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Department of Agriculture

Forest Service

36 CFR Part 294

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Colorado; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC74

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Colorado

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service, U.S. Department of Agriculture (USDA), is proposing to establish a State-specific rule to provide management direction for conserving Colorado roadless areas. The USDA invites written comments on both the proposed rule and the draft environmental impact statement (DEIS) and will consider those comments in developing a 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 90 days from the date the rule is published in the **Federal Register**.

ADDRESSES: Comments may be sent via e-mail to *COcomments@fsroadless.org*. Comments also may be submitted via the internet at *http://www.regulations.gov*. Written comments concerning this notice should be addressed to Roadless Area Conservation—Colorado, P.O. Box 162909, Sacramento, CA 95816–2909, or via facsimile to 916–456–6724.

All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying.

A copy of this proposed rule, draft environmental impact statement (DEIS), the DEIS summary, dates and locations of public meetings, and other information related to this rulemaking will be available at the national roadless Web site *http://www.roadless.fs.fed.us.* Reviewers may request printed copies or compact disks of the DEIS and the summary by writing to Colorado Roadless Team/Planning, USDA Forest Service, Rocky Mountain Regional Office, 740 Simms Street, Golden, CO 80401–4720, or by e-mail to *comments-rocky-mountain-regional-office@fs.fed.us*, or by Fax to 303–275–5134. When ordering, requesters must specify their address, if they wish to receive the summary or full set of documents, and if the material should be provided in print or compact disk. Printed copies will be available for public viewing at Forest Service district and supervisor's offices within the State of Colorado.

FOR FURTHER INFORMATION CONTACT: Colorado Roadless Rule Team Leader Kathy Kurtz at (303) 275–5083. Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

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. Similarly, the State of Colorado is committed to sustained natural resource use and conservation of State and Federal land within its borders. Furthermore, the Forest Service is charged to collaborate cooperatively with states and other interested parties regarding the use and management of the National Forest System (NFS).

State of Colorado Petition

On July 14, 2005, the State of Colorado announced it would submit a petition requesting specific regulatory protections for the inventoried roadless areas within the State. The State's commitment to participate was evidenced by Senate Bill 05–243, the ''Roadless Areas Review Task Force'' legislation signed into law on June 8, 2005. The bill outlined membership and responsibilities of a 13-member bipartisan task force to make recommendations to the Governor regarding inventoried roadless areas in NFS lands in Colorado. The task force held nine public meetings throughout the State, reviewed over 40,000 public comments, and conducted a comprehensive review of Colorado's 4.4 million acres of roadless areas (2001 Roadless Rule).

Colorado's petition (2006 petition) was submitted to the Secretary of Agriculture for consideration on November 13, 2006, by then-Governor Owens with the provision it be considered under section 553(e) of the Administrative Procedure Act and USDA regulations at 7 CFR 1.28. On April 11, 2007, Governor Ritter resubmitted the 2006 petition with a substantive letter of transmittal, which became the 2007 petition. Governor Ritter's transmittal letter requested that state-specific rulemaking be undertaken to provide an ''insurance policy for protection of our roadless areas,'' given ongoing legal uncertainty. The 2007 petition took into account State and local resource management challenges along with the national interest in maintaining roadless characteristics and the need for management flexibility in certain circumstances.

The Roadless Area Conservation National Advisory Committee (RACNAC) reviewed the 2007 petition on June 13 and 14, 2007, in Washington, DC. Harris Sherman, executive director of the Colorado Department of Natural Resources, representing Governor Ritter, described the scope and intent of the 2007 petition. The RACNAC also heard comments from other State and Forest Service officials, task force members, and members of the public. On August 8, 2007, the RACNAC issued a unanimous consensus-based recommendation to the Secretary to direct the Forest Service, with the State of Colorado as a cooperating agency, to proceed with rulemaking based on the 2007 petition.

After reviewing the RACNAC's recommendation, the Secretary accepted the 2007 petition on August 24, 2007, and directed the Forest Service to initiate rulemaking based on the petition. The proposed rule would respond to the 2007 petition by establishing a system of Colorado Roadless Areas (CRAs) with protections for these areas that would supersede the 2001 Roadless Rule.

The USDA, State, and Forest Service are committed to conserving and managing roadless areas and consider these areas an important and exceptional component of the NFS. The USDA, State, and Forest Service believe the most viable path for lasting conservation of these areas is through properly integrating local, State, and national perspectives on roadless area management on NFS lands located within the State of Colorado.

Through a memorandum of understanding dated January 8, 2008, the State of Colorado was granted cooperating agency status with the Forest Service, under 40 CFR 1508.5, for the preparation of the environmental impact statement (EIS) associated with this rulemaking.

Within the 2007 petition, the State requested the Colorado Department of Natural Resources and/or the Colorado Division of Wildlife be offered cooperating agency status to assure participation in the evaluation of future proposed activities in CRAs associated with Federal coal reserves under certain lands in the North Fork coal mining area on the Grand Mesa, Uncompahgre, and Gunnison National Forests, and

proposed activities associated with ski area lands proposed for removal from roadless designation, listed in Table 2. In addition, the Forest Service will offer cooperating agency status to the State where it expresses an interest for any Forest Service project or planning activity on NFS lands located within CRAs, pursuant to the Council on Environmental Quality implementing National Environmental Policy Act (NEPA) regulations at 40 CFR 1500–1508. Where the Forest Service does not have the authority to grant cooperating agency status, the Forest Service will coordinate with the State.

National Forest System Land Inventories in Colorado

The 2007 petition proposed using the 2001 Roadless Rule inventoried roadless areas as a basis for identifying CRAs. These inventories would be updated by technical corrections to the inventory, such as but not limited to, congressionally-designated areas as defined in Table 3, land exchanges, and any boundary line revisions including additions and deletions to the inventory through revised forest plans (Arapaho and Roosevelt, Routt, Rio Grande and White River National Forests) and ongoing forest plan revisions (Grand Mesa, Uncompahgre, and Gunnison; San Juan; Pike and San Isabel; and Manti-La Sal National Forests). Finally, the 2007 petition identified that certain portions of ski areas (described in Table 2) were not to be included in CRAs. Table 1 displays the acreage changes between the 2001 inventoried roadless areas (IRAs) and the proposed CRA boundaries.

TABLE 1.—NET CHANGE IN ROADLESS ACRES DESIGNATIONS BY FOREST—INVENTORIED ROADLESS AREA ACRES TO COLORADO ROADLESS AREA ACRES

	2001 Rule total IRA acres [1]	Congressionally designated as wilderness or special areas [2] not included in IRAs or CRAs	Total IRA acres without congressionally designated acres	IRA acres not included within CRAs	Unroaded acres added to CRAs	Total roadless acres in CRAs	Net change between IRA and CRA acres
Arapaho-Roosevelt	391,000 (1997)	(37,000)	354,000	(5,000)	1,000	350,000	(4,000)
GMUG	1,127,000 (1979)	(67,000)	1,060,000	(329,000)	120,000	853,000 (2005 draft)	(207,000)
Pike-San Isabel	688,000 (1979)	(19,000)	669,000	(77,000)	82,000	674,000 (2006 draft)	5,000
Rio Grande	530,000 (1996)		530,000	(16,000)	4,000	518,000	(12,000)
Routt	442,000 (1998)		442,000	(10,000)	2,000	434,000	(8,000)
San Juan	604,000 (1979)	(60,000)	544,000	(84,000)	99,000	558,000 (2006 draft)	14,000
White River	640,000 (2002)		640,000	(5,000)	1,000	636,000	(4,000)
Manti La Sal in Colorado	11,000 (1979)		11,000	(4,000)	500	8,000 (2006 draft)	(3,000)
Total State of Colorado	4,433,000	(184,000)	4,249,000	(529,000)	309,000	4,031,000	(218,000)

Acres may not add due to rounding (ref. DEIS).

[1] The 2001 Roadless Rule used inventoried roadless areas from forest plans that were in effect at the time the 2001 Rule was developed, or a roadless inventory that had undergone public involvement. The date of each forest's inventory used for the 2001 Rule is shown here. Acreages are from the 2001 Roadless Rule FEIS.

[2] This column includes acres for the James Peak and Spanish Peak Wildernesses and additions to the Indian Peaks Wilderness, and Bowen Gulch and James Peak Protection Areas, Roubideau and Tabeguache Special Areas, Fossil Ridge Recreation Management Area, and the Piedra Special Management Unit all designated by Congress but not excluded from the 2001 RACR inventory.

[3] Acres not included are those identified as substantially altered, mapping errors, updated GIS technology, land exchanges, and ski area acres.

TABLE 2.—SKI AREA ACRES IN 2001 IRAS OR FOREST PLAN INVENTORIES NOT INCLUDED IN CRAS PER 2007 PETITION

National Forest ski areas	Colorado roadless area(s)	Ski area permitted acres	Additional ski area allocation [1] acres	Total ski acres not included in CRAs
Arapaho-Roosevelt National Forest				
Loveland	Bard Creek, Mount Sniktau	1,370	1,620	2,990
Grand Mesa, Uncompahgre, and Gunnison National Forest				
Crested Butte	Gothic	900	0	900
Pike-San Isabel National Forest				
Ski Cooper	Mad Creek DB & DB1	560	0	560

TABLE 2.—SKI AREA ACRES IN 2001 IRAS OR FOREST PLAN INVENTORIES NOT INCLUDED IN CRAS PER 2007 PETITION—Continued

National Forest ski areas	Colorado roadless area(s)	Ski area permitted acres	Additional ski area allocation [1] acres	Total ski acres not included in CRAs
Routt National Forest				
Steamboat Springs	Long Park	180	0	180
San Juan National Forest—(Draft Revised Forest Plan)				
Durango Mountain Resort	San Miguel	0	[2]90	90
White River National Forest				
Arapahoe Basin	Porcupine Peak	1,050	0	1,050
Aspen Mt	McFarlane	50	0	50
Beaver Creek	Meadow Mountain A & B	510	0	510
Breckenridge	Tenmile	150	0	150
Buttermilk	Burnt Mountain	50	0	50
Copper Mountain	Ptarmigan Hill	720	0	720
Snowmass	Burnt Mountain	80	0	80
Vail	Game Creek	900	0	900
Total		6,500	1,700	8,200

Ski area acres rounded to nearest 10 acres and total acres rounded to nearest 100 acres. Totals may not add due to rounding.

Ski areas on National Forest System lands in the State of Colorado that are not listed here do not contain roadless acres within their permit or allocation boundary.

[1] Acres allocated in forest plans to ski area management that adjoin currently operating ski areas but are not within the current permitted area.

[2] Expansion of Durango Mountain Resort is included within the San Juan's forest plan revision, draft preferred alternative. There are 90 acres of roadless area to be excluded from the CRA inventory.

