

**ALASKA ROADLESS RULEMAKING  
REGULATORY FLEXIBILITY ANALYSIS  
OPPORTUNITIES FOR SMALL ENTITIES**

## **SUMMARY**

The United States Department of Agriculture (USDA) is exempting the Tongass National Forest from the 2001 Roadless Area Conservation Rule, which prohibits tree harvest and road construction/reconstruction within inventoried roadless areas with certain limited exceptions. In January 2018, the State of Alaska submitted a petition requesting that the Secretary of USDA consider exempting the Tongass National Forest from the 2001 Roadless Rule, in accordance with the Administrative Procedures Act (APA), section 553(e) and the USDA's rulemaking procedures in 7 Code of Federal Regulations (CFR) 1.28. In June 2018, the USDA secretary directed the Forest Service to begin working to develop an Alaska state-specific roadless rule under the APA. The Secretary of Agriculture has broad authority to protect and administer the National Forest System through regulation as provided by the Organic Administration Act of 1897 (the Organic Act), the Multiple-Use Sustained Yield Act of 1960, and the National Forest Management Act of 1976. These statutes provide the Secretary with discretion to determine the proper uses within any area, including the appropriate resource emphasis and mix of uses. Since the 2001 Roadless Area Conservation Rule was promulgated it has been the subject of uncertainty, due to litigation, on the Tongass National Forest. In August 2018, the Forest Service granted cooperating agency status to the State of Alaska. Originally six Alaska Native Tribes became cooperating agencies. However, after the publication of the proposed rule, one Alaska Native Tribe withdrew as cooperating agency, and after the publication of the Final Environmental Impact Statement the remaining five tribal cooperating agencies withdrew. The USDA and the State of Alaska believe that an Alaska-specific roadless rule provides a unique opportunity to collaboratively resolve and offer certainty to roadless area management within the State of Alaska.

The Forest Service published a Notice of Intent (NOI) to prepare an environmental impact statement and initiate a public rulemaking process to address the management of inventoried roadless areas on the Tongass National Forest on August 30, 2018 (83 Federal Register [FR] 44252). As stated in that NOI, the USDA proposed to develop a durable and long-lasting regulation for the conservation and management of roadless areas on the Tongass National Forest (NF). The State-specific roadless rule discontinue the existing regulation's prohibitions and instead rely upon existing statutory and management plan direction to manage roadless area characteristics for the Tongass National Forest.

For the proposed rulemaking, USDA elected to circulate the full text of the proposed rule for public comment. The final rule corresponds to the roadless management regime represented in Alternative 6 of the Final Environmental Impact Statement for the Alaska Roadless Rule.

None of the regulatory alternatives propose changes to the projected timber sale quantity or timber demand projections guided by the Tongass Land and Resource Management Plan. The Tongass National Forest, in compliance with the Tongass Timber Reform Act (1990), seeks to

provide an annual supply of timber to meet market demand to the extent consistent with providing for multiple use and sustained use of all renewable forest resources, and other requirements, including the National Forest Management Act of 1976 (NFMA). While projected harvest levels are not expected to be materially different under any of the alternatives under consideration, the roadless rule can influence the potential location or likelihood of future timber harvesting between the various alternatives. In other words, the alternatives examine different mixes of land areas and timber restrictions that would incrementally increase management flexibility for how the forest plan's timber harvest goals can be better achieved, but does not alter the plan's underlying goals or projected outcomes. In addition to timber related impacts, this report includes discussion of recreation and tourism, commercial fisheries, mining related industries, and impacts to non-market or non-use benefit categories.

The Alternative 6 final rule has been considered in light of Executive Order 13272 (E.O. 13272) regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The Forest Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the E.O. 13272 and SBREFA, because the final rule does not directly subject small entities to regulatory requirements. Therefore, a regulatory flexibility analysis is not required for the final rule. A number of small and large entities may experience time or money savings as a result of flexibility provided by the final rule, or otherwise benefit from activities on National Forest System (NFS) lands under the final rule. As such, the final rule as a whole is not expected to result in direct or indirect beneficial impacts to small entities (businesses, governments, and organizations). The agency has therefore determined that the Alternative 6 final rule would not have a significant economic impact on a substantial number of small entities.

## Contents

Summary .....	1
Introduction.....	4
Analysis Requirements .....	11
Small Entity Characteristics.....	14
Small Business Opportunities and Effects .....	20
Small Government Opportunities and Effects .....	28
Conclusions.....	29
References.....	29

## INTRODUCTION

The Roadless Area Conservation Rule (2001 Roadless Rule) was adopted into regulations at Title 36 of the CFR Part 294 (36 CFR 294), Subpart B (66 FR 3244) in January 2001. Currently, about 9.4 million acres (56 percent) of the Tongass are managed as “inventoried roadless areas” (IRAs). IRAs contain generally undeveloped areas that are typically 5,000 acres or greater in size. The 2001 Roadless Rule applies nationwide (except Idaho and Colorado), and currently provides management direction for IRAs on 44.7 million acres of National Forests (approximately 24 percent of total NFS lands) by prohibiting road construction and reconstruction and timber cutting, sale, or removal in those IRAs, with certain exceptions.

Since its promulgation, the 2001 Roadless Rule has been the subject of litigation. In 2001, the State of Alaska filed a complaint, challenging the USDA promulgation of the 2001 Roadless Rule and its application in Alaska. The USDA and the State of Alaska reached a settlement in 2003, and the USDA subsequently issued a rule temporarily exempting the Tongass NF from the 2001 Roadless Rule. In 2011, a federal court (District of Alaska) set aside the Tongass NF’s exemption and reinstated the 2001 Roadless Rule on the Tongass NF (with special instructions). The Alaska District Court’s ruling was initially reversed by a three-judge panel of the Ninth Circuit, but the District Court’s ruling was ultimately upheld in a 6–5 en banc ruling of the Ninth Circuit in 2015. Consequently, the 2001 Roadless Rule remains in effect in Alaska and the Forest Service continues to apply the 2001 National Rule to the Tongass and Chugach NFs.

In January 2018, the State of Alaska submitted a petition requesting that the Secretary of Agriculture consider exempting the Tongass NF from the 2001 Roadless Rule, pursuant to the APA and the USDA’s petition procedures in 7 CFR 1.28. In June 2018, the Secretary of Agriculture directed the Forest Service to begin working to develop an Alaska state-specific roadless rule. In August 2018, the Forest Service granted cooperating agency status to the State of Alaska. Originally six Alaska Native Tribes became cooperating agencies. However, after the publication of the proposed rule, one Alaska Native Tribe withdrew as cooperating agency, and after the publication of the Final Environmental Impact Statement the remaining five tribal cooperating agencies withdrew. The Forest Service published a NOI to prepare an environmental impact statement (EIS) and initiate a public rulemaking process to address the management of IRAs on the Tongass NF on August 30, 2018 (83 FR 44252). As stated in that NOI, the USDA proposes to develop a durable and long-lasting regulation for the conservation and management of roadless areas on the Tongass NF. The state-specific roadless rule would discontinue the existing regulation’s prohibitions and instead rely upon existing statutory and management plan direction to manage roadless area characteristics for the Tongass National Forest.

The Alternative 6 final rule is intended to provide for economic development opportunities in Southeast Alaska. The final rule is programmatic and does not authorize the implementation of any ground-disturbing activities. Because the final rule does not directly subject small entities to regulatory requirements, the Forest Service does not believe that the Regulatory Flexibility Act and subsequent amendments (SBREFA) apply to the final rule. However, given public and agency interest in the effects of the final rule on small entities, including rural counties and economies, and efforts to be consistent with related rule making analysis in the past, this document characterizes the adverse indirect effects or reasonably foreseeable losses in potential small entity opportunities associated with the regulatory alternatives.

This report provides small entity effects of the final rule (Alternative 6) in comparison to baseline conditions represented as a continuation of current land management pursuant to the 2001 Roadless Rule, presented as “baseline 2001 Roadless Rule” in the discussion below, and current Forest Plan direction.

Alternative 1 applies to the provisions of the 2001 Roadless Rule to inventoried roadless areas under the No Action Alternative and is referred to as the baseline 2001 Roadless Rule throughout this document. Alternative 1 takes no action and leaves all of Alaska under the 2001 Roadless Rule, including the Tongass NF. Under Alternative 1, roadless areas consist of 110 IRAs identified in the 2001 Roadless Rule. As a result of ownership changes and boundary alignment corrections these IRAs currently encompass 9.4 million acres of NFS land. Provisions of the 2001 Roadless Rule would remain intact across the 110 IRAs, encompassing approximately 56 percent of the Tongass NF. Under Alternative 1 baseline 2001 Roadless Rule, about 230,000 acres of old growth and 334,000 acres of young growth are currently suitable for timber production.

Alternative 2 provides limited additional timber harvest opportunity while maximizing roadless area designations. It removes approximately 142,000 acres from roadless designation that have been substantially altered as identified by known prior road construction or timber harvest including both development and non-development LUDs. These areas are generally known as “roaded roadless” areas but include additional areas considered to be substantially altered. Alternative 2 also maximizes the geographic scope of roadless area designation by adding 110,000 acres as ARAs.

