



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596-AD37

Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The United States Department of Agriculture (USDA) is proposing to exempt 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 addition, the proposed rule would provide an administrative procedure for correcting and modifying inventoried roadless area boundaries on the Chugach National Forest. The USDA invites written comments on the proposed rule and the draft environmental impact statement (DEIS). The proposed rule would not directly authorize any ground-disturbing activities. Substantive comments received during the comment period will be considered in developing the final rule and final environmental impact statement (FEIS). The final rule will be published in the *Federal Register*.

DATES: Comments must be received in writing by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments may be submitted electronically to www.fs.usda.gov/project/?project=54511. Written comments can be sent hard copy to: Alaska Roadless Rule, USDA Forest Service, P.O. Box 21628, Juneau, Alaska 99802-1628. All comments, including names and addresses, are placed in the record and are available for public inspection and copying. The public may inspect comments received at www.fs.usda.gov/project/?project=54511.

FOR FURTHER INFORMATION CONTACT: Ken Tu, Interdisciplinary Team Leader, at 202-403-8991 or akroadlessrule@usda.gov. Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Services at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The USDA Forest Service (hereafter Forest Service) manages National Forest System (NFS) lands to maintain and enhance the quality of the environment to meet the Nation's current and future needs. Forest Service land management supports recreation, water, timber, fish, wildlife, wilderness, aesthetic values and a variety of resource development activities for current and future generations. As a leader in natural resource conservation, the Forest Service provides direction for the management and use of the Nation's forests, rangeland, and aquatic ecosystems under its jurisdiction.

On January 12, 2001, the USDA promulgated the Roadless Area Conservation Rule (hereafter 2001 Roadless Rule) (66 FR 3244), establishing nationwide prohibitions on timber harvest, road construction, and road reconstruction within inventoried roadless

areas with certain limited exceptions. The intent of the 2001 Roadless Rule is to provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple-use land management. Based on the State of Alaska's Roadless Rule Petition (described below) and a review of public comment, USDA analyzed rulemaking alternatives addressing whether and how the national prohibitions on timber harvesting, road construction, and road reconstruction should apply on the Tongass National Forest.

In 2001, the State of Alaska filed a complaint challenging the USDA's promulgation of the 2001 Roadless Rule and its application in Alaska. *State of Alaska v. USDA*, A01-039 CV (JKS) (D. Alaska). The USDA and the State of Alaska reached a settlement in 2003, and the USDA subsequently issued a rule temporarily exempting the Tongass National Forest from the 2001 Roadless Rule. In 2011, a federal court set aside the Tongass Exemption and reinstated, with clarifying instructions, the 2001 Roadless Rule on the Tongass National Forest. The district court's ruling was initially reversed by a three-judge panel of the Ninth Circuit, but was ultimately upheld in a 6-5 *en banc* ruling in 2015. Consequently, the 2001 Roadless Rule (as provided for in the district court's Judgment) remains in effect in Alaska and the Forest Service continues to apply the 2001 Roadless Rule to both the Tongass and Chugach National Forests.

Currently there are over 21.9 million acres of national forest in the State of Alaska, of which approximately 14.7 million acres (67%) are considered inventoried roadless areas as defined by the 2001 Roadless Rule, including both the Tongass and Chugach National Forests. The Tongass National Forest, in particular, is approximately 16.7 million acres of which approximately 9.2 million (55%) acres are designated inventoried roadless areas. This rulemaking focuses on the Tongass National Forest

roadless areas, along with a boundary modification and correction provision that would apply to the Chugach National Forest.

State of Alaska Petition

In January 2018, Governor Bill Walker submitted a petition on behalf of the State of Alaska to Secretary of Agriculture Sonny Perdue pursuant to the Administrative Procedure Act. The petition requested the USDA consider creation of a state-specific rule to exempt the Tongass National Forest from the 2001 Roadless Rule. In June 2018, the Secretary of Agriculture agreed to address the State's concerns on roadless area management and economic development opportunities in Southeast Alaska through a rulemaking process. The Secretary directed the Forest Service to begin working with representatives from the State of Alaska concerning a state-specific roadless rule. On August 2, 2018, the State of Alaska and the USDA Forest Service signed a memorandum of understanding concerning the development of the state-specific rule. The Forest Service initiated its environmental analysis process with the publication in the *Federal Register* of a notice of intent to prepare an environmental impact statement on August 30, 2018 (83 FR 44252).

