

U.S. Department of Agriculture
Forest Service
Regulatory Workplan - Rules

1. Under Secretary's Recommended Designation of Significance: <input checked="" type="checkbox"/> NON-SIGNIFICANT <input type="checkbox"/> SIGNIFICANT <input type="checkbox"/> ECONOMICALLY SIGNIFICANT <input type="checkbox"/> MAJOR – (Public Law 103-354) – ORACBA <input type="checkbox"/> MAJOR – (Public Law 103-354) – SBREFA	Special Handling Requirements <hr/> OMB'S Designation: _____ Date: _____ RIN #: 0596-_____ OBPA WORKPLAN #: _____ Date: _____
_____ Under Secretary's Signature	_____ Date

2. Formal Title: Title 36 CFR, Part 294--Special Areas, Subpart E--Alaska Roadless Area Management

Colloquial Title: Alaska Roadless Rule

Legal Authority (Public Law, CFR or FS Manual/Handbook Citation): 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205

3. Type of Action: Rule Directive

Stage: ANPR Proposed Interim Final Final Direct Final

Anticipated Date of Publication (month/year): July 2019

4. Description of Action:

Background: Describe what the current regulations require or allow, and what the problem is.

On January 19, 2018 the State of Alaska submitted a petition for rulemaking asking that the State of Alaska be exempt from the 2001 Roadless Area Conservation Rule. The Secretary of Agriculture conferred with Governor Bill Walker on June 1, 2018 about the petition and agreed to move forward with a state-specific roadless rule.

On January 12, 2001, the Department adopted the Roadless Area Conservation Rule (2001 Roadless Rule (66 FR 3243 and 66 FR 3272, January 12, 2001)). The 2001 Roadless Rule conserves roadless area characteristics by prohibiting timber harvest and road construction/reconstruction, with limited exceptions, within designated roadless areas. Roadless area characteristics include high quality or undisturbed soil, water, and air; sources of public drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; dispersed recreation; reference landscapes; natural appearing landscapes with high scenic quality; traditional cultural properties and sacred sites; and other locally identified unique characteristics (2001 Roadless Rule (66 FR 3243). During the development of the 2001 Roadless Rule, the Forest Service analyzed an alternative that would not apply the rule to the Tongass National Forest, but in the final rulemaking, the Department applied the rule to the Tongass National Forest, making the entire forest a roadless area subject to the rule's restrictions. In 2003, the Department exempted the Tongass National Forest from the 2001 Roadless Rule (68 FR 75136, December 30, 2003). The 2003 decision was then overturned by the U.S. District Court for the District of Alaska, and the 2001 Roadless Rule was reinstated on the Tongass National Forest. The District Court's ruling was upheld by the U.S. Court of Appeals for the Ninth Circuit and the Supreme Court declined further review.

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The 2001 Roadless Rule remains subject to litigation filed by the State of Alaska and other parties in the D.C. Circuit Court of Appeal. However, on September 26, 2018, the D.C. Circuit directed that Alaska's appeal of the District Court's ruling upholding the 2001 Roadless Rule would be held in abeyance pending further order of the court. The parties were directed to file status reports at 90-day intervals. A long-term, durable approach to roadless area management is needed that accommodates the unique biological, social and economic situation in and around the Tongass National Forest, which is what this rulemaking seeks to accomplish.

Proposed Action: *Briefly describe the action you wish to take.*

Create a state-specific alternative to the 2001 Roadless Rule based on recommendations from the State of Alaska and public comments.

The Agency proposes to:

- Maintain the current protection status under the 2001 Roadless Rule of the inventoried roadless areas on the Chugach National Forest in Alaska.
- Establish a new land classification system designed to conserve roadless area characteristics on the Tongass National Forest while accommodating timber harvesting and road construction/reconstruction activities that are determined to be needed for forest management, economic development opportunities, and the exercise of valid existing rights or other non-discretionary legal authorities.

Specifics: *List the exact regulatory language that this regulation will modify, and describe, generally, how this will be changed or what will be added. Use bullets.*

The Department would be informed by two other state-specific roadless rules:

- Title 36 CFR, Part 294--Special Areas, Subpart C--Idaho Roadless Area Management
- Title 36 CFR, Part 294--Special Areas, Subpart D--Colorado Roadless Area Management

The Department would create a new set of regulations specific to Alaska at:

- Title 36 CFR, Part 294--Special Areas, Subpart E-Alaska Roadless Area Management

Exact language of Subpart E is in development.

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5. Justification:

Discuss Other Alternatives Considered:

In addition to the proposed action listed above, the environmental impact statement will consider alternatives:

- No action - keep the 2001 Roadless Rule in place
- Provide the Tongass National Forest a full exemption from the 2001 Roadless Rule

Discuss Why this Approach Was Chosen Over The Alternatives:

This is a preliminary alternative that will be further modified and informed by public comments from scoping on the notice of intent and input from the Governor's Alaska Roadless Rule Citizen Advisory Committee, which was established under State law by Administrative Order 299. Preliminarily, the Department believes that a collaboratively developed solution, recognizing all voices and interests, is more likely to provide a practical and durable solution that provides both economic opportunity and environmental protection for rural Alaskans and the Nation.