TABLE 3.—CONGRESSIONALLY DESIGNATED ACRES INCLUDED IN 2001 IRAS AND NOT INCLUDED IN CRAS

Congressional designations	National Forest	Acres within roadless areas
Bowen Gulch Protection Area	Arapaho-Roosevelt	8,600
Indian Peaks Wilderness additions	Arapaho-Roosevelt	3,000
James Peak Protection Area	Arapaho-Roosevelt	11,300
James Peak Wilderness	Arapaho-Roosevelt	14,300
Fossil Ridge Recreation Management Area	Grand Mesa, Uncompahgre, and Gunnison	39,800
Roubideau Area	Grand Mesa, Uncompahgre, and Gunnison	18,600
Tabeguache Area	Grand Mesa, Uncompahgre, and Gunnison	8,900
Spanish Peak Wilderness	Pike-San Isabel	18,700
Piedra Special Management Unit	San Juan	60,400
Total		184,000

Using these inventories, the Forest Service has identified 4.031 million acres of roadless areas that would be subject to this proposed rule. This rule, if finalized as proposed, would establish CRA maps defining the boundaries of these areas and would be maintained at the national headquarters office of the Forest Service as provided in section 294.32 of this rule. These maps and acreages may be modified with additions or deletions to boundary lines only as outlined in section 294.37. Acres not included in the CRAs that were within the boundaries of the 2001 Roadless Rule IRAs would not be subject to the 2001 Roadless Rule and would be managed under their respective forest plan direction as provided in section 294.36(i).

Proposed Roadless Area Conservation Rule for Colorado

The USDA, State, and Forest Service believe this proposed rule for Colorado represents a unique opportunity to collaboratively manage and protect roadless areas within the State of Colorado. The petitioning process and the proposed rule enables the Forest Service to consider the comments of people most affected by or concerned about the contents of state-specific rulemaking for roadless areas across the State in balance with national concerns for these areas. The proposed rule represents a balanced solution for retaining the integrity and natural beauty of Colorado's roadless areas while maintaining management flexibility to affect future changes where needed.

The Forest Service, in cooperation with the State, has completed a review of the social, economic, and environmental characteristics and values associated with the IRAs in Colorado. With public input, the Forest Service has considered the question of how these roadless lands should be managed within the scope of the Forest Service's authority. The management direction proposed by these regulations would take precedence over any inconsistent regulatory provision or land management plan but would not supersede valid existing rights. All forests must meet the requirements of the proposed rule, regardless of their forest plan guidance. However, the

proposed rule at sections 294.33 and 294.34 does allow restrictions from forest plans to apply if they are more stringent than the proposed rule. Forest plans are revised at approximately 15-year intervals and are amended as needed. A revision or amendment could result in more restrictive direction for an individual CRA, but any forest plan direction with less restrictive direction, would have no force or effect (sec. 294.36(d)).

Ski Areas

The State of Colorado's petition requested the Forest Service not include within CRAs, certain acres that are within the 2001 IRAs and allocated in forest plans to a ski-based management area prescription. This includes acres that are currently within the ski area permitted boundaries (6,500 acres) as well as acres that have been allocated in forest plans (current or draft, 1,700 acres) to a ski-based management area prescription that are not currently within the permitted areas but directly adjoin current operating ski areas. A list of the acres not included in the CRAs by ski area can be found in Table 2.

The combined 8,200 ski area acres that are not proposed for CRA designation would remain subject to their respective forest plan direction and applicable terms and conditions of special use authorizations. Any proposal for these ski area acres, including expanding a ski area permit boundary into an area allocated to a ski-based management prescription would be subject to all appropriate environmental analysis, including NEPA analysis.

Limited Road Construction and Reconstruction

The proposed rule at section 294.33 prohibits road building in CRAs except under certain circumstances. The circumstances in section 294.33(b) allow for a road, whereas circumstances in section 294.33(c) are specific to temporary roads. Whenever a forest road is proposed, an EIS will be prepared (sec. 294.33(e)). For all other circumstances, NEPA requirements will be used to determine the level of environmental analysis needed.

Many exceptions in the proposed rule mirror the exceptions for road building provided in the 2001 Roadless Rule, but several additional circumstances allowing road building are proposed. The proposed rule at section 294.33(b)(6) includes an additional circumstance that would allow for the construction and maintenance of roads for existing and future utility and water conveyance structures. The Forest Service and the State believe this is a needed exception so Colorado's water and utility infrastructure can be properly operated and maintained. This provision is only intended to apply to existing and future authorized utility and water conveyance structures. The proposed rule at section 294.31 provides the definition for utility and water conveyance structures. The definition does not include road construction or reconstruction for the construction or maintenance needed for reservoirs. In addition, the proposed rule at section 294.33(b)(7) includes an additional circumstance that would allow for the construction and maintenance of roads needed for the management of livestock grazing. The Forest Service and State recognize the importance of maintaining a viable ranching industry in Colorado. Conserving sustainable, working grasslands reduces development pressure on these lands and is a component of the Forest Service's Open Space Conservation Strategy.

Another change from the 2001 Roadless Rule is the emphasis the proposed rule places on using temporary roads to the extent possible for any of the circumstances allowing for road building (sec. 294.33(c) and (e)). The proposed rule also emphasizes restoration of temporary roads at section 294.33(c).

The Forest Service is charged with managing the National Forest transportation system, including requirements for temporary roads to be designed with the goal of reestablishing vegetative cover on the roadway and areas where the vegetative cover has been disturbed by road construction within ten years after the termination of a contract, permit, or lease through either artificial or natural means (ref. 16 U.S.C. 1608). The Forest Service and State have considerable experience dealing with road restoration activities across many types of programs and activities. For example, the State administers a federally-funded abandoned mine reclamation program in which one principal goal is to identify environmental problems arising from abandoned mines and then to design appropriate closure methods and reclamation techniques (including restoring roads) at project sites. The State has restored over 1,500 acres of abandoned mine lands statewide since 1980.

The proposed rule anticipates that lands affected will be returned to a condition consistent with the preexisting roadless characteristics (sec. 294.33(c)). However, the proposed rule recognizes that restoration efforts are to proceed in an environmentally sound way. In rare instances, complete obliteration and restoration (such as fully recontouring the roadway to its natural state) may cause more environmental harm than recontouring to a level that stabilizes against soil loss or other damage. For example, when the Forest Service decommissions temporary roads, restoration and obliteration are intended to make the corridor unusable as a road, stabilize it against soil loss or other damage, and reestablish the affected land's natural resource capabilities through such actions as: removing bridges and culverts and reestablishing normal maximum water flow, eliminating ditches, out-sloping the roadbed, removing ruts and berms, and recontouring road cuts. However, fully recontouring a road cut may set the stage for higher levels of soil loss due to unsuccessful revegetation on a steep slope as compared to partial recontouring incorporating a design that facilitates revegetation.

Roads built for access to existing oil and gas leases as of the date of the Colorado Rule (sec. 294.33(c)(3)) and roads built to accommodate coal mining exploration and coal-related surface activities in the North Fork coal mining area (sec. 294.33(c)(4)) would be classified as temporary or long-term temporary roads. The proposed rule would establish a new category of road, long-term temporary road, which would have application only in CRAs. The intent is to provide a classification for roads associated with oil and gas, or coal leases that better recognizes the longer term, but non-permanent nature that is typical of such roads. Long-term temporary roads would be expected to be in place anywhere from 10 to 30 years. They would be included in the forest transportation system, ensuring they will be monitored and maintained in compliance with the terms of the applicable permit or special use authorization. However, as with other temporary roads, any long-term temporary roads constructed pursuant to an oil and gas lease or pursuant to a coal exploration license or a coal lease shall be decommissioned and the affected landscape restored when the road is no longer needed, or upon termination of the lease or license. The intent of this provision is to preserve the roadless character of CRAs to the maximum extent practicable.

Except for emergency purposes, administrative use, or motorized vehicle use that is specifically authorized, all roads constructed in CRAs will be closed to motorized vehicles, including off-highway vehicles (OHVs) not authorized for the specific activity for

which the road was constructed (sec. 294.33(d)). Any temporary roads, including long-term temporary roads, built in a CRA would not serve as the basis for altering the management status for that CRA. (sec. 294.33(c)).

Colorado State Land Board Mineral Interests

The proposed rule at section 294.33(b)(2) aligns with the Colorado State Land Board's current ability to develop its mineral interests that underlie NFS lands in CRAs. Access to such mineral interests would continue to be governed by operation of the standard applicable laws and regulations rather than by this rule. The Forest Service and the State are committed to exploring opportunities for land exchanges whereby the State could acquire other property interests of equal value, outside of roadless areas. Such exchanges would provide the Forest Service with unified administration of both surface and mineral interests in CRAs.

Public and Safety

The USDA, Forest Service, and State are committed to preserving roadless area characteristics while also protecting human health and safety. In an effort to achieve a proper balance, the proposed rule would allow for the construction of a temporary road if it is needed to safeguard public health when there is a catastrophic event, such as a flood or fire, which would cause the loss of life or property (sec. 294.33(c)(2)).

Locatable Minerals

Development of locatable minerals is subject to the General Mining Law of 1872, as amended. Like the 2001 Roadless Rule the proposed rule does not seek to impose any limits on activities related to the exploration for or development of locatable minerals. The proposed rule at section 294.33(b)(2) allows for roads provided for by statute or treaty, which includes roads provided under the General Mining Law of 1872, as amended. The proposed rule does not affect or seek any withdrawal of the mineral estate in CRAs. Therefore, the proposed rule will not affect rights of reasonable access to prospect and explore lands open to mineral entry and location, or to develop any minerals discovered.

Saleable Minerals

Disposal of saleable minerals (mineral materials) is at the discretion of the Forest Service, subject to the provisions of 36 CFR 228 subpart C. The proposed rule prohibits road construction or reconstruction associated with developing new mineral material sites in roadless areas, unless this material is necessary to and accessible from roads allowed to be constructed under other provisions of the rule.

Leasable Minerals—Oil and Gas

Like the 2001 Roadless Rule the proposed rule does not prohibit oil and gas leasing. However, prohibitions on road construction and reconstruction provided in the proposed rule (sec. 294.33), would affect Federal oil and gas leases, subject to valid and existing rights. The proposed rule (sec. 294.33 (c)(3)) would require future leases within CRAs include stipulations that prohibit road construction. Drilling and production may be allowed on leases in roadless areas issued after the effective date of the rule, but new roads to access sites for drilling and production will not be allowed. Oil and gas resources in roadless areas under leases issued after the effective date of the final rule may be developed by helicopter access or by other means such as directional drilling from outside the roadless areas. These provisions bar roading, but would not restrict the construction of oil and gas pipelines in CRAs where the construction of a pipeline is necessary to transport the product of an oil and gas lease on lands within a CRA that are under lease by the Secretary of the Interior as of the effective date of the final rule.

