

Need for the Rule

Q1. Off-Highway Vehicles (OHVs) are an increasingly popular way to enjoy outdoor recreation on National Forest System (NFS) lands. Will the rule limit access to the national forests and grasslands? Why is there a change in Forest Service policy?

A. In the right places and under careful management, OHVs are a legitimate use of NFS lands. The final rule maintains public access to national forests and grasslands. By designating a system of roads, trails, and areas for motor vehicle use, the rule enhances opportunities for outdoor recreation and ensures that it remains sustainable over the long term. Previous Forest Service regulations were developed before the recent increases in OHV use and advances in OHV technology and are no longer adequate to respond to growing demand.

Q2. Some OHV use damages the environment and affects the experiences of other visitors. Why does the agency allow OHV use on national forests and grasslands at all?

A. National forests are established for use by the American public for multiple purposes. When properly managed, OHV use is a legitimate use of NFS lands. The final rule provides for careful management of OHV use so that environmental impacts can be limited and the use sustained over the long term.

Q3. How does the rule define Off Highway Vehicles? What classes of vehicles are subject to the rule?

A. The final rule defines an OHV as “any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.” Technological advances have enabled many classes of motor vehicles to travel off highways. The designation requirements in the final rule apply to all classes of motor vehicles (not just OHVs) except aircraft, watercraft, and over-snow vehicles.

The Designation Process

Q4. When will the rule become effective? How will roads, trails, and areas be designated?

A. The rule becomes effective 30 days after publication in the *Federal Register*. However, the rule itself does not open or close any road, trail, or area. The final rule establishes national guidance for making designation decisions at the local level. Each national forest or grassland will assess its current travel management direction, involve the public, and determine whether changes are needed. The rule does not require reconsideration of past decisions. Designations will be made with public involvement, coordination with federal, state, county and other local governmental entities and tribal governments, and appropriate environmental analysis and documentation. Once an administrative unit or a ranger district completes the designation process and publishes a motor vehicle use map, the rule prohibits motor vehicle use inconsistent with those designations.

Q5. How does travel management relate to land management planning? How will the agency comply with the National Environmental Policy Act (NEPA) in designating routes and areas for motor vehicle use?

A. Forest Land and Resource Management Plans contain suitability determinations and guidelines that inform decisions related to motor vehicle use. However, land management plans do not designate roads, trails, and areas for motor vehicle use. Designation of roads, trails, and areas is a local, project-level decision separate from the applicable plan decision, which must be based on appropriate site-specific environmental analysis and documentation under NEPA. Nothing in the final rule requires reconsideration of past travel management decisions authorizing motor vehicle use of specific roads, trails, and areas. The agency expects that the level and scope of NEPA analysis associated with route and area designation will depend on the local situation, including each unit’s history of travel planning and the particular issues involved.

Q6. Where cross-country motor vehicle use has been allowed in the past, repeated use has often created unplanned, user-created trails. How will these user-created routes be managed under the final rule?

A. Some user-created routes are well-sited, provide excellent opportunities for outdoor recreation, and would enhance the system of designated routes and areas. Other user-created routes are poorly located and are causing unacceptable environmental impacts. User-created routes are best evaluated at the local level, by officials with first-hand knowledge of the particular circumstances, uses, and environmental impacts involved, working closely with local governments, users, and other members of the public. The agency anticipates that some user-created routes will be designated for motor

vehicle use and become part of the managed system of NFS roads and NFS trails, after site-specific evaluation and public involvement. Those not designated will be closed to motor vehicle use.

Q7. How will the public be involved in travel management decisions?

A. The final rule requires the Forest Service to provide for public participation in the process of designating roads, trails, and areas for motor vehicle use. Designation decisions will be made by forest supervisors or district rangers working closely with local communities, motorized and non-motorized recreation groups, and other interested parties. Local units will notify the public of opportunities to participate in travel planning. The Forest Service supports collaborative travel planning involving all interested parties and a wide range of interests.

Q8. Are designations of roads, trails and areas for motor vehicle use permanent?