Alternative 3 provides more timber harvest opportunities than Alternative 2 by removing substantially-altered roadless areas (including roaded roadless, similar to Alternative 2) and extending the bounds of these areas to logical end points of existing road and timber harvest systems, generally defined as the nearest watershed boundary (i.e., ridgeline of 14th-field hydrologic unit) from an existing road system. Removing these areas from the roadless inventory represents the logical extensions of substantially altered acres from existing infrastructure and likely encompasses the more economically feasible locations for future timber harvest with the least impact to roadless characteristics. Approximately 3,259,000 acres under Alternative 3 would be managed under Watershed Priority category and applied to areas identified in the Forest Plan as Tongass 77 (T77) Watersheds and The Nature Conservancy (TNC)/Audubon Conservation Priority Areas. Alternative 3 also provides additional timber harvest opportunity by designation of Community Priority areas around seven communities, Hydaburg, Juneau, Kake, Ketchikan, Sitka, Wrangell, and Yakutat. The Community Priority ARA allows for small-scale timber harvest and associated road construction/reconstruction. In addition, it allows for infrastructure development to connect and support local communities and traditional Alaska Native cultural uses. Further detail on this and other Alaska Roadless Area Land Management Categories are provided in the next section.

Alternative 4 provides significant additional timber harvest opportunity but maintains roadless protections for Scenic Viewshed Land Use Designations (LUD) and Tongass 77 (T77) Watersheds/The Nature Conservancy (TNC)/Audubon Conservation Priority Areas that are in

roadless areas. There is a small amount of young growth within these areas that would be available for timber harvest. Approximately 401,000 acres are removed from roadless designation, including substantially-altered areas and logical extensions of substantially-altered acres (similar to Alternatives 2 and 3), along with selected additional locations for potentially feasible economic timber sales. These acres are also converted from unsuitable to suitable timber lands, resulting in significant additional timber harvest opportunity.

Alternative 5 provides the same timber harvest opportunity as the Alternative 6 final rule while maintaining some roadless area protection in areas where the Forest Plan currently does not allow commercial timber harvest. Though the 2001 Roadless Rule represents baseline conditions, the final rule is compared to the other regulatory alternatives to fully understand the impacts of the final rule. Table 1 provides a comparison of the regulatory alternatives and further discussion of the Alaska Roadless Areas (ARA) management categories are provided below.

Alternative 6 is the final rule and provides maximum additional timber harvest opportunity and is the full exemption alternative. Under the final rule, roadless protection would be removed from all roadless areas on the Tongass, resulting in a reduction of 9.4 million acres of roadless areas (Table 1). Former roadless areas would be managed in accordance with the Forest Plan (USDA Forest Service 2016) with an estimated net gain of about 168,000 acres of suitable old growth, including 59,000 acres of high-volume suitable old growth (Table 1). This estimated gain (168,000 acres) is equivalent to about 74 percent of the acres available under the baseline 2001 Roadless Rule and seven times the old-growth acres expected to be harvested over the next 25 years (24,000 acres).

Aspects of the Tongass Forest Plan are consistent with the final rule including the goals, objectives, management prescriptions, standards, guidelines, projected timber sale quantity, projected wood sale quantity, and young-growth transition strategy. Analysis relies on baseline conditions described in the 2016 Forest Plan that includes standards and guidelines for other non-timber resources, for example Riparian Management standards and guidelines providing protection for fisheries with subsistence and commercial importance. All timber harvest, including harvest in areas formerly designated as IRAs, would be compelled to adhere to these resource standards and guidelines (fisheries, water quality, air, recreation, etc.), thus providing continuation of Forest Plan direction under all the regulatory alternatives.

Table 1. Roadless Areas by Alternative and Management Category

Roadless Category (acres)	Alternative					
	Baseline	2	Alternative 3	Alternative 4	5	Final Rule
	2001 Roadless Rule	Roaded Roadless Alternative	Logical Extension Alternative	Partial Dev LUDs <sup>1</sup> Alternative	All Dev LUDs Alternative	Full Exemption Alternative
Total Roadless Area	9,368,000	9,336,000	8,224,000	8,975,000	7,047,000	0
<b>ARA Management Categories</b>						
LUD II Priority	N/A	854,000	0	854,000	847,000	0
Watershed Priority	N/A	3,284,000	3,259,000	0	0	0
Roadless Priority	N/A	5,199,000	4,595,000	7,363,000	6,200,000	0
Community Priority	N/A	0	370,000	0	0	0
Timber Priority	N/A	0	0	757,000	0	0
<b>Old-Growth Acres Suitable for Timber Production</b>						

Total Acres	227,000	247,000	312,000	388,000	395,000	395,000
Net Change	0	20,000	85,000	161,000	168,000	168,000
<b>T77 &amp; TNC/ Audubon Conservation Priority Areas Outside of Roadless given Long-term Protection</b>						
Total Acres	0	0	507,000	0	0	0

N/A = not applicable

<sup>1</sup> Includes Timber Production and Modified Landscape LUDs, but not Scenic Viewshed.

<sup>2</sup> Includes old growth that would be suitable except for prohibition on old-growth harvests in Tongass 77 (T77) and The Nature Conservancy (TNC)/ Audubon Conservation Priority Areas. Overall, there are 171,000 acres of old growth within T77 and TNC/ Audubon Conservation Priority Areas outside of roadless areas.

## RELATIONSHIP OF FINAL RULE TO THE FOREST PLAN

The National Forest Management Act of 1976 (NFMA) requires the Forest Service to develop, maintain and as appropriate, revise land and resource management plans (forest plans) for units of the National Forest System. Land management plans provides a framework for integrated resource management and for guiding project and activity decision making, but plans do not authorize projects or activities or commit the Forest Service to take action. A revised Tongass Land Management Plan was issued in 1997, and amended in 2008 and 2016. Forest planning is a distinct and separate process from USDA’s various roadless rulemakings. See *Kootenai Tribe of Idaho v. Veneman*, 313 F.2d 1094 (9th Cir. 2002); and *State of Wyoming v. USDA*, 661 F.3d 1209 (10th Cir. 2011).

The relationship between regulations, land and resource management plans (forest plan), and national forest projects is of particular importance to roadless rulemaking. Hierarchically, the Alaska Roadless Rule is two steps removed from any Tongass project-specific decision. A regulation is hierarchically above a forest plan, which must comply with all applicable laws and regulations. A forest plan provides broad guidance for future project activities within a specific national forest.

All forest plans must conform to existing laws and regulations as well as new laws and regulations. See 36 CFR 219.1(f) and 219.13(c). All of USDA’s previous roadless rules, national and state-specific, have directed that: (1) no amendment or revision of any forest plan was compelled by promulgation of such rules, (2) subsequent forest planning decisions could not revise the Secretary’s regulatory instructions, and (3) line officers were to conform project decisions to the prohibitions and exceptions set forth in the applicable rules. The final rule would continue this approach with one minor exception.

The final rule would direct the Tongass Forest Supervisor to provide notice of an administrative change (36 CFR 219.7(c)) concerning lands that were deemed unsuitable in the Tongass Forest Plan (See Tongass Forest Plan, Appendix A: Identification of Lands Suitable for Timber Production and Limitations on Timber Harvest) solely due to the application of the 2001 Roadless Rule. Similarly, an administrative change addressing timber suitability would occur for other alternatives that alter the underlying assumptions of the plan’s identification of suitable lands. Any such lands would be appropriately returned to the suitable timber base via the administrative change provision of the planning regulations. All other aspects of the Tongass Forest Plan are consistent with the final rule including the goals, objectives, management prescriptions, standards, guidelines, projected timber sale quantity, projected wood sale quantity, and young-growth transition strategy. This includes standards and guidelines for non-timber

resources, for example riparian management standards and guidelines which provide protection for fisheries with subsistence and commercial importance. All timber harvest, including harvest in areas formerly designated as inventoried roadless areas, would be compelled to adhere to these resource standards and guidelines (fisheries, water quality, air, recreation, etc.), thus providing continuation of Forest Plan direction under all the regulatory alternatives. A forest plan amendment or revision is neither required nor expected to occur due to this rulemaking, and the public involvement opportunities associated with this rulemaking are equivalent to any notice or public involvement requirements under the National Forest Management Act.

Although the Forest Service has broad discretion during forest plan revision to modify management direction, any change would need to be consistent with applicable law, regulation, and policies, including the final Alaska Roadless Rule. Similarly, the Tongass Timber Reform Act, directs the Forest Service to seek to provide a supply of timber from the Tongass National Forest that meets annual market demand and the market demand for each planning cycle to the extent consistent with providing for the multiple-use and sustained-yield of all renewable resources and other applicable requirements, including NFMA. The USDA recognizes the projected timber sale quantity is not a cap, like the allowable sale quantity from the 1982 Planning Rule. It is only an estimate and at this time it is the agency's best estimate. The current Forest Plan anticipates sufficient timber availability to meet projected demand as described in the 2016 Tongass Forest Plan Amendment Final EIS and Record of Decision. In addition, the Tongass Forest Plan provides guidance to conduct annual monitoring and review to estimate current timber demand. Similarly, the Tongass Timber Reform Act provides for protection of riparian habitats and the multiple use and sustained yield of all renewable surface resources. In addition, watershed protection measures in the 2016 Tongass Forest Plan, such as riparian buffers and application of watershed conservation measures, are not likely to substantially change with any future revision or amendment because of other requirements such as the Clean Water Act, Endangered Species Act, Magnuson–Stevens Fishery Conservation and Management Act, and Alaska's Department of Environmental Conservation Water Quality Standards.

A unique aspect of the Tongass Forest Plan is the land use designation (LUD) called LUD II, a statutorily established land classification that applies on lands as described in the Tongass National Forest Land Management Plan, completed March, 1979 and amended winter 1985-1986, for areas allocated to be managed in a roadless state to retain their wildland character. Wildlife and fish habitat improvement and primitive recreation facility development are permitted in these areas. LUD II areas are defined in the Tongass Timber Reform Act (TTRA; Title II, Section 201) and the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291, 128 Stat. 3729, Section 3720(f)). The statutory direction for LUD II areas would remain in place regardless of whether the 2001 Rule or any other rule is promulgated.

