

[3410-11-P]

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Parts 212, 251, 261, and 295**

**Travel Management; Designated Routes and Areas for Motor Vehicle Use**

**RIN 0596-AC11**

**AGENCY:** USDA, Forest Service.

**ACTION:** Proposed rule; request for comment.

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**SUMMARY:** The Forest Service proposes to amend regulations regarding travel management on National Forest System lands to clarify policy related to motor vehicle use, including the use of off-highway vehicles. The proposed rule would require the establishment of a system of roads, trails, and areas designated for motor vehicle use. The proposed rule also would prohibit the use of motor vehicles off the designated system, as well as motor vehicle use on the system that is not consistent with the classes of motor vehicles and, if applicable, the time of year, designated for use. The establishment and clear identification of a transportation and use system for motor vehicles on each National Forest would enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The proposed rule also would conform agency rules to the provisions of

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

**DATES:** Comments must be received in writing by [insert date 60 days from date of publication in the **FEDERAL REGISTER**].

**ADDRESSES:** Send written comments to Proposed Rule for Designated Routes and Areas for Motor Vehicle Use, c/o Content Analysis Team, P.O. Box 221150, Salt Lake City, UT 84122-1150; by e-mail to *trvman@fs.fed.us*; or by facsimile to (801) 517-1014. Comments also may be submitted by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov*.

All comments, including names and addresses when provided, will be placed in the rulemaking record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the office of the Content Analysis Team, 550 West Amelia Earhart Drive, Building 1, Suite 100, Salt Lake City, UT 84116, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead at (801) 517-1020 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Sharon Metzler, Recreation and Heritage Staff, (202) 205-0931, or Glenn Casamassa, Legislative Affairs Staff, (202) 205-1216.

**SUPPLEMENTARY INFORMATION:**

**Background and Need for the Rule**

Providing for the long-term sustainable use of National Forest System lands and resources is essential to maintaining the quality of the recreation experience in the National Forests. Motor vehicle use is an appropriate way to recreate in the National Forests, access hunting and fishing opportunities, sightsee, and otherwise enjoy recreational experiences on National Forest System lands. The growing use of motor vehicles, however, is prompting the Forest Service to revise its management of this use so that the agency can continue to provide opportunities desired by the public, while sustaining National Forest System lands and resources.

Off-road motor vehicle use for public enjoyment of the National Forest System has increased in recent years. Motor vehicle use off roads in the National Forest System may involve any motor vehicle that can travel off road, such as a sport utility vehicle and an off-highway vehicle (OHV). An OHV is a motor vehicle that is designed or retrofitted primarily for recreational use off road, including minibikes, amphibious vehicles, snowmobiles, off-highway motorcycles, go-carts, motorized trail bikes, and dune buggies. In the 1960s and 1970s, the opportunities that people enjoyed to hike, camp, and sightsee on the National Forests expanded to include the opportunities to operate motor vehicles across National Forest System lands, which provided access to areas previously accessible only on foot or by horse. As off-road motor vehicle use increased, questions arose about the current and potential impacts arising from operation of motor vehicles on soil, water, vegetation, fish and wildlife, National Forest visitors, and cultural and historic resources.

Executive Order (E.O.) 11644 (February 8, 1972), “Use of Off-Road Vehicles on the Public Lands,” as amended by E.O. 11989 (May 24, 1977), addresses these concerns. Section 3(a) of E.O. 11644 directs the Forest Service to promulgate regulations that provide for designation of trails and areas for off-road motor vehicle use. Pursuant to section 3(a) of E.O. 11644, the regulations must require that designation of these trails and areas be based upon protection of National Forest System resources, promotion of public safety, and minimization of conflicts among uses of National Forest System lands. Specifically, section 3(a) of E.O. 11644 directs the agency to develop and issue regulations “to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted . . . .” Section 9(b) was added to E.O. 11644 when it was amended by E.O. 11989. Section 9(b) specifically authorizes the Forest Service to adopt the policy to designate those areas or trails that are suitable for motor vehicle use and to close all other areas and trails to that use.

Forest Service rules at Title 36, Code of Federal Regulations, part 295 (36 CFR part 295) codify the requirements in E.O. 11644 and E.O. 11989 by providing for administrative designation of areas and trails on National Forest System lands where motor vehicle use is allowed, restricted, or prohibited. National Forest managers develop travel plans that are consistent with the regulations and the intent of the E.O. 11644 and E.O. 11989, while meeting public demand for recreation and resource protection needs. In crafting their travel plans, many National Forest managers keep the Forests open to motor vehicle use unless there is a pressing reason to close them. These managers

attempt to maximize the opportunities for recreational choice, while minimizing resource damage in the most sensitive areas of National Forest System lands. National Forests where this approach has been adopted are referred to as “open unless posted closed.” This approach has worked when the amount of off-road motor vehicle use is minimal and occasional cross-country vehicle tracks are of less concern than other impacts to National Forest System lands and resources.

However, between 1982 and 2000, the number of people who drive motor vehicles off road increased over 109 percent in the United States (“Outdoor Recreation for 21<sup>st</sup> Century America: A Report to the Nation, The National Survey on Recreation and the Environment,” p. 37 (H. Cordell, 2004)). On many National Forests, the magnitude and intensity of motor vehicle capability and use increased to the point where the intent of E.O. 11644 and E.O. 11989 could not be met while still allowing the full array of opportunities for motor vehicle use. On these National Forests, the scenario of an occasional cross-country vehicle track has evolved into situations where areas rutted by motor vehicle use have become more common. Soil depth, water quality, and wildlife habitat are being impacted, and motor vehicle use is beginning to affect the condition of these National Forests.

Studies conducted by the Forest Service have raised these same issues. For example, the “Draft Environmental Impact Statement for Cross-Country Travel for OHVs, Kaibab, Coconino, Prescott, Tonto, and Apache-Sitgreaves National Forests” (66 FR 17136, March 29, 2001) identified environmental impacts associated with cross-country wheeled motor vehicle use, including the spread of noxious weeds along roads

and trails; erosion at rates that permanently affect the productivity of National Forest System lands; damage to cultural or historical sites; conflicts among uses of National Forest System lands; and disturbance of wildlife and wildlife habitat.

In addition, the Forest Service and the Grand Canyon Trust each inventoried roads and trails in one area of the Coconino National Forest. The inventories revealed that National Forest users had created a large number of roads and trails over a 10-year period. The two inventories also showed a significant population of noxious weeds associated with all roads.

Members of the public, the Arizona Game and Fish Department, and the Arizona Parks and Recreation Department have also shared their concerns with managers from these five National Forests about sound and site degradation associated with certain OHV use on National Forest System lands. Public surveys of Arizona residents conducted by Arizona State Parks for the preparation of long-range comprehensive plans for the Arizona State Trails Program and the Arizona State Off-Highway Vehicle Recreation Program showed that 82 percent of motorized trail users and 81 percent of non-motorized trail users in Arizona expressed concerns about conflicts with other uses (“The Arizona Trails 2000: State Motorized and Nonmotorized Trails Plan,” Nov. 1999).

In January 2001, the Forest Service and the Bureau of Land Management completed an environmental impact statement regarding motor vehicle use on Federal lands the agencies administer in Montana, North Dakota, and portions of South Dakota. The Forest Service selected alternative five in this environmental impact statement, which prohibits cross-country wheeled motor vehicle use throughout the analysis area.

