 open houses receiving approximately 2,300 persons and 1,800 comments. Further, the agency will provide opportunity for public comment on revising the roads management policy which will replace the interim rule.

*Issue 22: Availability of information.* Many respondents wrote that the Forest Service inadequately distributed information to the public about its intent and did not provide sufficient time for meaningful public input to the review process. A number of individuals expressed dissatisfaction with local Forest Service officials' ability to answer questions or to provide more information about the proposed interim rule.

*Response.* The Department acknowledges that information on the proposed interim rule was not made available before publication in the **Federal Register** on January 28, 1998 (63 FR 4351). Facts used to support the proposed interim rule were published in an Appendix to that announcement (63 FR 4351, Appendix A—Facts About the National Forest Road System). Further information and reports were made available through the Internet. In response to public requests, the comment period was extended 30 days, and a schedule of open houses was announced in the **Federal Register** on February 27, 1998 (63 FR 9880). As part of that announcement, preliminary effects information was also made available to the public. Local officials were provided with this information to share with local public and special-interest groups. As evidenced by approximately 53,000 responses to the proposed interim rule, the Department believes sufficient public notice and involvement occurred.

#### **Suggested Revisions to the Proposed Interim Rule**

*Definitions.* There was not a definition paragraph in the proposed interim rule.

*Comment: Addition of definitions.* Many respondents asked that the definitions of roads and roadless areas be included in the final interim rule. Most were concerned that existing

unclassified, or "ghost" roads, would be considered as roads and thus eliminate areas where the suspension should apply. Others expressed concern that the trails they use for hiking, biking, and horseback riding would be characterized as roads, and that necessary maintenance and repair would not be done during the interim 18-month period.

*Response.* Because such definitions are critical to understanding which projects will be subject to suspension, the agency has added a new paragraph (a) *Definitions*. The terms "roads", "classified roads", "unclassified roads", "unroaded areas", and "RARE II areas" are defined. Definitions for "road construction", "road reconstruction", and "road maintenance" were not added because these terms are already defined in the Forest Service Manual (FSM 7705).

The term "roads" is used in the interim rule as a general term to mean a vehicle travel way over 50 inches wide. A road may be classified or unclassified. "Classified roads" are those that are constructed or maintained for long-term highway vehicle use. Classified roads may be public, private, or forest development. "Unclassified roads" are roads that are not constructed, maintained, or intended for long-term highway use. Unclassified roads include all temporary roads associated with fire suppression, timber harvest, and oil, gas, or mineral activities, as well as travel ways resulting from off-road vehicle use. Unclassified roads, including roads created by repeated public use and often used by off-road vehicles, do not disqualify an area for consideration as unroaded in the final interim rule.

The term "roadless" is used in the final interim rule in conjunction with areas already inventoried that have defined boundaries as established through forest planning, RARE II, or some other agency planning process. The term "unroaded area" is defined in the final interim rule and is used to characterize any area that does not contain classified roads, even if the area was not previously inventoried in RARE II or land and resource management planning.

The final interim rule will not obliterate or prevent the use of existing classified or unclassified roads. However, construction and reconstruction of unclassified roads in certain unroaded areas will be suspended as described in paragraph (b) of the final interim rule. Decisions regarding the management and use of such travel ways will be addressed through land and resource management

planning and project-level decisionmaking, which require environmental analysis and public involvement.

*Suspensions.* Paragraphs (a)(1)–(5) of the proposed interim rule listed five categories of unroaded areas in which road construction or reconstruction would be suspended. First, the proposed interim rule would apply a temporary suspension of road construction and reconstruction in roadless areas of 5,000 or more acres inventoried in RARE II and in other unroaded areas identified in land and resource management plans. Second, the proposal would also suspend road construction and reconstruction in unroaded areas greater than 1,000 acres that are contiguous to congressionally-designated wilderness areas or contiguous to Federally-administered components of the National Wild and Scenic River System that are classified as "Wild". Third, suspensions would apply to all unroaded areas greater than 1,000 acres contiguous to roadless areas of 5,000 acres or more on other Federal lands. In addition, the suspension would apply to two other categories: (1) Any National Forest System (NFS) areas of low-density road development or (2) any other NFS area that retains its unroaded characteristics which the Regional Forester subsequently determined have such special and unique ecological characteristics or social values that no road construction should proceed.

*Comment: Size and type of areas where suspensions should apply.* Many respondents disagreed that the proposed interim rule should apply only to unroaded areas that are 1,000 acres or more, suggesting instead, that no size limit should be imposed. These respondents proposed that the interim rule should apply to all roadless areas, regardless of size. Others stated that road construction and reconstruction should also be suspended in any unroaded area, not just those adjacent to inventoried roadless areas. A few respondents offered minimum size criteria, which ranged from 10 to 500 acres, to 100 square miles. Still others suggested that criteria might appropriately vary by region; for example, Eastern and Southern forests, which have smaller contiguous National Forest System lands than forests in the West, should have a smaller minimum size criterion. Many recommended that the suspension also should provide protection to unroaded areas that have not been inventoried. Some respondents felt that the suspension should apply to roaded portions of inventoried roadless

areas that have been roaded since the inventory was done.