As a result of these legal and regulatory constraints, reducing the number of acres designated as roadless, or even removing roadless status from all acres is not expected to lead to large scale development or harvest of timber. The USDA recognizes the projected timber sale quantity is not a cap, like the allowable sale quantity from the 1982 Planning Rule. It is only an estimate and at this time it is the agency's best estimate. The agency has no reason to believe harvest levels will increase from the Tongass Forest Plan annual projected timber sale quantity based on implementation of the final rule.

### **Alaska Roadless Area Land Management Categories**

Regulatory alternatives, apart from the baseline 2001 Roadless Rule and the final rule, provide for a variety of management approaches within roadless areas through ARA land management categories which include Land Use Designation (LUD) II Priority, Watershed Priority, Community Priority, Roadless Priority, and Timber Priority. The management categories prohibit timber harvest, road construction, and road reconstruction with a range of exceptions that are applied differentially across the regulatory alternatives. A brief description of each management category follows.

#### **Roadless Priority (Alternatives 2, 3, 4 and 5)**

The Roadless Priority management category is similar to the 2001 Roadless Rule but is less restrictive and addresses Alaska-specific concerns. Specifically, it expressly provides for infrastructure development to connect and support local communities, and road construction/reconstruction for access to renewable energy and leasable minerals. The leasable minerals exception provides for roading associated with geothermal, oil, gas, and/or coal development. In addition, the Roadless Priority category includes specific exceptions that, while they are already allowed under the 2001 Roadless Rule, included to improve overall clarity.

#### **LUD II Priority (Alternatives 2, 4 and 5)**

Land Use Development (LUD) II designated areas existed before the 2001 Roadless Rule and approximately 870,000 acres of the Tongass are congressionally designated as LUD II (847,000 acres currently are additionally designated as IRA under the 2001 Roadless Rule and 22,000 acres currently not designated as IRA) managed in a roadless state to retain their wildland character (as defined in the Tongass Timber Reform Act of 1990 and the National Defense Authorization Act for Fiscal Year 2015). Alternatives 2 and 4 propose to designate 854,000 LUD II acres as LUD II Priority ARA.

Under Alternatives 2, 4 and 5 the LUD II Priority category would reduce confusion by having the roadless regulatory management direction manage these areas only in accordance with the statutory direction: that these lands will be managed in a roadless state to retain their wildland character as defined in the Tongass Timber Reform Act of 1990 (Title II, Section 201) and the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291, 128 Stat. 3729, Section 3720(e)(4)). Alternatives 2 and 4 propose to designate all of the congressionally designated LUD II acres as LUD II Priority ARAs. Notably, Alternative 3 proposes to remove all LUD II areas from roadless designation rather than designating an ARA category. LUD II areas under Alternative 3 would continue to be managed under their congressional designation. Alternative 5 proposes to apply the LUD II Priority category only to LUD II areas that are currently designated as IRA.

#### **Watershed Priority (the Alternatives 2 and 3)**

The Watershed Priority category is more protective than the 2001 Roadless Rule as it offers fewer exceptions for timber harvest, road construction, and road reconstruction. It also provides for activities specific to aquatic habitat improvement. Approximately 3,284,000 acres under Alternative 2 and 3,259,000 acres under Alternative 3 would be managed under this management category. The Watershed Priority category is applied to areas identified in the

Forest Plan as Tongass 77 (T77) Watersheds and The Nature Conservancy (TNC)/Audubon Conservation Priority Areas. Also, the Watershed Priority management designation was applied to high priority sockeye salmon watersheds. Additionally, for Alternative 3, commercial old-growth timber harvest would be prohibited on National Forest System lands in T77 and TNC/Audubon Conservation Areas including those that extend beyond Alaska Roadless Area boundaries.

### **Community Priority (Alternative 3)**

The Community Priority category allows for small-scale timber harvest and associated road construction and reconstruction. In addition, it allows for infrastructure development to connect and support local communities, and traditional Alaska Native cultural uses. In all cases, activities within Community Priority ARAs would have to be consistent with the underlying Forest Plan LUD requirements. This is to say that even if a timber harvest, road building, or other activity would be permissible under the Alaska Roadless Rule, it may not be allowable because of Forest Plan requirements specific to the LUD that applies to the area. This management category applies to approximately 370,000 acres and is only proposed under Alternative 3 adjacent to seven communities: Hydaburg, Juneau, Kake, Ketchikan, Sitka, Wrangell, and Yakutat.

This management category was developed to address specific desires of some communities to retain roadless protections while also allowing for small timber operators in the community, infrastructure development to support the community, and provide for traditional Alaska Native cultural uses. The provision allows for road building to accommodate small commercial sales of less than one million board feet (which does not exclude larger operators but is designed to reduce barriers to entry for smaller operators).

### **T77 Watersheds and TNC/Audubon Conservation Priority Areas – Additional Protections (Alternative 3)**

Watershed protection is a key element of roadless management. Watersheds are highly valued sources of municipal drinking water, support fisheries and wildlife habitat, and can act as keystones for economic activities. Under Alternative 3, areas identified in the 2016 Tongass Forest Plan as T77 and TNC/Audubon Conservation Priority Areas (high priority watershed areas) would be afforded added protection through the roadless regulation. Specifically, old-growth timber harvest would be prohibited within these areas, subject to the described exceptions. A prohibition on old growth harvesting already exists through the Tongass Forest Plan. But Alternative 3 establishes regulatory continuity between these roadless and watershed management systems given how extensively they overlap (the listed watersheds comprise over half of the Tongass' roadless areas, and approximately 90% of the watershed areas are within roadless area boundaries). Thus the old growth harvest prohibition would be extended beyond the designated roadless area boundaries in order to maintain the balance and integrity of the watershed protection system. Young-growth timber harvest outside of Alaska Roadless Areas within the high priority watershed areas is not prohibited.

As with all roadless rule instructions, the new old growth harvest prohibition would operate as an overlay to the forest plan, with the plan continuing to provide management direction in other regards. In this manner, Alternative 3 affords high priority watershed areas greater protection than under the 2001 Roadless Rule.

### **Timber Priority (Alternative 4)**

The Timber Priority category allows timber harvest, road construction, and road reconstruction to facilitate timber management and provide economic opportunity. This management category applies to approximately 856,000 acres and is only proposed under Alternative 4.

## **ANALYSIS REQUIREMENTS**

This report summarizes information and analysis regarding the effects of the final Alaska Roadless Rule (i.e., final rule), as evaluated in the Final Environmental Impact Statement (FEIS) (USDA Forest Service 2020) on small entities in the context of requirements under the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA, 5 U.S.C. et seq., Public Law 96-354) as amended by the Small Business Regulatory Flexibility Enforcement Fairness Act of 1996 (SBREFA) generally requires an agency to prepare a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of the rulemaking. This is required of any rule subject to notice and comment requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a “significant impact on a substantial number of small entities”. The RFA acknowledges small entities have limited resources and makes it the responsibility of the regulating federal agency to avoid burdening such entities unnecessarily. If, based on an initial assessment, a regulation is likely to have a significant economic impact on a substantial number of small entities, the RFA requires a regulatory flexibility analysis (Initial Regulatory Flexibility Analysis (IFRA) for the final rule, Final or FRFA analysis for the final rule).

The RFA requires analysis of a rule’s economic impact on the small entities that will be subject to the rule’s requirements; rules that do not establish requirements applicable to small entities are thus not susceptible to RFA analysis. It is also noted that the Act states that the purpose of analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the final rule on small entities” (sections 603 and 604, emphasis added). Consequently, rules that relieve regulatory burden, or otherwise have a positive economic effect on small entities subject to the rule, should not require an IFRA or FRFA.

### **General Methodology and Assumptions**

This report summarizes analysis of potential small entity opportunities associated with six regulatory alternatives summarized in the Introduction. For a discussion about the overall impacts to employment and labor income across all entities, the reader is referred to the FEIS for the final rule (USDA Forest Service 2020) and the Regulatory Impact Assessment for the final rule (USDA Forest Service 2020b). The final rule does not directly regulate, nor have a direct impact on any small entities. However, this analysis considers the indirect impacts on small entities, consistent with recommendations in recent SBA guidance.<sup>1</sup>

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<sup>1</sup> “An agency should examine the reasonably foreseeable [indirect] effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule.” A guide for government agencies – How to comply with the Regulatory Flexibility Act” (US Small Business Administration, August, 2017).

This report begins by describing small entity<sup>2</sup> characteristics in the region potentially affected by the final rule. The analyses in this report then address (1) opportunities for small businesses associated with industry sectors projected to experience effects under the final rule (i.e., timber, recreation, commercial fisheries and mining), and (2) opportunities for small governments (i.e., boroughs and municipalities in Census Areas) such as revenue sharing and infrastructure effects.

The RFA references the definition of "small business" found in the Small Business Act. The Small Business Act further authorizes the Small Business Administration (SBA) to define "small business" by regulation, which it does for each of the business categories listed in the North American Industrial Classification System (NAICS). Size standards are provided by the SBA. For each NAICS code and are set by the number of employees or average annual receipts (SBA 2018). Business and size standards for industries related to resource uses potentially affected by ARR are listed in the table below.

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<sup>2</sup> Small entities include small businesses (as defined by US Small Business Administration (SBA) size standards regarding number of employees or annual receipts, by North American Industrial Classification System (NAICS) codes), small organizations ("not-for-profit enterprise which is independently owned and operated and is not dominant in its field"), and small governments (government of city, county, town, school district or special district with a population of less than 50,000).