The proposed rule at section 294.33(c)(3) would allow for temporary or long-term temporary road construction or reconstruction for access on and to Federal oil and gas leases that were issued before the effective date of the final rule and that allow road construction. Such access will be allowed pursuant to valid existing rights but restricted to lessees, operators, and their designated contractors; Forest Service and Bureau of Land Management (BLM) personnel and other federal and state agencies with jurisdictional authority over mineral development activity allowed under the proposed rule; and fire, emergency, or law enforcement personnel.

The proposed rule does not allow the Forest Service to authorize the BLM to grant a waiver (permanent removal), exception (case-by-case exemption), modification (permanent changes), or otherwise remove stipulations prohibiting surface occupancy or road construction or reconstruction on existing leases or on any future lease in any CRAs where these stipulations occur, It is the intent of the proposed rule to maintain all no surface occupancy, controlled surface use and other stipulations that restrict road construction and reconstruction on all existing leases, including those specifically tied to the 2001 Roadless Rule.

Leasable Minerals—Coal

The proposed rule at section 294.33(c)(4) provides for temporary or long-term temporary roads associated with the exploration and mining of coal resources in roadless areas in the North Fork coal mining area on the Grand Mesa, Uncompahgre, and Gunnison National Forests. This area is identified on the North Fork coal mining area map within the DEIS for the proposed Colorado Roadless Rule. This area would be included in the CRAs and will be managed in a way that permits temporary or long-term temporary roads and other coal related surface activities associated with coal exploration and coal mining to occur (sec. 294.33(c)(4)). Such temporary or long-term temporary roads will be closed to the public. The use of these roads will be restricted to coal mine and oil and gas operations, the Forest Service and other Federal and State agencies with jurisdictional authority, including emergency response, fire, and law enforcement personnel.

Temporary and long-term temporary coal mine roads may be constructed for exploration drilling, resource monitoring, safety, or installation and operation of surface facilities needed to operate coal mines, including methane venting wells. In some instances roads are necessary to comply with Mine Safety and Health Administration (MSHA) requirements for mine safety, and to meet Colorado Division of Reclamation, Mining, and Safety requirements for resource monitoring. For example, roads may be constructed to facilitate the venting of coal mine methane gas. Methane is a by-product of coal mining in the North Fork area and must be removed from the mines to protect miner health and safety.

The proposed rule also provides the opportunity for an oil and gas lessee to use roads for the purpose of collecting and transporting coal mine methane rather than venting the methane into the atmosphere. These activities will remain within the authorized right of way for the long-term temporary roads; no additional roads or pipelines outside the right-of-way will be constructed. Any roads constructed pursuant to a coal lease or exploration license and used for collection and transportation of coal mine methane under an oil and gas lease shall be decommissioned and the affected landscape restored when the road is no longer needed for coal mining

purposes or coal mine methane collection, whichever is later.

Leasable Resources—Geothermal Energy

Colorado has high geothermal energy potential on NFS lands both inside and outside roadless areas. However, site-specific information on this resource in CRAs is limited. At this time, the proposed Colorado Roadless Rule does not include a specific exemption for geothermal energy resources. The proposed rule makes no special provision for road construction and reconstruction associated with geothermal energy sources. Once additional information becomes available, the State or other parties could choose to seek a change in the rule's restrictions.

Road Closures

The proposed rule does not provide direction about where and when OHV use would be permissible except roads constructed under this provision would be closed to OHVs pursuant to section 294.33(d). Travel planning-related actions will continue to be addressed through travel management and individual forest plans.

Tree Cutting, Sale, or Removal—Forest Health

In order to reduce the hazard of wildfire near communities and after careful consideration of roadless area characteristics, the proposed rule at sections 294.34(b)(1)(ii) and 294.33 (c)(1) allows for forest health treatments and temporary road construction to meet needs described in Community Wildfire Protection Plans (CWPPs) or, if a CWPP is not in place, within the Wildland Urban Interface (WUI). CWPPs are collaborative agreements in which local communities identify and prioritize areas for hazardous fuel reduction treatments. The Forest Service and the State believe that allowing forest health treatments for projects identified in CWPPs or within WUIs strike the proper balance of protecting roadless area characteristics while allowing forest health and community protection needs to be addressed.

Oil and Gas Pipelines

After the petition was submitted the State requested that the proposed rule (sec. 294.35) restrict the construction of oil and gas pipelines through CRAs where a source or sources of the oil and/or gas are exclusively outside CRAs. The proposed rule would not prohibit the construction of pipelines that were authorized by the Forest Service or another jurisdictional agency prior to the effective date of the final rule. The proposed rule would not restrict the construction of oil and gas pipelines in CRAs where the construction of a pipeline is necessary to transport the product of an oil and gas lease on lands within a CRA that are under lease by the Secretary of the Interior as of the effective date of the final rule.

Access

The Forest Service and State are committed to conserving roadless area characteristics while also providing reasonable access to public and private property and facilities. Several aspects of the proposed rule address the need for the State and/or private parties to access property and/or facilities (sec. 294.33(b)(2) and (6); (sec. 294.33(c)(3) and (4); sec. 294.36(g)).

Regulatory Certifications

Regulatory Planning and Review

This proposed rule was reviewed under USDA procedures, Executive Order 12866 issued September 30, 1993 (E.O. 12866), as amended by E.O. 13258 and E.O. 13422 on Regulatory Planning and Review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). These executive orders address regulatory planning and review and require that agencies conduct a regulatory analysis for economically significant regulatory actions. Economically significant regulatory actions are those that have an annual effect on the economy of $100 million or more or adversely affect the economy or economic sectors. Because this rule is projected to have an annual effect on the economy of approximately $500 million, this proposed rule has been designated as significant and is subject to Office of Management and Budget (OMB) review under E.O. 12866. This proposed rule is not expected to interfere with an action taken or planned by another agency nor raise new legal or policy issues. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

A regulatory impact analysis has been prepared for this proposed rule. OMB Circulars as well as guidance regarding E.O. 12866 indicate that regulatory impact analysis should include benefit cost analysis and an assessment of distributional effects. We are seeking comments on assumptions, methods, and conclusions in the Regulatory Impact Analysis and Cost-Benefit Analysis. The benefits, costs, and distributional effects of three alternatives referred to as follows: the proposed Colorado Roadless Rule (proposed rule), 2001 Roadless Rule (2001 rule) and land management plans (LMPs) are analyzed over a 15 year time period. As of the printing of this proposed rule, the 2001 rule is in operation. For the purpose of regulatory impact analysis, the 2001 rule represents baseline conditions or goods and services provided by NFS lands in the near future in the absence of the proposed rule.

The proposed rule is programmatic in nature and intended to guide future development of proposed actions within roadless areas. The proposed rule is intended to provide greater management flexibility under certain circumstances to address unique and local land management challenges, while continuing to conserve roadless values and characteristics. Increased management flexibility is primarily needed to reduce hazardous fuels and large-scale insect and disease outbreaks, allow access to coal reserves in the North Fork coal mining areas and ski area development, and to allow access to future utility and water conveyances, while continuing to conserve roadless area values and characteristics.

This proposal does not authorize the implementation of any ground-disturbing activities, but rather it describes circumstances under which certain activities may be allowed or restricted within roadless areas. Before authorizing land use activities in roadless areas, the Forest Service must complete a more detailed and site-specific environmental analysis pursuant to the NEPA and its implementing regulations at 40 CFR 1500–1508.

Because the proposed rule does not prescribe site-specific activities, it is difficult to predict the benefits and costs or other changes of the different alternatives. In addition, the types of benefits derived from roadless characteristics and the uses of roadless areas are far ranging and include a number of non-market and non-use benefit categories that are difficult to measure in monetary terms. As a consequence, benefits are not monetized, nor are net present values or benefit cost ratios estimated. Instead, increases and/or losses in benefits are discussed separately for each resource area in a quantitative or qualitative manner. Benefits and costs are organized and discussed in the context of local land management challenges or concerns ('local challenges') and 'roadless characteristics' in an effort to remain consistent with the overall purpose of the proposed rule, recognizing that benefits associated

with local challenges may trigger or overlap with benefits associated with roadless characteristics in some cases (e.g., forest health). Access and designations for motorized versus non-motorized recreation is a topic raised in comments during scoping, however, the proposed rule does not provide direction on where and when off-highway vehicle (OHV) use would be permissible and makes clear that travel planning-related actions should be addressed through travel management planning and individual land management plans.

Distributional effects or economic impacts, in terms of jobs and labor income, are quantified for the oil and gas and the coal sectors for an economic area consisting of five Colorado counties (Delta, Garfield, Mesa, Montrose, and Rio Blanco) using a regional impact model. Fiscal impacts (i.e., mineral lease payments) are estimated for counties where changes in mineral activity are expected to be physically located (Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin). The distributional effects associated with protecting values at risk from wildfire are characterized by estimating the number of communities-at-risk expecting to benefit from fuel treatments in roadless areas. Distributional effects or economic impacts are not evaluated for other economic sectors (e.g., timber harvest, recreation) due to evidence presented in respective resource sections suggesting that the extent or magnitude of changes in output or services are not sufficient to cause significant changes in distributional effects.

Details about the environmental effects of the proposed rule can be found in the Roadless Area Conservation; National Forest System Lands in Colorado Draft Environmental Impact Statement (DEIS). Effects on opportunities for small entities under the proposed rule are discussed in the context of Executive Order 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 results of the regulatory impact analysis for the proposed rule are summarized in the following tables. Table 1 provides information related to roadless area acreage, road miles and tree-cutting. Table 2 summarizes the potential benefits and costs of the proposed rule, the 2001 roadless rule, and land management plans alternatives. Table 3 summarizes distributional effects and economic impacts of the proposed rule and alternatives.

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Table 1 – Framework for Analysis: Comparison of Roadless Area Acreage, Road Miles, and Tree-cutting

	2001 Roadless Rule	Proposed Rule	LMPs
Aggregate Roadless Areas	Inventoried Roadless Areas (IRAs) = 4,249,000 acres	Colorado Roadless Areas (CRAs) = 4,031,000 acres	Inventoried Roadless Areas (IRAs) = 4,249,000 acres
Total Existing Authorized Road Miles in Roadless Areas	1,396 miles	216 miles	1,396 miles
Road Construction and Reconstruction Projected in Roadless Areas (1)	6 miles/year	21 miles/year	30 miles/year
Tree-cutting Projected in Roadless Areas	800 acres (12,000 acres over 15 yrs)	7,600 acres (114,000 acres over 15 yrs)	16,300 acres (244,500 acres over 15 yrs)
Harvest volume Projected in Roadless Areas	800 ccf/year	1,700 ccf/year: CRAs only 6,700 ccf/year: CRAs and Substantially Altered areas	24,400 ccf/year

(1) More than 10 miles road decommissioning expected per year for all alternatives.
Ccf = hundred cubic feet.