*Response.* The 5,000-acre limit described in RARE II was used as a criterion for wilderness suitability to define areas that could be effectively managed while providing visitors with an opportunity for solitude. This criterion was included in the proposed interim rule to clearly restate the acreage criteria used for RARE II delineations. The intention was not to limit suspensions to areas that are 5,000 acres or larger. Agency officials believe that the 5,000-acre criterion specific to RARE II areas is redundant and confusing and unnecessary. Therefore, paragraph (b) of the final interim rule omits this acreage limit.

The vast majority of all large blocks of roadless areas (5,000 acres or more) were inventoried in RARE II or forest planning. While some large blocks of National Forest System unroaded areas, in excess of 5,000 acres, have been created through land exchanges, purchases, road obliterations and other management actions, it is impractical and unnecessary to commission a new inventory of roadless areas at this time. Such inventories are appropriate at the forest planning level and regional assessment scales within the existing agency planning and decisionmaking framework. Therefore, road construction and reconstruction are not suspended in un-inventoried areas that are not contiguous to inventoried roadless areas.

Areas inventoried as roadless under RARE II or forest planning, but in which roads have since been constructed, no longer have the ecological and social values of roadless areas and, therefore, do not meet the same threshold of concern and need for protection. Therefore, in the final interim rule a one-quarter mile road influence zone has been added as a criterion for determining the remaining areas that will be considered unroaded and subject to suspension of road construction and reconstruction. An influence zone is an area on either side of a road where the effects on ecological process from the road are felt. Recent science suggests that a road influence zone may be as great as 1000 meters, in excess of one-half mile, away from the road. Other studies suggest a zone as small as 100 meters. For purposes of the final interim rule, the one-quarter mile limit was selected as an intermediate measure of road influence. The final interim rule states at paragraph (b)(1) that road construction and reconstruction will be suspended in remaining unroaded portions of RARE II and forest plan inventoried areas that are one-quarter

mile or more beyond any classified road.

The suspension is intended to apply to roadless areas already inventoried and identified through the forest planning process (36 CFR part 219). The final interim rule does not call for a new inventory of roadless areas or compromise the local planning processes. It does, however, cover all unroaded portions of roadless areas inventoried in the forest plans, irrespective of size. The intent in establishing the one-quarter mile limit is not to encourage road construction or reconstruction within the one-quarter mile influence zone. However, it is anticipated that there will be no new road construction or reconstruction within the one-quarter mile influence zone.

The proposed interim rule did not contain an explicit provision to suspend road construction or reconstruction in unroaded areas contiguous to RARE II or contiguous to areas inventoried in land and resource management planning. Having considered the comments, this omission has been corrected. The final interim rule includes an explicit provision, at paragraph (b)(2), suspending road construction and reconstruction in unroaded areas greater than 1,000 acres contiguous to RARE II and forest plan roadless inventoried areas. This provision recognizes that these areas provide the same ecological benefits as areas contiguous to wilderness, Wild components of Wild and Scenic Rivers System, or unroaded areas of other Federal ownership. To qualify for suspension, these contiguous areas must have a considerable common boundary, provide an important corridor for wildlife movement, or significantly extend a unique value of the already inventoried roadless area. This condition is added to ensure that contiguous areas enhance ecological values of inventoried roadless areas. Without this condition, irregular shapes might be created that do not, in fact, significantly enhance the ecological values being protected.

*Comment: Regional Forester's authority to designate special areas.* Most respondents did not want Regional Foresters to have the authority to suspend road construction in areas thought to have unique ecological characteristics or social values. These respondents wrote that such authority would allow Regional Foresters "arbitrarily" to designate land as special or unique and thereby withdraw it from possible timber harvest. Many expressed a concern that, because special or unique attributes could be found on every acre of the National Forest

System, unelected officials might eventually put all lands off-limits to natural resource management. Others, citing a need to protect remaining unroaded areas, wrote that Regional Foresters should use their authority under the proposed interim rule to prevent road construction.

*Response.* Paragraphs (a)(4) and (a)(5) of the proposed interim rule are not retained in the final interim rule because of the concern with how these procedures would be implemented with consistency and fairness. Additionally, further consideration of these paragraphs led to a conclusion that these provisions are unnecessary to accomplish the objectives of the interim rule, since Regional Foresters have authority to limit road construction or reconstruction without the interim rule.

*Comment: Additional areas need to be protected.* Some respondents asked that the final interim rule identify specific areas in which road construction and reconstruction would be suspended. Many respondents suggested specific areas they wanted to be protected by suspending road construction and reconstruction. These areas included those listed in the Southern Appalachian Area Assessment and other specific areas of special meaning to various respondents.

*Response.* Areas that have been inventoried through an established planning process with public involvement were considered for suspension under the proposed interim rule. For example, the preamble to the proposed interim rule (63 FR 4352) listed several areas that might warrant protective consideration under the Regional Foresters' authority, such as municipal watersheds that provide drinking water; habitat for listed or proposed threatened and endangered fish, wildlife, or plants; and areas listed in the Southern Appalachian Area Assessment, Social/Cultural/Economic Technical Report (Report 4 of 5, dated July 1996). In response to these comments, the Department considered adding designated municipal watersheds and threatened and endangered species habitat to areas suspended but decided not to include these areas in the final interim rule because they are protected through existing environmental laws such as the Safe Drinking Water Act, Clean Water Act, and the Endangered Species Act.

Having considered the comments proposing additional unroaded areas that should be subject to the road construction and reconstruction suspension, the Department has decided to add areas listed in Table 5.1 of the Southern Appalachian Area Assessment

as specific and unique ecological areas where road construction or reconstruction will be suspended. Those areas are included in current inventories and have been the subject of extensive public discussion, scientific analysis, and collaborative planning and thus merit special consideration before deciding to construct or reconstruct roads in them.