In a summary of the environmental effects of the selected alternative from the Forest Service's record of decision, the agency identified benefits associated with restricting cross-country wheeled motor vehicle use. These benefits included substantial reduction of use conflicts associated with cross-country travel; improvement of motorized and non-motorized recreation experiences; substantial reduction in impairment of visual aesthetics; and enhanced protection of habitat and aquatic, soil, and air resources in the analysis area ("Off-Highway Vehicle Environmental Impact Statement and Proposed Plan Amendment for Montana, North Dakota and Portions of South Dakota"; the notice of the draft environmental impact statement was published in 64 FR 57120, October 22, 1999, and the final environmental impact statement was issued January 4, 2001).

Cross-country wheeled motor vehicle use was also reviewed in an environmental analysis conducted by the National Forests in Florida on the Osceola National Forest in 2004 to identify which roads and trails would be designated for use by motor vehicles and bicycles in certain restricted areas. Benefits of designated roads and trails included less interruption of natural processes, such as fire; improvement of the ecological and hydrological functions in and around riparian areas, wetlands, and streams; and increased public safety ("Environmental Assessment for Access Designation in Restricted Areas, Osceola National Forest, Baker and Columbia Counties, Florida," 2004).

Some travel plans, such as the travel plans for the Hoosier, White Mountain, and Monongahela National Forests, were changed to enhance management of motor vehicle use within the boundaries of these National Forests. Some National Forests have a system of motor vehicle use on established or designated routes and areas, while others

do not. As a result, the Forest Service does not have a clear, consistent, internal policy regarding motor vehicle use on National Forest System lands.

Since E.O. 11644 and E.O. 11989 were issued, impressive advances in motor vehicle technology have been made. The capability of motor vehicles to travel off flat, firm roads has significantly increased. Whole new classes of vehicles that can travel off road, such as all-terrain vehicles (ATVs) and sport utility vehicles (SUVs), are widely used and growing in popularity. For example, from 1997 to 2001, the number of ATVs in use increased by almost 40 percent, the number of ATV drivers grew by almost 36 percent, and the number of ATV driving hours increased by 50 percent (statement made by Dr. Edward J. Heiden of Heiden Associates, at a Consumer Product Safety Commission Public Field Hearing, June 5, 2003).

The line between street vehicle and OHV has blurred. Vehicles created for specialized uses off road, such as military vehicles, are now marketed and purchased as family cars. An increasing number of States have statutes governing OHV use, including vehicle registration requirements, limits on operator age, training and licensing requirements, equipment requirements, sound restrictions, and safety requirements.

While motor vehicle recreation is increasing on National Forests, so are many other recreational activities. From 1982 to 2000, the number of people in the United States participating in fishing increased 24 percent, and the number of people participating in hunting increased 21 percent (“Outdoor Recreation for 21<sup>st</sup> Century America: A Report to the Nation, The National Survey on Recreation and the Environment,” p. 41 (H. Cordell, 2004)). Many recreationists have found that motor



vehicle use enhances their enjoyment of these other activities. For example, motor vehicles help hunters and anglers access remote areas and lakes in National Forests, and enable the public after a short ride to enjoy rare vistas that formerly could be reached only after a long hike or horseback ride. In many National Forests, most off-road motor vehicle use is conducted in support of other recreational activities, rather than as the central part of a recreational experience. A recent survey conducted in Idaho showed that more than half (53.1 percent) of resident hunters surveyed owned an ATV or off-highway motorcycle (OHM), and that 47.5 percent of hunters surveyed used an ATV or OHM for hunting; the percentage of hunters never using an ATV decreased from 83 percent in 1988 to 35 percent in 2000 (“Understanding ATV/OHM and Hunting Interactions in Idaho: A Survey of ATV/OHM Registrants and Licensed Hunters” (2002), as discussed in “Idaho 2003-2007 Statewide Comprehensive Outdoor Recreation and Tourism Plan, Idaho Department of Recreation,” p. 156 (2003)). OHV use is a growing and important recreational activity on National Forest System lands.

Recreational use not associated with motor vehicle travel has increased as well in the United States. The number of people viewing or photographing birds has increased over 231 percent, the number of people day hiking has increased 193 percent, and the number of people backpacking has increased 182 percent since the early 1980s (“Outdoor Recreation for 21<sup>st</sup> Century America: A Report to the Nation, The National Survey on Recreation and the Environment,” p. 37 (H. Cordell, 2004)). The challenge for recreation management is to address the needs and conflicting expectations of millions of people who use and enjoy the National Forests, while providing for the long-term sustainability

of National Forest System lands. Increased pressure from growing numbers of people, coupled with advances in recreation technology, will continue to challenge Federal land management agencies, State and local governments, and private landowners. As demand for a greater variety of recreation uses increases, managing an appropriate balance between motor vehicle use and nonmotorized recreational activities has become an important priority.

Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. Recreation visitors have high expectations for National Forest System lands in terms of access, settings, experiences, facilities, and services, and they are likely to expect even more in the future. Recreation is one of the fastest growing uses on the National Forests and National Grasslands. Accordingly, the agency needs to strike an appropriate balance in managing all types of recreational activities. As part of this effort, the Forest Service is proposing revisions to 36 CFR parts 212, 251, 261, and 295 to provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands designated for motor vehicle use. A designated system established with public involvement would enhance public enjoyment of the National Forests, while maintaining other important values and uses on National Forest System lands.

The designated system would be broader in scope than E.O. 11644 and E.O. 11989 and 36 CFR part 295 because the system would apply to motor vehicle use on

National Forest System roads, as well as off National Forest System roads. The designated system also would apply to all classes of motor vehicles, including OHVs, unless exempted. This approach would allow the agency to address different types of uses on National Forest System roads. In addition, this approach would allow the agency to include in the designations for National Forest System trails and areas on National Forest System lands any classes of motor vehicles that can travel off road.

### **Section-by-Section Analysis of Proposed Rule Changes**

#### ***Revisions to Part 212–Travel Management***

The provisions governing designation of roads, trails, and areas would be included in part 212 as a component of travel management. The current heading of part 212, “Administration of the Forest Transportation System,” would be changed to “Travel Management.” Part 212 would be divided: subpart A would contain the provisions currently in part 212 governing administration of the forest transportation system; subpart B would contain new provisions governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use and also incorporating provisions previously found at part 295; and subpart C would contain the provisions governing snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands. The proposed rule would remove the current part 295, as its provisions, with the exception of §295.6, requiring annual review of motor vehicle management plans and temporary designations, would be integrated into part 212, subpart B, of the proposed rule.

This approach would allow the agency to create a more comprehensive system of travel management without compromising the provisions of the regulations governing the forest transportation system, which address facilities, but not areas, and which are more concerned with construction, maintenance, and management of the forest transportation system than management of uses on National Forest System roads, National Forest System trails, and areas on National Forest System lands. The agency is also proposing minor, nonsubstantive revisions to part 212.

### **Part 212, New Subpart A—Administration of the Forest Transportation System**

*Table of contents for part 212.* The table of contents for part 212 would be revised to set out the sections in the new subparts A, B, and C. A technical revision also would be made to change the heading of §212.2 from “Forest development transportation program” to “Forest transportation program.”

*Section 212.1 Definitions.* This section contains definitions applicable to subparts A, B, and C. Some of the provisions from §212.2(a) would be incorporated into a new definition for forest transportation atlas. “Forest transportation atlas” would be defined as a display of the system of roads, trails, and airfields of an administrative unit of the National Forest System that consists of the geospatial, tabular, and other data that support resource management activities and analysis associated with resource management goals in the applicable land management plan.

