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[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212 and 261

RIN 0596-AD17

Use By Over-Snow Vehicles (Travel Management Rule) AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule; request for public comment.

SUMMARY: Consistent with a court order on March 29, 2013, the U.S. Forest Service (Forest Service) is proposing to amend the agency's travel management rule (TMR) to require designation of National Forest System (NFS) roads, NFS trails, and areas on NFS lands where over-snow vehicle (OSV) use is allowed, restricted, or prohibited. Under the amended subpart C, the responsible official could establish a system of routes and areas where OSV use is prohibited except where allowed or a system of routes and areas where OSV use is allowed unless prohibited. The proposed rule would continue to exempt OSV use from subpart B of the TMR, which provides for designation of a system of routes and areas where motor vehicle use is allowed and prohibits motor vehicle use off the designated system.

DATES: Comments must be received in writing by [insert date 45 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Submit comments electronically by following the instructions at the Federal eRulemaking portal at <http://www.regulations.gov>. Comments also may be

submitted by mail to the U.S. Forest Service, Attn: Joseph Adamson, Recreation, Heritage, and Volunteer Resources Staff, 1400 Independence Avenue, S.W., Stop 1125, Washington, D.C. 20250-1125. If comments are sent electronically, please do not send duplicate comments by mail. Please confine comments to issues pertinent to the proposed rule, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the Office of the Director, Recreation, Heritage, and Volunteer Resources Staff, 5th Floor SW, 1400 Independence Avenue, S.W., Washington, D.C., on business days between 8:30 a.m. and 4:00 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205-0813 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Joseph Adamson, (202) 205-0931, Recreation, Heritage, and Volunteer Resources Staff.

SUPPLEMENTARY INFORMATION:

Background and Need for the Rule

Between 1982 and 2009, the number of people who operated motor vehicles off road increased by more than 153 percent in the United States (“Outdoor Recreation Trends and Futures, a Technical Document Supporting the Forest Service 2010 RPA [Resources Planning Act] Assessment,” p. 135 (H. Cordell, 2012)). While both motor vehicle use and OSV¹ use are increasing in the National Forests and Grasslands, so are many other types of recreational activities. From 1982 to 2009, the number of people in

¹ See 36 CFR 212.1 for the definition of an OSV.

the United States participating in viewing or photographing birds increased 304.2 percent, the number of people participating in day hiking increased 228.2 percent, the number of people participating in backpacking increased 167 percent, the number of people participating in fishing increased 36 percent, and the number of people participating in hunting increased 34 percent (*id.* at 135-36). Providing for the long-term sustainable use of NFS lands and resources is essential to maintaining the quality of the recreation experience in the national forests and grasslands.

In 2005, the Forest Service promulgated the TMR to provide more effective management of public motor vehicle use. Subpart B of the TMR requires designation of those NFS roads, NFS trails, and areas on NFS lands where public motor vehicle use is allowed (36 CFR 212.51(a)). Unless exempted from the designations, public motor vehicle use is prohibited off designated routes and outside designated areas (36 CFR 261.13). Under subpart B, the responsible official must establish a system of routes and areas where motor vehicle use is allowed. This information will be displayed for the public at local district offices. Motor vehicle use off the designated system is prohibited, unless it is exempted from the designations. Subpart C of the current TMR authorizes but does not require the responsible official to allow, restrict, or prohibit OSV use on NFS roads, NFS trails, and areas on NFS lands. Under subpart C, the responsible official has the discretion to determine whether to regulate OSV use and to establish a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed. The TMR treats OSVs differently from other types of motor vehicles because an OSV traveling over snow results in different impacts on natural and cultural resource values than motor vehicles traveling

over the ground. Consequently, in contrast to motor vehicles, it may be appropriate for OSVs to travel off route. 69 Fed. Reg. 42386, 42389 (July 15, 2004) (proposed TMR); 70 Fed. Reg. 68273 (Nov. 9, 2005) (final TMR).