On September 6, 2018, Governor Walker issued Administrative Order 299 to establish the Alaska Roadless Rule Citizen Advisory Committee (the Committee) to provide an opportunity for Southeast Alaskans to advise the State of Alaska on the future management of roadless areas in the Tongass National Forest. The Committee's report identifies that it was comprised of 13 members, appointed by Governor Walker, intended to represent a diversity of perspectives, including Alaska Native Corporations and tribes, fishing, timber, conservation, tourism, utilities, mining, transportation, local government,

and the Alaska Division of Forestry. The Committee's specific task was to present a written report on the rulemaking process to the Governor and State Forester, which included options for a state-specific roadless rule. The Committee met for three in-person meetings during the fall of 2018 (October 2-3 in Juneau; October 24-26 in Ketchikan; and November 6-8 in Sitka). Meetings were open to the public and each meeting included an opportunity for public comment. The Committee's Report was submitted to the Governor and State Forester in late November 2018 and recommendations from the Committee informed the State of Alaska input, as a cooperating agency, to the Forest Service in the development of the alternatives. The final Committee report can be found at:

<http://bit.ly/akroadlessreport>.

Proposed Alaska Roadless Rule

The proposed rule exempts the Tongass National Forest from the 2001 Roadless Rule, is responsive to the State of Alaska's petition, and is based on Alternative 6 of the DEIS. Removing the regulatory designation of roadless areas on the Tongass National Forest would not authorize any ground disturbing activities. Instead, the proposed rule would return decision-making authority to the Forest Service, allowing decisions concerning timber harvest, road construction, and roadless area management on the Tongass National Forest to be made by local officials on a case-by-case basis.

The 2001 Roadless Rule would remain applicable to the Chugach National Forest. However new administrative provisions for correcting and modifying inventoried roadless area boundaries would be applied to the Chugach National Forest to allow for limited adjustments to remedy clerical errors, improvements in mapping technology, conformance to statutory changes, or incorporation of changes due to land adjustments.

Rationale for the Proposed Rule

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 (MUSYA), and the National Forest Management Act of 1976 (NFMA). These statutes provide the Secretary with discretion to determine the proper uses within any area, including the appropriate resource emphasis and mix of uses. For decades, USDA has worked with States, Tribes, local communities and collaborative groups toward land management solutions for roadless areas. Sometimes solutions have been found nationally. Sometimes a state-by-state approach has been the best option. Often, the solutions are found forest by forest, or even area by area. USDA remains committed to working closely with States, Tribes, and others toward shared stewardship of National Forest System lands and resources.

In selecting the proposed rule among the several alternatives considered, the Department has given substantial weight to the State's policy preferences as expressed in the incoming Petition. The State's preference to emphasize rural economic development opportunities is consistent with the findings of the Interagency Task Force on Agriculture and Rural Prosperity established by Executive Order 13790 (issued Apr. 25, 2017). *See* Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity (Oct. 21, 2017), <https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf>. USDA recognizes that ensuring rural Americans can achieve a high quality of life is the one of the foundations of prosperity. *See id.* at 2, 21-25; *see also id.* at 26-29, 35-42 (calls to

action for supporting a rural workforce and developing the rural economy). The State's views on how to balance economic development and environmental protection offer valuable insight when making management decisions concerning NFS lands within Alaska.

The USDA is acutely aware of the heightened sense of expectation concerning adjustments to administration and management of roadless areas on the Tongass National Forest. See *Organized Village of Kake v. State of Alaska*, 795 F.3d 956 (9th Cir 2015) (*en banc*). USDA's consideration of whether or how to apply the original 2001 Roadless Rule on the Tongass National Forest itself substantially evolved during the 2001 rulemaking, culminating in the identification of four different policy preferences as described in the 2001 final rule, including the alternative proposed here. See generally 66 Fed. Reg. 3244, 3262-63 (Jan. 12, 2001) (final 2001 Roadless Rule); see *id.* at 3263 ("The Tongass Exempt alternative did not apply a national prohibition to the Tongass National Forest. It allowed road construction and reconstruction on the Tongass to continue subject to existing land management plan prescriptions. Future proposals for road activities in inventoried roadless areas would be considered on a case-by-case basis."); see *id.* at 3266 (giving one-sentence explanation for rejection of Tongass Exempt alternative); *id.* at 3254-55 (lengthier discussion). Similarly, the 2003 Tongass Exemption rulemaking reflected not so much a change of underlying facts or circumstance but instead reflected a different policy perspective on the roadless policy question. These sorts of normative policy preferences and judgments are inherent in the Department's authority to manage National Forest System lands and resources.