To accommodate the new system of designated routes and areas, the proposed rule would add definitions for the following terms: administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle;

National Forest System road; National Forest System trail; road or trail under Forest Service jurisdiction, snowmobile; temporary road or trail; trail; travel management atlas; unauthorized or unclassified road or trail; and use map.

Definitions for trail and categories of trails are needed to integrate designation of roads, trails, and areas for motor vehicle use into travel management in part 212. The definition for a trail in the proposed rule would complement the definition for a road in the current part 212. Since a road is defined as a motor vehicle route over 50 inches wide, unless identified and managed as a trail, a trail would be defined as a route 50 inches or less in width, or a route over 50 inches wide that is identified and managed as a trail.

The same categories of roads are also used for trails, and they are combined in the same definition, i.e., forest road or trail, temporary road or trail, and unauthorized or unclassified road or trail. A forest road or trail would be defined as a road or trail that is wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources, and that is reflected in a forest transportation atlas. A temporary road or trail would be defined as a road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas. An unauthorized or unclassified road or trail would be defined as a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

The definitions for classified road, temporary road, and unclassified road in the current part 212 would be replaced with definitions for forest road, temporary road, and unauthorized or unclassified road in the proposed rule. The definition for forest road in the proposed rule parallels the definition for classified road in the current rule and comes from 23 U.S.C. 101. The definition for temporary road in the proposed rule parallels the definition for temporary road in the current rule. The term “unauthorized or unclassified road” more clearly captures the relationship among the three categories of roads than the term “unclassified road.” Likewise, the definition for unauthorized or unclassified road (any road other than a forest road or a temporary road) more clearly shows how the three categories of roads relate to each other than the definition for unclassified road.

Designated roads and trails are National Forest System roads and trails. National Forest System roads and trails that are not designated for motor vehicle use under this proposed rule could still be designated for other purposes, such as hiking, mountain biking, or equestrian use. Designated uses would be reflected on a use map.

Unplanned or user-created roads and trails on National Forest System lands that have resulted from cross-country motor vehicle use would be identified through public involvement and would be considered in the designation process under the proposed rule. These routes would not necessarily be inventoried and included in a forest transportation atlas. If unplanned or user-created routes are not inventoried and included in a forest transportation atlas, they would meet the definition for unauthorized or unclassified road or trail (a road or trail other than a forest road or trail or a temporary road or trail) under the proposed rule. Alternatively, these routes could be designated for motor vehicle use

pursuant to §212.51 of the proposed rule or for other purposes. If so, these routes would become National Forest System roads or National Forest System trails and would be included in a forest transportation atlas and reflected on a use map.

“Administrative unit” would be defined as a National Forest, a National Grassland, Land Between the Lakes, Lake Tahoe Basin Management Unit, or Midewin National Tallgrass Prairie.

“Area” would be defined as a discrete, specifically delineated space that is smaller than a ranger district. All references to area in the proposed regulations would be modified by adding “on National Forest System lands.” Thus, only areas on National Forest System lands would be designated under the proposed rule.

Areas designated for motor vehicle use are not intended to be large or numerous. The characteristics of an area, such as its size and topography, are not enumerated in the definition in the proposed rule to give the agency the flexibility to designate areas for motor vehicle use as appropriate, given the variety of natural features, resources, and uses on National Forest System lands. Generally, an area designated for motor vehicle use would have natural resource characteristics (like sand dunes) that are suitable for motor vehicle use, or would be so significantly altered by past actions (like old quarry sites) that motor vehicle use might be appropriate. Once an area is designated, it would be specifically delineated on a use map. In addition, the characteristics of an area are not specified in the definition to give the agency flexibility with respect to allowing, restricting, or prohibiting snowmobile use.

“Designated road, trail, or area” would be defined as a National Forest System road, National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to §212.51 in a use map contained in a travel management atlas. Only National Forest System roads, National Forest System trails, and areas on National Forest System lands would be designated for motor vehicle use under the proposed rule.

“Forest transportation system” would be defined as the system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands that are included in a forest transportation atlas.

“National Forest System road,” “National Forest System trail,” and “area” are defined in the proposed rule. Pursuant to 23 U.S.C. 101, National Forest System road and National Forest System trail would be defined as a forest road or trail under the jurisdiction of the Forest Service. Thus, any road or trail that is not a forest road or trail under the jurisdiction of the Forest Service would not be designated for motor vehicle use under the proposed rule.

“Road or trail under Forest Service jurisdiction” is defined in the proposed rule. The definition for road or trail under Forest Service jurisdiction is consistent with the terminology in 23 U.S.C. 101. For purposes only of the definition of National Forest System road and National Forest System trail, a road or trail under the jurisdiction of the Forest Service would be defined in terms of control over the road or trail. Thus, a road or trail that is authorized by a legally documented right-of-way held by a State, County, or local public road authority would not be designated for motor vehicle use under the



proposed rule because that road or trail is not under the jurisdiction of the Forest Service. State law would govern motor vehicle use on that type of right-of-way. Likewise, a road or trail which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477, would not be designated for motor vehicle use under the proposed rule.

The definition for motor vehicle in the proposed rule builds on the definition for that term currently in 36 CFR 261.2 by excluding any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area. This exclusion of any wheelchair or mobility device would prevent violations of civil rights laws that could occur if restrictions on motor vehicle use were to be applied to motorized wheelchairs or other mobility devices. The definition for wheelchair or mobility device comes from Title V, section 507c, of the Americans With Disabilities Act (42 U.S.C. 12207(c)(2)).

The proposed rule would add a definition for snowmobile because, as explained in the description of proposed §§212.51 and 212.81, snowmobiles would be exempted from the mandatory designations in 36 CFR 212.51 and would be addressed separately in 36 CFR 212.81. The proposed rule defines a snowmobile as a motor vehicle that is designed exclusively for use over snow and that runs on a track or tracks and/or a ski or skis. This definition would not include motor vehicles such as SUVs, ATVs, or other

wheeled vehicles that can be outfitted with tracks that turn them into vehicles that can travel over snow because these vehicles are not designed exclusively for use over snow.

The proposed rule would add a definition for a use map. A use map would reflect designated roads, trails, and areas on an administrative unit or a ranger district of the National Forest System and would be part of a travel management atlas. A travel management atlas would be defined as an atlas that includes a forest transportation atlas and a use map.

*Section 212.2 Forest transportation program.* The proposed rule would revise §212.2 by reorganizing the current paragraph (a) into two paragraphs: (a) setting requirements regarding the travel management atlas, which would be developed and maintained for each administrative unit of the National Forest System and made available to the public at the headquarters of that administrative unit; and (b) describing a forest transportation atlas. The current paragraph (b) setting out requirements for the program of work for the forest transportation system would be redesignated as paragraph (c).

*Section 212.5 Road system management.* The proposed rule would revise §212.5(a)(1) concerning the applicability of State traffic laws to traffic on roads by adding “designations established under subpart B of this part or” before “the rules at 36 CFR part 261” to make clear that designations of roads for motor vehicle use established under State law would not be incorporated pursuant to §212.5(a)(1) to the extent they conflict with designations established under §212.51. These revisions would prevent incorporation of State laws that designate roads, trails, or areas for motor vehicle use that conflict with designations established under §212.51 of the proposed rule.