A. No. The final rule includes a process for revising designations (36 CFR 212.54). The agency expects that over time new roads and trails will be constructed and added to the designated system. Other existing roads and trails may be closed and removed from the designated system in response to environmental impacts or changing travel management needs. Revision of designations will include public involvement and appropriate environmental analysis.

Special Cases

Q9. Are certain uses of motor vehicles exempted from the general prohibition on motor vehicle use off designated roads and trails and outside designated areas?

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

The final rule also allows the responsible official to include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping and retrieval of a big game animal by an individual who has legally taken that animal.

Q10. How does the rule affect the use of snowmobiles and other over-snow vehicles on national forests and grasslands?

A. The rule does not require units to designate roads, trails, and areas for over-snow travel. The final rule retains current authorities to manage use of NFS lands by over-snow vehicles, which may be allowed, restricted or prohibited at the local level. Over-snow vehicles result in different impacts to natural resources than motor vehicles traveling over the ground. It may therefore be appropriate for snowmobiles and other over-snow vehicles to travel cross-country in some places where other vehicles are restricted to designated roads, trails, and areas. The final rule expands this exemption to include other over-snow vehicles in addition to snowmobiles.

Q11. Does the rule affect use of state highways or county roads crossing NFS lands?

A. No. Public roads authorized by a legally documented right-of-way held by a state, county, or other local public road authority are not subject to designation under this rule.

Q12. Does the rule take away valid existing rights held by federally recognized tribal governments, counties, or private individuals, including treaty rights, other statutory rights, or private rights-of-way?

A. No. Responsible officials will recognize valid existing rights in making designations at the local level.

Q13. How does the rule address use of motor vehicles for timber harvesting, grazing, mining, ski areas, utility line maintenance, firewood collection, and other permitted uses of national forests and grasslands?

A. The final rule provides an exemption from the prohibition on motor vehicle use off designated roads and trails and outside designated areas for use specifically authorized under a written authorization issued under federal law or regulation. Motor vehicles may be used off the designated system for the above purposes when specifically authorized under a contract, permit, operating plan, or other written instrument issued under federal law or regulation.

Q14. How does the rule affect access to national forests and grasslands for people with disabilities?

A. Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all NFS lands that are open to foot travel and are specifically exempted from the definition of motor vehicle in §212.1 of the final rule, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest Service's travel management program (7 CFR 15e.103).

Implementation

Q15. How will the Forest Service pay for travel planning? Will other Forest Service programs be cut?

A. The Forest Service expects to complete route and area designation on all national forests by 2009, using available funds. A designated system of motor vehicle routes will benefit multiple agency programs, and funding sources will depend on the specific local circumstances. Travel planning is ongoing today on many national forests. The new rule provides a consistent national framework for these efforts. Addressing urgent needs in unmanaged recreation will sometimes delay other agency work, but this will be a local situation. Failure to complete travel planning would be even more costly, both in agency expenditures and in terms of impacts to recreational visitors and the environment.

Q16. Many respondents suggested including an enforceable deadline in the final rule for route and area designation. Why didn't the Forest Service adopt this suggestion? How will the agency assure that designation gets done?

A. An enforceable regulatory deadline would subject the Forest Service to legal challenge if, despite its best efforts (perhaps due to the controversy involved in the process), the agency is unable to meet the deadline. Cooperative work by responsible officials with state, tribal, county, and municipal governments, user groups, and other interested parties offers the best hope for long-term resolution of issues involving recreational use, including use of motor vehicles. An inflexible deadline can make collaborative solutions more difficult. However, the Forest Service shares a strong interest in completing route and area designation quickly. The Chief expects route and area designation to be completed on all national forests and grasslands by 2009.

Q17. The final rule does not require a complete inventory of existing user-created routes. How will the Forest Service give fair consideration to user-created routes without a complete inventory?

A. User-created routes developed without planning, design, authorization, or study by the agency. Some are well-located. Others are not. Still others involve multiple braided routes in a single corridor. A complete inventory of all these routes would be very time-consuming and expensive and could delay completion of route and area designation. Local Forest Service managers will use public involvement to help identify appropriate user-created routes for consideration and evaluation in the designation process.

