

[3410-11-P]

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Parts 219 and 294**

**RIN 0596-AB85**

**National Forest System Land and Resource Management**

**Planning; Special Areas; Roadless Area Conservation**

**AGENCY:** Forest Service, USDA.

**ACTION:** Advance notice of proposed rulemaking; request for comment.

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**SUMMARY:** On May 4, the Secretary of Agriculture expressed the Administration's commitment to providing protection of roadless areas in the National Forest System. However, acknowledging concerns raised by local communities, tribes, and States impacted by the roadless area conservation rule published January 12, 2001, the Secretary also indicated that USDA would move forward with a responsible and balanced approach to re-examining the rule that fairly addressed those concerns.

This advance notice is intended to give the public the opportunity to comment on key issues that have been raised regarding the protection of roadless areas. These comments will help the Department determine the next steps in addressing the long-term protection and management of roadless values within the National Forest System.

**DATES:** Comments must be received in writing by [Insert date 60 days from date of publication in the **Federal Register**.]

**ADDRESSES:** Send comments in writing by mail to USDA-Forest Service -- CAT, Attention: Roadless ANPR Comments, P.O. Box 221090, Salt Lake City, Utah, 84122; via electronic mail to [roadless\\_anpr@fs.fed.us](mailto:roadless_anpr@fs.fed.us); or via facsimile to 1-801-296-4090, Attention: Roadless ANPR Comments. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Salt Lake City, Utah.

**FOR FURTHER INFORMATION CONTACT:** Jody Sutton at telephone number, 801-517-1023.

**SUPPLEMENTARY INFORMATION:** The Department is seeking public comment to help decide the next steps in providing long-term protection of roadless values.

On January 12, 2001, the Department issued a final rule accompanied by a final environmental impact statement (*Forest Service Roadless Area Conservation*, USDA Forest Service, November 2000) and Record of Decision (published as part of the final rule, 36 CFR Part 294, Special Areas; Roadless Area Conservation, on January 12, 2001 at 66 FR 3244). This rule changed the land management on 58.5 million acres of inventoried roadless areas in 120 national forests. Originally scheduled to take effect on March 12, the Secretary of Agriculture extended the effective date until May 12, 2001, to permit the new Administration to review the rule.

Previously, the long-standing process employed by the Forest Service for all resource management decisions relied on amendments and revisions to forest plans governed by the National Forest Management Act. This is a highly collaborative process involving local, regional, and national interests, using the best available forest-level information and maps.

Following publication of the final rule, a number of States, tribes, organizations, and citizens have raised a number of concerns. Many assert that the most appropriate process for evaluating and making long-term resource management direction -- including inventoried roadless area protection and management -- is through the local forest planning process, which is governed by the rules at 36 CFR 219. They also maintain that environmental analysis and resource management decisions affecting individual national forests should be based on local information and knowledge and the best available science rather than applying one standard uniformly to every inventoried roadless area, no matter the location.

The Department recognizes that inventoried roadless areas contain important environmental values that warrant protection. Appropriate protection and management should be crafted through an open and fair process and address the concerns of States, tribes, local communities, and others.

On May 4, 2001, the Secretary of Agriculture presented five principles on which the protection and management of roadless values should be based:

1. **Informed decisionmaking**, using reliable information and accurate mapping, and drawing on local expertise and experience through the local forest planning process;

2. **Working together**, by collaborating with States, tribes, local governments, organizations, and individuals through a fair and open process that is responsive to local input and information;
3. **Protecting forests** from the negative effects of severe wildfire and insect and disease outbreaks;
4. **Protecting communities, homes, and property** from the risk of severe wildfire or other risks existing on adjacent federal lands; and
5. **Protecting access to property**, by ensuring that States, tribes, and citizens owning property within inventoried roadless areas have access to that property as required by existing laws.

Eight lawsuits, involving seven states in six judicial districts of four federal circuits have been filed against the January 12, 2001, rule. Among the various issues raised these lawsuits share a common allegation that there was inadequate opportunity for public review and comment on the roadless rule.

On May 10, 2001, the Idaho District Court granted the preliminary injunction requested in *Kootenai Tribe of Idaho v. Veneman* and *State of Idaho v. U.S. Forest Service*, enjoining the Forest Service from implementing “all aspects of the Roadless Area Conservation Rule” as well as a section of the November 2000, forest planning rule that addresses the inventory and evaluation of roadless areas during the forest plan revision. The Court based its decision, in part, on concerns noted in its April 5, 2001, order related to the public review and comment

process; namely that, "... the Court conclusively finds that the comment period was grossly inadequate and thus deprived the public of any meaningful dialogue or input in to the process..." The Idaho District Court's decision to grant a preliminary injunction has been appealed and is now pending before the Ninth Circuit Court of Appeals.

On June 7, 2001, the Chief of the Forest Service issued a letter concerning interim protection of inventoried roadless areas, stating that "the Forest Service is committed to protecting and managing roadless areas as an important component of the National Forest System. The best way to achieve this objective is to ensure that we protect and sustain roadless values until they can be appropriately considered through forest planning." As part of that letter, the Chief indicated he would be issuing interim direction regarding timber harvest and road construction in inventoried roadless areas until a forest plan amendment or revision considers the long-term protection and management of unroaded portions of inventoried roadless areas.

The Forest Service has been evaluating roadless areas for nearly 30 years. Decisions about how to manage inventoried roadless areas have been difficult and controversial. In 1972, the Forest Service began a review of National Forest System roadless areas (the Roadless Area Review and Evaluation, subsequently called RARE I) to determine their suitability for inclusion in the National Wilderness Preservation System. A second review for wilderness consideration of roadless areas at the national scale was initiated in 1978 (RARE II). Upon review of the RARE II process, the Ninth Circuit Court of Appeals ruled in *California v. Block* 690 F. 2d. 753 (9<sup>th</sup> Cir. 1982) that the national evaluation of roadless area categorization was insufficiently site-specific and did not consider a sufficient range of alternatives.