The proposed rule also would make technical changes to §212.5. In the second sentence of §212.5(a)(2)(ii), “tailers” would be changed to “trailers.” The heading for §212.5(c) would be changed from “Cost recovery on forest service roads” to “Cost recovery on National Forest System roads.” The heading for §212.5(d) would be changed from “Maintenance and reconstruction of forest service roads by users” to “Maintenance and reconstruction of National Forest System roads by users.”

*Section 212.7 Access procurement by the United States.* The proposed rule would make a technical change to §212.7(a) by changing the heading for that provision from “Existing or proposed forest development roads which are or will be part of a system of a State, county, or other local subdivision” to “Existing or proposed National Forest System roads which are or will be part of a system of a State, county, or other local subdivision.”

*Section 212.10 Maximum economy National Forest System roads.* The proposed rule would make a technical change to paragraph (d) of §212.10. The proposed rule would add the phrase, “consistent with applicable environmental laws and regulations,” to refer to the standard for a road that is sufficient for harvesting and removal of National Forest timber and other products, in order to make §212.10(d) consistent with its authorizing statute, 16 U.S.C. 535a(e).

*Section 212.20 National Forest trail system operation.* The proposed rule would remove and reserve the current §212.20 concerning the National Forest trail system. Management of National Forest System trails would be addressed in the new subpart B of part 212.

**Part 212, New Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use**

*§212.50 Purpose and scope.* The new subpart B of part 212 would provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. Once these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, that is not in accordance with these designations would be prohibited pursuant to 36 CFR 261.13 of the proposed rule. Thus, motor vehicle use off designated roads and trails and outside of designated areas, or cross-country travel, would be prohibited pursuant to 36 CFR 261.13 of the proposed rule.

*§212.51 Designation of roads, trails, and areas.* To address the problems associated with motor vehicle use on routes and off routes in a more comprehensive, systemic manner, this provision would require that motor vehicle use on National Forest System roads, National Forest System trails, and areas on National Forest System lands be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or ranger districts of the National Forest System, provided that the following vehicles and uses would be exempted from these designations:

- (a) Aircraft;
- (b) Watercraft;
- (c) Snowmobiles;
- (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; and
- (h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

All but one of these exemptions, the exemption for snowmobiles, are found in E.O. 11644, E.O. 11989, and 36 CFR part 295. Snowmobiles would be exempted from the mandatory designation scheme because a snowmobile traveling over snow results in different and less severe impacts to natural resource values than wheeled motor vehicles traveling over the ground. Consequently, in contrast to wheeled motor vehicles, it may be appropriate for snowmobiles to travel off route.

Nevertheless, since there are impacts associated with snowmobile use, and since snowmobiles are included in the definition of off-road vehicle in E.O. 11644 and E.O. 11989, the agency is preserving the authority currently in part 295 to allow, restrict, or prohibit snowmobile use on a discretionary basis in §212.80 of the proposed rule, as discussed in the description of that section.

The proposed rule would give responsible officials the flexibility to designate roads, trails, and areas for motor vehicle use in one step or several stages. Specifically, responsible officials could designate motor vehicle use only in certain areas and on existing routes in an administrative unit or ranger district, that is, on National Forest

System roads and trails reflected in the applicable forest transportation atlas and on user-created routes identified by the public and the Forest Service in the designation process. This approach would expedite implementation of a prohibition on cross-country motor vehicle use, other than in designated areas. Revision to the initial designations could effectuate a longer-term vision for motor vehicle management. Alternatively, the proposed rule would give responsible officials the flexibility to implement a longer-term vision for motor vehicle management in one step, by evaluating whether user-created routes should become National Forest System roads or National Forest System trails, be included in a forest transportation atlas, and reflected on a use map.

Existing decisions that allow, restrict, or prohibit motor vehicle use on National Forest System roads, National Forest System trails, or areas on National Forest System lands could be revised and incorporated into the new designated system established under the proposed rule, or could be subsumed in designations made pursuant to the proposed rule. If an administrative unit or ranger district has completed designations of roads, trails, and areas, the responsible official would evaluate the designations and determine if the designations could be included in the new designated system for motor vehicle use established under the proposed rule.

Suitability determinations and guidelines in land management plans would be separate from but relevant to designations made pursuant to this proposed rule. Land management plans determine suitability of uses and establish resource protection guidelines, such as those governing wildlife migration corridors, soil erosion, noise, and air pollution. The plans themselves would not designate roads, trails, or areas pursuant to

this proposed rule and consequently would not be enforceable under 36 CFR 261.13. Rather, such designations would occur only after a decision separate from the plan decision is made pursuant to this proposed rule. If a designation decision would not be consistent with a plan, the plan would have to be amended to make it conform to the designation decision. Designation decisions would culminate from a site-specific proposal and public involvement. Once designations were made pursuant to this proposed rule, they would be enforceable pursuant to 36 CFR 261.13.

*§212.52 Public involvement in the designation process.* Section 212.52(a) of the proposed rule would address public involvement in the designation process and (like section 3(b) of E.O. 11644 and §295.3) would require that the public be allowed to participate in the process of designating roads, trails, and areas or revising designations pursuant to this subpart. Proposed §212.52(a) also would require that advance notice be given to allow for public comment on proposed or revised designations.

Public involvement in the designation process would include public participation in identification of unplanned or user-created roads and trails on National Forest System lands that have resulted from cross-country motor vehicle use. As stated previously, these routes would not necessarily be inventoried and included in a forest transportation atlas. If unplanned or user-created routes are not inventoried and included in a forest transportation atlas, they would meet the definition for unauthorized or unclassified roads or trails (any roads or trails other than forest roads and trails or temporary roads and trails) under the proposed rule. Alternatively, these routes could be designated for motor vehicle use pursuant to §212.51 of the proposed rule or for other purposes. If so, these

routes would become National Forest System roads or National Forest System trails, would be included in a forest transportation atlas, and would be reflected on a use map.

Section 212.52(b) of the proposed rule would address the absence of public involvement in temporary, emergency closures. Section 212.52(b)(1) would address the absence of public involvement in temporary, emergency closures in general.

Specifically, §212.52(b)(1) would state that nothing in §212.52 would alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice in order to provide short-term resource protection or to protect public health and safety.

Section 9 of E.O. 11644, as amended by E.O. 11989, and the current §295.5 (which would be removed by this proposed rule) provide for temporary, emergency closures based on a determination of considerable adverse effects. Section 212.52(b)(2) of the proposed rule would address temporary, emergency closures based on a determination of considerable adverse effects. This section would provide that if, based on monitoring pursuant to §212.57, the Forest Supervisor or other responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is causing or will cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources associated with that road, trail, or area, the Forest Supervisor or other responsible official would immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been



mitigated or eliminated and that measures have been implemented to prevent future recurrence.

E.O. 11644, E.O. 11989, and current §295.5 provide that temporary, emergency closures based on a determination of considerable adverse effects will remain in effect until the responsible official determines that the adverse effects have been eliminated, rather than mitigated or eliminated. The Forest Service believes that use in §212.52 of the phrase “mitigated or eliminated” in this context is reasonable and consistent with use of the word “eliminated” because mitigation of adverse effects has the net effect of elimination of adverse effects and because elimination of adverse effects is not always possible or may be difficult to establish.

Temporary, emergency closures based on a determination of considerable adverse effects are intended to be short-term. Removing roads, trails, or areas subject to a temporary, emergency closure from the system of designated roads, trails, and areas would require public involvement pursuant to §212.52(a).