Q18. Will the agency authorize mixing ATVs and other non-highway-legal vehicles on roads open to full-sized vehicles? How will the Forest Service address state laws allowing or restricting mixed use?

A. NFS roads can provide connections between OHV trails and offer important opportunities for OHV recreation. Some NFS roads receive only limited traffic by highway-legal vehicles. The Forest Service anticipates designating some roads or sections of roads as open to both highway-legal vehicles and non-highway-legal OHVs. Designating roads for this mixed use involves safety considerations such as traffic composition, traffic volume, and road standards. Decisions affecting safety must be informed by engineering judgment. Traffic on roads is subject to state traffic laws except when in conflict with designations established under this final rule.

Q19. On many national forests, designation may not be complete for a few years. What are the rules for OHVs while designation decisions are pending?

A. Until an administrative unit or a ranger district completes the designation process, current travel management policies, restrictions, and orders remain in effect. Forest supervisors may continue to issue travel management orders pursuant to

part 261, subpart B, and impose temporary, emergency closures based on a determination of considerable adverse effects pursuant to §212.52(b)(2) of the final rule.

Q20. With limited law enforcement resources, how does the Forest Service expect to be able to implement a new regulation and manage OHV use?

A. Forest Service law enforcement personnel play a critical role in ensuring compliance with laws and regulations, protecting public safety, and protecting National Forest System resources. The Forest Service also maintains cooperative relationships with many state and local law enforcement agencies that provide mutual support across jurisdictional boundaries. The new rule provides a consistent framework for enforcing travel management regulations, including provision for a motor vehicle use map. Most OHV users want to do the right thing, and the agency believes that proper education and engineering (e.g., road and trail design, signing) can focus law enforcement resources on those few users who intend to violate the law.

Process Questions

Q21. Noise is one of the most frequently cited impacts of OHV use on other visitors. Does the Forest Service plan on regulating vehicle noise levels?

A. Respondents representing a wide range of interests, including OHV user groups and manufacturers, have asked the Forest Service to consider establishing a maximum noise level for OHVs operating on NFS lands. Some states already regulate noise, and standards differ from state to state. No noise regulation is included in this final rule, but the agency anticipates addressing this issue in future rulemaking.

Q22. Many comments addressed the relationship between the proposed rule and Executive Order (E.O.) 11644. Is the final rule consistent with the E.O.? Does it weaken mandatory language in the E.O.?

A. The final rule implements and is fully consistent with E.O. 11644 ("Use of Off-Road Vehicles on the Public Lands" February 8, 1972), as amended by E.O. 11989 ("Off-Road Vehicles on Public Lands" May 24, 1977). The final rule is designed to assist agency field units in achieving the purposes of the E.O.s. With respect to temporary, emergency closures and criteria for designation, the preamble to the final rule provides additional discussion of how the final rule ensures that the intent of the E.O.s is achieved.

Local Process

Q23. What is the timeline for implementing the Rule on the Okanogan and Wenatchee National Forests?

A. We will begin with an initial round of public meetings in June 2006. After those meetings, Forest specialists will be analyzing, in 2007, our existing travel system (roads and trails), along with the routes we hear about from the public. They will be analyzing which routes make sense from a user's standpoint, what we can afford to maintain, and what resource impacts might be associated with all those routes. Beginning in early 2008, we will complete a NEPA (National Environmental Policy Act) process to analyze those roads that could be designated under the Rule. The outcome of the NEPA analysis will determine which motorized routes are designated in the **Motor Vehicle Use Map**, tentatively scheduled to be available in late 2009.

Q24. Who can I contact for more information?

A. You may contact any of the Ranger Districts on the Forest. Individual Ranger District contact names and telephone numbers are listed on our Forest websites, below. These websites have additional information about the process, our timeline, and links to further National information sources.

Okanogan National Forest: <http://www.fs.fed.us/r6/oka>

Wenatchee National Forest: <http://www.fs.fed.us/r6/wen>

National Page: <http://www.fs.fed.us/recreation/programs/ohv/index.shtml>

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