USDA has listened carefully to the many divergent views and interests concerning the appropriate policy approach for these roadless areas, and, as is further explained below and in the DEIS, USDA has considered the factual and normative considerations at issue in past rulemakings concerning this matter, including the original 2001 Roadless Rule rulemaking, *see, e.g.*, 66 Fed. Reg. at 3254-55, as well as more recent factual and legal developments. There is broad agreement that the circumstances of the Tongass National Forest are unique in a number of respects. The Tongass differs from other national forests with respect to size, percentage of roadless areas, amount of NFS lands and dependency of 32 communities on federal lands, among other Alaska- and Tongass-specific statutory considerations (e.g., the Alaska National Interest Lands Conservation Act and the Tongass Timber Reform Act). There is not consensus over how to manage the Forest given those unique features. The key factual issues (further discussed below and in the DEIS) are generally well understood by a wide range of stakeholders; but ultimately these stakeholders' good faith disagreements over preferred outcomes are rooted in value judgments and normative preferences.

In part because of such sharply divided policy priorities (for example, differing value judgments and normative preferences concerning rural prosperity, competing economic interests, environmental tradeoffs-), the Department believes that the national rule's one-size-fits-all approach to roadless area management is not the best approach for roadless area management on the Tongass National Forest. Instead, the circumstances of the Tongass National Forest appear to be best managed through the local planning processes, as is generally true for forest management pursuant to the Organic Act, MUSYA, and NFMA. The Forest Service's 40 years of experience with the forest

planning system under NFMA, which includes forest plans subject to periodic review and adjustment, routinely demonstrates that system's capacity to provide durable and widely accepted solutions providing for balanced multiple use and sustained yield of the many goods and services provided by the National Forest System.

The analysis set out in the DEIS indicates that removal of regulatory roadless designations and prohibitions on the Tongass National Forest would not cause a substantial loss of roadless protection. The proposed rule would effectively bring only 185,000 acres (~2%) out of 9.2 million designated as inventoried roadless areas on the Tongass National Forest into the set of lands that may be considered for timber harvest. When examined in 2016, the Forest Service projected that only 17,000 acres of old-growth and 11,800 acres of young-growth might be harvested over the next 100 years. That modest addition of suitable timber lands would allow local managers greater flexibility in the selection and design of future timber sale areas. This improved flexibility could, in turn, improve the Forest Service's ability to offer economic timber sales that better meet the needs of the timber industry and contribute to rural economies. Despite the proposed regulatory exemption, the remaining 9 million acres would not be scheduled or expected to be subject to timber harvest activities. Of course, any proposed timber harvest or road construction would be individually reviewed and environmental impacts minimized through the protective measures set out in the Tongass Forest Plan and other conservation requirements.

Notably, approximately 3.6 million acres in key watersheds (defined in the 2016 Forest Plan as Tongass 77 Watersheds and The Nature Conservancy/Audubon Conservation Areas) are managed for no old-growth timber harvest, thus minimizing

adverse impacts to fisheries. In addition, the Tongass Timber Reform Act (Pub. L. 101-626, Title II, Section 201) and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291, 128 Stat. 3729, Section 3720(f)) designated approximately 856,000 acres as Land Use Designation (LUD) II areas, which are managed in a roadless state to retain their wildland character.

Aside from the flexibility that would be attained for timber harvest activities, the proposed exemption would allow forest plan direction to guide other access needs that support isolated rural communities in the unique island archipelago environment of the Tongass National Forest. Specifically, the proposed rule would promote clarity and remove doubt concerning standards for the construction of roads that may be needed for access to municipal water and wastewater utility systems, Alaska Native cultural sites, micro and small timber sales, aquaculture facilities, and administrative access to designated experimental forests.

The proposed rule is a deregulatory action, consistent with the goals of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs. The proposed rule would create an incremental reduction in the cost of conducting compliance reviews of permissible projects proposed in designated inventoried roadless areas on the Tongass National Forest, thus reducing expenditure of taxpayer dollars. Though usually prompt, internal compliance reviews can take months to complete. Although a few months may not represent a substantial burden, it could impact businesses through additional costs, thus reducing the attractiveness to investors.