*§212.53 Coordination with Federal, State, County, and other local governmental entities and Tribal governments.* The current §295.2 (which would be removed by this proposed rule) provides for coordination with appropriate Federal, State, and local agencies in connection with designation of trails and areas for motor vehicle use. Section 212.53 of the proposed rule would incorporate this provision, by providing that the Forest Supervisor or other responsible official shall coordinate with appropriate Federal, State, County, and other local governmental entities and Tribal governments when designating roads, trails, and areas pursuant to the proposed rule. Section 212.53 would include in

the designation process coordination with other governmental agencies, such as the Bureau of Land Management or State natural resource agencies, that administer lands in the vicinity of roads, trails, and areas contemplated for designation.

*§212.54 Revision of designations.* Section 212.54 of the proposed rule would provide that designations made pursuant to §212.51 could be revised as needed to meet changing conditions. Section 212.54 would allow for updated designations to reflect changes in environmental conditions, recreation demand, and other factors. Revision of designations would reflect the outcome of monitoring effects of motor vehicle use and would promote protection of the environment. Revisions of designations would be made in accordance with the requirements set out in the proposed rule for public input (§212.52) and designation criteria (§212.55) and would be identified in a use map pursuant to §212.56.

*§212.55 Criteria for designation of roads, trails, and areas.* This section of the proposed rule would enumerate the criteria to be used in designating roads, trails, and areas for motor vehicle use.

*§212.55(a) General criteria for designation of roads, trails, and areas.* Section 212.55(a) would include the general criteria for designating roads, trails, and areas. Half of these criteria come from section 3(a) of E.O. 11644 and the current §295.2(b) (which would be removed by the proposed rule). These criteria include protection of National Forest resources, promotion of public safety, and minimization of conflicts among uses of National Forest System lands. Although these criteria come from E.O. 11644 and part

295, which apply only to off-road motor vehicle use, these criteria are general enough to be appropriate for designating roads for motor vehicle use under the proposed rule.

Section 212.55(a) of the proposed rule would add the following to these general criteria: provision of recreational opportunities; access needs; the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration. A key goal of the designated system for motor vehicle use would be to provide recreational opportunities. In designating roads, trails and areas for motor vehicle use, the agency needs to address access to National Forest System lands for a variety of purposes, including recreational and non-recreational use. Maintenance and administration needs arise from designation of roads, trails, and areas for motor vehicle use. These needs, and the availability of resources to address those needs, would be taken into account in designating roads, trails, and areas under the proposed rule.

*§212.55(b) Specific criteria for designation of trails and areas.* Section 212.55(b) would include the specific criteria for designating trails and areas in section 3(a) of E.O. 11644 and the current §295.2(b) (which would be removed by the proposed rule). These criteria are keyed to off-road motor vehicle use and therefore would not apply to designation of roads under the proposed rule. Section 212.55(b) would add consistency with the agency's trail management objectives to the preexisting criteria. The criteria for designating trails and areas would include consideration of effects on the following, with the objective of minimizing:

- (1) Damage to soil, watershed, vegetation, and other forest resources;

(2) Harassment of wildlife and significant disruption of wildlife habitats;

(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and

(4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official would consider:

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

(6) Consistency with trail management objectives.

E.O. 11644 states that its implementing regulations shall direct that designation of trails and areas for motor vehicle use be based upon certain general criteria, which are set out in §212.55(a) of the proposed rule. For example, section 3(a) of E.O. 11644 states that implementing regulations “shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands . . . .” E.O. 11644 also provides that its implementing regulations shall require that designation of trails and areas for motor vehicle use be in accordance with achieving the objectives in specific criteria, which are set out in §212.55(b) of the proposed rule. Section 3(a) also states that implementing regulations “shall further require that the designation of such areas and trails shall be in accordance with the following – (1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands . . . .”

The agency believes that these provisions of E.O. 11644 establish the criteria that must be considered in designating trails and areas for motor vehicle use. The agency believes that these criteria are objectives that the agency must evaluate in designating trails and areas, rather than required outcomes. Section 3(a) of E.O. 11644 does not establish the primacy or subservience of any particular use relative to other uses of trails and areas. Accordingly, §212.55(a) and (b) of the proposed rule would require the responsible official to consider the criteria enumerated in those sections in designating roads, trails, and areas or trails and areas, respectively.

In requiring consideration of the enumerated criteria in designating roads, trails, and areas, the proposed rule would give the responsible official discretion to weigh the pertinent criteria in each specific circumstance and to select from a variety of options, depending on that circumstance. For example, based upon consideration of the pertinent criteria, the responsible official could decide to designate a road, trail, or area because there would be no measurable or appreciable effects on National Forest System resources or other uses, as in a dry location where the soil is stable, there are few or no other uses, and there are limited wildlife concerns. Alternatively, based upon consideration of the pertinent criteria, the responsible official could decide to designate a road, trail, or area after mitigation of adverse effects, such as where a road, trail, or area is designated for use seasonally to accommodate elk calving in the vicinity. Based upon consideration of the pertinent criteria, the responsible official alternatively could decide not to designate a road, trail, or area because designation would result in considerable adverse effects on National Forest System resources and other uses that could not be mitigated, such as

where there are primarily nonmotorized uses such as hiking, where there is a municipal watershed with highly erosive soils, or where there is a wide variety of threatened, endangered, or sensitive species habitat.

*§212.55(c) Specific criteria for designation of roads.* Section 212.55(c) of the proposed rule would include the specific criteria for designating roads, which are based on objectives in agency policy for management of motor vehicle use on roads. These criteria include:

- (1) Speed, volume, composition, and distribution of traffic on roads; and
- (2) Consistency with road management objectives.

To a certain degree, National Forest System roads are in effect already designated for some classes of motor vehicle use pursuant to State law and assignment of the Forest Service's road maintenance levels. To avoid an unnecessary process in connection with designation of roads, the Forest Service would capture these de facto designations in implementing this proposed rule. For example, the agency could provide that all open National Forest System roads are presumptively designated for use by motor vehicles meeting the operator qualifications, vehicle licensing, and vehicle equipment requirements for use of public roads under applicable State law.

In addition, it may be possible to provide that Forest Service road maintenance levels are keyed to certain motor vehicle classes, and that by setting a certain maintenance level for a National Forest System road, the agency has also designated the road for use by certain vehicle classes. For example, since National Forest System roads at maintenance level 2 are suitable for high-clearance motor vehicles, such as commercial

trucks and SUVs, that meet motor vehicle requirements for use of public roads under applicable State law, the agency could provide that National Forest System roads at maintenance level 2 are presumptively designated for those motor vehicles.

The agency could still allow use of a National Forest System road, if deemed appropriate, by vehicles such as OHVs that may not be used on public roads under State law. United States Department of Transportation regulations and Forest Service directives require that provisions of the Highway Safety Act apply on roads managed as open to public travel, that is, National Forest System roads at road maintenance levels 3, 4, and 5. In general, National Forest System roads subject to the Highway Safety Act would be designated for use by OHVs only in special circumstances and only upon completion of an engineering study to establish the traffic control devices and signs needed for user safety.

*§212.55(d) Rights of access.* Section 212.55(d) would provide that in making designations pursuant to part 251, subpart B, the responsible official must be consistent with rights of access. These rights of access include valid existing rights; the rights of use of National Forest System roads and trails under §212.6(b); and the provisions concerning rights of access in sections 811 and 1110(a) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3121 and 3170(a), respectively) (note that section 811 of ANILCA applies only in Alaska).