Table 2. Small business size standards

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars	Size standards in number of employees
<b>Timber related</b>			
115310	Support Activities for Forestry	\$7.5	
321113	Sawmills	NA	500
321114	Wood Preservation	NA	500
321211	Hardwood Veneer and Plywood Manufacturing	NA	500
321212	Softwood Veneer and Plywood Manufacturing	NA	1,250
321213	Engineered Wood Member (except Truss) Manufacturing	NA	750
321214	Truss Manufacturing	NA	500
321219	Reconstituted Wood Product Manufacturing	NA	750
321911	Wood Window and Door Manufacturing	NA	1,000
321912	Cut Stock, Resawing Lumber, and Planing	NA	500
321918	Other Millwork (including Flooring)	NA	500
321920	Wood Container and Pallet Manufacturing	NA	500
321991	Manufactured Home (Mobile Home) Manufacturing	NA	1,250
321992	Prefabricated Wood Building Manufacturing	NA	500
321999	All Other Miscellaneous Wood Product Manufacturing	NA	500
<b>Commercial fishing related</b>			
114111	Finfish Fishing	\$20.5	NA
114112	Shellfish Fishing	\$5.5	NA
114119	Other Marine Fishing	\$7.5	NA
<b>Outfitter and Guide related</b>			
713990	All Other Amusement and Recreation Industries <sup>3</sup>	\$7.5	NA
<b>Mining related</b>			
212221	Gold Ore Mining	NA	1,500
212222	Silver Ore Mining	NA	250

Methods used to examine the impacts to small business opportunities rely on discussion of jobs and labor income and other effects under the alternatives from the FEIS for the final rule (USDA Forest Service 2020). Changes in resource outputs are not projected in the FEIS and adverse impacts to small entities are not anticipated. Resource areas discussed include timber and wood products, recreation, commercial fishing, and minerals. Analysis of these sectors is limited to a summary of effects from the FEIS and descriptions of small entity characteristics.

<sup>3</sup> Includes seven guiding related NAICS “Index Entries”: Fishing guide services; Guide services (i.e., fishing, hunting, tourist); Guide services, fishing; Guide services, hunting; Guide services, tourist; Hunting guide services; and Tourist guide services

The RFA defines "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000. Small governments examined include all eight boroughs (Haines, Juneau, Ketchikan Gateway, Petersburg, Sitka, Skagway, Wrangell, and Yakutat) and the municipalities included in two Census Areas (CAs) (Hoonah-Angoon CA<sup>4</sup> and Prince of Wales-Hyder CA<sup>5</sup>) since all contain populations less than 50,000. Methods used to examine impacts to small governments rely on information from the FEIS such as effects related to revenue-sharing and infrastructure.

## **SMALL ENTITY CHARACTERISTICS**

Information regarding small entities were obtained from the FEIS for the final rule (USDA Forest Service 2020) and the SBA profile for Alaska (SBA 2018). Criteria for defining small businesses are obtained from SBA's small business size standards (SBA 2018) displayed in Table 2 above.

### **Small Business Characteristics in Alaska**

Alaska had an estimated total of 71,840 small businesses, including non-employer firms, in 2015, based on a general standard of 500 employees<sup>6</sup> (SBA 2018). These small businesses made up 99 percent of all Alaska businesses during 2015. Small business employment was 53 percent (142,448 employees) of total private employment (267,999 employees) within the state.

Small firms classified as "Agriculture, Forestry, and Fishing and Hunting" (NAICS 11) and "Manufacturing" (NAICS 31-33) made up 13 percent (9,325 firms) and 2 percent (1,589 firms), respectively, of all small business firms in the state (71,841 firms). Small firms classified as "Arts, Entertainment, and Recreation" (NAICS 71) and "Mining, Quarrying, and Oil and Gas Extraction" (NAICS 21) made up 6 percent (4,017 firms) and less than 1 percent (410 firms), respectively, of all small business firms in the state.

Small business employment as a share of total private employment in these firms varies. Employment in small firms classified as "Agriculture, Forestry, and Fishing and Hunting" (NAICS 11) and "Manufacturing" (NAICS 31-33) made up 68 percent (556 employees) and 35 percent (4,282 employees), respectively, of all private employment in their sectors. Employment in small firms classified as "Arts, Entertainment, and Recreation" (NAICS 71) and "Mining, Quarrying, and Oil and Gas Extraction" (NAICS 21) made up 69 percent (3,206 employees) and 15 percent (2,041 employees), respectively, of all private employment in their sectors.

The extent to which these firms are affected by the final rule and/or the potential significance of economic impacts are discussed in resource-specific sections below. It is important to note that this type of data (SBA 2018) focuses on firms and not necessarily ownership; a given firm or employer may be owned by a larger parent corporation or entity that would exceed the small

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<sup>4</sup> Angoon, Gustavus, Hoonah, Pelican, and Tenakee Springs in Hoonah-Angoon CA.

<sup>5</sup> Coffinan Cove, Craig, Edna Bay, Hydaburg, Kake, Kasaan, Klawock, Port Alexander, and Thorne Bay in Prince of Wales-Hyder CA

<sup>6</sup> 500 employees is adopted as a conservative and generic standard in this case, recognizing that standards vary by industry classification according to current Small Business Administration direction (See SBA 2006), recognizing that standards for different sectors vary (see table 2 in this document); some standards are specified in terms of average annual receipts (e.g., Forestry Services (NAICS 1153)).

business standards and disqualify the establishment from being classified as small business. As such, this data is more reliable than data regarding establishments<sup>7</sup> but is still likely to overestimate numbers of small businesses. Additional details about sector-specific small business conditions are noted in some sections below.

### Small Business Characteristics for the Timber Industry

The wood products industry in Southeast Alaska in its current form consists of individual- and family-owned sawmills and independent logging businesses. The Forest Service has conducted an annual on-site survey of sawmills in the region since 2000. To maintain consistency, the survey includes only those mills assessed in previous survey years. The original list of mills to be surveyed, initially identified in 2000, consisted of 20 sawmills that regularly operated and met established criteria for medium- to large-size classification. This total was subsequently increased to 22 in 2007. The annual survey for 2018 found that seven of these sawmills (32 percent) were still active; two (9 percent) remained installed with significant equipment on site, but were idle during 2018; and the remaining 13 (59 percent) were no longer in production, either decommissioned or uninstalled (Parrent et al. 2019). The seven active and two idle mills included in the survey are identified in Table 3.

Table 3. Forest Service Mill Survey: Estimated Mill Capacity, Production, and Utilization, 2018

Mill Name <sup>1</sup>	Location	Estimated Capacity (MBF) <sup>2</sup>	Estimated Production (MBF) <sup>3</sup>	Percent Utilization
Viking Lumber Co.	Craig	80,000	14,000	18%
Icy Straits Lumber & Milling Co. <sup>4</sup>	Hoonah	3,000	500	17%
Western Gold Cedar Products	Thorne Bay	6,500	700	11%
D&L Woodworks	Hoonah	1,000	1.5	<1%
Thuja Plicata Lumber	Thorne Bay	1,000	31	3%
The Mill	Petersburg	6,000	2.5	<1%
Falls Creek Forest Products <sup>5</sup>	Petersburg	3,000	15	1%
<b>Total Active</b>	<b>Southeast Alaska</b>	<b>100,500</b>	<b>15,250</b>	<b>15%</b>
Thorne Bay Wood Products	Thorne Bay	6,250	NA	NA
St. Nick Forest Products <sup>6</sup>	Craig	1,150	NA	NA
<b>Total Idle</b>	<b>Southeast Alaska</b>	<b>7,400</b>	<b>NA</b>	<b>NA</b>
<b>Overall Total<sup>7</sup></b>	<b>Southeast Alaska</b>	<b>107,900</b>	<b>15,250</b>	<b>14%</b>

Notes:

MBF = thousand board feet; NA = not applicable

<sup>1</sup> Data are presented for those mills included in the Forest Service's annual on-site survey only.

<sup>2</sup> Estimated mill capacity is an estimate of the processing capability of the mill based on the amount of net sawlog volume (Scribner log scale) that could be utilized by the mill as currently configured, during a standard 250-day per year, two shifts per day, annual operating schedule, not limited by availability of employment, raw materials or market.

<sup>3</sup> Estimated Mill Production is the estimated net sawlog volume used during the year to manufacture sawn products.

<sup>4</sup> Estimated capacity for the Icy Straits mill was reduced from 21 MMBF as a result of a major mill fire in July 2010. Mill production occurred prior to the fire.

<sup>5</sup> Formerly Southeast Alaska Wood Products.

<sup>7</sup> A firm may consist of or own one or more physical establishments within a region or state of interest.

<sup>6</sup> Formerly W.R. Jones & Son Lumber Co.  
<sup>7</sup> Totals may not sum due to rounding.  
Source: Parrent et al. 2019

The Tongass NF supplied about 7.7 MMBF or 50 percent of the total volume (15.3 MMBF) processed by the mills identified in Table 3 in 2018, with state lands responsible for most of the remaining volume (Parrent et al. 2019). The Tongass share of timber processed locally (8.4 MMBF) was equivalent to about 52 percent of the total (16.0 MMBF) harvested on the Tongass in 2017 (Table 3). Viking Lumber processed 14 MMBF, approximately 92 percent of the total (15.3 MMBF) processed in 2018 (Table 3).

As noted above, the annual Forest Service mill survey is not a comprehensive inventory of all sawmills in Southeast Alaska. While no new sawmills of sufficient size classification to be added to the annual mill survey have been established since 2007, many other smaller sawmills operate across the region, including facilities that operate on a seasonal, part-time, or contingent basis. The number of active mills and timber operators in Southeast Alaska varies at any given time. A review of business licenses in December 2018, for example, identified 22 additional sawmills in Southeast Alaska that are not included in the Forest Service survey (Table 4). The University of Montana’s Bureau of Business and Economic Research (BBER), in conjunction with the PNW Inventory and Analysis Program of the Forest Service, conducted a census of timber processors in Alaska in 2011 and identified 27 sawmills in Southeast Alaska, with almost half this total (12 facilities) located on Prince of Wales Island (Berg et al. 2014).