*Comment: Scope of suspension.* A number of respondents asserted that all road construction should be suspended, arguing that no additional roads are needed to manage the national forests and that the potential risks are more significant in heavily roaded areas than in roadless areas. These reviewers argued that if the purpose of the proposed interim rule is to allow the Forest Service time to develop improved analysis tools, those tools should be applied to all road construction throughout the National Forest System, not just to roads in unroaded areas. Many wrote that, to be equitable, national policy must be truly national in application. A few respondents asked that the final interim rule suspend all "destructive" activities, including grazing, mining, and oil and gas development. They wrote that unroaded areas are priceless because of their biological diversity, wildlife habitats, and spiritual values. Those whose livelihoods would be more directly affected by a suspension of road construction or reconstruction had a different view. They saw the proposed interim rule as a first step towards eliminating multiple-use and sustained-yield management of unroaded areas. Some wrote that the proposed interim rule is "an attempt by special interests to lock up our National Forests to the public."

*Response.* The Advance Notice of Proposed Rulemaking (ANPR) and the proposed interim rule both addressed the need for a time-out while additional transportation planning tools are developed and a revised road management policy is adopted. Interim action is needed to ensure better roads management and planning, to help managers avoid causing irreversible damage to resources, and to help focus attention on comprehensive management of the entire National Forest Transportation System. This final interim rule is not intended to suspend decisions made more appropriately in the forest planning process. The purpose of the final interim rule is to retain resource options in unroaded areas and to safeguard those areas from the potential adverse effects associated with road construction and reconstruction until a revised road

management policy is adopted. The potentially damaging ecological effects of a first entry into a unroaded area is often proportionately greater than the effects of similar construction or reconstruction in an already roaded area. By contrast, suspending all road construction throughout the National Forest System would be extremely disruptive to the ongoing management of lands and resources. Much road reconstruction is specifically designed to reduce environmental problems by relocating roads originally constructed in sensitive riparian areas, to improve road drainage and reduce erosion, and to improve safety and access. Curtailment of all such work would have greater ecological and social consequences than continuing current program activities in roaded areas. Therefore, the suggestion of suspending all road construction has not been adopted.

*Comment: Applicability to construction of temporary roads.* A number of respondents were concerned that temporary roads would be allowed during the suspension and indicated that the Forest Service should not allow this to happen.

*Response.* In the short term, temporary roads can create as great a risk of environmental damage as permanent roads. The proposed interim rule recommended temporary suspension of permanent and temporary road construction and reconstruction in unroaded areas of National Forest System land, with certain stated exemptions. This provision is retained in the final interim rule.

*Exemptions.* Paragraphs (b)(1)–(b)(4) of the proposed interim rule expressly exempted four categories of roadless areas from the temporary suspension of road construction and reconstruction:

1. Roadless areas within national forests that have a signed Record of Decision revising their forest plans and have completed the administrative appeal process as of the effective date of the rule;
2. Roadless areas within national forests that have a signed Record of Decision revising their forest plans on which the administrative appeal process is underway, but not completed as of the effective date of the rule;
3. Roadless areas in Washington, Oregon and California within those portions of national forests encompassed by the Northwest Forest Plan; and
4. Road construction or reconstruction in roadless areas needed for public safety or to ensure access to private lands pursuant to statute or outstanding and reserved rights.

*Comment: Elimination of exemptions.* Many respondents questioned the need for any exemptions to the interim rule. To support their arguments, they cited perceived instances of poor planning, an intentional exclusion of roadless issues from planning, and a lack of trust in local Forest Service officials. Many wrote about inadequate safeguards for protecting unroaded areas, insufficient scientific justification, and lack of credible forest planning processes. These reviewers said that exempting any national forest or planning area from the suspension will have a negative effect on lands they believe are already over-roaded and degraded.

By contrast, some respondents thanked the Forest Service for honoring the effort of national forest officials and their public partners to complete plan revisions. They felt that areas in which citizens have invested much time and energy to forge agreements and reach compromises should be exempt from the final interim rule. Many wrote that formal land management planning and appeals processes would be undermined by a "top-down national forest plan amendment" to suspend road construction in most roadless areas. A few suggested exempting all national forests that are in any stage of the planning process, and some were concerned that the interim rule would result in decisions that reverse management direction in revised land and resource management plans now under appeal without regard for the hard work of their communities. Respondents expressing this concern most often cited the Tongass Land and Resource Management Plan.

A number of respondents were concerned that a provision in the proposed interim rule to exempt forests of the Pacific Northwest and national forests with revised forest plans might be reversed in the final interim rule. These respondents believe that formal land management planning and appeals processes would be undermined if revised forest plans are not exempt from the temporary suspension of road construction and reconstruction in the final interim rule. This concern was often coupled with a general opinion that the Forest Service is disregarding valid processes for the development of land and resource management plans.

*Response.* The Department believes strongly that established planning processes should be honored and, therefore, the exemption for revised forest plans has been retained in the final interim rule. However, the most recent available science has not been incorporated into all revised forest plans. Therefore, the final interim rule

includes a provision at paragraph (c)(1) that exempts only the most recent forest plan revisions, specifically those that have Records of Decision issued after January 1, 1996. The effect of this cutoff date is that unroaded areas within Virginia's George Washington National Forest are subject to the road construction suspension. The George Washington National Forest is the only forest that would have been exempted under the proposed interim rule but will not be exempted under the final interim rule.