Examples of valid existing rights include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States and a right-of-way for a road or trail acquired by the United States,

where the owner of the underlying land may have retained control of the right-of-way and may have reserved the right to allow others to use it. Designations could still apply to uses outside the scope of the first type of right-of-way and could apply to uses within the scope of either type of right-of-way if the Forest Service has reserved the right to regulate use of the right-of-way.

*§212.55(e) Congressionally designated wilderness and primitive areas.* Section 3(a)(4) of E.O. 11644 and the current §295.2(b)(4) (which would be removed by this proposed rule) state that trails and areas in Congressionally designated wilderness and primitive areas shall not be designated for motor vehicle use. Each Congressionally designated wilderness area has enabling legislation. Some of these statutes may provide for motor vehicle use in a particular wilderness area. Accordingly, §212.55(e) of the proposed rule would preclude National Forest System roads, National Forest System trails, and areas on National Forest System lands in Congressionally designated wilderness areas from being designated for motor vehicle use, unless motor vehicle use is authorized by the applicable enabling legislation for those areas.

*§212.56 Identification of designated roads, trails, and areas.* Section 5 of E.O. 11644 and §295.4 require publication and distribution of information, including maps, identifying and explaining designation of trails and areas for motor vehicle use. Section 212.56 of the proposed rule would provide that designated roads, trails, and areas must be identified in a use map as defined in the proposed rule. Section 212.56 would also provide that use maps are to be made available to the public at the headquarters of corresponding administrative units of the National Forest System. “Made available to the



public” would not necessarily mean making the maps available free of charge. The use maps would specify the classes of vehicles and, if appropriate, the times of year for which use is designated. Use maps also could reflect designations for nonmotorized uses, such as horseback riding and hiking, and restrictions or prohibitions on snowmobile use established pursuant to §212.58 of the proposed rule.

Section 5 of E.O. 11644 also provides that designated trails and areas are to be well marked. The agency believes that marking of designated roads, trails, and areas may vary depending on the circumstances and that consequently some discretion is needed in the context of marking these routes and areas. Therefore, the agency believes that marking of designated roads, trails, and areas is best addressed in agency policy, rather than regulations.

*§212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.* Section 8 of E.O. 11644 and current §295.5 (which would be removed by the proposed rule) require the Forest Service to monitor the effects of motor vehicle use on designated trails and areas under the jurisdiction of the Forest Service. Accordingly, §212.57 of the proposed rule would provide that for each administrative unit of the National Forest System, the Forest Supervisor, or other responsible official, shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that Forest Supervisor or other responsible official. The results of monitoring could provide the basis for revision or rescission of designations made pursuant to §212.51 of the proposed rule, as provided in section 8(a) of E.O. 11644, or for a determination of considerable adverse effects for purposes of

implementing a temporary, emergency closure pursuant to §212.52(b)(2) of the proposed rule.

Section 212.57, like section 8 of E.O. 11644 and the current §295.5, would not prescribe how monitoring is to be conducted. The agency believes that monitoring of designated roads, trails, and areas may vary depending on the circumstances and that some discretion is needed in the context of monitoring these routes and areas. Therefore, the agency believes that monitoring of designated roads, trails, and areas is best addressed in agency policy, rather than regulations.

### **Part 212, New Subpart C–Snowmobile Use**

*§212.80 Purpose and scope.* The purpose of this subpart would be to provide for regulation of snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands.

*§212.81 Snowmobile use.* Section 212.81 of the proposed rule would preserve the authority in E.O. 11644 and E.O. 11989 and in the current part 295 (which would be removed by this proposed rule) to allow, restrict, or prohibit snowmobile use on a discretionary basis. Section 212.81(a) and (b) would provide that snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited, provided that the following uses would be exempted from restrictions or prohibitions on snowmobile use:

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

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

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

(e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

These exemptions are found in E.O. 11644 and E.O. 11989 and in the current part 295.

As stated previously in the discussion of §212.51 of the proposed rule, a snowmobile traveling over snow results in different and less severe impacts to natural resource values than wheeled motor vehicles traveling over the ground. Consequently, in contrast to wheeled motor vehicles, it may be appropriate for snowmobiles to travel off route in relatively large, dispersed areas on National Forest System lands.

Section 212.81(c) of the proposed rule would provide that the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52 (public involvement); 212.53 (coordination with other governmental entities); 212.54 (as applied to snowmobile use, revision of restrictions and prohibitions); 212.55 (as applied to snowmobile use, criteria for restrictions and prohibitions); 212.56 (as applied to snowmobile use, identification of restrictions and prohibitions); and 212.57 (monitoring the effects of motor vehicle use) shall apply to establishment of any restrictions or prohibitions on snowmobile use.

***Revisions to Part 251–Land Uses, Subpart B–Special Uses***

*Section 251.51 Definitions.* Like §212.1 of the proposed rule, the current §251.51 contains definitions for forest road, National Forest System road, and National

Forest System trail. However, §251.51 lacks a definition for a road or trail under Forest Service jurisdiction, which is a component of the definition for National Forest System road and National Forest System trail. Therefore, to make the definition in §251.51 consistent with those in §212.1 of the proposed rule, a definition for a road or trail under Forest Service jurisdiction would be added to §251.51.

### **Revisions to Part 261–Prohibitions, Subpart A–General Prohibitions**

*Section 261.2 Definitions.* The proposed rule would revise the definition for motor vehicle in §261.2 to make it consistent with the definition for motor vehicle in §212.1 of the proposed rule, which excludes wheelchairs and other mobility devices as defined in the Americans With Disabilities Act.

Like §212.1 of the proposed rule, the current §261.2 contains definitions for forest road or trail, National Forest System road, and National Forest System trail. However, §261.2 lacks a definition for a road or trail under Forest Service jurisdiction, which is a component of the definition for National Forest System road and National Forest System trail. To make the definitions in §261.2 consistent with §212.1 of the proposed rule, a definition for a road or trail under Forest Service jurisdiction would be added to §261.2 of the proposed rule.

*Section 261.13 Motor vehicle use.* Section 6 of E.O. 11644 requires the Forest Service, where authorized by law, to prescribe appropriate penalties for violation of regulations adopted pursuant to that E.O. and to establish procedures for enforcement of those regulations. Accordingly, the proposed rule would add a new prohibition to part 261, subpart A, for enforcement of designations made pursuant to §212.51 of the

proposed rule. Enforcement of designations for motor vehicle use made pursuant to §212.51 of the proposed rule using a prohibition in part 261, subpart A, would be simpler than enforcement of restrictions and prohibitions under the current part 295 (part 295 would be removed by this proposed rule), which requires issuance of an order under part 261, subpart B, and issuance of a citation for violation of that order. Enforcement of a prohibition in part 261, subpart A, can be accomplished simply through issuance of a citation.

The prohibition in §261.13 of the proposed rule would not go into effect and could not be enforced until roads, trails, and areas have been designated pursuant to §212.51 of the proposed rule, in accordance with the requirements in proposed part 212, subpart B, including the requirements in the proposed rule for public input in §212.52 and the criteria in §212.55. Under proposed §261.13, after roads, trails, and areas have been designated pursuant to §212.51 on an administrative unit or a ranger district of the National Forest System, it would be prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or ranger district other than in accordance with those designations, provided that the following vehicles and uses would be exempted from this prohibition:

- (a) Aircraft;
- (b) Watercraft;
- (c) Snowmobiles;
- (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) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and
- (i) Use of a road or trail that is not under Forest Service jurisdiction.