Discuss the Expected Results of the Action:

Increase the number of jobs and income as well as strengthen economic and social sustainability of small rural communities of southeast Alaska while maintaining roadless area characteristics and upholding the Agency mission to sustain the health, diversity, and productivity of the nation's forests to meet the needs of present and future generations.

6. Benefits and Costs:

What are the top 2 notable benefits granted by this regulation:

1. In the long-term, a substantial number of jobs could be gained in Southeast Alaska due to the application of a state-specific roadless rule, including direct job gains in the timber industry and indirect job gains in other sectors. All of the businesses in Southeast Alaska engaged in timber harvest and processing of Tongass timber are small businesses. Therefore, this rule would be expected to have future positive impacts on the small entities in Southeast Alaska due to the increased opportunities.
2. Facilitate rural prosperity and support sustainable communities in Southeast Alaska through increased management flexibility while maintaining roadless area characteristics.

What are the top 2 notable costs imposed by this regulation:

1. As internal management restrictions, the current and proposed rules impose no direct costs on the Agency or the public. Over time, timber harvest and road construction can negatively influence roadless characteristics on NFS lands.
2. Over time the increase in road miles would result in increased road operations and maintenance costs.

7. Significance:

a. Designation:

The Forest Service believes that the regulation described in this work plan should be designated as not significant

Please provide brief explanation.

This final rule will NOT:

1. Have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments.
2. Interfere with an action taken or planned by another agency.
3. Alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

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recipients of such programs.

- 4. Raise novel legal or policy issues because the Department has extensive experience with roadless rules: including:

4.:

- a. The Department has extensive experience with the development of state-specific roadless rules (including, 2008 Idaho Roadless Rule (73 FR 61456, October 16, 2008), 2012 Colorado Roadless Rule (77 FR 39576, July 3, 2012). Such state-specific rulemaking are now a widely accepted practice and would no longer be considered to present novel legal or policy issues. Indeed, one court has characterized the Department's state-specific rulemaking model to be "exactly the kind of collaborative, compromise-oriented policymaking that we want in America." High Country Conservation Advocates v. U.S. Forest Service, 52 F.Supp 3d. 174 (D. Colo. 2014).
 - b. The State of Alaska has already undertaken extensive public outreach efforts (public meetings, internet and social media outlets) assuring that all interested persons and groups have had the opportunity to identify concerns and preferences following publication of the Notice of Intent to Prepare an Environmental Impact Statement (83 FR 44252, August 30, 2018). In fact, a State Citizens Advisory Committee was convened by former Governor Walker. The Committee held 3 meetings that were open to the public. The Forest Service hosted 17 public meetings in communities throughout SE Alaska, in Anchorage, AK and in Washington, D.C.
 - c. The Forest Service received extensive public comments on its Notice of Intent to Prepare an Environmental Impact Statement (83 FR 44252, August 30, 2018) associated with this rulemaking. However, of the 144,000 comments, only 1,400 were substantive, non-form letters. The substantive letters received would not appear to have revealed new or novel issues.
 - d.
 - e. Roadless management issues, although related, are discrete from other high profile policy issues concerning management of the Tongass National Forest (e.g. transition to small growth timber recently addressed in the 2016 Tongass Forest Plan)
- ~~a. 2001 Roadless Rule (66 FR 3243, 66 FR 3272, January 12, 2001).~~
~~b. 2003 Roadless Rule (Tongass exemption) (68 FR 75136, December 30, 2003);~~
~~c. 2008 Idaho Roadless Rule (73 FR 61456, October 16, 2008).~~
~~d. 2012 Colorado Roadless Rule (77 FR 39576, July 3, 2012).~~

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b. Determination Criteria:

- Does this reg. interpret a law or have the potential to prompt legal controversy? Yes; No
- Does this regulation affect another federal agency? Yes; No
- Have you coordinated with another federal agency in the preparation of this regulation? Yes; No
Which agency?
- Will this rule affect user fee programs or the budget impact of user fee programs? Yes; No
Which program?
- Is the approach used here novel? Yes; No
- Will this rule have a negative impact on the economy, jobs, or competition? Yes; No
How many jobs?
Whose jobs?
How would this limit competition?

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c. Economic Effects: (monetized)

Who will be impacted?

The majority of forest product employees and a minority of communities within the Tongass National Forest boundaries would experience improved transportation and additional public infrastructure. Other sectors of the economy (fishing, tourism) may also be affected.

How many of them?

It is estimated the current 300 forest product sector jobs would increase by 100 percent based on the analysis of the 2003 Rule.

How will they be impacted (positive or negative)?

They would be affected positively.

How much will they be impacted (\$), and how intense will the impact be to them?