Table 2 – Summary of Net Benefits of the Proposed Rule and Alternatives.

Category	2001 Roadless Rule	Proposed Rule	LMPs
Local Challenges: Roadless Area Management			
Wildfire hazard (1)	1 percent of the annual fuel treatments on NFS lands in Colorado could occur in roadless areas. Lowest opportunity to improve fuels and fire management efficiency.	12 percent of the annual fuel treatments on NFS lands in Colorado could occur in roadless areas (in CWPP areas or WUIs). Moderate opportunity to improve fuels and fire management efficiency.	27 percent of the annual fuel treatments on NFS lands in Colorado could occur in roadless areas. Greatest opportunity to improve fuels and fire management efficiency.
Insect and disease (1)	2 percent of the high risk acres in roadless areas would likely be treated.	19 percent of the high risk acres in roadless areas would likely be treated.	41 percent of the high risk acres in roadless areas would likely be treated.
Reduction of wildfire hazard for at-risk-communities and values	Opportunities to reduce wildfire hazard for at-risk communities would be lowest under this alternative compared to the others.	Opportunities to reduce wildfire hazard for at-risk communities would be available but somewhat limited under this alternative compared to the others.	Opportunities to reduce wildfire hazard for at-risk communities would be greatest under this alternative compared to the others.

Wildlife and plant habitat, including special status species	Not allowing new roads in conjunction with treatments to reduce wildfire hazard could result in a higher risk of severe wildfires causing adverse impacts to habitat for some species.	Allowing new roads in conjunction with treatments to reduce wildfire hazard could result in reducing the hazard of severe wildfires causing adverse impacts to habitat for some species. Increased ability to cut trees on more acres for forest health and fuels management could improve habitat for early seral species in some areas in the short-term.	Same flexibility to improve habitat conditions as the proposed rule, but to a greater extent.
Utility and water facilities and conveyances	Does not allow new roads to provide for future utility or water conveyances in roadless areas (limited to those under an existing permit issued prior to January 2001).	Allows new roads to provide for future electrical transmission utilities and water conveyances in roadless areas (other then where prohibited by forest plan direction).	Same flexibility as the proposed rule, with additional flexibility for new roads to provide for other types of utilities such as telephone and fiber optic lines, water reservoirs, and others (other than where prohibited by forest plan direction).
Roadless area boundary updates	Does not provide a process for updating roadless area boundaries. Changes could be allowed in the future if authorized by the Secretary of Agriculture through rule making.	Provides a process for updating roadless area boundaries. Modifications based on changed circumstances or public need require at least 60 days public notice and opportunity to comment.	Like the proposed rule, provides a process for updating roadless area boundaries. Boundary changes may be made through a forest plan amendment or revision process, subject to public involvement and analysis under NFMA and NEPA regulations (36 CFR 219 and 40 CFR 1500).
Public safety and Safety	All of the alternatives provide adequate flexibility to respond to emergency situations or major threats to public health and safety in roadless areas (refer to features common to all alternatives). The Forest Service will continue to respond to wildfires, chemical or oil spills, abandoned mine hazards, road-design hazards, hazard trees, and other similar situations. Roads for this purpose must be temporary under the proposed rule, and would be expected to be temporary under the 2001 roadless rule and LMPs alternatives.		
	Limited capacity to respond to emergency situations	Roads improve capacity to respond to emergency situations	Roads provide greatest capacity to respond to emergency situations.

Outstanding rights and existing authorized uses of NFS lands	All of the alternatives allow the exercise of outstanding rights for access, occupancy, and use of NFS lands within roadless areas, including those that exist by law, treaty rights, or other authority (e.g. access to private property, valid mining claims for locatable minerals, land uses protected by American Indian treaty rights). All of the alternatives allow for the continuation, transfer, or renewal of existing land use authorizations in roadless areas that exist at the time the applicable roadless rule becomes effective, including discretionary authorizations such as for livestock grazing and other permitted activities. For clarification, "existing" authorizations under the 2001 Roadless Rule are those issued prior to January 12, 2001, while "existing" authorizations under the proposed Colorado Roadless Rule would be those issued prior to adoption of the final rule. Thus, outstanding rights and existing authorized uses may continue in roadless areas except where limited by applicable laws, regulations, Forest Service directives, or land management plan direction.		
Ski Areas	Road building and tree-cutting may occur on 3,200 IRA acres under permits authorized prior to 1/12/2001	Road building and tree-cutting may occur on 8,200 IRA acres (acres not included in CRAs)	
Leasable Minerals: Energy Resources			
Pipelines and Access energy resources	Provides the least opportunity for access to develop oil, natural gas, or coal resources in roadless areas. No prohibition on oil or gas pipelines through IRAs from sources outside IRAs.	Access to develop oil and natural gas is similar to 2001 roadless rule. Increases roaded access to future coal resources in the North Fork coal mining area. Prohibits construction of oil and gas pipelines through CRAs from sources outside the CRAs.	Provides the most opportunity for access to develop future oil, natural gas, and coal resources compared to the other alternatives. No prohibition on oil or gas pipelines through IRAs from sources outside IRAs.
Oil and gas	Projections are for approximately 252 oil and gas wells in IRAs with access to 418.6 bcfg over a 15-year period; providing the least opportunity for oil and natural gas development and production among the alternatives.	Projections are for approximately 674 oil and gas wells in CRAs with access to 1005.6 bcfg over a 15-year period; providing much more opportunity for oil and natural gas development and production than the 2001 rule and slightly less than LMPs.	Projections are for approximately 731 oil and gas wells in IRAs with access to 1.023.6 bcfg over a 15-year period; providing the most opportunity for oil and gas development and production than other alternatives.

Coal	Projections are for 6.5 miles of new roads for coal-related activity in IRAs. Restricts access to potential coal resources in IRAs more than other alternatives. 3,700 acres of road-accessible reserves (135 million tons)	Projections are for 45 miles of new roads for coal-related activity in CRAs. Reduces restrictions on access to potential coal resources in CRAs compared to the 2001 rule, but is more restrictive than LMPs (limits new roads to the North Fork coal mining area). 29,000 acres of road-accessible reserves (1 billion tons)	Projections are for 66 miles of new roads for coal-related activity in IRAs. Least restrictive on access to potential coal resources in IRAs compared to the other two alternatives. 31,000 acres of road-accessible reserves (1.1 billion tons)
Geothermal	Opportunities for geothermal development in roadless areas would not occur under the 2001 rule and the proposed rule due to new road prohibitions. Opportunities for geothermal development in roadless areas would occur under LMPs as most LMPs allow new roads in roadless areas for this purpose.		
Other Resource Effects			
Livestock Management	None of the projected activities in roadless areas that vary by alternative would be likely to have any substantial beneficial or adverse impacts on livestock management operations in roadless area grazing allotments.		
Locatable and saleable minerals	Opportunities to develop locatable minerals resources held by valid mining claims in roadless areas would continue to occur and would not differ by alternative. Opportunities for saleable minerals production would not likely differ by alternative because little to no saleable mineral operations would likely occur in the roadless areas.		
Roadless Area Characteristics and Values			
Soil and water quality, including public drinking water sources	No major difference among alternatives related to the risk of adverse water quality and soil impacts. The 2001 rule would have the least risk of adverse effects, and the proposed rule would have a slightly higher risk, followed by LMPs with the greatest risk of adverse impacts. However, these differences are insignificant because the actual impacts would be small in magnitude and scattered over a wide geographic area. Most of the potential effects would be of short duration, and effectively mitigated by site-specific watershed conservation practices, best management practices, post-project rehabilitation of disturbed soil, and regulatory permit requirements.		
Air quality	No major difference among alternatives related to the risk of adverse impacts on air quality. One minor difference is related to potential smoke-related impacts from wildfires, which would be more likely to occur in roadless areas under the 2001 rule, and least likely to occur under LMPs. None of the alternatives is likely to result in emissions that would exceed air quality standards; most would be of short duration with site-specific mitigation measures applied as needed.		
Invasive plants	An increase of about 4 acres per year of invasive plants in IRAs.	An increase of about 38 acres per year of invasive plants in CRAs.	An increase of about 82 acres per year of invasive plants in IRAs.

Scenic quality (integrity)	Maintains the most IRA acreage at high to very high scenic integrity levels where it exists.	Retains majority of CRAs at high or very high integrity; the scenic integrity of some areas would be reduced by the roads and road-related activities projected as likely to occur in CRAs.	Maintains the least IRA acreage at high to very high scenic integrity levels, as more IRA acres would be reduced by shifting to a moderate to low scenic integrity from the roads and road-related activities projected as likely to occur in IRAs
Cultural properties and sacred sites	No major difference among alternatives related to the risk of adverse effects on traditional cultural properties, sacred sites or other cultural (heritage) resources. The 2001 rule offers the most protection from development in roadless areas, which translates to fewer potential effects to historic properties; this is offset somewhat by a slightly increased potential for uncharacteristic wildfire. The proposed rule offers fewer acres of roadless protection, so there is an increase in potential development activities that may have an effect on cultural resources; wildfire risk is slightly reduced in this alternative. LMPs has the most potential for direct effects on cultural resources; this alternative may also have the lowest risk of uncharacteristic wildfire.		
Wilderness and other congressionally designated areas	No major difference among the alternatives related to the risk of adverse effects on congressionally designated areas. There would be no potential direct effect on these areas as they are located outside the roadless areas that are the subject of each alternative. There could be indirect effects on wilderness characteristics due to some noise and visibility of human activities in adjacent roadless areas, with the highest potential for indirect impacts under LMPs, and the lowest potential under the 2001 rule. Effects on areas allocated in LMPs as recommended wilderness would not differ by alternative as LMPs generally prohibit roading and tree-cutting and removal activities in those areas. However, the restrictions on activities in IRAs under the 2001 rule provide a greater opportunity to maintain future options for recommending roadless acres as wilderness in the future, compared to the proposed rule or LMPs alternatives.		
Protected Species, Habitat, and Biodiversity			
Biodiversity	The value of roadless areas in conserving biodiversity is likely to increase as habitat loss and habitat degradation increase in scope and magnitude in lands outside of roadless areas. Opportunities for protected large contiguous blocks of habitat, biological strongholds, and habitat connectivity would be greatest for the 2001 rule and lowest under LMPs.		
Terrestrial species and habitat	Provides terrestrial species and habitat the most protection compared to other alternatives, based on the IRAs with important wildlife habitat and projected activities that differ among alternatives.	Provides terrestrial species and habitat moderate protection (less than the 2001 rule and more than LMPs), based on the CRAs with important wildlife habitat and projected activities that differ among alternatives.	Provides terrestrial species and habitat the least amount of protection compared to the other two alternatives, based on IRAs with important wildlife habitat and projected activities that differ among the alternatives.
	For all alternatives, potential adverse effects are expected to be avoided or minimized through compliance with standards and guidelines in land management plans and other applicable laws and policies. For all alternatives, activities may affect individual animals but are not likely to adversely affect populations or critical habitat of T&E species, nor result in the loss of viability or cause a trend toward federal listing for sensitive species.		