Table 4. Additional Sawmills in Southeast Alaska Based on a Review of Business Licenses, 2018

<b>Mill Name<sup>1</sup></b>	<b>Location</b>
Cedar Street Enterprises	Port Alexander
Chilkat Valley Sawmill	Haines
Crew Lumber	Edna Bay
CSL Farm & Services	Edna Bay
Cutting Edge Wood Products	Ketchikan
D and L Woodworks	Hoonah
Dale R. Bakula Construction	Ketchikan
Dark Horse Lumber	Haines
Fair & Square Milling	Coffman Cove
Falls Creek Forest Products	Petersburg
Glacier Bay Woodcraft	Gustavus
K & D Lumber	Thorne Bay
Mud Bay Lumber Company, LLC	Haines
Peavey Log	Thorne Bay
Pitch Enterprises	Thorne Bay
Seakwood.com	Petersburg
Spruce Point Mill	Petersburg
Tenakee Logging Company	Tenakee Springs
Windy Point Sawmill and Bobcat Service	Craig

Wood Marine	Klawock
The Woodshed	Petersburg
Yakutat Supply	Yakutat
<p>Note:  <sup>1</sup> These businesses were identified through a review of business licenses in December 2018 and includes businesses listed as sawmills (North American Industrial Classification System [NAICS] Code 321113 – Sawmills). This table identifies additional sawmills that are not included in the Forest Service’s mill survey (see Table 3.2-4). Source: Alaska DCCED 2018</p>	

Detailed data on the size of logging firms or sawmills by employment or receipts is not available for the boroughs and Census Areas of interest<sup>8</sup> in Southeast Alaska. This data is often withheld to avoid disclosing data for individual companies. To maintain confidentiality, the U.S. Census Bureau suppresses data to protect the identity of any business or individual. Thus data across business sizes is used for NAICS code 11 and 31-33 since data for the specific timber related codes in Table 2 are not disclosed for boroughs and Census Areas of interest in Southeast Alaska. NAICS code 11 is specific to Agriculture, forestry, fishing and hunting industries and includes logging and other forestry support. NAICS code 31-33 characterizes manufacturing and includes wood product processing sectors listed in Table 2 above. Within the boroughs and Census Areas of interest, the average receipts per establishment for sector 11 was \$120,000 and ranged from a minimum of \$23,000 to a maximum of \$253,000, across all businesses in this NAICS aggregation. This suggest all industries are likely to meet the small business size standards for small entities in Table 2 (less than \$7.5 million in earnings) (US Department of Commerce 2012). For NAICS code 31-33 the average number of employees per establishment was 20 with a minimum of 2 and a maximum of 59, across available data for boroughs and Census Areas of interest, indicating most if not all firms meet the size standards for small firms across all industries in Table 2 (US Department of Commerce 2012b).

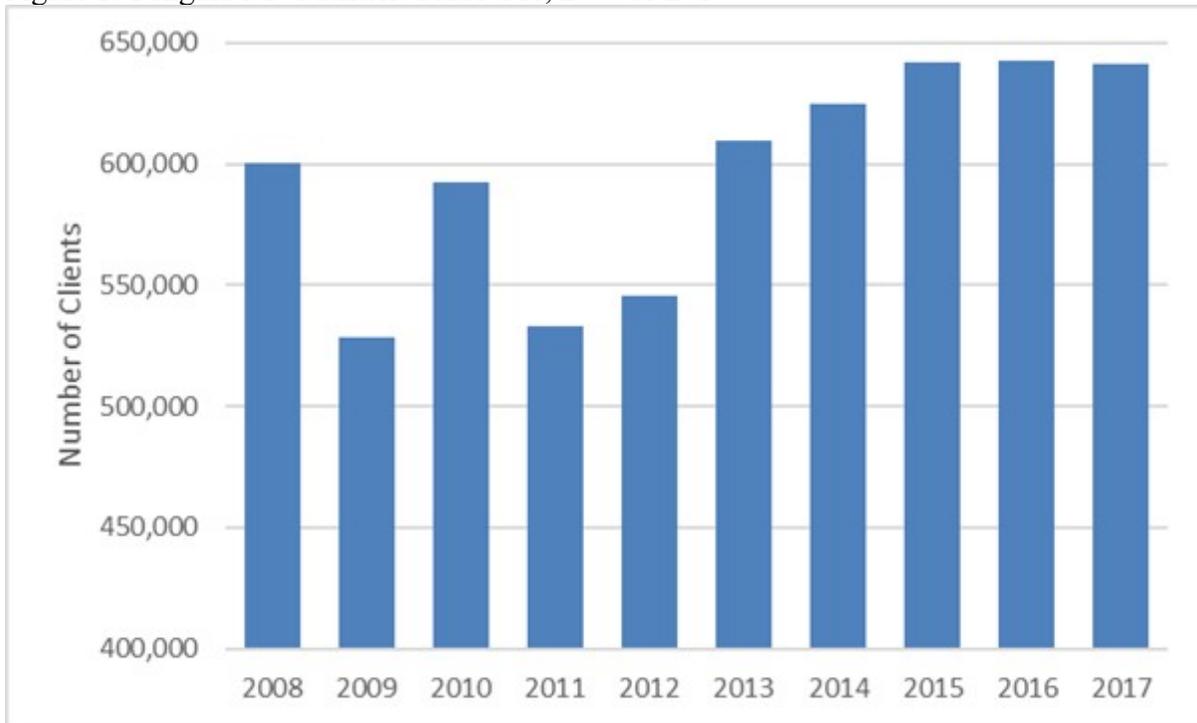
### **Small Business Characteristics of Outfitters and Guides**

A total of 242 authorized outfitter/guides provided services to Forest visitors during 2013 to 2017. More than half of these operators (132) use the Forest consistently (at least four out of the five years). Outfitter/guides reported an annual average of 632,000 clients over this period, with a total of 641,149 clients reported in 2017. Figure 1 shows reported outfitter/guide use on the Forest from 2008 to 2017.

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<sup>8</sup> Haines, Juneau, Ketchikan Gateway, Petersburg, Sitka, Skagway, Wrangell, and Yakutat; and the two Census Areas Hoonah-Angoon and Prince of Wales-Hyder

Figure 1. Tongass NF Outfitter/Guide Use, 2008 to 2017



Note:

Source: USDA Forest Service 2018

Detailed data on outfitter/guide firm size by employment or receipts is not available for the boroughs and Census Areas of interest<sup>8</sup> in Southeast Alaska. This data is often withheld to avoid disclosing data for individual companies. To maintain confidentiality, the U.S. Census Bureau suppresses data to protect the identity of any business or individual. Thus data across business sizes is used for NAICS code 713 since data specific to NAICS code 713990 is not disclosed for boroughs and Census Areas of interest in Southeast Alaska. NAICS code 713 is specific to Amusement, gambling, and recreation industries and includes the seven guiding related NAICS “Index Entries”: Fishing guide services; Guide services (i.e., fishing, hunting, tourist); Guide services, fishing; Guide services, hunting; Guide services, tourist; Hunting guide services; and Tourist guide services. Within the boroughs and Census Areas of interest, the average receipts per establishment was \$550,000 and ranged from a minimum of \$76,000 to a maximum of \$850,000, across all businesses in this NAICS aggregation (US Department of Commerce 2012c). This suggest all firms are likely to meet the small business size standards for small entities in Table 2 (less than \$7.5 million in earnings).

### **Small Business Characteristics for Commercial Fishing and Seafood Processing**

In 2018, an estimated 185 million pounds of seafood was harvested in Southeast Alaska with an ex-vessel value of \$247 million. Viewed in terms of value, salmon accounted for more than half (55 percent) of the total commercial catch in Southeast Alaska in 2018, with the remainder divided among black cod (16 percent), halibut (13 percent), crab (7 percent), herring (2 percent), and other (8 percent) (Southeast Conference 2019).

Employment in the seafood harvesting and processing sectors varies from year- to-year, but remains relatively stable compared to the fluctuations in the volumes and value of salmon harvested each year. Salmon harvesting employed an estimated 864 people in Southeast Alaska in 2018, with an additional 1,281 people employed harvesting other fish (Alaska DOL 2019). A further total of 1,300 people were employed in fish processing in 2018 for a combined total of 3,445 jobs (Alaska DOL 2019b). Seafood harvesting and fish processing employment trends are shown for 2000 to 2013 in the Tongass Forest Plan Amendment FEIS (USDA Forest Service 2016, pp. 3-501 to 3-503).

### **Small Business Characteristics for Mining and Mineral Development**

Mineral exploration and mining have been a part of life in Southeast Alaska for more than a century. Estimates developed using Alaska DOL data found that a total of 889 workers were employed in the mining sector in Southeast Alaska in 2018 (USDA Forest Service 2020). According to a recent economic impact study prepared for Alaska’s mining industry, the Greens Creek and Kensington mines employed 420 workers and 387 workers in 2018, respectively, with the Kensington Mine employing an additional 90 contractors (McDowell Group 2019). Mining jobs are the highest-paying jobs in the region, with annual wages of \$104,650 in 2018 (Southeast Conference 2019). The high wages in this sector reflect the skilled nature of the job, as well as the demands of working in remote locations (Abrahamson 2013). The region’s two large mines (Greens Creek and Kensington) accounted for the majority of the mining employment in Southeast Alaska in 2018 (Southeast Conference 2019).