The overarching goal of the proposed rule is to reach a long-term, durable approach to roadless area management that accommodates the unique biological, social,

and economic situation found in and around the Tongass National Forest. The proposed rule provides local forest managers an avenue for a long-term durable approach for managing the Tongass National Forest, unencumbered by the 2001 Roadless Rule, through the local forest planning process. The existing Forest Plan and other conservation measures would continue to provide protections that allow roadless area values to prevail on the Tongass National Forest.

2016 Tongass National Forest Land and Resource Management Plan

The 2001 Roadless Rule was largely not operational on the Tongass until 2011, leading to the creation of so called “roaded roadless” areas, which are areas designated as inventoried roadless areas by the 2001 Roadless Rule that have been subsequently harvested and/or roaded. The Tongass Land and Resource Management Plan (Forest Plan) was amended in 2008 and again in 2016. Both amendments, particularly the 2016 amendment, substantially accelerated the Forest Service’s movement toward a timber harvest program that would focus on second growth harvests. While estimating long-term market demand for Tongass timber is inherently uncertain and there are differences in opinion regarding long-term forecasts of market demand, the Record of Decision for the 2016 Tongass Forest Plan concluded that 46 million board feet (MMBF) of timber a year was reasonable, conservative, and based on the best available information. Subsequent review of the analysis completed for the Forest Plan indicates that there is no data supporting the conclusion that circumstances have changed or are likely to change with regard to the market demand for Tongass timber in the near- or long-term future due to overall limited competitiveness of Tongass timber in domestic and export markets. Therefore, the DEIS for the proposed Alaska Roadless Rule assumes that the harvest

levels projected in the Tongass Forest Plan will remain the same, and that the changes to roadless area management in any Alaska Roadless Rule will provide more flexibility for those timber harvest opportunities.

The 2016 Forest Plan

(https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd527907.pdf) was the product of an extensive, collaborative effort with members of the public and the Tongass Advisory Committee – a committee organized under the Federal Advisory Committee Act. The proposed Alaska Roadless Rule would not alter the Forest Plan’s management area designations, harvest levels, substantive requirements (goals, objectives, standards, and guidelines), or the young-growth transition strategy, except for the administrative changes noted below concerning suitable lands determinations specifically issued to implement the 2001 Roadless Rule. Possible impacts from this rulemaking are discussed in the Regulatory Impact Assessment and DEIS in terms of the baseline conditions described in the 2016 Forest Plan.

The proposed rule does not change the projected timber sale quantity or timber demand projections set out in the Tongass Forest 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 yield of all renewable forest resources, and other requirements. While projected harvest levels are not expected to be materially different under any of the alternatives under consideration, the various alternatives considered in the DEIS for the roadless rule can influence the potential location or likelihood of future timber harvesting. 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 achieved, but does not fundamentally alter the plan's underlying goals or projected outcomes.

Relationship of the Proposed 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. Forest plans provide 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 Forest 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).

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 proposed rule would continue this approach with one minor exception.

The proposed rule would direct the Tongass Forest Supervisor to provide notice of an administrative change (36 CFR 219.13(c)) concerning lands that were deemed

unsuitable in the 2016 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 2016 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 would remain operational under the proposed 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 any timber harvesting 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 2016 Forest Plan protections under all the regulatory alternatives.

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 any 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 the NFMA. 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 2016 Tongass Forest Plan provides guidance to conduct annual monitoring and review of 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. Watershed protection measures, such as riparian buffers and application of watershed conservation measures, will be provided for during future plan revisions or amendments in conformance with all applicable laws, including the Clean Water Act, Magnuson–Stevens Fishery Conservation and Management Act, and Alaska’s Department of Environmental Conservation Water Quality Standards.

Alternatives Considered in Detail

In addition to Alternative 6, the proposed rule and preferred alternative, the DEIS analyzes five other alternatives for managing roadless areas on the Tongass National Forest. Alternative 1 is the no action alternative and would result in the continued implementation of the 2001 Roadless Rule as prescribed in the Alaska District Court’s Judgment. Alternative 2 increases the geographic scope of roadless area designation by adding an additional 133,000 acres as Alaska Roadless Areas while removing areas where roadless characteristics have already been substantially altered, (commonly referred to as “roaded roadless”) primarily by road development and/or timber harvest.