These vehicles and uses are also exempted from the designations made pursuant to §212.51. These exemptions are enumerated in §212.51(a) through (h). The counterpart for exemption (i) is the scope of §212.51, which with respect to roads and trails is limited to designating motor vehicle use on National Forest System roads and National Forest System trails, i.e., forest roads or trails under the jurisdiction of the Forest Service. Since designations for motor vehicle use established pursuant to §212.51 of the proposed rule would not apply to roads or trails that are not under Forest Service jurisdiction, a prohibition enforcing designations for motor vehicle use established pursuant to §212.51 of the proposed rule would not apply to motor vehicle use on roads or trails that are not under Forest Service jurisdiction.

*Section 261.14 Snowmobile use.* Section 6 of E.O. 11644 requires the Forest Service, where authorized by law, to prescribe appropriate penalties for violation of regulations adopted pursuant to that E.O. and to establish procedures for enforcement of those regulations. Accordingly, the proposed rule would add a new prohibition to part

261, subpart A, for enforcement of restrictions and prohibitions regarding snowmobile use established pursuant to §212.81 of the proposed rule. Enforcement of snowmobile restrictions and prohibitions established pursuant to §212.81 of the proposed rule using a prohibition in part 261, subpart A, would be simpler than enforcement of restrictions and prohibitions under the current part 295 (which would be removed by this proposed rule), which requires issuance of an order under part 261, subpart B, and issuance of a citation for violation of that order. Enforcement of a prohibition in part 261, subpart A, can be accomplished simply through issuance of a citation.

Under proposed §261.14, it would be prohibited to possess or operate a snowmobile on National Forest System lands in violation of a restriction or prohibition established pursuant to proposed §212.81, provided that the following uses would be exempted from this prohibition:

- (a) Limited administrative use by the Forest Service;
- (b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (c) Authorized use of any combat or combat support vehicle for national defense purposes;
- (d) Law enforcement response to violations of law, including pursuit;
- (e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and
- (f) Use of a road or trail that is not under Forest Service jurisdiction.

These uses are also exempted from the restrictions and prohibitions established pursuant to §212.81 of the proposed rule. Exemptions (a) through (e) are enumerated in §212.81(b). The counterpart for exemption (f) is the scope of §212.81(a), which with respect to roads and trails is limited to establishing restrictions or prohibitions on snowmobile use on National Forest System roads and National Forest System trails, such as, forest roads or trails under the jurisdiction of the Forest Service. Since restrictions and prohibitions on snowmobile use established pursuant to §212.81 of the proposed rule would not apply to snowmobile use on roads or trails that are not under Forest Service jurisdiction, a prohibition enforcing restrictions and prohibitions on snowmobile use established pursuant to §212.81 of the proposed rule would not apply to snowmobile use on roads or trails that are not under Forest Service jurisdiction.

***Removal of Part 295—Use of Motor Vehicles Off National Forest System Roads***

Part 295 would be removed, as its provisions, with the exception of §295.6, requiring annual review of motor vehicle management plans and temporary designations, would be integrated into part 212, subpart B, of the proposed rule. Section 295.6 would not be retained because it has no antecedent in E.O. 11644 or E.O. 11989 and inappropriately removes discretion from the responsible official to determine how often to review designations of roads, trails, and areas for motor vehicle use.

Proposed part 212, subpart B, would provide more consistency in management of motor vehicle use than the current part 295. In contrast to the current part 295, which allows for a patchwork of restrictions and prohibitions on motor vehicle use on National Forest System lands, proposed part 212, subpart B, would require designation of National



Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use.

In addition, designations made pursuant to proposed part 212, subpart B, would be broader than any restrictions or prohibitions implemented pursuant to the current part 295 because designations made pursuant to part 212, subpart B, would apply to motor vehicle use on National Forest System roads, as well as off National Forest System roads.

### **Regulatory Certifications**

#### ***Environmental Impact***

This proposed rule would require development at the field level, with public input, of a designated system for motor vehicle use on National Forest System roads and trails and in areas on National Forest System lands. The proposed rule would have no effect on the ground until designations of roads, trails, and areas are completed at the field level, with opportunity for public involvement. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The agency’s conclusion is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

#### ***Regulatory Impact***

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and

Budget (OMB) has determined that this proposed rule is not significant for purposes of E.O. 12866. This proposed rule would not have an annual effect of \$100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. This proposed rule would not interfere with any action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this proposed rule is not subject to OMB review under E.O. 12866.

***Regulatory Flexibility Act Analysis***

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The proposed rule would not have any effect on small entities as defined by the Regulatory Flexibility Act. The proposed rule would require development at the field level, with public input, of a designated system for motor vehicle use on National Forest System roads and trails and in areas on National Forest System lands. The proposed rule would not directly affect small businesses, small organizations, and small governmental jurisdictions. Therefore, the agency has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act because it would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

### ***No Takings Implications***

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

### ***Civil Justice Reform***

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

### ***Federalism and Consultation and Coordination with Indian Tribal Governments***

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

Moreover, this proposed rule would not have Tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

### ***Energy Effects***

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

### ***Unfunded Mandates***

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule would not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

### ***Controlling Paperwork Burdens on the Public***

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

### **List of subjects**

#### ***36 CFR Part 212***

Highways and roads, National forests, Public lands—rights-of-way, and Transportation.

#### ***36 CFR Part 251***

Administrative practice and procedure, Electric power, National forests, Public lands rights-of-way, Reporting and record-keeping requirements, Water resources.

***36 CFR Part 261***

Law enforcement, National forests.

***36 CFR Part 295***

National forests, Traffic regulations.

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

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

**PART 212—TRAVEL MANAGEMENT**

**Subpart A—Administration of the Forest Transportation System**

Sec.

212.1 Definitions.

212.2 Forest transportation program.

212.3 Cooperative work.

212.4 Construction and maintenance.

212.5 Road system management.

212.6 Ingress and egress.

212.7 Access procurement by the United States.

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

212.9 Principles for sharing use of roads.

212.10 Maximum economy National Forest System roads.

212.11–212.20 [Reserved]

212.21 Pacific Crest National Scenic Trail.

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

212.50 Purpose and scope.

212.51 Designation of roads, trails, and areas.

212.52 Public involvement in the designation process.

212.53 Coordination with Federal, State, County, and other local governmental entities and Tribal governments.

212.54 Revision of designations.

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

212.56 Identification of designated roads, trails, and areas.

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

**Subpart C—Snowmobile Use**

212.80 Purpose and scope.

212.81 Snowmobile use.

2. Add new subpart A and move the authority citation from part 212 to subpart A, which continues to read as follows:

**Part 212–TRAVEL MANAGEMENT**

**Subpart A–Administration of the Forest Transportation System**

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

\* \* \* \* \*

3. Amend §212.1 to read as follows:

a. In alphabetical order, add the following definitions: administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle; National Forest System road; National Forest System trail; road or trail under Forest Service jurisdiction, snowmobile; temporary road or trail; trail; travel management atlas; unauthorized or unclassified road or trail; and use map; and

b. Revise the definition for forest transportation atlas and road, and remove the definitions for classified road, temporary road, and unclassified road.

**§212.1 Definitions.**

*Administrative unit.* A national forest, a national grassland, Land Between the Lakes, Lake Tahoe Basin Management Unit, or Midewin National Tallgrass Prairie.

*Area.* A discrete, specifically delineated space that is smaller than a ranger district.

\* \* \* \* \*

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

\* \* \* \* \*

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

*Forest transportation atlas.* A display of the system of roads, trails, and airfields of an administrative unit of the National Forest System that consists of the geospatial, tabular, and other data that support resource management activities and analysis associated with resource management goals in the applicable land management plan.