Both the Greens Creek and Kensington mines are located in the City and Borough of Juneau, mostly on Tongass NFS lands. Greens Creek Mine is a primary silver mine located on Admiralty Island; Kensington Mine is a gold mine located on the mainland approximately 45 miles north of Juneau. Alaska residents make up about two-thirds of the total labor force at each mine, 66 percent at Greens Creek and 67 percent at Kensington. Alaska resident employees of both mines live throughout the region. More than two-thirds of Greens Creek’s Alaska resident employees live in Juneau. The other third live in other Southeast Alaska communities or elsewhere in the region (McDowell Group 2018).

Two proposed underground mine projects on NFS lands on Prince of Wales Island received approval for financial assistance through the Alaska Industrial Development and Export Authority in June 2014 (Bradner 2014). Senate Bill 99 authorized \$145 million and \$125 million in infrastructure and construction financing, respectively, for the proposed Bokan Mountain and Niblack projects. The Bokan Mountain project is a rare earths mine that would include on-site ore processing facilities. The McDowell Group (2013), in a study prepared for the Bokan Mountain project, estimated that construction of the project would last 2 years and employ an average construction workforce of 200, with peak employment potentially reaching 300 workers. Operation would be expected to employ 190 workers with approximately \$18 million in annual payroll (McDowell Group 2013). The Niblack Project is a proposed underground copper-gold-zinc-silver mine. The project owners estimate that the construction and operation phases of the project would both employ approximately 200 workers (Niblack Project LLC 2015). No exploration activity was reported for either project in 2016 and 2017 (McDowell Group 2018).

### **Information Relevant to Small Governments**

Prior to 2000, in states with national forests, 25 percent of the returns to the U.S. Treasury from revenue producing Forest Service activities such as timber sales, were returned to each state for distribution back to counties (or in Alaska, boroughs) having acreage within a national forest. Those payments were called the “25 percent fund payments” and were dedicated by law to be used for roads and schools. In October 2000, the Secure Rural Schools and Community Self Determination Act of 2000 was enacted to stabilize federal payments to states in response to declining federal receipts.

The legislation was authorized for implementation for fiscal years 2001 through 2007 and allowed counties and/or boroughs to choose between 25 percent of current receipts or a full payment amount based on the average of the highest three payments made to the state during the 14-year period between 1986 and 1999. Alaska boroughs and communities have elected to receive a full payment amount rather than 25 percent of receipts since enactment of this legislation.

Those annual full payment amounts are primarily dedicated to roads and schools, with provisions for special project funding under certain conditions. Under the full payment approach, Forest Service payments to the State of Alaska have been based on the high 3-year historic average, rather than linked to annual Forest Service revenue.

The Secure Rural Schools Act has been reauthorized since 2008, most recently in March 2018 for Fiscal Years 2017 and 2018. The program was not reauthorized for Fiscal Year 2016, resulting in a substantial drop in payments. Tongass-related secure rural schools payments to Southeast Alaska totaled \$8.9 million in 2013 and \$6.7 million 2018. Detailed payments for each borough and CAs over this period are presented in Table 3.2-7 of the FEIS for the final rule (USDA Forest Service 2020).

### **SMALL BUSINESS OPPORTUNITIES AND EFFECTS**

The FEIS for the final rule (USDA Forest Service 2020) and the Regulatory Impact Assessment for the final rule (USDA Forest Service 2020b) provide further detail on the regional economy including Southeast Alaska industry employment and earnings characteristics by industry and unemployment trends. The reader is encouraged to review those reports for details about environmental effects. This report focuses on opportunities for small businesses associated with industry sectors projected to experience effects under the final rule (i.e., timber, recreation, commercial fisheries and mining).

## **Timber Industry**

Timber program output levels are expected to remain constant between the baseline 2001 Roadless Rule, the final rule and remaining regulatory alternatives; and involve a similar number of acres under all regulatory alternatives, varying only by the location of timber harvest. None of the regulatory alternatives propose changes to the projected timber sale quantity or timber demand projections, guided by the Tongass Land and Resource Management Plan. The Tongass National Forest, in compliance with the Tongass Timber Reform Act (1990), seeks to provide an annual supply of timber to meet market demand to the extent consistent with providing for multiple use and sustained use of all renewable forest resources, and other requirements, including NFMA. Thus, the proportion of harvest occurring within versus outside of roadless areas would vary by regulatory alternative, but overall economic impacts are assumed to remain constant. These impacts were estimated for the first decade following implementation in the 2016 Forest Plan FEIS (USDA Forest Service 2016) and are based on an annual average harvest of 46 MMBF. All regulatory alternatives, including the final rule, are assumed to support a similar range of direct jobs and income. Based on the 2016 Forest Plan EIS assessment, all of the regulatory alternatives would support an estimated 92 jobs in logging, 49 to 100 jobs in sawmilling, and 29 to 46 jobs related to transportation and other services, with direct income ranging from \$9.8 million to \$10.4 million. Thus no change in timber related employment or income is expected as a result of the final rule or other regulatory alternatives.

The local sawmilling and transportation-related employment estimates (from the 2016 Forest Plan EIS) were based on a range, from maximum possible shipment out of state (export of all Alaska yellow-cedar and western redcedar plus hemlock and Sitka spruce export equal to 50 percent of total sale net sawlog volume), to no shipment of western redcedar, hemlock, or Sitka spruce, and export of 100 percent Alaska yellow cedar. Transportation and other services include water transportation, independent trucking, stevedoring, scaling, and export marking and sort yard employment for export volume, and water transportation, scaling, and independent trucking for locally sawn volume. Export employs more workers in transportation and other services per million board feet harvested than domestic production, which is reflected in the range of values estimated for transportation and related services.

Actual employment and income in Southeast Alaska would depend on choices made by purchasers; those choices may change as markets and prices shift. Under current market conditions, purchasers are likely to export as much as they can while processing enough material locally to keep manufacturing facilities open, and take advantage of opportunities to produce high-value sawn material in Southeast Alaska. In addition, the Regional Forester has allowed increased export on a case-by-case basis, as discussed above and explained in Appendix H of the Tongass Forest Plan (USDA Forest Service 2016). If purchasers were allowed on a case-by-case basis to export a larger share of a particular sale in unprocessed form, there would be a commensurate reduction in sawmilling jobs and an increase in transportation-related jobs.

In practice, many factors can influence the cost of timber harvest, adding economic risks for potential purchasers and affecting the ability of the Forest Service to offer timber sales. Road construction, helicopter yarding, complex silvicultural prescriptions, setting size, and other factors may increase costs, which then decrease the value of the offering. The value of the timber offered must be sufficient to cover costs and include profit for the purchaser. Under the Further

Consolidated Appropriations Act, 2020 P.L. 116-94, 133 Stat. 2751 (Sec. 436), timber sales that do not appraise positive using the current Region 10 Residual Value appraisal cannot be offered (USDA Forest Service 2020). Estimated costs per thousand board feet vary substantially across the Forest. Transportation infrastructure costs and haul distances are typically higher in more remote areas, i.e., those areas that are further from existing infrastructure and markets. In this context, markets may include a mill or export yard.

The Record of Decision for the Tongass Forest Plan estimated that a total of approximately 24,000 old-growth acres would be harvested Forest-wide after 25 years, with a total of 42,500 old-growth acres harvested after 100 years (USDA Forest Service 2016a). These estimates represent an approximate upper estimate of the number of roadless acres that could be potentially harvested under any of the regulatory alternatives. The Tongass Forest Plan FEIS (USDA Forest Service 2016) estimated that approximately 5 MMBF of small and micro-sales of old-growth timber is required each year to meet the needs of existing small old-growth mills that produce high value products such as appearance grade lumber and cedar shingles. This annual small and micro-sale demand (5 MMBF) is anticipated to be met for the duration of the planning period under all of the regulatory alternatives, including the baseline 2001 Roadless Rule.

For larger sales, more acres of suitable old-growth land would allow the Forest Service greater flexibility in the selection of future timber sale areas, as well as the potential for more flexibility in sale design, depending on the planning areas selected. This improved flexibility could, in turn, potentially improve the Forest Service's ability to offer economic sales that meet the needs of industry. This greater flexibility could be especially beneficial during the first two decades of the Forest Plan (the transition period), when most old-growth harvest would take place. While many factors can influence the cost of timber harvest, as noted above, areas along existing roads or those using marine access facilities are typically more economically efficient, followed by areas where existing roads can be easily extended. Transportation infrastructure costs can include road construction, reconditioning, reconstruction, and maintenance, as well as log transfer facility development. Road construction, reconditioning, reconstruction, and maintenance involve substantial costs and have the potential to strongly influence timber sale economics.

Areas closer to markets, either a mill or export facility, are also more likely to offer more economic timber sale options. Existing old-growth mills in Southeast Alaska are primarily located in the south part of the region, with a concentration of mills, including the last remaining medium-sized mill (Viking Lumber), on Prince of Wales Island. Sales on the south part of the Forest are, therefore, more likely to appraise positive. In cases where the Regional Forester allows 100 percent export, which is permissible on a case-by-case basis, proximity to an export facility may also result in sales being more likely to appraise positive (USDA Forest Service 2020).

The Regulatory Impact Assessment (RIA) for the final rule (USDA Forest Service 2020b) provides detail related to stumpage value change from forest level "stump-to-truck" data (felling, yarding, loading, etc.). Changes in stumpage value reflect efficiency gains from a portion of all costs to purchasers covering just "stump to truck" from felling, yarding, and loading. Transportation and towing costs are assumed to remain constant. Harvest near existing roads and closer to markets may provide 'stump to truck' costs saving as readily available acres in areas

formerly designated as IRAs are harvested first. As these acres are exhausted efficiency gains from lower “stump to truck” costs are likely to be absorbed by increased transportation and towing costs. Information on transportation and towing costs are not available and highly speculative given the influence of external market forces and lack of site specific knowledge on where and when harvest will occur.