Alternative 3 would increase the available land base from which timber harvest opportunities could occur by making timber harvest, road construction, and road

reconstruction permissible in areas where roadless characteristics have already been substantially altered and areas immediately adjacent to existing roads and past harvest areas. Adjacent areas are considered to be the logical extensions of the existing road and/or harvest systems, which would remove approximately 376,000 acres from the roadless classification system. The adjacent areas represent the most likely locations where future timber harvest could occur and have the least environmental impacts to overall roadless characteristics while providing for additional timber opportunities.

Alternative 3 also establishes a Community Priority category which 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, recreation opportunities, and traditional Alaska Native cultural uses. Alternative 3 also includes the Watershed Priority category, applied to approximately 3.2 million acres identified in the 2016 Forest Plan as the Tongass 77 Watersheds and The Nature Conservancy/Audubon Conservation Priority Areas (T77 and TNC/Audubon Conservation Areas). Approximately 90% of those 3.2 million acres fall within roadless area boundaries identified in Alternative 3. To provide heightened balance and integrity of watershed protections and establish management continuity across these high priority watersheds, Alternative 3 would also include a prohibition on old-growth timber harvesting on the portion of the T77 and TNC/Audubon Conservation Areas that extend beyond roadless areas boundaries established by Alternative 3.

In addition to the roaded roadless and adjacent areas being removed from the roadless classification system, approximately 828,000 acres designated as LUD II areas would be removed from the roadless classification system in Alternative 3. LUD II areas

are statutory land use designations managed in a roadless state to retain their wildland character as defined in the Tongass Timber Reform Act (Pub. L. 101-626, Title II, Section 201) and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291, 128 Stat. 3729, Section 3720(f)). These areas are proposed for removal from regulatory roadless classification because having two layers of protection (statutory and regulatory direction) that are substantially similar but slightly different does not make a meaningful difference to the level of protection provided and can create confusion for land managers, stakeholder groups, and the public. Removal of the LUD II areas from regulatory roadless classification is an attempt to eliminate that confusion while remaining consistent with the congressionally established management regime established for the LUD II areas. The statutory direction for LUD II areas would remain in place regardless of which alternative is selected.

Alternative 4 provides additional lands from which timber harvest opportunities could occur while maintaining protections for areas designated as roadless and defined in the 2016 Tongass Forest Plan as Scenic Viewsheds, T77 Watersheds, and The Nature Conservancy/Audubon Conservation Priority Areas. Additional timber opportunities are provided by removing approximately 376,000 acres of roaded roadless areas and adjacent extensions, as described in Alternative 3, from roadless classification. In addition, timber opportunities are provided by managing approximately 749,000 acres of Timber Development and Modified Landscape Land Use Designations, as defined in the 2016 Tongass Forest Plan, in a roadless management category called Timber Priority, which allows for timber harvest, road construction, and road reconstruction.

Alternative 4 adds approximately 32,000 acres not included in the 2001 roadless inventory which are designated as LUD II areas. These areas in addition to the LUD II areas included in the 2001 roadless inventory amount to about 856,000 total acres that would be managed as roadless with regulatory direction mirroring the statutory direction.

The remaining 7,252,000 acres of Alaska Roadless Areas in Alternative 4 would be managed as a roadless management category called Roadless Priority, which is similar to the 2001 Roadless Rule, but less restrictive and addresses Alaska-specific concerns for infrastructure development to connect and support local communities and access to renewable energy and leasable minerals.

Alternative 5 maximizes the land base from which timber harvest opportunities could occur by removing 2.3 million acres from roadless area designation. Taken together, the six alternatives represent the spectrum of management regimes identified to the Forest Service through public comments, public meetings, and cooperating agency input.

The table below displays the acreage changes from the 2001 Roadless Rule to acreages that would be designated under each of the six alternatives displayed in the DEIS.

	Alternatives					
	1	2	3	4	5	6 Proposed Rule
Total Roadless Acres	9,200,000	9,220,000	8,103,000	8,857,000	6,905,000	0
Roadless Acres Removed	0	113,000	1,202,000	375,000	2,298,000	9,200,000
Roadless Acres Added	0	133,000	105,000	32,000	3,000	0
Net Acre Change	0	20,000	-1,098,000	-343,000	-2,295,000	-9,200,000

Public Participation

The August 30, 2018, publication of the notice of intent initiated a 45-day public comment period. The Forest Service received about 144,000 responses (approximately 32,500 form letters, 110,000 petition signatures, and 1,400 unique letters). During the comment period, the Forest Service held 17 public meetings throughout Southeast Alaska, Anchorage, and Washington, DC. Public comments received during the comment period and information from the public meetings helped inform the development of the alternatives to the proposed rule. In addition, the State of Alaska and six federally-recognized tribes agreed to participate as cooperating agencies (Angoon Community Association, Central Council of Tlingit and Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, and Organized Village of Kasaan) and provided input on the DEIS, which informed the development of the alternatives.