\* \* \* \* \*

*Forest transportation system.* The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands that are included in a forest transportation atlas.

\* \* \* \* \*

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

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

\* \* \* \* \*

*National Forest System road.* A forest road under the jurisdiction of the Forest Service.



*National Forest System trail.* A forest trail under the jurisdiction of the Forest Service.

\* \* \* \* \*

*Road.* A motor vehicle route over 50 inches wide, unless identified and managed as a trail. A road may be a forest road, a temporary road, or an unauthorized or unclassified road.

\* \* \* \* \*

*Road or trail under Forest Service jurisdiction.* For the purposes only of the definitions of National Forest System road and National Forest System trail, a road or trail located on National Forest System lands, other than a road or trail:

(1) Which has been authorized by a legally documented right-of-way held by a State, County, or local public road authority; or

(2) Which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976).

\* \* \* \* \*

*Snowmobile.* A motor vehicle that is designed exclusively for use over snow and that runs on a track or tracks and/or a ski or skis.

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

*Trail.* A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail. A trail may be a forest trail, a temporary trail, or an unauthorized or unclassified trail.

*Travel management atlas.* An atlas that includes a forest transportation atlas and a use map.

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

*Use map.* A map reflecting designated roads, trails, and areas on an administrative unit or a ranger district of the National Forest System that is part of a travel management atlas.

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

**§212.2 Forest transportation program.**

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

(b) *Forest transportation atlas.* A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary

road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directive system (§200.1).

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

5. Revise §212.5 as follows:

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

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

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

#### **§212.5 Road system management.**

(a) *Traffic rules.* \* \* \*

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

(2) *Specific.* \* \* \*

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

trailers. Types of traffic may include, but are not limited to, groupings such as commercial hauling, recreation, and administrative.

\* \* \* \* \*

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

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

\* \* \* \* \*

6. Change the heading for §212.7(a) to read as follows:

**§212.7 Access procurement by the United States.**

(a) *Existing or proposed National Forest System roads which are or will be part of a system of a State, county, or other local subdivision.*

\* \* \* \* \*

7. Revise §212.10(d) to read as follows:

**§212.10 Maximum economy National Forest System roads.**

\* \* \* \* \*

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

8. Remove and reserve §212.20.

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

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

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

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

**§212.50 Purpose and scope.**

The purpose of this subpart is to provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

**§212.51 Designation of roads, trails, and areas.**

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

- (a) Aircraft;
- (b) Watercraft;
- (c) Snowmobiles (see §212.81);
- (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; and
- (h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

**§212.52 Public involvement in the designation process.**

(a) *General.* The public shall be allowed to participate in the process of designating National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment on proposed designations and revisions.

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

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If, based on monitoring pursuant to §212.57, the Forest Supervisor or other responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is

causing or will cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources associated with that road, trail, or area, the Forest Supervisor or other responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence.

**§212.53 Coordination with Federal, State, County, and other local governmental entities and Tribal governments.**

The Forest Supervisor or other responsible official shall coordinate with appropriate Federal, State, County, and other local governmental entities and Tribal governments when designating National Forest System roads, National Forest System trails and areas on National Forest System lands pursuant to this subpart.

**§212.54 Revision of designations.**

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

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

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System

lands for motor vehicle use, the responsible official shall consider protection of National Forest System resources, promotion of public safety, provision of recreational opportunities, access needs, minimization of conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

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

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

In addition, the responsible official shall consider:

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



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

- (1) Speed, volume, composition, and distribution of traffic on roads; and
- (2) Consistency with road management objectives.

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

- (1) Valid existing rights;
- (2) The provisions concerning rights of access in sections 811 and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121 and 3170(a), respectively); and

- (3) The rights of use of National Forest System roads and trails under §212.6(b).

(e) *Congressionally designated wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in Congressionally designated wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

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

Designated roads, trails, and areas shall be identified in a use map as defined in §212.1 of this part. Use maps shall be made available to the public at the headquarters of corresponding administrative units of the National Forest System. The use maps shall

specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

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

For each administrative unit of the National Forest System, the Forest Supervisor or other responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that Forest Supervisor or other responsible official.

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

**Subpart C—Snowmobile Use**

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

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

**§212.80 Purpose and scope.**

The purpose of this subpart is to provide for regulation of snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands.

**§212.81 Snowmobile use.**

(a) *General.* Snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) *Exemptions from restrictions and prohibitions.* The following uses are exempted from restrictions and prohibitions on snowmobile use:

- (1) Limited administrative use by the Forest Service;
- (2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (3) Authorized use of any combat or combat support vehicle for national defense purposes;
- (4) Law enforcement response to violations of law, including pursuit; and
- (5) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

(c) *Establishment of restrictions and prohibitions.* The requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of any restrictions or prohibitions on snowmobile use.

## **PART 251—LAND USES**

### **Subpart B—Special Uses**

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

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

\* \* \* \* \*

12. Add a definition to §251.51 for road or trail under Forest Service jurisdiction, in alphabetical order, to read as follows:

**§251.51 Definitions.**

\* \* \* \* \*

*Road or trail under Forest Service jurisdiction.* For the purposes only of the definitions of National Forest System road and National Forest System trail, a road or trail located on National Forest System lands, other than a road or trail:

(1) Which has been authorized by a legally documented right-of-way held by a State, County, or local public road authority; or

(2) Which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976).

\* \* \* \* \*

**PART 261—PROHIBITIONS**

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

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

14. Revise the definition for motor vehicle in §261.2 and add a definition for forest road or trail under Forest Service jurisdiction, in alphabetical order, to read as follows:

**Subpart A—General Prohibitions**

\* \* \* \* \*

**§261.2 Definitions.**

\* \* \* \* \*

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

(1) A vehicle operated on rails; and

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

\* \* \* \* \*

*Road or trail under Forest Service jurisdiction.* For purposes only of the definitions of National Forest System road and National Forest System trail, a road or trail located on National Forest System lands, other than a road or trail:

(1) Which has been authorized by a legally documented right-of-way held by a State, County, or local public road authority; or

(2) Which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976).

\* \* \* \* \*

15. Add a new §261.13, Motor vehicle use, and a new §261.14, Snowmobile use, and redesignate the current §§261.13 through 261.21 as §§261.15 through 261.23, to read as follows:

**§261.13 Motor vehicle use.**

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a ranger district of the National Forest System, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or ranger district other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

- (a) Aircraft;
- (b) Watercraft;
- (c) Snowmobiles;
- (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) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and
- (i) Use of a road or trail that is not under Forest Service jurisdiction.

**§261.14 Snowmobile use.**

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

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

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

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

(e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is not under Forest Service jurisdiction.

**§261.15 Use of vehicles off roads.**

\* \* \* \* \*

**§261.16 Developed recreation sites.**

\* \* \* \* \*

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

\* \* \* \* \*

**§261.18 National Forest Wilderness.**

\* \* \* \* \*

**§261.19 Boundary Waters Canoe Area Wilderness.**

\* \* \* \* \*

**§261.20 Pacific Crest National Scenic Trail.**

\* \* \* \* \*

**§261.21 National Forest primitive areas.**

\* \* \* \* \*

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

\* \* \* \* \*

**§261.23 Wild free-roaming horses and burros.**

\* \* \* \* \*

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

**ROADS**

16. Remove the entire part 295.