Stump-to-truck cost estimates used in this assessment are based on actual appraised values for past timber sales specific to felling, yarding, and loading costs. Under the Further Consolidated Appropriations Act, 2020 P.L. 116-94, 133 Stat. 2751 (Sec. 436), timber sales that do not appraise positive using the current Region 10 Residual Value appraisal cannot be offered. The Region 10 Residual Value appraisal and other timber valuation programs are based on the best available information (collected from timber companies, price reports, and cost indices) to appraise timber sales on the Tongass National Forest. The main cost center affected by roadless restrictions is “fell yard load” because most of the easier ground (lower logging cost) was logged in the first and second entry. In these cases, each subsequent entry into the roaded base has an increasing higher percentage of units with cable or helicopter logging or lower quality smaller timber in units deemed uneconomical (“left-overs”) in previous entries. Examination in the RIA indicates that stumpage value could potentially increase by approximately \$460,000 to \$922,000 annually as a result of improved flexibility under the final rule and Alternatives 2 through 5. Estimated stumpage value change depends on the level of harvest thus two estimates of harvest are used: one standard deviation less than the average annual harvest on the Tongass NF, over the last 17 years (23 MMBF) and the harvest estimate under the Tongass Forest Plan (46 MMBF). This range of harvest accounts for uncertainty in timber demand; accounting for past influences of the 2016 and 2008 Forest Plans by using the annual average harvest (see Table 4 in the RIA; USDA Forest Service 2020b). In addition the upper-bound estimate of 46 MMBF, guided by the 2016 Forest Plan, is a projection of future demand. This includes the agency’s responsibilities under the Tongass Timber Reform Act, which directs the Forest Service to seek to provide a supply of timber from the Tongass National Forest that meets annual market demand and the market demand for each planning cycle to the extent consistent with providing for the multiple-use and sustained-yield of all renewable resources and other applicable requirements. Cost savings would accrue to both small and large entities harvesting timber from the Tongass NF. Cost savings would range from \$14,000 to \$28,000 if averaged across the 11 mills in Table 3 and additional 22 mills in Table 4. Assuming these mills are similar to the characteristics of timber industry entities, described above, within the boroughs and Census Areas of interest in Southeast Alaska, cost saving would range from 0.3 to 0.6 percent of average annual receipts of available data for representative firms (\$137,000 in 2020 dollars) (U.S. Department of Commerce 2012). These estimates provide an upper-bound for consideration of potential cost savings to the timber industry and should not be used as precise estimates outside this analysis.

### **Outfitters and Guides**

Changes in land management have the potential to affect outfitter/guide operations that provide commercial recreation opportunities on the Forest. Impacts to existing outfitter/guide use are likely to be greatest where changes in roadless protections allow development in remote areas that are used for outfitter/guide activities dependent on high scenic integrity and undisturbed landscapes. Changes in roadless area protections could also affect outfitter/guide use in other

adjacent or nearby areas as outfitter/guides displaced from one location seek other places to take clients. Some use areas are presently at capacity, which could serve to exacerbate potential displacement effects. Long-term changes in roadless area management could affect the Forest's ability to meet future outfitter/guide demand, especially for operators seeking more remote areas.

The outfitter/guide analysis prepared for the FEIS (USDA Forest Service 2020) used changes in suitable old- growth and young-growth acres in conjunction with information on existing outfitter/guide use to help focus on potentially affected areas. The resulting analysis identified 15 outfitter/guide use areas where potential conflicts between existing outfitter/guide use and future management could occur. In most of these areas, existing outfitter/guide use occurs near areas where development has occurred in the past, either near or along shorelines and/or Forest road systems. Similarly, in most cases, harvest that could already occur in these areas (under the baseline 2001 Roadless Rule) has the potential to conflict with existing outfitter/guide use. Viewed in terms of increases in acres suitable for harvest, impacts under Alternatives 2 and 3 would be minimal in all areas, with increases in roadless acres and reductions in suitable acres occurring in some areas. By expanding the acres available for harvest, the final rule and Alternatives 4 and 5 could add to these potential impacts by increasing the geographic extent of the acres affected. Even though the level of harvest would be the same under all regulatory alternatives, this latter group of alternatives could also result in more adverse effects due to roads because they would result in more timber becoming suitable for harvest in remote areas. In some locations, new road construction could create new opportunities for operators who use Forest roads for access. However, nearly all new roads constructed under the final rule and other regulatory alternatives would be closed following harvest. As a result impacts to small business entities associated with outfitter and guide use on the Tongass NF are anticipated to be minimal.

The following analysis uses changes in suitable young- and old-growth acres in conjunction with information on existing outfitter/guide use to help focus on potentially affected areas. Not all of the outfitter/guide use areas were used over the past 5 years; a number do not include any roadless acres; others include roadless acres, but none are suitable for old-growth harvest; and others would see little change in suitable old-growth acres by alternative. The EIS for the final rule performed a screening review based on these factors and identified 15 outfitter/guide use areas where potential conflicts between existing outfitter/guide use and future management could occur based on recent patterns of existing use. These are outfitter/guide use areas with recent outfitter/guide use where there would be increases in suitable old-growth acres under one or more of the action alternatives. Areas with no or limited existing use and no or small estimated changes in suitable old-growth acres relative to Alternative 1 were removed from further review. A majority of the areas removed had no or minimal change in suitable old-growth acres under all five action alternatives (see Table C-4 in Appendix C of the FEIS for the final rule; USDA Forest Service 2020).

This location information is useful at the programmatic level, but does not identify actual patterns of outfitter/guide use, which may extend over relatively large areas, depending on the activity. It is also important to note that outfitter/guide use areas are large areas ranging from about 63,000 acres to more than 1.3 million acres in size; many are larger than the District of Columbia and three are larger than the state of Rhode Island. Use in some of these areas involves multiple outfitter/guides, activities, and locations. Potential conflict could occur in multiple

locations in each area. The following assessment is not a site-specific review, rather it uses available information to illustrate broad patterns of use and differentiate between the regulatory alternatives.

The analysis assumes all visitation is displaced under the highest level of suitability designation, under the final rule, to provide an upper -bound estimate of displacement; this is offered to provide a broad orders-of-magnitude comparison with other costs and benefits. Visitation under the regulatory alternatives is adjusted based on the change in suitable acres (old-growth and young-growth) as a share of total suitable acres under the final rule. Visitation and potential harvest does not occur evenly across the forest. The adjustment of visitation, using old-growth and young-growth suitability relative to the final rule, avoids mischaracterizing visitor displacement as an assumption that visitation and harvest occurs evenly across outfitter/guide areas. In addition, this provides for a baseline estimate of visitor displacement from current harvest and associated lost revenue under the baseline 2001 Roadless Rule. Net change in visitation and lost revenue is measured against this baseline.

The review by outfitter/guide use area also considers projected old-growth and young-growth harvest by alternative. Based on the assumptions used to distribute estimated old-growth harvest acres, very limited to no old-growth harvest is projected to occur in eight of the 15 outfitter/guide use areas discussed above, specifically those areas located on the north part of the Forest. In the remaining seven, old-growth and young-growth harvest is projected to decrease relative to Alternative 1, based on the relative distribution of suitable acres across the Forest. The remaining seven areas include the entire Craig and Thorne Bay Ranger Districts, and outfitter/guide use areas on the Petersburg (four areas) and Ketchikan -Misty Fjords (one area) Ranger Districts. The subset of seven outfitter/guide use areas provide a lower-bound estimate of displaced visitation; adjusted based on the change in suitable acres (old-growth and young-growth) as a share of total suitable acres under the final rule.

Revenue to outfitter and guides from visitors to the Tongass NF is an important source of income for many communities in Southeast Alaska. The University of Alaska Anchorage assessed the economic importance of nature-based tourism in Southeast Alaska, as measured by business revenue (Dugan et al. 2009). Information from Dugan et al. indicate that average annual outfitter and guide revenues (associated with Tongass NF activities) range from \$122 to \$1, 280 and average \$711 per trip (deflated to 2020 dollars); excluding guided hunting trips. Hunting trips can cost from \$4,270 to the most expensive \$15,370 per trip (deflated to 2020 dollars). The average (excluding hunting) is used for 78 and 72 percent of potential visitation displacement while the most expensive hunting trip cost are applied to 22 and 28 percent (for the fifteen and seven outfitter/guide use areas, respectively where 22 and 28 percent of clients were on guided hunting trips; USDA Forest Service 2019c) (Table 5).

Table 5. Projected change from the Alternative 1, the baseline 2001 Roadless Rule, in harvest acres, potential displaced visitors and lost revenue (2020 dollars) in outfitter/guide use areas

	Baseline – 2001 Roadles s Rule	Alt 2	Alt 3	Alt 4	Alt 5	Final Rule
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**15 outfitter/guide use areas**

Displaced Clients <sup>1</sup>	142.7	147.2	153.6	196.5	198.3	199.0
Net Change in displaced clients	0.0	4.5	10.8	53.7	55.6	56.3
Max potential lost revenue	\$567,000	\$585,000	\$610,000	\$781,000	\$788,000	\$791,000
Net Change in lost revenue	\$0	\$18,000	\$43,000	\$214,000	\$221,000	\$224,000

### **7 outfitter /guide use areas**

Displaced Clients <sup>1</sup>	36.0	39.5	44.6	49.4	50.0	50.1
Net Change in displaced clients	0.0	3.6	8.7	13.4	14.1	14.2
Max potential lost revenue	\$174,000	\$191,000	\$216,000	\$239,000	\$242,000	\$242,000
Net change in potential lost revenue	\$0	\$17,000	\$42,000	\$65,000	\$68,000	\$68,000

<sup>1</sup> Under the final rule and regulatory alternatives projected harvest acres are not subject to harvest in a single year. This provides for variation in annual harvest in any given outfitter/guide use area but visitation displacement noted above would occur over the 100 years of harvest projected thus estimates of displaced clients are divided by 100.