The Forest Service invites comments on all aspects of this rulemaking, including the alternatives analyzed in the DEIS, the expected economic costs and benefits, and any additional costs and benefits. Comments received during the 60-day comment period on the proposed rule and DEIS will be considered in development of a final rule and supporting analyses. Public meetings are planned to be held during the 60-day comment period and tentative public meeting locations include Anchorage, Angoon, Craig, Gustavus, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Petersburg, Point Baker, Sitka, Tenakee Springs, Thorne Bay, Wrangell, Yakutat, and Washington D.C. Additional information on meeting times and specific locations will be provided through the project website (www.fs.usda.gov/project/?project=54511) and local media.

Regulatory Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) determined this rulemaking to be a significant regulatory action as it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The agency has prepared a regulatory requirements analysis of impacts and discussion of benefits and costs of the proposed rule.

The proposed rule exempting the Tongass National Forest from the 2001 Roadless Rule will provide additional opportunities for timber harvest and road construction to occur; however, it does not materially affect the quantity of timber expected to be harvested or the miles of new roads constructed. As to timber harvest activities, the proposed rule would increase the flexibility for land managers to locate and design timber sales. Improved flexibility could, in turn, improve the Forest Service's ability to offer economic sales that meets timber industry needs and contribute to rural economies. While many factors can influence the cost of timber harvest, 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. The most expensive harvesting costs are associated with areas without existing road or marine access facilities. Estimated harvest cost savings (felling, yarding, loading, etc.) range from \$1 to \$2 million dollars per year depending on the level of harvest (24 MMBF or one standard deviation less than the average annual harvest on the Tongass National Forest over the last 16 years or the harvest ceiling under the 2016 Forest Plan of 46 MMBF).

Cost savings from improved flexibility for timber harvest activities would accrue alongside other benefits, including reduced costs for leasable mineral availability, renewable energy development potential, and potential for development of state roads and other transportation projects. Cost savings are anticipated to outweigh estimated lost revenue to outfitters and guides, by a factor of 10 (\$77,000 travel and guided related expenses), and across all industries in Southeast Alaska by a factor of 3 (\$319,000 in total expenditures across all recreation industries in Southeast Alaska including outfitters and guides) from visitors potentially displaced from annual harvest of suitable young- and old-growth. Expenses incurred by visitors are not necessarily lost but subject to displacement related changes. While some businesses may lose revenue if visitors choose not to travel to Southeast Alaska, others may see increases in revenue if visitors choose to stay longer or travel to substitute sites within Southeast Alaska.

Regulatory Flexibility Act and Consideration of Small Entities

The USDA certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as determined in the Regulatory Flexibility Analysis because the proposed rule does not directly subject small entities to regulatory requirements. Therefore, notification to the Small Business Administration's Chief Council for Advocacy is not required pursuant to Executive Order 13272. A number of small and large entities may experience time or money savings as a result of flexibility provided by the proposed rule, or otherwise benefit from activities on National Forest System lands under the proposed rule. The agency is interested in receiving specific input regarding the anticipated effects of the proposed rule to small businesses.

Paperwork Reduction Act

This proposed rule does not require any additional record keeping, reporting requirement, or other information collection requirements as defined in 5 CFR part 1320 that are not already approved for use and, therefore, imposes no additional paperwork on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Risk Assessment

A risk assessment is only required under 7 U.S.C. § 2204e for a “major” proposed rule, the primary purpose of which is to regulate issues of human health, human safety, or the environment. The statute (P.L. 103-354, Title III, Section 304) defines “major” as any regulation the Secretary of Agriculture estimates is likely to have an impact on the economy of the United States of \$100 million or more as measured in 1994 dollars. Economic effects of the proposed rule are estimated to be less than \$100 million per year.

Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, issued January 30, 2017, requires significant new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.