Aquatic species and habitat	Provides aquatic species and habitat the most protection compared to other alternatives, based on the IRAs with important aquatic habitat and projected activities that differ among alternatives.	Provides aquatic species and habitat moderate protection (less than the 2001 rule and more than LMPs), based on the CRAs with important aquatic habitat and projected activities that differ among alternatives.	Provides aquatic species and habitat the least amount of protection compared to the other two alternatives, based on IRAs with important aquatic habitat and projected activities that differ among the alternatives.
Native plants, including special status plants	No major difference among alternatives related to the risk of adverse effects on native threatened, endangered or sensitive plant species. There would be very little to no increases in roads, tree-cutting, or energy development activities in the roadless areas that support those plant species. The main difference is the higher risk under the proposed rule and LMPs that invasive plants would increase from the higher levels of ground-disturbance, thereby increasing this threat to native plant communities.		
Recreation			
Primitive and semi-primitive recreation settings and opportunities	Likely to retain the greatest proportion of IRA acreage in a primitive or semi-primitive setting. The substantially altered areas and developed ski areas in IRAs may continue to appear inconsistent with semi-primitive characteristics expected in roadless areas.	Likely to retain a high proportion of CRA acreage in a semi-primitive setting; although some CRA acres would shift toward roaded natural in areas where the most roads and energy operations are projected to occur in CRAs. By not including substantially altered areas and developed ski areas in CRAs and adding unroaded areas to CRAs, the CRAs would appear more consistent with semi-primitive characteristics expected in roadless areas.	Likely to retain lower proportions of IRA acreage in a semi-primitive setting; more acres would shift toward roaded natural in areas where the most roads and energy operations are projected to occur in IRAs. The substantially altered areas and developed ski areas in IRAs may continue to appear inconsistent with semi-primitive characteristics expected in roadless areas.
Other General Resource Effects			
Geological and Paleontological	None of the projected activities in roadless areas that vary by alternative would be likely to adversely affect geological or paleontological resources, which would either be avoided or otherwise protected from potential adverse impacts.		
Outfitters and guides and other special uses	The alternatives are expected to have negligible adverse effects on recreational special uses, including outfitter and guide opportunities, based on reasonably foreseeable activity projections. Limitations on roading and tree-cutting under any alternative would not be likely to affect ability to obtain or use a recreation use authorization.		
Climate Change	None of the alternatives are expected to cause a measurable change in the amount of carbon dioxide or other greenhouse gas emissions. The cumulative effects of climate change on roadless area conditions cannot be quantitatively described in this programmatic evaluation. The risk of cumulative effects would be somewhat lower under the 2001 rule, and incrementally larger under the proposed rule and LMPs due to projected levels of ground-disturbing activity.		

Agency Costs			
Vegetation and Fuel Treatments	Treatments are likely to be less efficient and more costly in IRAs.	Increased flexibility to achieve management objectives in critical insect and disease areas; increase ability to strategically locate treatments and improve efficiency.	Capacity to shift even more treatment acres into IRAs; increased efficiency, effectiveness and timeliness of wildfire suppression response as well as fuel reductions in WUIs
Other Costs	Administrative costs are unlikely to change due to flat or static budgets and corresponding constraints on projects. Emphasis on road decommissioning and temporary roads is expected to ease demands on maintenance backlog.		

(1) Percentages assume that all projected tree-cutting acres target the respective objectives (fuels or insect/disease); high risk insect and disease areas may not overlap with WUI/CWPP areas during actual implementation.

Bcfg = billion cubic feet gas

Ccf = hundred cubic feet timber

Table 3 – Summary of Distributional Effects and Economic Impacts of the Proposed Rule and Alternatives.

	2001 Rule	Proposed Rule	LMPs
Leaseable minerals: coal, oil and gas – Output Value, Jobs and Income (2006$) Contributed (1)	$149.2 million/yr Output 297 Jobs supported $17.5 million per year Labor Income	$565.7 million/yr Output 1,481 Jobs supported $96 million per year Labor Income	$621.7 million/yr Output 1,592 Jobs supported $102.7 million per year Labor Income
Revenue Sharing: Mineral Lease Payments and Tax Revenues (2007$) (2)	State Total: $6,146,000 Energy-Affected Counties: $2,240,000 All other CO Counties: $193,000	State Total: $24,481,000 Energy-Affected Counties: $6,847,000 All other CO Counties: $904,000	State Total: $26,825 Energy-Affected Counties: $7,729,000 All other CO Counties: $976,000
Values at risk: Number of At-Risk-Communities where opportunities for hazardous fuel reduction in the WUI may uncrese, relative to the 2001 rule (3)	NA (4)	118 communities in 20 Counties	196 communities in 23 Counties

(1) Jobs and income contributed annually (2006 dollars) based on projected levels of coal, oil, and gas production and regional economic modeling multipliers. Values are all based on the following annual production volumes: 9.6 billion cubic feet gas/yr (bcfg/yr) and zero tons/yr coal for the 2001 rule; 26.2 bcfg/yr and 4 million tons/yr coal for the proposed rule; 29.8 bcfg/yr and 4 million tons/yr coal for LMPs.

(2) Payments consist of property tax receipts from coal, oil, and gas production; state distribution of severance taxes and federal royalties. Energy-affected counties are Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin counties. Changes in payments associated with the Secure Rural Schools and Self Determination Act and Payments in Lieu of Taxes (PILT) are not expected to change significantly.

(3) At-risk-communities are assumed to experience an increase in likelihood if the probability of tree-cutting in association with the WUI changes from "unlikely or somewhat likely" to "very likely or plans underway" in at least one CRA within 3 miles according to forest unit survey responses (see Appendix C of the draft EIS).

(4) WUI treatments are projected to be 'very likely' or 'already planned' for 82 at-risk-communities under the 2001 rule, 183 communities under the proposed rule, and 250 communities under land management plans. Some at-risk communities may benefit from fuel reductions under all alternatives but are within 3 miles of multiple CRAs; these communities may therefore experience incremental increases in opportunities when comparing alternatives.

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Proper Consideration of Small Entities

This proposed rule has also been considered in light of Executive Order 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 with the assistance of the State of Colorado 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 proposed rule does not subject small entities to regulatory requirements. Therefore, an initial regulatory flexibility analysis is not required for this proposed rule.

For small businesses affiliated with most industry sectors involved with activities in roadless areas (e.g., coal, oil and gas), potential opportunities increase due to easing of restrictions on road construction and tree-cutting in certain circumstanced under the proposed rule. As a result, there is little or no potential for significant adverse economic impacts to small businesses under the proposed rule relative to no-action conditions (i.e., 2001 rule).

There are about 1,390 recreation special use permits currently authorized within NFS lands in Colorado of which a large majority are small businesses, and 1,066 (77%) are associated with outfitter and guide permits, some of which are likely to operate within roadless areas. However, there is little difference between alternatives with respect to recreation special use authorizations in roadless areas, because limitations on roading and tree-cutting under any alternative would not be likely to affect ability to obtain or use a recreation use authorizations. Exceptions might be special-use permit holders who rely on primitive or semi-primitive recreational settings to maintain the quality of the outdoor or remote experience. Increases in road construction and tree-cutting may have adverse impacts on permit holders in specific areas under the proposed rule, but impacts are not expected to be significant due to the small percentage (0.2%) of acreage affected (7,600 acres of tree-cutting per year) and roads constructed (21 miles per year) spread across 4 million acres of Colorado Roadless Areas. It is also noted that a significant percentage of roads and tree-cutting activity will occur within or near the wildland urban interface areas where primitive or semi-primitive settings may already be affected.

Projected harvest volumes from roadless areas from the seven affected National Forest units are all greater under the proposed rule and land management plans relative to the no-action alternative (2001 rule). As such there is little or no potential for adverse impacts to small entity opportunities, relative to no-action, in aggregate or in the context of individual forest unit areas. Volumes are projected to be 17,700 hundred cubic feet (ccf) less under the proposed rule, relative to the land management plans, and approximately 70% of the decrease is due to volume changes on the Pike San Isabel National Forest (decrease of 12,720 ccf). All seven National Forest units have been in compliance with small business set aside shares for the period 1/1/2000 to 9/30/2005. The proposed rule, relative to the land management plans alternative, may decrease small entity opportunities for wood products businesses associated with the Pike San Isabel National Forest, recognizing that small business shares are already being met and that aggregate volumes sold from NFS lands may not change significantly under any alternative due to flat budget assumptions. Flat budgets imply that the percentage of harvest from roadless areas may change under the alternatives, but aggregate volumes across all NFS land are expected to remain relatively unchanged, on average, implying little potential for adverse impacts to small entities.

For leasable minerals associated energy resources (coal, oil and gas), significant changes in output are projected across alternatives. More than 95 percent of the firms associated with these sectors can be classified as small as defined by Small Business Administration standards. Any changes in oil and gas, or coal development or production can therefore have an effect on small business opportunities in these sectors. A five-county region has been defined to model the economic impacts associated with energy resources (Delta, Garfield, Mesa, Montrose, and Rio Blanco counties). A total of 355 firms associated with oil and gas, and coal development and extraction are estimated to be located within this region, of which 95% are likely to be small (337 firms). However, energy resource sector jobs, supported annually by projected activity within roadless areas, are estimated to increase from 297 under no-action (2001 rule) to 1,481 jobs under the proposed rule. Labor income increases by a similar degree from $17.5 million to $96.2 million per year. There is a slight increase in job numbers under land management plans (1,592 jobs), relative to the proposed rule, but the magnitude of the difference between the two alternatives does not suggest that adverse impacts will be significant if choosing between the proposed rule and land management plans. These results indicate that there is no potential for adverse impacts to small entities associated with energy resource development and extraction under the proposed rule relative to the 2001 rule, and that potential adverse impact under the proposed rule relative to land management plans are not significant.

For all other economic sectors considered, changes in resource outputs are not projected to be significant to the extent that adverse impacts to small entities could occur in aggregate or within regions.