Under the final rule from \$68,000 to \$224,000 in expenditures would potentially be lost annually. These estimates provide an upper-bound for consideration of potential lost revenue and should not be used as precise estimates of lost revenue from IRA visitor expenditures. The average across all 242 outfitter and guide firms would thus range from \$280 to \$930 dollars per year. The upper bound estimate is less than a fifth of one percent of average annual receipts for representative firms<sup>9</sup> in boroughs and Census Areas of interest in Southeast Alaska (and about a tenth of one percent of the maximum and about a quarter of one percent of the minimum annual per firm receipts for individual boroughs and Census Areas of interest) (U.S. Department of Commerce 2012c). These estimates are not costs associated with losses to outfitter and guides but expenses incurred by visitors and thus subject to displacement related changes. While some outfitter and guides may lose these receipts<sup>10</sup> if visitors choose not to travel to Southeast Alaska others may see increases in receipts if visitors choose to stay longer or travel to substitute sites within Southeast Alaska.

### **Salmon Harvesting and Processing**

The final rule and other regulatory alternatives are not expected to have a significant change to the commercial fishing or fish-processing industries over the planning period, provided that Forest Plan direction remains in place. Riparian Management standards and guidelines established in the Forest Plan (USDA Forest Service 2016) would remain in place under the final rule and all of the regulatory alternatives. While there would be some variation in the level of protection, these variations are not expected to affect the fishing industry. The future of the fishing industry in Southeast Alaska is more likely to depend upon occurrences outside of the Tongass NF such as hatchery production, offshore harvest levels, and changes in ocean conditions.

The absence of an effect due to the final rule and regulatory alternatives is based on the conclusion from the 1997 FEIS for the Tongass NF (USDA Forest Service 1997); which noted

<sup>9</sup> NAICS code 713 is specific to Amusement, gambling, and recreation industries and includes the seven guiding related NAICS “Index Entries”: Fishing guide services; Guide services (i.e., fishing, hunting, tourist); Guide services, fishing; Guide services, hunting; Guide services, tourist; Hunting guide services; and Tourist guide services.

<sup>10</sup> less than a half of one percent of the maximum and less than a tenth of one percent of the minimum annual per firm receipts in boroughs and Census Areas of interest in Southeast Alaska (U.S. Department of Commerce 2012c).

that the amount of acreage of timber harvest was at most less than 20,000 acres per year, representing approximately 0.5 percent of the total remaining productive old growth (or 5 percent over the next decade) and less than 0.02 percent of the entire Forest. That EIS concluded that this was not expected to result in a significant change to commercial fishing employment. All of the regulatory alternatives would allow considerably less timber harvest and new road construction than the alternatives evaluated in the 1997 FEIS. Total annual old-growth harvest allowed over the 100-year planning period would be approximately 42,500 acres, substantially lower than the maximum proposed in the 1997 FEIS.

As a result impacts to small business entities associated with Salmon Harvesting and Processing are not anticipated under the final rule.

### **Mining and Mineral Development**

The Forest Service divides minerals resources into three groups: locatable minerals, leasable minerals, and salable minerals. Locatable minerals are those minerals that may be located and removed from Federal lands under the authority of the General Mining Law of 1872, as amended. Examples of locatable minerals on the Tongass include gold, silver, copper, molybdenum, iron, nickel, lead, and zinc. The General Mining Law of 1872, as amended, grants every United States citizen the right to prospect and explore public domain lands open to mineral entry. The right of reasonable access is guaranteed and is not at the discretion of the Forest Service. Exploration, mining, and mineral processing activities, including road construction and reconstruction, are presently allowed to the extent provided by statute in Inventoried Roadless Areas and would continue to be allowed under the final rule and all the other regulatory alternatives. Changes in roadless management under the final rule is, therefore, not expected to affect existing or future locatable mineral exploration or mining activities on the Forest.

Leasable minerals are certain types of minerals, primarily energy resources (e.g., oil, gas, coal, and geothermal resources) that are not subject to mining claim location but are available for exploration and development under provisions of the Mineral Leasing Act of 1920. Roadbuilding is currently prohibited for any new leasable projects, including geothermal projects, within IRAs. For Alternatives 2 through 5, this prohibition would continue in ARAs with watershed (Alternative 2) and LUD II priorities. Following project-specific analyses, roads could be approved for leasable projects within ARAs with timber (Alternative 4) or roadless priorities. Under the final rule roadbuilding would not be prohibited for any new leasable projects, including geothermal projects, with removal of roadless areas on the Tongass NF. The Tongass has no current leasable mineral activity and the anticipated demand for leasable minerals is expected to remain low. The Bureau of Land Management (BLM) conducted an assessment of mineral resource potential in support of a resource management plan for the Ring of Fire planning area, which includes Southeast Alaska. While there has been oil and gas exploration activity in the Yakutat area in the past, the resource development potential is considered low; therefore, the BLM expects no exploration or development activity within the Forest Plan period of analysis (10 to 15 years). Outside of the Yakutat area, oil and gas occurrence potential elsewhere in the Tongass is considered low to none. Occurrences of coal found at several locations in Southeast Alaska; however, the BLM considers development of these resources to be uneconomic in the near future, other than possibly for local use, and does not foresee associated

exploration or development activity (USDA Forest Service 2016). As a result, changes in roadless management are expected to have limited impacts on related economic activity.

Salable minerals from the Forest are mainly used to construct NFS roads. Since road construction is not expected to vary much between regulatory alternatives, there would be little difference in salable mineral development between the regulatory alternatives.

As a result impacts to small business entities associated with locatable, leasable and salable minerals are not anticipated under the final rule and regulatory alternatives.

## **SMALL GOVERNMENT OPPORTUNITIES AND EFFECTS**

### **Revenue Sharing**

As noted in the discussion above, the Secure Rural Schools Act has been reauthorized since 2008, most recently in March 2018 for fiscal years 2017 and 2018. The amount of these payments received by boroughs and CAs would not be affected by the final rule or any of the regulatory alternatives.

### **Infrastructure Effects**

With some exceptions, federal and state road development is presently limited in IRAs. Exceptions include roads with reserved or outstanding rights, roads provided for by statute or treaty, or road development related to a Federal Aid Highway project. Roadless protection would be removed to various degrees under the final rule and Alternatives 2 through 5 with corresponding implications for regional highway development. In most cases, changes in roadless management, as well as changes in the number of acres managed as roadless, would be more permissive with respect to regional road systems. In addition to those roads presently excepted, Roadless Priority ARAs would also allow roads needed for the connection of communities and development of the regional transportation system as identified in the State of Alaska's Southeast Alaska Transportation Plan. Timber Priority ARAs and areas removed from roadless protection would remove roadless rule- related restrictions on road building. As a result, more areas would be available for additional types of regional road development under the final rule and Alternatives 4 and 5. Future road projects would be subject to funding constraints and evaluated in detail on a project-by-project basis.

None of the regulatory alternatives are expected to substantially affect the development of energy projects or related infrastructure. Removing roadless designations in areas under the final rule and Alternatives 2 through 5 would simplify the process for projects but would not necessarily result in an increase in the number of projects developed.

In areas where new roadless areas are added or expanded, the permitting process could be more complicated, but projects would not be prohibited. An exemption for utility systems in Roadless Priority ARAs under Alternatives 2 through 5 and Community Priority ARAs (Alternative 3) would allow for tree cutting and road construction. Under Alternative 4, Timber Priority ARAs would not prohibit tree cutting or road construction at all. Where restrictions are removed, or exemptions added, the greatest effect may be in making the permitting process for developers less burdensome, resulting in more a rapid permitting process rather than an increase in the number of sites developed.

## CONCLUSIONS

The final rule is intended to provide for economic development opportunities in Southeast Alaska in response to the State of Alaska’s petition requesting that the Secretary of Agriculture consider exempting the Tongass NF from the 2001 Roadless Rule. The final rule is programmatic and does not authorize the implementation of any ground-disturbing activities. Upper bound estimates of net-benefits are positive for the final rule and regulatory alternatives (USDA Forest Service 2020b). Under the final rule greater flexibility is provided for the selection of future timber sale areas and sale design (depending on the planning areas selected); and could, in turn, potentially improve the Forest Service’s ability to offer economic sales that meet the needs of industry. In addition, the final rule would allow additional timber harvest opportunities provided by dropping roadless protections for areas that are currently protected under the 2001 Roadless Rule. None of the regulatory alternatives propose changes to the projected timber sale quantity or timber demand projections guided by the Tongass Land and Resource Management Plan; thus the final rule would not decrease timber related jobs, income or output. In addition, the final rule is not anticipated to significantly impact a substantial number of small entities in local economies associated with outfitter and guide use, commercial fisheries and mining related industries assuming existing protections remain in place, including those in the Tongass Forest Plan.

The final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Regulatory Flexibility Act (5 U.S.C. 601 et. seq) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Based on the evidence summarized above, the final rule is expected to provide opportunities for small entities. The ability of the procedures under the final rule to expand opportunities and therefore promote the growth and well-being of small entities, suggests that the final rule is not expected to result in significant impacts to a substantial number of small entities, as defined by the E.O. 13272 and SBREFA.

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