*Comment: Application of exemptions to the Pacific Northwest and Alaska.* A majority of those who commented on application of the proposed interim rule to the Pacific Northwest and Alaska strongly recommended that the national forests in these areas should be subject to the road construction and reconstruction suspension, citing the unique ecological characteristics of these lands. They asserted that maintenance of biological diversity and protection of old-growth ecosystems should be principle goals.

*Response.* To avoid undue interruption or interference with established planning processes and to honor current decisions that incorporate current available science, the agency proposed an exemption for those plans in the Pacific Northwest and Alaska. Following publication of the proposed interim rule, Forest Service officials prepared an environmental assessment of the possible effects of several alternatives for suspending road construction and reconstruction. One alternative included suspending road construction and reconstruction in unroaded areas of forests encompassed by the Northwest Forest Plan and the Tongass National Forest Land and Resource Management Plan. The assessment shows that suspending road construction and reconstruction in unroaded areas of the Tongass National Forest would disrupt projected timber harvesting substantially. However, in recent years the actual timber harvested from the Tongass National Forest has been less than levels offered for sale. The forests encompassed by the Northwest Forest Plan would be disrupted to a lesser degree than the Tongass. The Tongass Land and Resource Management Plan and the Northwest Forest Plan were subject to substantial public involvement, greater, in fact, than received by most other land and resource management plans that also would be exempt under the proposed interim rule. The Tongass and Northwest Forest plans also involved considerable scientific input by scientists evaluating the environmental

consequences that might result from following these plans. Moreover, the Tongass forest plan is still undergoing evaluation as part of the administrative appeal process under 36 CFR 217. As a result of the considerable science and public involvement in formulating these plans and considering the disruption to management that could result by applying suspensions to these forests, the Department has decided to retain the exemption for the Tongass Land and Resource Management Plan and those forests encompassed by the Northwest Forest Plan.

*Comment: Exemption for plans under development but yet to be adopted.* Some respondents believe that land and resource management plan revisions that have been ongoing for the last few years should be honored by exempting these plans from suspension provisions of the final interim rule. These respondents state that the rigor of analysis in these plans is comparable to land and resource management plans exempted under the proposed interim rule and upon completion of these plans they should be exempted.

*Response.* The Department agrees with these comments. Since future forest plan revisions will undergo analyses as rigorous as those conducted since January 1, 1996, forest plan revisions that will be approved while the rule is in effect would be exempt upon completion of a Record of Decision revising the forest plan and implementation of that decision.

To date, the Northwest Forest Plan is the only multi-agency, eco-regional, decisionmaking document that has extensively employed available science, especially integrating scientific findings into the decision. However, decisions on other multi-agency, eco-regional projects may be issued while the final interim rule is in effect; for example, the Interior Columbia Basin Ecosystem Management Project (ICBEMP). Paragraph (c)(3) of the final interim rule exempts portions of those forests encompassed by the ICBEMP upon completion of a Record of Decision for that planning effort or other multi-agency eco-region decisionmaking made during the 18-month suspension period of the final interim rule. Paragraph (c)(3) also would permit road construction and reconstruction in unroaded areas where the forest plan amendment or revision has been developed through multi-Federal agency coordination based on an eco-regional assessment.

*Comment: Opportunity to provide additional information in appeals of forest plan revision decisions.* One individual asked the Forest Service to reopen the appeal period for those forest

plans exempt under the proposed interim rule but currently under appeal; for example the Tongass Land and Resource Management Plan. This respondent believes that the appeal period should be extended until new and improved analytical tools are developed and cited in the appeal process.

*Response.* To extend current planning and appeal processes for the 18-month suspension period would not honor established planning and appeal processes. Additionally, a halt to all ongoing planning, decisionmaking, and appeal processes until new and improved analytical tools are developed would result in unreasonable and unnecessary delays of many forest management activities. The final interim rule respects current planning and decisionmaking; it does not alter the established process for the Forest Service Chief's review of forest plans nor does it change the criteria for administrative review. If the Chief remands a land and resource management plan to reconsider certain land allocations, NFMA compliance would be required, as it would for any change in a land and resource management plan.

*Comment: Exemptions for ski areas and oil and gas leases with current authorizations.* A number of respondents asked that oil and gas, mining, and ski area projects be exempted from the final interim rule. Permit holders wrote that they have made good-faith efforts to complete necessary administrative processes and abide by the conditions of their respective permits. They stated that the proposed interim rule would revoke rights duly given under permits and unfairly affect responsive and responsible operators for the actions of others. If permits were to be affected by the final interim rule, they asked that the Forest Service allow road maintenance and repair.

Exempting ski area permits was an issue for many. The proposed expansion of Colorado's Vail Ski Area was of particular concern for those who believe that Vail does not need to expand and that the required road construction would have negative effects on the adjacent Two Elks Roadless Area. Some expressed concern about the proposed construction of new ski areas on the Kootenai National Forest in northwest Montana and in Oregon's proposed Pelican Butte area. By contrast, a few persons wrote that ski areas should be exempt from the proposed suspension.