Similarly, with respect to the January 12, 2001, rule, it is difficult, and perhaps infeasible to collect in a short timeframe, on a national scale, the local data needed to produce a sufficient EIS that analyzes all relevant information or that proposes an adequate range of alternatives. Moreover, within an extended timeframe, collecting and analyzing the information may unnecessarily duplicate the forest planning process.

The National Forest System is comprised of 192 million acres, which is 8.5 percent of the total land base of the United States. Within the National Forest System, there are currently 34.7 million acres of Wilderness, 58.5 million acres of inventoried roadless area, and 4.2 million acres of areas in Congressional designations other than Wilderness that are not included in the inventoried roadless areas, such as Wild and Scenic Rivers or National Recreation Areas. The remaining 94.9 million acres includes roaded and other non-inventoried unroaded areas. The January 12, 2001, roadless rule applies only to the inventoried roadless areas, as described in Volume 2 of the FEIS (maps). All of the 58.5 million acres of inventoried roadless areas were considered for their potential as wilderness during the RARE II process. For a variety of reasons, most were not recommended for designation as Wilderness. For instance, other areas in comparison had greater wilderness values or more public support, or other resource potentials were believed to outweigh the area's contribution to the national wilderness system. Most of these areas still retain their natural characteristics and vary in importance for primitive types of recreation, pristine scenic quality, important fish and wildlife habitats, contributions to biological diversity, watershed protection, other natural values, and, in some cases, resource development options.

Approximately 2.8 million acres (4.8 percent) of inventoried roadless areas have undergone resource development in the form of road construction, timber harvest, mining, or recreational development during the last 30 years. Of the total inventoried roadless area acreage, current forest plans assign 24.2 million acres to roadless or non-development management prescriptions and 34.3 million acres are in prescriptions that allow road construction. In the latter category, there are about 9 million acres of productive timberland, and about 25 million acres are not suitable for timber production.

The *Forest Service Roadless Area Conservation Final Environmental Impact Statement* (USDA Forest Service, November 2000, pages 2-25) estimated that less than two-tenths of one percent of the total of inventoried roadless areas (94,600 acres of 58.5 million acres) might be developed between 2000 and 2004.

### **How should Roadless Areas be managed?**

The Department is studying whether to amend the Roadless Area Conservation rule published January 12, 2001, or to provide further administrative protections. This is consistent with the Idaho Court finding that: “[b]y issuing the Preliminary Injunction the Court is not precluding or even proposing that the USDA not go forward with their study concerning the proposed amendments because the ultimate responsibility lies with the Government or its agencies and not with the Court.”

All interested parties are encouraged to express their views on inventoried roadless area management. In providing input, reviewers are especially asked to include responses to the following questions, which are framed around the key principles established by the Secretary and the issues raised by States, tribes, organizations, and individuals.

1. **Informed Decisionmaking.** What is the appropriate role of local forest planning as required by NFMA in evaluating protection and management of inventoried roadless areas?

2. **Working Together.** What is the best way for the Forest Service to work with the variety of States, tribes, local communities, other organizations, and individuals in a collaborative manner to ensure that concerns about roadless values are heard and addressed through a fair and open process?

3. **Protecting Forests.** How should inventoried roadless areas be managed to provide for healthy forests, including protection from severe wildfires and the buildup of hazardous fuels as well as to provide for the detection and prevention of insect and disease outbreaks?

4. **Protecting Communities, Homes, and Property.** How should communities and private property near inventoried roadless areas be protected from the risks associated with natural events, such as major wildfires that may occur on adjacent federal lands?

5. **Protecting Access to Property.** What is the best way to implement the laws that ensure States, tribes, organizations, and private citizens have reasonable access to property they own within inventoried roadless areas?

6. **Describing Values.** What are the characteristics, environmental values, social and economic considerations, and other factors the Forest Service should consider as it evaluates inventoried roadless areas?

**7. Describing Activities.** Are there specific activities that should be expressly prohibited or expressly allowed for inventoried roadless areas through Forest Plan revisions or amendments?

**8. Designating Areas.** Should inventoried roadless areas selected for future roadless protection through the local forest plan revision process be proposed to Congress for wilderness designation, or should they be maintained under a specific designation for roadless area management under the forest plan?

**9. Competing Values and Limited Resources.** How can the Forest Service work effectively with individuals and groups with strongly competing views, values, and beliefs in evaluating and managing public lands and resources, recognizing that the agency can not meet all of the desires of all of the parties?

**10. Other Concerns.** What other concerns, comments, or interests relating to the protection and management of inventoried roadless areas are important?

### **Regulatory Findings**

This advance notice of proposed rulemaking is being issued to obtain public comment regarding the protection and management of inventoried roadless areas. Because the Department is not proposing any specific approach for managing inventoried roadless areas, there are no regulatory findings associated with this notice. Comments received will help the Department determine the extent and scope of any future rulemaking.

## **Conclusion**

The Department of Agriculture is considering how to best proceed with long-term protection and management of inventoried roadless areas. Through this advance notice of proposed rulemaking, the Department is seeking public input as responses to a series of questions about inventoried roadless area protection and management. Public input and comment on management of inventoried roadless areas and their values will help inform the Department's consideration of how best to proceed with long-term protection and management of these areas. How the Department ultimately addresses protecting roadless values will depend on a number of factors. These include court decisions, public comments, and practical options for amending the current rule or EIS or both, using other administrative tools to implement inventoried roadless area protections.

/s/ Dale N. Bosworth  
DALE N. BOSWORTH  
Chief

7/3/01  
(date)