Among 64 counties in the state of Colorado, 36 counties (56%) are considered to be small governments (population less than 50,000). These 36 counties are considered to be small rural counties having NFS lands within IRAs/CRAs. Six counties are energy (coal, oil and gas) producing counties. These six counties (Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin) are expected to be the counties most likely to benefit from mineral lease payments and revenue sharing under the proposed rule and land management plans. All of these counties, with the exception of Mesa can be considered small governments (population less than 50,000), and all are forecast to receive significant increases in property tax receipts from coal, and oil and gas production, as well as state distributions of severance taxes and federal royalties under the proposed rule and land management plans relative to the no-action alternative. There are slight increases in payments under land management plans, relative to the proposed rule (aggregate payments increase from $6.8 million to $7.7 million per year). Payments associated with the Secure Rural Schools and Self Determination Act (SRSA) and Payments in Lieu of Taxes (PILT) are not expected to change significantly, or any decreases would be largely offset by increases in federal mineral lease payments.

The number of at-risk-communities that may potentially benefit from fuel treatments in the wildland urban interface (WUI) areas are projected to increase under the proposed rule and land management plans relative to the 2001 rule (no-action alternative). The likelihood of tree-cutting or fuel treatments and corresponding reduction in wildfire hazard is projected to increase for a total of 90 at-risk-communities in 16 counties with small populations (<50,000) under the

proposed rule, relative to no-action. Similarly, the likelihood of reduced wildfire hazard is projected to increase for 150 at-risk-communities in 18 small counties under land management plans, compared to no-action. No counties are projected to experience a decrease in the likelihood of road construction or tree-cutting in the WUI under the proposed rule or land management plans, compared to the no action alternative. A total of 10 counties may experience a decrease in the likelihood of tree-cutting or road construction in the WUI under the proposed rule, relative to land management plans. These results indicate that adverse impacts to small governments, in association with protection of values at risk from wildfire, are not likely, when comparing the action alternatives with no-action.

Therefore, for small governments, including counties with small populations and at-risk-communities from wildfire within those counties, opportunities for revenue sharing, as well as protection of values-at-risk are expected to be maintained or increase for all counties under the proposed rule and land management plans compared to no-action conditions under the 2001 rule.

Mitigation measures for small entity impacts associated with the proposed rule are not relevant in many cases, because the proposed rule eases restrictions on a number of activities in many areas, implying increases in potential opportunities for small entities, as noted above. Mitigation measures associated with existing programs and laws regarding revenue sharing with counties and small business shares or set-asides will continue to apply.

Controlling Paperwork Burdens on the Public

This proposed rule does not call for any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. 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.

Regulatory Risk Assessment

This is a proposed major regulation as defined in 7 U.S.C. Section 2204e and a regulatory risk assessment is being prepared. The regulatory risk assessment will be made available during the comment period. A Notice of Availability of the risk assessment will be published in the **Federal Register** and it will be available at the Forest Service Internet roadless Web site (*http://www.roadless.fs.fed.us).*

Federalism

The Department has considered this proposed rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), Federalism. The Department has made an assessment that the proposed rule conforms with the Federalism principles set out in E.O. 13132; would not impose any compliance costs on the states; and would not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this proposed rule does not have Federalism implications. This proposed rule is based on a petition submitted by the State of Colorado under the Administrative Procedure Act at 5 U.S.C. 553(e) and pursuant to Department of Agriculture regulations at 7 CFR 1.28. The State's petition was developed through a task force with involvement of local governments. The State has been a cooperating agency for the development of this proposed rule. State and local governments are encouraged to comment on this proposed rule, in the course of this rulemaking process.

Consultation With Indian Tribal Governments

The United States has a unique relationship with Indian Tribes as provided in the Constitution of the United States, treaties, and federal statutes. These relationships extend to the Federal government's management of public lands and the Forest Service strives to assure that its consultation with Native American Tribes is meaningful, in good faith, and entered into on a government-to-government basis.

On September 23, 2004, President George W. Bush issued Executive Memorandum Government-to-Government Relationship with Tribal Governments recommitting the Federal government to work with federally recognized Native American Tribal governments on a government-to-government basis and strongly supporting and respecting Tribal sovereignty and self-determination.

Management of roadless areas has been a topic of interest and importance to Tribal governments. During promulgation of the 2001 Roadless Rule, Forest Service line officers in the field were asked to make contact with Tribes to ensure awareness of the initiative and of the rulemaking process. Outreach to Tribes was conducted at the national forest and grassland level, which is how Forest Service government-to-government dialog with Tribes is typically conducted. Tribal representatives remained engaged concerning these issues during the subsequent litigation and rulemaking efforts.

The State's petition identifies that a vital part of its public process in developing its petition were the recommendations and comments received from Native American Tribes. The Governor's office was keenly aware of the spiritual and cultural significance some of these areas hold for the Tribes.

There are two resident tribes in Colorado, both retaining some of their traditional land base as reservations via a series of treaties, agreements, and laws. The Ute Mountain Ute and Southern Ute Tribes (consisting originally of the Weeminuche, Capote, Tabeguache, and Mouaches Bands)—each a ''domestic sovereign'' nation—have reserved some specific off-reservation hunting rights in Colorado and retain inherent aboriginal rights throughout their traditional territory. Many other tribes located outside Colorado maintain tribal interests, including aboriginal and ceded territories, and retain inherent aboriginal rights within the state.

The Forest Service has been consulting with Colorado-affiliated tribes regarding this proposed rulemaking action and analysis process (see chapter 1). Tribal concerns surfaced during phone or e-mail consultations. Those concerns related to: maintaining existing tribal hunting and access rights within roadless areas, limiting public use of temporary roads, and decommissioning temporary roads after they are no longer needed. Those land uses and management activities would not be affected by the proposed Colorado Roadless Rule; therefore, those concerns are briefly discussed but not analyzed in detail in this EIS. Consultation with interested or affected tribes will continue throughout the analysis and decisionmaking process.

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' the Department has assessed the impact of this proposed rule on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect Indian Tribal government communities.

The proposed rule would establish direction governing the management and protection of Colorado Roadless Areas, however, the proposed rule respects prior existing rights, and it addresses discretionary Forest Service management decisions involving road construction, timber harvest, and some mineral activities. The Department has also determined that this proposed rule does not impose substantial direct compliance costs on Indian Tribal governments. This proposed rule does not mandate Tribal participation in roadless management of the planning of activities in Colorado Roadless Areas. Rather, the Forest Service officials are obligated by other agency policies to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988. It has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this proposed rule or that would impede full implementation of this proposed rule will be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) this proposed rule would not require the use of administrative proceedings before parties could 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), the Department has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the executive order.

Based on guidance for implanting EO 13211 (Actions concerning regulations that significantly affect energy supply, distribution and use) issued by Office of Management and Budget (Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies (M–01–27), July 13, 2001), this proposed rule would not create significant adverse effects in a material way the productivity, competition, or prices in the energy sector for the reasons discussed below.

The difference in potential natural gas production between the proposed rule and the 2001 Rule (i.e., conditions under the no action alternative) is positive, as is the difference between land management plans and the no action alternative. The only potential adverse impact would be a comparison of potential gas production under the proposed rule and the land management plans alternative; the estimated difference in potential gas production in this case is only 3.6 million mcf and is below the criteria of 25 million mcf under EO 13211. The difference in oil production is approximately 350 barrels, well below the criteria of 4,000 barrels.

Potential coal production is estimated to increase by 4 million tons under the proposed rule as well as the third alternative considered (management of inventoried roadless areas under Land management plans) compared to conditions under the no action alternative (continuance of 2001 Roadless Rule). No adverse outcomes are anticipated in association with energy supply, distribution or use related to coal production.

The proposed rule is expected to result in an increase in potential opportunities for gas production, relative to conditions under the no action alternative (i.e., the 2001 Roadless Rule). When comparing the proposed rule to the third alternative considered (i.e., management of inventoried roadless areas in accordance with relevant Land management plans), there is slight potential for a decrease in opportunities for gas production. However, this decrease (3.6 million mcf) is estimated to be only 0.3% of total gas production from Colorado wells in 2006 (1.21 billion mcf) and is not anticipated to affect regional (or national) productivity, competition, or prices.

No novel legal or policy issues regarding adverse effects to supply, distribution or use of energy are anticipated beyond what has already been addressed in the draft EIS, or the Regulatory Impact Analysis (RIA). None of the proposed corridors designated for oil, gas, and/or electricity under Section 368 of the Energy Policy Act of 2005 are within Colorado Roadless Areas.

The proposed rule does not disturb existing access or mineral rights and restrictions on saleable mineral materials are narrow. The proposed rule also provides regulatory mechanism for consideration of requests for modification of restrictions if adjustments are determined to be necessary in the future. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 36 CFR Part 294

National Forests, Recreation areas, Navigation (air), State petitions for inventoried roadless area management.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 294 of Title 36 of the Code of Federal Regulations by adding new subpart D to read as follows:

PART 294—SPECIAL AREAS

* * * * *

Subpart D—Colorado Roadless Areas Management

Sec.

294.30 Purpose.
294.31 Definitions.
294.32 Colorado Roadless Areas.
294.33 Road construction and reconstruction in Colorado Roadless Areas.
294.34 Prohibition on timber cutting, sale, or removal in Colorado Roadless Areas.
294.35 Oil and gas pipelines.
294.36 Scope and applicability.
294.37 Administrative corrections.
294.38 List of designated Colorado Roadless Areas.

Subpart D—Colorado Roadless Areas Management

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

§ 294.30 Purpose.

The purpose of this subpart is to provide, within the context of multiple-use management, lasting protection for roadless areas within the National Forests in Colorado.

§ 294.31 Definitions.

The following terms and definitions apply to this subpart.

At-Risk Community: As defined under section 101 of the Healthy Forest Restoration Act (Pub. L. 108–148).

Colorado Roadless Area (CRA): Areas identified in a set of roadless area maps maintained at the national headquarters office of the Forest Service, including

records regarding any corrections or modifications to such maps pursuant to § 294.37.

Community Wildfire Protection Plan (CWPP): As defined under section 101 of the Healthy Forest Restoration Act (Pub. L. 108–148), the term ''community wildfire protection plan'' means a plan for an at-risk community that:

(1) Is developed within the context of the collaborative agreements and the guidance established by the Wildland Fire Leadership Council and agreed to by the applicable local government, local fire department, and State agency responsible for forest management, in consultation with interested parties and the Federal land management agencies managing land in the vicinity of the at-risk community;

(2) Identifies and prioritizes areas for hazardous fuel reduction treatments and recommends the types and methods of treatment on Federal and non-Federal land that will protect one or more at-risk communities and essential infrastructure; and

(3) Recommends measures to reduce structural ignitability throughout the at-risk community.