*Response.* Recreation resort developments, including ski areas, oil and gas leases, and mining operations,

are authorized by special use permits or other legal instruments for development and operation. These authorizations constitute a long-term, legally binding relationship between the permit holder and the Forest Service. Paragraph (d)(1) of the final interim rule retains the proposed exemption for special use authorizations and contract commitments made in such agreements. Ski area master development plans and other large development plans do not necessarily make project-level decisions on anticipated road construction or reconstruction. However, road construction and reconstruction evaluated and decided as part of a development plan are considered to be authorized under the special use authorization and, therefore, are encompassed by exemptions in paragraph (d)(1) of the final interim rule.

Less than 15 miles of permanent and temporary road construction and reconstruction for ski areas could be affected. Most proposed construction and reconstruction for ski areas are within areas covered by approved master development plans and are not subject to suspension of road construction and reconstruction. Since most oil and gas and ski area developments are not subject to suspension, the Department does not believe the final interim rule will unduly disrupt these activities and, therefore, a specific exemption is unnecessary in the final interim rule.

*Comment: Exemption of land exchanges and timber sales under analysis.* A few respondents representing timber companies requested that the final interim rule exempt road construction projects in pending land exchanges because, in some cases, the terms and conditions of a land exchange may be contingent on future access and road construction may be required. Some asked that active timber sale contracts or proposed timber sales for which planning has been completed also be exempt.

*Response.* The final interim rule will not affect rights-of-access associated with land exchanges already decided. Land exchanges in and of themselves do not involve road construction or reconstruction and, therefore, are not affected by the final interim rule. However, road construction or reconstruction in unroaded areas affected by the temporary suspension in connection with a land exchange could not proceed. There are few situations where land exchanges are dependent on road construction or reconstruction; therefore, an exemption for road construction or reconstruction

associated with land exchanges is unnecessary. The final interim rule will not modify any existing contract or other instrument including timber sale contracts. Timber sales in the planning and contract award process that have not progressed to a signed timber sale contract, as of the effective date of the rule, create no right and, therefore, would be subject to suspension provisions of paragraph (b) of the rule.

*Comment: Exemption of recreation roads and trails.* A few respondents wrote that recreation roads and trails funded with Federal and State money should be exempt from the final interim rule. These reviewers expressed concern about the suspension's potential effects on continued funding for roads or off-road vehicle trails jointly operated and maintained by Federal and State government entities. Other respondents were concerned that existing recreation roads and trails would be removed unless exempted by this interim rule.

*Response.* Approximately 230 recreation projects with approximately 195 miles of road construction or reconstruction are needed to access the government facilities are estimated for all NFS lands during the period the final interim rule would be in effect. Because less than one mile of associated access would be within an unroaded area covered by the final interim rule, the effect would be negligible. Additionally, the Forest Service will not remove any existing roads or trails within unroaded areas as a direct consequence of this final interim rule.

*Comment: Exemption for national forests covered by the Upper Columbia River Basin Assessment.* Many respondents asked that the final interim rule exempt national forests in the Upper Columbia River Basin (UCRB), and one organization requested that the Forest Service exclude all projects within the Interior Columbia Basin Ecosystem Management Project (ICBEMP) for which the NEPA process has already begun.

A number of respondents argued that years of work and thousands of hours of research have gone into the creation of the ICBEMP and, therefore, the Forest Service should consider exempting all forests encompassed by the ICBEMP. They wrote that the regionally developed ICBEMP is based on sound science, broad public participation, and in-depth analysis, which should be sufficient to ensure that road construction and reconstruction anywhere in the area will meet the objectives of the final interim rule. One individual said, " \* \* \* the active public participation and substantial work on guidelines factored into the

ICBEMP mean the proposed moratorium on road building in roadless areas in the Basin is not necessary to achieve the better decisionmaking process you are seeking." A few respondents suggested that an analysis process be included in the final interim rule that would allow road construction and reconstruction to proceed within the area encompassed by the ICBEMP if the science in the ICBEMP assessment was used at the project-level and a watershed analysis was followed to make site-specific road construction decisions.

In contrast to these viewpoints, others argued that since no decisions have been made for the ICBEMP, none of the standards and guidelines that might apply to road construction and reconstruction are binding on any of the national forests in the analysis area. In addition, some stated that the areas most at risk from detrimental effects of road construction are within the ICBEMP.

*Response.* The ICBEMP team and public participants are using the best available science to plan, locate, and design roads. This extensive planning effort has maintained extensive public involvement, conducted in-depth analyses, and fostered collaboration among all Federal management and regulatory agencies directly affected by the proposed action. However, as many respondents noted, there are no final resource decisions and, therefore, guidelines and standards that may result are not yet binding on the Forest Service nor agreed to by the cooperating agencies.

Having considered these comments, the Department has adopted a revised exemption at paragraph (c)(3) that will permit road construction in unroaded areas to proceed where forest plan amendments or revisions are adopted using a multi-Federal agency approach, current and available science, and an eco-regional assessment. Thus, portions of the National Forest System covered by the ICBEMP will be exempt when the Forest Service issues a final decision that amends or revises forest plans.

*Comment: Impending threat considerations should be exempted.* Many wrote that the Forest Service proposal gave no recognition to the importance of roads for fire suppression, access for emergency/rescue personnel, and critical insect and disease treatment. They said that the proposed temporary suspension would limit the agency's ability to fight fires, rescue injured or lost persons, and prevent property loss. Many wrote that access also improves fire suppression safety. Others argued that areas should be exempt from active management of fuel

accumulation and improvement of forest health.