On March 29, 2013, the United States District Court for the District of Idaho ruled that subpart C of the TMR violated Executive Order (EO) 11644, as amended by EO 11989, governing use of off-road vehicles on federal lands in giving the Forest Service discretion to determine whether to regulate OSV use, and that the agency therefore improperly denied the plaintiff's petition to amend the TMR. *Winter Wildlands Alliance v. USFS*, 2013 WL 1319598, No. 1:11-CV-586-REB (D. Idaho Mar. 29, 2013). The court did not rule that the Agency lacks the discretion to determine how to regulate OSV use. To the contrary, the court held that the Forest Service has the discretion to determine where and when OSV use can occur on NFS lands. This ruling requires the Agency to designate routes and areas where motor vehicle use is permitted and routes and areas where motor vehicle use is not permitted on NFS lands, consistent with EO 11644, as amended by EO 11989, sec. 3(a)), but does not dictate where and when motor vehicle use can occur on those lands. The court ordered the Forest Service to issue a new rule consistent with the EOs.

The Forest Service is proposing to amend subpart C of the TMR to provide for management of OSVs on NFS lands consistent with the EOs and the court's order. Specifically, the Forest Service is proposing to amend subpart C of the TMR to require the responsible official to designate NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed, restricted, or prohibited in administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, where snowfall is adequate for OSV

use to occur. The Forest Service is not proposing to remove the exemption for OSVs from subpart B because the Agency wants to preserve the discretion in subpart C to establish a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed. In contrast, subpart B requires designation of a system of routes and areas where motor vehicle use is prohibited unless allowed. Regardless of whether a unit or district establishes a system of routes and areas where OSV use is allowed unless prohibited or a system or routes and areas where OSV use is prohibited unless allowed, the decision would be based on an analysis of the impacts from the proposed designations and anticipated uses in accordance with subpart B, as modified in subpart C to provide for consistency in terminology. This information will be displayed for the public at local district offices.

The difference in management of motor vehicle use and OSV use on NFS lands stems from differences in their associated settings, activities, environmental impacts, and public preferences. National forests and grasslands change when snow blankets the landscape. Vegetation camouflages, animals burrow, and water transforms into ice. Recreationists and others accessing snow-covered National Forests and Grasslands typically trade hiking boots for skis and snowshoes and motor vehicles with tires for those with tracks and sleds.

Because of snowfall patterns, National Forests and Grasslands vary significantly in their need to address OSV use. National Visitor Use Monitoring (NVUM) data from 2008 to 2012 show that approximately 30 percent of NFS lands do not offer OSV recreation opportunities.

OSV use occurs only in the months when snow is present, in contrast to other types of motor vehicle use, which can occur at any time of the year. Other types of motor vehicles operating over snow are regulated under subpart B of the TMR.

A key difference between OSV use and other types of motor vehicle use is that, when properly operated and managed, OSVs do not make direct contact with soil, water, and vegetation, whereas most other types of motor vehicles operate directly on the ground. Unlike other types of motor vehicles traveling cross-country, OSVs traveling cross-country generally do not create a permanent trail or have a direct impact on soil and ground vegetation. In some areas of the country, OSV use is therefore not always confined to roads and trails.

The public's OSV preferences and practices on NFS lands vary nation-wide due to different terrain, snow typology and amount, recreational activities, and transportation needs. OSV use on NFS lands in the northeast and mid-west is largely trail-based, while the larger, wide-open, powder-filled bowls in western mountains support cross-country OSV use.

Subpart B of the TMR recognizes that cross-country travel by other types of motor vehicles is generally unacceptable. Subpart C of the TMR as originally promulgated and in the proposed rule recognizes that cross-country travel by OSVs may be acceptable in appropriate circumstances.

Recreational preferences are another factor accounting for the difference in management of other types of motor vehicle use and OSV use. The public's desire for recreational opportunities is different in the summer and the winter. NVUM data from 2008 to 2012 show that most public use of NFS lands (79 percent) occurs during non-

snow seasons. Per NVUM data from 2008 to 2012, most snow season use on NFS lands (69 percent) occurs at alpine ski areas and generally does not involve OSVs, back-country skiing, snowshoeing, or any other snow-based activity.

Consistent with §212.50(b) of subpart B of the current TMR, existing decisions that allow, restrict, or prohibit OSV use on NFS roads, NFS trails, or areas on NFS lands that were made under prior authorities (part 295 or subpart C) would remain in effect under the proposed rule and would not have to be revisited.