Average income in 2014 dollars for forest products sector employee is \$34,500.

How much of the sector do they represent?

The majority of the sector is dependent on Tongass timber.

What are the expected monetary impacts on the agency?

There may be some agency costs to maintain or decommission new roads which could be created under the proposed regulatory change.

8. **Analytical Requirements:**

a. All Regulations:

Does this rule affect towns, small businesses, hospitals, or schools? Yes; No

- Is the effect positive or negative? Positive; Negative

Not applicable because the proposed rule does not directly regulate any community, business, etc.

- Have you begun discussing this with SBA? Yes; No

What information would you have to collect from anyone under this regulation? None.

- What questions?
No questions

- To whom?

- Does this constitute an information collection? Yes No N/A
- Have you started the request for an information collection or received an OMB Control Number?
 Yes; No N/A

How much funding would this regulation require states or local governments to expend? None

Which local governments?

For what?

Does this regulation supersede or replace local law? Yes; No

Which law?

How will NEPA be applied to this regulation? EIS EA Cat. Ex Other

Why? (List the specific authority) 40 CFR 1500 through 1508

Will this potentially affect the general well being of families? Yes; No

- Is the effect positive or negative? Positive; Negative

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How? *(List the specifics)* Increase the number of employees in the wood products sector and wood workers income

Will this regulation affect people's property rights? Yes; No

How? *(List the specifics)*

Does this regulation affect tribes? Yes; No TO BE DETERMINED

We have initiated consultation with Alaska Tribes and Alaska Native Corporations. At this time it is unknown as to whether this regulation will affect tribes.

When determining costs and benefits, list the things that were quantified/evaluated.

We will evaluate economic contributions of Tongass National Forest from recreational visitors, commercial fisheries, minerals and energy production, forest products, Departmental investments, and payments to States & counties

b. Only for Regulations Recommending a Significant Designation or above

What will be quantitatively reviewed in the Cost-Benefit Analysis?

Was this policy decision influenced or supported by science? Yes; No

Published Article (title, author, author's organization):

Was this publication peer-reviewed? Yes; No

Was a peer-review agenda published for the peer review of this publication? Yes; No

What will be discussed in the civil rights analysis?

What are the likely findings?

How will this regulation affect children?

Will this regulation disproportionately affect children? Yes; No

How will this rule affect energy supply or distribution?

Are you preparing a risk assessment? Yes; No

What risks have you identified?

c. Only for Interim Final or Direct Final Regulations

Discuss why this regulation must be enacted before receiving public comment?

9. Public Interest Total comments anticipated: 200,000 or Total comments received:

Who will likely submit comments (or for a final rule, who did submit comments)?

Congressional Delegation, State of Alaska Agencies, Alaska Tribes and Alaska Native Corporations, Local Cities (City & Borough of Wrangell, City & Borough of Juneau, Ketchikan, Ketchikan Gateway Borough, Sitka Borough, and Petersburg Borough), local chamber of commerce (Ketchikan), Trust Land Office.

Industry groups Alaska Forest Association & SE Conference, Resource Development Council, Alaska Miners Association, Alaska Power and Telephone, Alcan Forest Products & Evergreen Timber, First Things First Alaska

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Foundation, Hyak Mining Company, Juneau Economic Development Council, Southeast Conference, and individual members of these groups.

Environmental groups GEOS Institute, Alaska Wilderness League, Audubon Society, Defenders of Wildlife, Earthjustice, Southeast Alaska Conservation Council, Greater Southeast Alaska Conservation Community, Trout Unlimited, Natural Resources Defense Council, Sitka Conservation Society, and individual member of these groups.

Discuss why or why not this will likely be controversial?

The 45-day public scoping process for this rulemaking effort resulted in about 116,000 responses, including approximately 1,400 unique letters and 10 petitions with 93,000 signatures.

Generally, do you anticipate the comments will be positive or negative (or for final rule, were they positive or negative)? Give % of each. Any petitions or "form-letters" received will likely be negative, but the letters from individual citizens would likely be split 50/50. State, local community, and Industry comments are expected to be positive. Environmental group comments are expected to be negative

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10. **Timing**

What, if any, time constraints or issues are associated with this regulation? Include specific publication dates (if needed).

A Federal Register Notice was published on August 30, 2018 ([83 FR 44252](#)) for a notice of intent to prepare an environmental impact statement. The public comment period ended on October 15, 2018.

Publish a proposed rule by July 2019.

Publish a final rule by June 2020.

11. **Project Manager or Subject Matter Specialist**

Name: Mary Snieckus

Title: Roadless Rule Project Leader

Program Area: National Forest System

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12. **Agency Contact** *(Name, phone number and email)*

Ann Eberhart Goode _____
Regulatory Officer Signature Date
Phone Number: (202) 205-6560 Email: aegoode@fs.fed.us

13. **Approvals:**

Forest Service Date

Office of Budget and Program Analysis Date