*Response.* The Forest Service included an exemption for public safety in the proposed interim rule. This exemption is retained in paragraph (c)(4) of the final interim rule, which has been modified, based on consideration of comments, to also provide for the imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause a loss of life or property. This provision allows for fire suppression and emergency rescue of those who are in danger and provides for a level of proactive management to mitigate potential emergency situations before they become unmanageable.

The final interim rule does not provide an exemption for impending threats to significant ecological values, as recommended by some respondents, although the Forest Service and Department did consider such an exemption. Definitions of significant ecological values are subjective, may be misinterpreted or misconstrued, and could result in inappropriate road construction or reconstruction while the final interim rule is in effect.

*Comment: Violation of Indian Treaty Rights.* A few respondents expressed concern that the proposed interim rule would violate Indian treaty rights.

*Response.* The proposed interim rule expressly stated that road construction and reconstruction needed to ensure access provided by statute or pursuant to reserved or outstanding private rights will be protected. However, the Department has concluded that the term "private rights" may not be sufficient to include treaty rights; therefore, the final interim rule specifically adds treaty rights to paragraph (c)(4) to make clear the intent to protect Indian treaty rights. Additionally, the term "rights" has been substituted in paragraph (c)(4) of the final rule for "private rights" to ensure there is no confusion that State and local government rights are also protected.

*Scope and Applicability.* Paragraph (c) of the proposed interim rule contained an assertion that the interim rule would not modify, suspend, or cause to be reexamined any existing permit, contract, or other instrument authorizing occupancy and use of the National Forest System. This provision also would not modify or suspend any land and resource management plan, any land allocation decision, or other management activity or use within unroaded areas in which road construction or reconstruction have been temporarily suspended. Finally, in the proposed interim rule, the

suspensions would remain in effect until adoption of a revised road management policy is adopted or 18 months, whichever is sooner.

*Comment: Duration of the interim rule.* Many people commented on the proposed length of the final interim rule, as well as the design and application of new and improved analytical tools. Those supporting and those opposing the proposed interim rule wrote that the Forest Service has a poor record of completing plans and implementing policy changes within established timeframes. Some said that it would be impossible to conduct a comprehensive study and implement an appropriate revision of the National Forest Transportation System within 18 months. A few respondents suggested that the final interim rule should remain in effect until forest plan revisions have been completed or until a long-term transportation system policy has been adopted. Specific suggestions for the duration of the rule ranged from 6 to 36 months.

Some respondents expressed fear that the final interim rule would become permanent by default, while others specifically requested that it be made permanent. Such comments were often accompanied by personal views on the "appropriate use" and management of public lands. Many respondents cited the importance of forest management and the need to actively address forest health problems. These respondents expressed concern that, like the interim Strategies for managing Anadromous Fish Producing Habitat (PACFISH), the Inland Fish Aquatic Strategy (INFISH), and the California Spotted Owl Environmental Impact Statement (CASPO), the final interim rule would eventually become institutionalized. On the other hand, many recommended maintaining unroaded areas in an unmanaged condition and suggested that the Forest Service provide those areas with additional protection.

*Response.* The Department is determined that the final interim rule remain in effect for only as long as necessary until a revised road management policy is adopted. For this reason, a limit of 18 months was imposed to mitigate against delays while these tools are developed and tested and a revised road management policy is adopted. The certainty of the final interim rule's termination will expedite the revised policy and help ensure timeliness.

*Comment: Applicability to Memorandums of Understanding.* A few Federal and State agency respondents expressed concern that the proposed interim rule would delay projects

conducted under established agreements with other Federal or State agencies. The only project of this type cited was the multi-agency Yellowstone Pipeline project.

*Response.* The Yellowstone Pipeline project is an ongoing project that has fostered valuable collaboration among 11 cooperating agencies involved in decisionmaking. Substantial resources have been committed to this project over the last few years. The Department does not intend to disrupt established land management planning or broad, multi-agency planning. Therefore, paragraph (d)(2) of the final interim rule makes explicit that the suspension does not apply to the Yellowstone Pipeline project.

*Comment: Lack of description of the analytical tools.* A few respondents expressed concern that the analytical tools that will replace the final interim rule are not described in the preamble to the proposed interim rule. These respondents believe that these analytical tools will replace established planning mechanisms such as forest planning. They are also concerned that the analytical tools will impose standards that will eliminate future roading in unroaded areas. These respondents asked that the analytical tools be described in the final interim rule.

*Response.* The Department agrees that the analytical tools should be better described. Since publication of the proposed interim rule, a draft roads analysis procedure has been developed and is being field tested on six national forests across the National Forest System before undergoing a rigorous scientific peer and technical review. The objective is to develop a procedure that integrates ecological, social, and economic considerations into future decisions about building roads in roaded and unroaded areas. The procedure, which serves as a template to guide thinking about road options at all planning scales, will be composed of various analytical steps to identify and gather needed information and to produce maps and other documents. The analytical tools will be designed to be issue driven; that is, they will help managers identify public issues when analyzing local road system status and need. The process will use a multi-scale approach to ensure that all road-related issues are examined in context. The procedure will include methods for developing management opportunities and options and assessing risks associated with decisions to maintain, reduce, and expand road networks on the national forests. In addition, the process will provide a framework for examining important issues and

developing relevant information before managers enter into any formal decision process that may change the characteristics and uses of national forest road networks.