Analogous to §212.52(a) of subpart B of the current TMR, the proposed rule would provide that public notice with no further public involvement would be sufficient if an administrative unit or a Ranger District has made previous administrative decisions, under other authorities and including public involvement, that allow, restrict, or prohibit OSV use on NFS roads, on NFS trails, and in areas on NFS lands over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur and no change is proposed to these previous decisions. In short, existing OSV use determinations will remain in effect.

In requiring designation of NFS routes and areas on NFS lands where OSV use is allowed, restricted, or prohibited, the proposed rule would be consistent with the EOs and the court's order. Equally important, the resulting system of OSV routes and areas would sustain natural resource values, enhance user's experiences and provide opportunities for use on NFS lands.

Section-by-Section Analysis of the Proposed Rule

Part 212, Subpart A

Section 212.1 Definitions

Current §212.1 of the TMR defines an area as a discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District. The definition for an area in the proposed rule would recognize that cross-country OSV use may occur across a broader landscape. As with evaluation of an area for other types of motor vehicle use using the designation criteria in §212.55, evaluation of an area for OSV use using the designation criteria in §212.55 may be holistic and need not address each route within the area, as OSVs will be able to travel cross-country within it.

Current §212.1 also defines “designated road, trail, or area”. To avoid conflict with this terminology in subpart B, the proposed rule would add a definition for “designation of over-snow vehicle use.”

Part 212, New Subpart C—Over-Snow Vehicle Use

Subpart C—Over-Snow Vehicle Use

The title of part 212, subpart C, would be changed from “Use by Over-Snow Vehicles” to “Over-Snow Vehicle Use.”

Section 212.80 Purpose and scope.

Current §212.80 states that the purpose of subpart C is to provide for regulation of OSV use on NFS roads, NFS trails, and areas on NFS lands. The proposed rule would amend this section to require designation of NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed, restricted, or prohibited. Consistent with §212.50(b) in subpart B of the current TMR, the proposed rule would include a provision authorizing the responsible official to incorporate previous administrative decisions regarding OSV use made under other authorities in allowing, restricting, or prohibiting OSV use on NFS roads, on NFS trails, and in areas on NFS lands.

Section 212.81 Over-snow vehicle use.

The proposed rule would amend §212.81 to require designation of NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed, restricted, or prohibited on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the NFS where snowfall is adequate for that use to occur, subject to the exemptions currently enumerated in §212.81(b).

In contrast to subpart B and its corresponding prohibition at 36 CFR 261.13, which requires designation of a system of routes and areas that are open to motor vehicle use and prohibits motor vehicle use off the designated system, proposed subpart C would continue to allow the responsible official to designate a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed. An OSV use map could look like a motor vehicle use map, i.e., a map that identifies only the routes and areas where OSV use is allowed, or the opposite, i.e., a map that identifies only the routes and areas where OSV use is prohibited. In addition, local Forest Service officials would retain the discretion to manage OSV use to address local conditions and to establish restrictions, as appropriate, based on the season of use and other local factors. Decisions to designate OSV use may be made concurrently or separately from decisions to designate other types of motor vehicle use.

Consistent with §212.52(a) of subpart B of the current TMR, §212.81(b) of the proposed rule would provide that public notice with no further public involvement is sufficient if an administrative unit or Ranger District has made previous administrative decisions, under other authorities and including public involvement, that allow, restrict, or prohibit OSV use on NFS roads, on NFS trails, and in areas on NFS lands over the

entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur and no change is proposed to these previous decisions.

Except as modified by proposed §212.81(b) governing prior comprehensive OSV decisions and proposed §212.81(c) with respect to reference to the map displaying routes and areas where OSV use is allowed, restricted, or prohibited, §212.81(c) of the proposed rule would apply the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§212.52 (public involvement); 212.53 (coordination with other governmental entities); 212.54 (revision of designations); 212.55 (criteria for designation of roads, trails, and areas); 212.56 (identification of designated roads, trails, and areas); and 212.57 (monitoring of effects of motor vehicle use) to designation of NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed, restricted, or prohibited.