Condition Class 3: As defined under section 101 of the Healthy Forests Restoration Act (Pub. L. 108–148) the term ''condition class 3'' means an area of Federal land, under which:

(1) Fire regimes on land have been significantly altered from historical ranges;

(2) There exists a high risk of losing key ecosystem components from fire;

(3) Fire frequencies have departed from historical frequencies by multiple return intervals, resulting in dramatic changes to:

(i) The size, frequency, intensity, or severity of fires; or

(ii) Landscape patterns; and

(iii) Vegetation attributes have been significantly altered from the historical range of the attributes.

Forest transportation atlas: As defined at 36 CFR 212.1, a display of the system of roads, trails, and airfields of an administrative unit.

Forest road: As defined at 36 CFR 212.1, a road wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

Long-term temporary road: A road necessary for oil and gas, or coal operations in CRAs and authorized by contract, permit, lease, or other written authorization. A long-term temporary road is not a forest road, but is included in a forest transportation atlas, and is expected to be in place during the lease period. When no longer needed for the established purpose or upon termination or expiration of the contract, permit, lease or written authorization, whichever is sooner, the road shall be decommissioned and the affected landscape restored.

National Forest System road: As defined at 36 CFR 212.1, a forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

Off-Highway Vehicles (OHV): As defined at 36 CFR 212.1, any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

Responsible official: The Forest Service line officer with the authority and responsibility to make decisions regarding protection and management of CRAs pursuant to this subpart.

Road: As defined at 36 CFR 212.1, a motor vehicle route over 50 inches wide, unless identified and managed as a trail.

Road construction or reconstruction: As defined at 36 CFR 212.1, supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

Road maintenance: As defined in FSM 7705, the ongoing upkeep of a road necessary to retain or restore the road to the approved road management objective.

Roadless area characteristics: Resources or features that are often present in and characterize CRAs. The enumeration of these resources and features does not constitute in any way the establishment of any legal standard, requirement, or cause for any administrative appeal or legal action related to any project or activity otherwise authorized by this rule. These characteristics include:

(1) High quality or undisturbed soil, water, and air;

(2) Sources of public drinking water;

(3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Natural-appearing landscapes with high scenic quality;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

Temporary road: A road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road and that is not included in a forest transportation atlas (ref 36 CFR 212.1), and is not necessary for long-term management. When a temporary road is no longer needed for the established purpose or upon termination or expiration of the lease, contract, or permit, whichever is sooner, it shall be decommissioned and the affected landscape restored.

Utility and water conveyance structures: Facilities associated with the transmission and distribution of utilities and water across National Forest System lands. For purposes of this rule, utilities are existing and future transmission lines used for electrical power and water conveyance structures are existing and future diversion structures, headgates, pipelines, ditches, canals, and tunnels (but shall not include reservoirs).

Wildland-Urban Interface: As defined under section 101 of the Healthy Forest Restoration Act (Pub. L.108–148), the term ''wildland-urban interface'' means—

(1) An area within or adjacent to an at-risk community that is identified in recommendations to the Secretary in a community wildfire protection plan; or

(2) In the case of any area for which a community wildfire protection plan is not in effect:

(i) An area extending ½-mile from the boundary of an at-risk community;

(ii) An area within 1½-miles of the boundary of an at-risk community, including any land that:

(A) Has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community;

(B) Has a geographic feature that aids in creating an effective fire break, such as a road or ridge top; or

(C) Is in condition class 3, as documented by the Secretary in the project-specific environmental analysis; and

(iii) An area that is adjacent to an evacuation route for an at-risk community that the Secretary determines, in cooperation with the at-risk community, requires hazardous fuel reduction to provide safer evacuation from the at-risk community.

§ 294.32 Colorado Roadless Areas.

(a) *Designations.* All National Forest System lands within the State of

Colorado identified in § 294.38 are hereby designated as Colorado Roadless Areas (CRAs).

(b) *Maps*. The Chief of the Forest Service shall maintain and make available to the public a map of each CRA, including records regarding any corrections or modifications to such maps pursuant to § 294.37.

§ 294.33 Road construction and reconstruction in Colorado Roadless Areas.

(a) *General*. A road may not be constructed or reconstructed in a CRA except as provided in paragraphs (b) and (c) of this section.

(b) *Roads*. Notwithstanding the prohibition in paragraph (a) of this section, a road may be constructed or reconstructed in a CRA if the responsible official determines that one of the following circumstances exists:

(1) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311 of the Clean Water Act, or the Oil Pollution Act;

(2) A road is needed pursuant to reserved or outstanding rights, authorizations, or as provided for by statute or treaty;

(3) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a forest road and that cannot be mitigated by road maintenance;

(4) Road reconstruction is needed to implement a road safety improvement project on a forest road determined to be hazardous on the basis of accident experience or accident potential on that road;

(5) The Secretary of Agriculture determines that a Federal Aid Highway project, authorized pursuant to Title 23 of the United States Code, is in the public interest or is consistent with the purposes for which the land was reserved or acquired and no other reasonable and prudent alternative exists;

(6) Consistent with applicable land management plan, a road is needed to allow for construction, reconstruction, or maintenance of existing or future authorized utility and water conveyance structures as defined by this rule in section § 294.31.

(7) Consistent with applicable land management plan and allotment management plans, a road is needed for the management of livestock grazing.

(c) *Temporary Road (including Long-Term Temporary Road)*.

(1) Notwithstanding the prohibition in paragraph (a) of this section, a temporary road may be constructed or reconstructed in a CRA as set forth in subparagraphs 1 through 4.

(2) For all temporary roads authorized under this rule, the responsible official may only consider construction of a temporary road after reviewing and rejecting other access options, resource and community protection needs, and consistency with applicable forest plans. If it is determined that a temporary road is needed, construction must be conducted in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface disturbances, and complies with all applicable land management plan directions, regulations, and laws. When a temporary road is no longer needed (for the established purpose) or upon termination or expiration of a contract, authorization, or permit, whichever is sooner, all temporary roads shall be decommissioned and the affected landscape restored. Restoration shall be designed considering safety, costs, and impacts on land and resources (16 U.S.C. 1608) to achieve complete stabilization and restoration to a condition generally consistent with the pre-existing roadless characteristics. Except as allowed under this rule in § 294.33(b), a temporary road shall not change designation to a forest road, nor will the construction of a temporary road, including long-term temporary road alter the management status of any designated CRA. A temporary road constructed for oil and gas, or coal related activities may include as part of its established purpose, the potential need to be used as a long-term temporary road.

(3) A temporary road is needed for treatment actions and in areas identified in a community wildfire protection plan or, if a community wildfire protection plan is not present, within areas of the wildland-urban interface; or

(4) A temporary road is needed for public health and safety in cases of threat of flood, fire, or other potential catastrophic event that, without intervention, would cause the loss of life or property; or

(5) A temporary or long-term temporary road is needed in conjunction with an oil and gas lease, including the construction of infrastructure necessary to transport the product, on lands that are under lease by the Secretary of the Interior as of the effective date of this rule. The Forest Service shall not agree to waive, except, modify or otherwise remove any oil and gas lease stipulation that prohibits or restricts road building or otherwise prohibits surface occupancy within CRAs; or

(6) A temporary or long-term temporary road is needed for coal exploration and coal-related surface activities for certain lands within CRAs in the North Fork coal mining area of the Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork coal mining area map within the Colorado Roadless Area Conservation Rule environmental impact statement. Such roads may also be used for the purpose of collecting and transporting coal mine methane. All infrastructure needed for the capture of methane will be located within the road right-of-way of coal-related temporary and/or long-term temporary roads or within areas of surface disturbance for methane venting wells otherwise needed for coal mining purposes. No additional roads shall be constructed to facilitate capture of coal mine methane. When a road is no longer needed for coal mining purposes or coal mine methane capture, the road shall be decommissioned and the affected landscape restored.

(d) *Road Closures*. All roads constructed pursuant to paragraphs (b) and (c) shall be closed to motorized vehicles (including OHVs) unless specifically used for the purpose for which the road was established; except the use of motor vehicles for administrative use by the Forest Service; emergency access for fire and law enforcement purposes; motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; or motor vehicle use by any fire, emergency, or law enforcement personnel.

(e) *Environmental Documentation*. An EIS will be prepared pursuant to section 102 of the National Environmental Policy Act and 40 CFR 1500 for any proposed action or alternative that includes constructing a forest road within a CRA. A no-road and a temporary road alternative shall be considered in the EIS. For projects proposing temporary roads within a CRA, an environmental analysis will be documented pursuant to the Council on Environmental Quality regulations at 40 CFR 1500–1508 and will include a no-road option.

(f) *Road Maintenance*. Maintenance of forest roads and NFS roads is permissible in CRAs.

§ 294.34 Prohibition on tree cutting, sale, or removal in Colorado Roadless Areas.

(a) Trees may not be cut, sold, or removed in CRAs, except as provided in paragraph (b) of this section.

(b) Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in CRAs if the

responsible official determines that one of the following circumstances exists and the activity is consistent with the applicable forest plan.

(1) The cutting, sale, or removal of trees is needed for one of the following purposes:

(i) For management and improvement of wildlife and plant species (including threatened, endangered, proposed, or sensitive species) in coordination with the Colorado Department of Natural Resources, including the Colorado Division of Wildlife. Such activities should be designed to maintain or improve roadless characteristics as defined by this rule.

(ii) To reduce the hazard of wildfire effects or large-scale insect and disease outbreaks, in areas covered by and as provided in a community wildfire protection plan or, if a community wildfire protection plan is not present, within areas of the wildland urban interface. Consistent with the purposes of this paragraph, the responsible official shall implement projects to reduce the wildfire hazard to communities after careful consideration to roadless area characteristics as defined by this rule.

(2) The cutting, sale, or removal of trees is incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(3) The cutting, sale, or removal of trees is needed and appropriate for personal or administrative use, as provided for in 36 CFR 223.

(c) In authorizing the cutting, selling, or removal of trees within a CRA, the responsible official shall consider the need for the cutting, sale, or removal of trees along with other resource and community protection needs and effects to roadless characteristics.

§ 294.35 Oil and Gas Pipelines.

The construction of permanent or temporary pipelines for the purposes of transporting oil or gas through a CRA, from a source or sources located exclusively outside of a CRA, shall be prohibited after [final rule effective date] of the rule and shall not be excepted, allowed, or otherwise authorized.

§ 294.36 Scope and applicability.

(a) This subpart does not revoke, suspend, or modify any permit, contract, or other legal instrument authorizing the occupancy and use of NFS land issued prior to [final rule effective date].

(b) This subpart does not revoke, suspend, or modify any project or activity decision made prior to [final rule effective date].

(c) This subpart does not compel the amendment or revision of any land management plan.

(d) The prohibitions and restrictions established in this subpart are not subject to reconsideration, revision, or rescission in subsequent project decisions or land management plan amendments or revisions undertaken pursuant to 36 CFR part 219. Nothing in this rule shall be construed as limiting the authority of a responsible official to establish additional restrictions regarding any management activities, including matters covered by this rule, within CRAs through a land management plan amendment or revision undertaken pursuant to 36 CFR Part 219.