These analytical tools will neither make decisions nor allocate lands for specific purposes; instead, they will assist decisionmaking by examining important ecological, social, and economic issues and by developing information relevant to decisions about forest plans and projects. The roads analysis tools will provide an ecological approach to transportation planning, will be flexible, and will allow a customized examination of individual landscapes and sites.

The agency intends to obtain scientific peer and technical review of these tools. However, since these tools are still under development and have yet to be peer reviewed, and since the analysis procedures themselves do not provide policy direction, it is both premature and inappropriate to include them in the final interim rule.

The final interim rule revises the circumstance that will lift the suspension before the 18-month termination. At paragraph (d)(3), the proposed rule would have lifted the suspension upon 18 months or upon the adoption of a revised road management policy whichever is first. Adoption of a revised road management policy provides a clearer termination point for the interim suspension than implementation of the analytical tools. Before adopting a revised road management policy, the Forest Service will provide public notice of its proposal and an opportunity for public comment.

### Conclusions

Having considered the comments received, the Department is adopting a final interim rule to suspend road construction and reconstruction in certain unroaded areas for up to 18 months. Road construction and reconstruction will be suspended in certain unroaded areas, specifically in remaining unroaded portions of RARE II and land and resource management planning inventoried roadless areas, National Forest System unroaded areas of more than 1,000 acres contiguous to RARE II areas and forest plan inventoried roadless areas, unroaded areas of 1,000 acres or more contiguous to Wild components of the Wild and Scenic River System, or unroaded areas of other Federal lands larger than 5,000 acres. The final interim rule provides for certain exemptions, specifically unroaded areas encompassed by land and resource management plans revised

since January 1, 1996, and unroaded areas encompassed by land and resource management plan amendments or revisions resulting from multi-Federal agency coordination using current available science and based on an eco-regional assessment. Also exempted are road construction or reconstruction in unroaded areas where roads are needed for public safety, to ensure access provided by statute, treaty, to address impending threats of flood, fire, or other catastrophic event, or pursuant to reserved or outstanding private rights. The final interim rule does not suspend or modify any existing permit, contract, or other instrument authorizing the occupancy and use of National Forest System land, and the rule specifically does not apply to road construction or reconstruction associated with the multi-Federal agency Yellowstone Pipeline project.

### Regulatory Impact

The final interim rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review and determined that it will not have a significant adverse effect on the economy. Under the final interim rule, some projects may not be implemented within their planned time-frames, particularly such activities as timber sales and ecosystem restoration projects that require road construction or reconstruction. While the interim rule is in effect, some projects may be canceled, some projects may proceed to the extent that no road construction will occur, and some may be postponed until adoption of a revised road management policy. Application of the revised policy to these projects may eventually result in modifications or elimination. A number of factors contribute to difficulties in estimating the costs and benefits associated with deferred land management projects. There may be considerable variation in site-specific factors, projects are in various stages of development, planning and analysis often take longer than initially anticipated, and some project work can be shifted to sites outside unroaded areas subject to suspension or road construction or reconstruction.

The Forest Service estimates that, nationwide, of the 5.4 billion board feet of timber planned for sale during the 18-month period of the final interim rule, the timber volume actually offered may be reduced by an estimated 170 to 260 million board feet as a result of this final interim rule. This is less than 5 percent of the planned sales. Although the actual amounts are difficult to estimate, reductions in timber-volume is expected to result in corresponding reductions in

employment and in payments-to-States. The reductions in timber-volume sold could affect between 270 to 420 direct timber jobs per year over 3 years. The estimated potential loss of payments-to-States is \$6 to \$8 million. However, the 1998 Supplemental Appropriations Rescission Act (Pub. L. 105-174) contains a provision requiring the Forest Service to compensate counties for loss of revenues that would have been provided from scheduled projects if the final interim rule were not implemented, or if substitute timber sales are not offered. The Forest Service expects that the Northern, Southern, and Intermountain Regions could experience a greater share of lost revenues than other geographic regions due to their higher dependence on unroaded areas for timber production. The losses could be mitigated by requirements of the 1998 Supplemental Appropriation Act. It is not possible to estimate the extent of the mitigation until implementation guidelines are established.

While project delays will have some adverse economic effects in the short-term, such effects will be offset by the benefits gained from the suspension. Those benefits will result from a reduced risk of erosion, landslides, and slope failure, all of which would threaten water quality in headwater streams within many of the included unroaded areas. The temporary suspension of road construction and reconstruction will also help prevent the introduction of noxious weed species, retain scenic and intrinsic values, and maintain important wildlife habitat and corridors. The transportation system analysis process will use the best available science and information about use trends during project planning. Resource managers and the public will better understand the possible effects of locating and constructing roads in unroaded areas.

Although it does result in costs associated with delays or deferrals in road construction or reconstruction, the suspension is limited to unroaded areas and will not extend beyond 18 months. The greatest impact of the final interim rule is the loss of an estimated \$6 to \$8 million annually, far less than the threshold of \$100 million, and it is not expected to otherwise adversely affect the economy, worker productivity, competition, jobs, the environment, public health or safety, or State or local governments.

Moreover, the final interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and it is hereby certified that the final interim rule will not have a

significant economic effect on a substantial number of small entities as defined by that Act.

#### No Takings Implications

This final interim rule has been analyzed in accordance with the principles and criteria described in Executive Order 12630 and it has been determined not to pose the risk of a taking of constitutionally protected private property. Because it applies only to Federal lands and explicitly ensures access to private property pursuant to statute, or to outstanding or reserved rights, no constitutionally protected private property rights will be affected.