Part 261, Subpart A - General Prohibitions

Subpart A—General Prohibitions

The title of §261.14 would be changed from “Use by over-snow vehicles” to “Over-snow vehicle use.”

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and EO 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this proposed rule is significant and is therefore subject to OMB review under E.O. 12866.

Environmental Impact

This proposed rule would require designation at the field level, with public input, of NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed, restricted, or prohibited. This proposed rule would have no effect on the ground until designation of NFS roads, NFS trails, and areas on NFS lands for OSV use is completed at the field level, with opportunity for public involvement. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.” The Agency has concluded that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This proposed rule would not have any effect on small entities as defined by the Regulatory Flexibility Act. The proposed rule would require designation at the field level, with public input, of NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed, restricted, or prohibited. The proposed rule would not directly affect small businesses, small organizations, and small governmental jurisdictions. The Forest Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act because it would not impose recordkeeping requirements on them; it would not affect their competitive position in relation to large entities; and it

would not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Agency has considered this proposed rule under the requirements of EO 13132 on federalism and has concluded that the proposed rule conforms with the federalism principles set out in this EO; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary at this time. Moreover, this proposed rule does not have tribal implications as defined by EO 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” and therefore advance consultation with Tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in EO 12630. The Agency has determined that the proposed rule would not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

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

Energy Effects

This proposed rule has been reviewed under EO 13211, titled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Agency has determined that this proposed rule does not constitute a significant energy action as defined in the EO.

Civil Justice Reform

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

Unfunded Mandates

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

Therefore, a statement under section 202 of the act is not required.

List of Subjects

36 CFR Part 212

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

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set out in the preamble, the Forest Service proposes to amend 36 CFR parts 212 and 261 as follows:

PART 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

1. The authority citation for part 212, subpart A continues to read as follows:

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

2. Amend §212.1 by revising the definition for “Area” and adding a definition for “Designation of over-snow vehicle use” in alphabetical order to read as follows:

§ 212.1 Definitions.

* * * * *

Area. A discrete, specifically delineated space that is smaller, and, except for over-snow vehicle use, in most cases much smaller, than a Ranger District.

* * * * *

Designation of over-snow vehicle use. Designation of a National Forest System road, National Forest System trail, or area on National Forest System lands where over-snow vehicle use is allowed, restricted, or prohibited pursuant to §212.81 on an over-snow vehicle use map.

* * * * *

3. Revise subpart C to read as follows:

Subpart C—Over-Snow Vehicle Use

Sec.

2.12.80 Purpose, scope, and definitions.

212.81 Over-snow vehicle use.

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

§ 212.80 Purpose, scope, and definitions.

(a) *Purpose.* The purpose of this subpart is to require designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands where over-snow vehicle use is allowed, restricted, or prohibited.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding over-snow vehicle use made under other authorities in allowing, restricting, or prohibiting over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands under this subpart.

(c) *Definitions.* For definitions of terms used in this subpart, refer to §212.1.

§ 212.81 Over-snow vehicle use.

(a) *General.* Over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated as allowed, restricted, or prohibited by the responsible official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the National Forest System where snowfall is adequate for that use to occur, provided that the following uses are exempted from these decisions:

(1) Limited administrative use by the Forest Service;

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

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

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

(5) Over-snow vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Previous comprehensive over-snow vehicle decisions.* Public notice with no further public involvement is sufficient if an administrative unit or a Ranger District has made previous administrative decisions, under other authorities and including public involvement, that allow, restrict, or prohibit over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur and no change is proposed to these previous decisions.

(c) *Decision-making process.* Except as modified in paragraph (b) and this paragraph, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to decisions made under this subpart. In making decisions under this subpart, the responsible official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively). National Forest System roads, National Forest System trails, and areas on National Forest System lands where over-snow vehicle use is allowed, restricted, or prohibited shall be reflected on an over-snow vehicle use map.

PART 261—PROHIBITIONS

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

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

Subpart A—General Prohibitions

5. Revise the heading of §261.14 to read as follows:

§ 261.14 Over-snow vehicle use.

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Thomas L. Tidwell
Chief,
U.S. Forest Service

June 4, 2014
Date

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