The proposed rule has been reviewed in accordance with Executive Order 13771 on reducing regulation and controlling regulatory costs and is considered an Executive Order 13771 deregulatory action.

Federalism

The USDA has considered the proposed rule in context of Executive Order 13132, Federalism, issued August 4, 1999. The USDA has determined that the proposed rule conforms with Federalism principles set out in Executive Order 13132; would not impose any compliance costs on any State; and would not have substantial direct effects on States, on the relationship between the national government and the State of Alaska or any other State, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the USDA concludes that this proposed rule does not have Federalism implications. The proposed rule is based on a petition submitted by the State of Alaska under the Administrative Procedure Act (5 USC 553(e)) and pursuant to Department of Agriculture regulations at 7 CFR 1.28. The proposed rule responds to the State's petition, considers public comment received during the Forest Service's public scoping process, and considers input received from cooperating agencies. The State of Alaska is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act.

Consultation with Indian Tribal Governments

On July 30, 2018, the Forest Service initiated government-to-government consultation with 32 Alaska federally-recognized tribes and 27 Alaska Native corporations, and invited them to participate as cooperating agencies during the rulemaking process. Six tribes agreed to become a cooperating agency including Angoon Community Association, Central Council Tlingit and Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, and Organized Village of Kasaan. Biweekly cooperating agency meetings are

occurring that include the six cooperating agency tribal governments. Furthermore, additional government-to-government consultations will occur by request of any of the 19 tribal governments across Southeast Alaska.

The proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require continued outreach efforts to determine if tribal consultation under Executive Order 13175 is required. To date, as part of their regulatory review process noted above, Forest Service detailed in their proposed rule various outreach efforts to American Indian and Alaska Native tribes, villages, and corporations regarding the development of this proposed rule, and the ongoing tribal cooperation in this process.

If a tribe requests consultation, Forest Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

No Takings Implications

The USDA has considered the proposed rule in context with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, issued March 15, 1988. The USDA has determined that the proposed rule does not pose the risk of a taking of private property because it only applies to management of National Forest System lands and contains exemptions that prevent the taking of constitutionally protected private property.

Civil Justice Reform

The USDA reviewed the proposed rule in context of Executive Order 12988. The USDA has not identified any State or local laws or regulations that are in conflict with the proposed rule or would impede full implementation of the rules. However, if the rule is adopted, (1) all State and local laws and regulations that conflict with this rule or would impede full implementation of this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) the proposed rule would not require the use of administrative proceedings before parties could file suit in court.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 USC 1531-1538), signed into law on March 22, 1995, the USDA has assessed the effects of the proposed rule on State, local, and Tribal governments and the private sector. The proposed rule does 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.

Energy Effects

The USDA has considered the proposed rule in context of Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, issued May 18, 2001. The USDA has determined the proposed rule does not constitute a significant energy action as defined in Executive Order 13211. Therefore, a statement of energy effects is not required.

E-Government Act

The USDA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subject in 36 CFR Part 294

National Forests, Recreation areas, Navigation (air), roadless area management.

For the reasons set forth in the preamble, the USDA proposes to amend part 294 of Title 36 of the Code of Federal Regulations by adding subpart E to read as follows:

PART 294 – SPECIAL AREAS

Subpart E – Alaska Roadless Areas Management

Sec.

294.50 Tongass National Forest.

294.51 Chugach National Forest.

Authority: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

Subpart E – Alaska Roadless Areas Management

§294.50 Tongass National Forest.

(a) The 2001 Roadless Area Conservation Rule (see 36 CFR part 294, subpart B, revised as of July 1, 2001) shall not apply to the Tongass National Forest.

§294.51 Chugach National Forest.

(a) Administrative correction or modification of inventoried roadless area designations on the Chugach National Forest may be made as follows:

(1) Administrative corrections to boundaries. The Regional Forester for the Alaska Region may issue administrative corrections to the boundaries of an Inventoried Roadless Area after a 30-day public notice and opportunity to comment period. Administrative corrections are limited to adjustments that remedy clerical errors, typographical errors, mapping errors, improvements in mapping technology, conformance to statutory or regulatory changes, or incorporation of changes due to land exchanges.

(2) Administrative modifications to Classifications and Boundaries. The Regional Forester for the Alaska Region may issue modifications to the classifications and boundaries of an Inventoried Roadless Area after a 45-day public notice and opportunity to comment period.

Dated: October 11, 2019.

Sonny Perdue,
Secretary of Agriculture.

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