#### Civil Justice Reform Act

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

#### Unfunded Mandates Reform

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 interim rule on state, local, and tribal governments and the private sector. This interim rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### Environmental Impacts

Based on the environmental assessment and comments received on the proposed interim rule, the Department has determined that there are no significant environmental impacts associated with adoption of this final interim rule. A copy of the environmental assessment and Finding of No Significant Impacts may be obtained on the World Wide Web at [www.fs.fed/news/roads/ea.html](http://www.fs.fed/news/roads/ea.html) or by writing the Director of Ecosystem Management Coordination, P.O. Box 96090, Washington, D.C. 20090, or by calling 202–205–0895.

#### Controlling Paperwork Burdens on the Public

This final interim rule does not contain any recordkeeping or reporting

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

#### List of Subjects in 36 CFR Part 212

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

Therefore, for reasons set out in the preamble, Part 212 of Title 36 of the Code of Federal Regulations is amended as follows:

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

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

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

#### PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

##### § 212.13 Temporary suspension of road construction in unroaded areas.

(a) *Definitions.* The special terms used in this section are defined as follows:

(1) *Road.* A vehicle travel way of over 50 inches wide. As used in this section, a road may be *classified* or *unclassified*.

(i) *Classified road.* A road that is constructed or maintained for long-term highway vehicle use. Classified roads may be public, private, or forest development.

(A) *Public road.* A road open to public travel that is under the jurisdiction of and maintained by a public authority such as States, counties, and local communities.

(B) *Private road.* A road under private ownership authorized by an easement to a private party, or a road which provides access pursuant to a reserved or private right.

(C) *Forest development road.* A road wholly or partially within or adjacent to a National Forest System boundary that is necessary for the protection, administration, and use of National Forest System lands, which the Forest Service has authorized and over which the agency maintains jurisdiction.

(ii) *Unclassified road.* A road that is not constructed, maintained, or intended for long-term highway use, such as, roads constructed for temporary access and other remnants of short-term use roads associated with fire suppression, timber harvest, and oil, gas, or mineral activities, as well as travel ways resulting from off-road vehicle use.

(2) *Unroaded area.* An area that does not contain classified roads.

(3) *RARE II.* The acronym for the second Roadless Area Review and Evaluation conducted by the Forest Service in 1979 that resulted in an inventory of roadless areas considered for potential wilderness designation.

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

(1) All remaining unroaded portions of RARE II inventoried roadless areas within the National Forest System, and all other remaining unroaded portions of roadless areas identified in a land and resource management plan prepared pursuant to the National Forest Management Act (16 U.S.C. 1604) that lie one-quarter mile or more beyond any existing classified road as of March 1, 1999;

(2) All National Forest System unroaded areas of more than 1,000 acres that are contiguous to remaining unroaded portions of RARE II inventoried roadless areas or contiguous to areas inventoried in land and resource management plans. For purposes of implementing this category of suspension, areas of 1,000 acres or more must have a common boundary of considerable length, provide important corridors for wildlife movement, or extend a unique ecological value of the established inventoried area;

(3) Roadless areas listed in Table 5.1 of the Southern Appalachian Area Assessment, Social/Cultural/Economic Technical Report, Report 4 of 5, July 1996;

(4) All National Forest System unroaded areas greater than 1,000 acres that are contiguous to congressionally-designated wilderness areas or that are contiguous to Federally-administered components of the National Wild and Scenic River System (16 U.S.C. 1274) which are classified as Wild; and

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

(c) *Exemptions.* Road construction and reconstruction projects are not subject to the suspension established by paragraph (b) of this section if they fall within one of the following unroaded areas:

(1) Unroaded areas within national forests that have a signed Record of Decision revising their land and resource management plans prepared pursuant to the National Forest Management Act (16 U.S.C. 1604) after January 1, 1996, and on which the

administrative appeals process under 36 CFR part 217 has been completed as of March 1, 1999;

(2) Unroaded areas within a National Forest that have a signed Record of Decision revising the land and resource management plan prepared pursuant to the National Forest Management Act (16 U.S.C. 1604) on which the administrative appeals process under 36 CFR part 217 has begun before or after March 1, 1999. (For these forests, any issues related to the construction of roads in unroaded areas will be addressed in the appeal decision, when appropriate.);

(3) Unroaded areas within the National Forest System encompassed by a land and resource management plan amendment or revision adopted before or during the period in which this section is effective, where such amendment or revision has been developed through multi-federal agency coordination using a science based ecological assessment;

(4) Road construction or reconstruction in unroaded areas where roads are needed for public safety, needed to ensure access provided by statute, treaty, or pursuant to reserved or outstanding rights; or needed to address an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property.

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

(2) This rule does not suspend or modify road construction or

reconstruction associated with the multi-federal agency Yellowstone Pipeline project.

(3) The suspensions established by paragraph (b) of this section remain in effect until the Forest Service, after giving appropriate public notice and opportunity to comment, adopts its revised road management policy, or 18 months from the effective date of this rule, whichever is first.

(e) *Effective date.* The suspension of road construction and reconstruction projects in unroaded areas as provided in paragraph (b) of this section is effective March 1, 1999.

Dated: February 2, 1999.

**Mike Dombeck,**

*Chief, Forest Service.*

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