(e) When the Forest Service is the lead agency, the Forest Service will offer cooperating agency status to the State of Colorado, pursuant to the Council on Environmental Quality regulations at 40 CFR 1500–1508 for all proposed projects and planning activities to be implemented on lands within CRAs, and those ski area acres identified in Table 50 of the Rulemaking for Colorado Roadless Areas final EIS. Where the Forest Service does not have the authority to offer cooperating agency status, the Forest Service shall coordinate with the State.

(f) Nothing in this rule shall be construed as expressly or implicitly affecting the current or future management of existing trails or existing roads in CRAs. Decisions concerning the future management and/or status of existing roads or trails within CRAs under this rule shall be made during the applicable forest travel management processes.

(g) Nothing in this rule shall be construed as limiting the authority of the Forest Service to issue grazing permits on lands within a CRA. An area's classification as a CRA shall not, by itself, be reason to not authorize grazing.

(h) If any provision this subpart or its application to any person or to certain circumstances is held invalid, the remainder of the regulations in this subpart and their application remain in force.

(i) After [final rule effective date] the rule promulgated on January 12, 2001, (66 F.R. 3244) shall have no effect within the State of Colorado.

§ 294.37 Administrative corrections.

Correction or modification of designations made pursuant to this rule may occur under the following circumstances, after coordination with the State:

(a) *Administrative Corrections.* Administrative corrections to the maps of lands identified in § 294.32(b) include, but are not limited to, adjustments that remedy clerical, typographical, mapping errors, or improvements in mapping technology. The Chief of the Forest Service may issue administrative corrections after 30 days public notice and opportunity to comment.

(b) *Modifications.* The Chief may add to, remove from, or modify the designations listed in § 294.38 based on changed circumstances or public need. The Chief shall provide at least 60 days public notice and opportunity to comment for all modifications.

§ 294.38 List of Designated Colorado Roadless Areas.

Arapaho-Roosevelt National Forest	
1	Bard Creek
2	Byers Peak
3	Cache La Poudre Adjacent Area
4	Cherokee Park
5	Comanche Peak Adjacent Areas
6	Copper Mountain
7	Crosier Mountain
8	Gold Run
9	Green Ridge—East
10	Green Ridge—West
11	Grey Rock
12	Hell Canyon
13	Indian Peaks Adjacent Areas
14	James Peak
15	Kelly Creek
16	Lion Gulch
17	Mount Evans Adjacent Areas
18	Mount Sniktau
19	Neota Adjacent Area
20	Never Summer Adjacent Area
21	North Lone Pine
22	North St. Vrain
23	Rawah Adjacent Area
24	Square Top Mountain
25	Troublesome
26	Vasquez Adjacent Area
27	White Pine Mountain
28	Williams Fork

Grand Mesa, Uncompahgre, Gunnison National Forest	
29	Agate Creek
30	American Flag Mountain
31	Baldy
32	Battlements
33	Beaver
34	Beckwiths
35	Calamity Basin
36	Cannibal Plateau
37	Canyon Ck/Antero
38	Carson
39	Castle
40	Cataract
41	Cimarron Ridge
42	Clear Fork
43	Cochetopa Creek
44	Cochetopa Hills
45	Cottonwoods
46	Crystal Peak

47	Curecanti
48	Currant Creek
49	Deer Creek
50	Dominguez
51	Double Top
52	East Elk
53	Electric Mountain
54	Failes Creek/Soldier Creek
55	Flat Irons
56	Flattops/Elk Park
57	Gothic
58	Granite Basin
59	Hope Lake
60	Horse Ranch Park
61	Horsefly Canyon
62	Huntsman Ridge
63	Italian Mountain
64	Johnson Basin
65	Kannah Creek
66	Kelso Mesa
67	Last Dollar/Sheep Creek
68	Little Cimarron
69	Long Canyon
70	Matchless Mountain
71	Matterhorn
72	Mendicant
73	Mirror Lake
74	Mount Lamborn
75	Munsey Creek/Erickson Springs
76	Naturita Canyon
77	Pilot Knob
78	Poverty Gulch
79	Salt Creek
80	Sanford Basin
81	Sawtooth
82	Soap Creek
83	Steuben
84	Sunnyside
85	Sunset
86	Texas Creek
87	Tomahawk
88	Turner Creek
89	Turret Ridge
90	Unaweep
91	Union Park
92	Whetstone
93	Whitehouse Mountain
94	Wilson
95	Windy Point

Manti-La Sal National Forest

96	Roc Creek

Pike-San Isabel National Forest

97	Aspen Ridge
98	Badger Creek
99	Boreas
100 ..	Buffalo Peaks East
101 ..	Buffalo Peaks South
102 ..	Buffalo Peaks West
103 ..	Burning Bear
104 ..	Chipeta
105 ..	Cuchara North
106 ..	Cuchara South
107 ..	Elk Mountain-Collegiate North
108 ..	Elk Mountain-Collegiate South
109 ..	Elk Mountain-Collegiate West
110 ..	Farnum
111 ..	Green Mountain
112 ..	Greenhorn Mountain: Badito Cone to Dry Creek
113 ..	Greenhorn Mountain: Cisneros Creek to Upper Turkey Creek
114 ..	Greenhorn Mountain: Graneros Creek to Section 10
115 ..	Greenhorn Mountain: Little Saint Charles Creek to Greenhorn Creek
116 ..	Gunbarrel
117 ..	Hardscrabble
118 ..	Highline
119 ..	Holy Cross
120 ..	Jefferson
121 ..	Kreutzer-Princeton
122 ..	Lost Creek East
123 ..	Lost Creek South
124 ..	Lost Creek West
125 ..	Methodist Mountain
126 ..	Mount Antero
127 ..	Mount Elbert
128 ..	Mount Evans
129 ..	Mount Massive
130 ..	Pikes Peak East
131 ..	Pikes Peak West
132 ..	Porphyry Peak
133 ..	Puma Hills
134 ..	Purgatoire
135 ..	Rampart East
136 ..	Rampart West
137 ..	Romley
138 ..	Saint Charles Peak
139 ..	Sangre de Cristo: Alvarado Campground to Music Pass
140 ..	Sangre de Cristo: Blanca Peak to Slide Mountain
141 ..	Sangre de Cristo: Lake Creek to Hermit Creek
142 ..	Sangre de Cristo: Medano Pass to Carbonate Mountain
143 ..	Sangre de Cristo: Silverheels Gulch to Hunts Creek
144 ..	Sangre de Cristo: West Creek to Big Cottonwood
145 ..	Scraggy Peaks
146 ..	Sheep Rock
147 ..	Silverheels
148 ..	Spanish Peaks
149 ..	Square Top Mountain
150 ..	Starvation Creek
151 ..	Tanner Peak
152 ..	Thirtynine Mile Mountain
153 ..	Thunder Butte
154 ..	Weston Peak

Rio Grande National Forest

155 ..	Alamosa River
156 ..	Antora Meadows/Bear Creek
157 ..	Beartown
158 ..	Beaver Mountain
159 ..	Bennet Mountain/Blowout/Willow Creek/Lion Point/Greenie Mountain
160 ..	Big Buck/Kitty/Ruby
161 ..	Box/Road Canyon
162 ..	Bristol Head
163 ..	Butterfly
164 ..	Chama Basin
165 ..	Conejos River/Lake Fork
166 ..	Copper Mountain/Sulphur
167 ..	Cotton Creek
168 ..	Crestone
169 ..	Cumbres
170 ..	Deep Creek/Boot Mountain
171 ..	Dorsey Creek
172 ..	Elkhorn Peak
173 ..	Four Mile Creek
174 ..	Fox Creek
175 ..	Fox Mountain
176 ..	Gibbs Creek
177 ..	Gold Creek/Cascade Creek
178 ..	Hot Springs
179 ..	Indian Ridge
180 ..	Kitty Creek
181 ..	La Garita
182 ..	Lake Fork
183 ..	Lower East Bellows
184 ..	Middle Alder
185 ..	Miller Creek
186 ..	Pole Creek
187 ..	Pole Mountain/Finger Mesa
188 ..	Red Mountain
189 ..	Ruby Lake
190 ..	Sawlog
191 ..	Sheep Mountain
192 ..	Silver Lakes/Stunner
193 ..	Snowshoe Mountain
194 ..	Spectacle Lake
195 ..	Spruce Hole/Sheep Creek
196 ..	Stunner Pass/Dolores Canyon
197 ..	Sulphur Tunnel
198 ..	Summit Peak/Elwood Pass
199 ..	Taylor Canyon
200 ..	Tewksberry
201 ..	Tobacco Lakes
202 ..	Trout Mountain/Elk Mountain
203 ..	Ute Pass
204 ..	Wason Park
205 ..	Wightman Fork/Upper Burro
206 ..	Wightman Fork To Lookout
207 ..	Willow Mountain

Routt National Forest

208 ..	Barber Basin
209 ..	Black Mountain
210 ..	Bunker Basin
211 ..	Bushy Creek
212 ..	Chatfield
213 ..	Chedsey Creek
214 ..	Dome
215 ..	Dome Peak
216 ..	Elkhorn
217 ..	Gold Creek
218 ..	Grizzly Helena
219 ..	Kettle Lakes
220 ..	Little Green Creek
221 ..	Long Park
222 ..	Mad Creek
223 ..	Morrison Creek
224 ..	Never Summer North
225 ..	Never Summer South
226 ..	Nipple Peak North
227 ..	Nipple Peak South
228 ..	Pagoda Peak
229 ..	Shield Mountain
230 ..	South Fork
231 ..	Sugarloaf North
232 ..	Sugarloaf South
233 ..	Troublesome North
234 ..	Troublesome South
235 ..	Walton Peak
236 ..	Whalen Creek

San Juan National Forest

237 ..	Baldy
238 ..	Blackhawk Mountain
239 ..	East Animas
240 ..	Fish Creek
241 ..	Florida River
242 ..	Graham Park
243 ..	HD Mountains
244 ..	Hermosa
245 ..	Lizard Head Adjacent
246 ..	Piedra Area Adjacent
247 ..	Runlett Park
248 ..	Ryman

249 ..	San Miguel
250 ..	South San Juan Adjacent
251 ..	Storm Peak
252 ..	Treasure Mountain
253 ..	Turkey Creek
254 ..	Weminuche Adjacent
255 ..	West Needles

White River National Forest

256 ..	Adam Mountain
257 ..	Ashcroft
258 ..	Assignation Ridge
259 ..	Baldy Mountain
260 ..	Basalt Mountain A
261 ..	Basalt Mountain B
262 ..	Berry Creek
263 ..	Big Ridge to South Fork A
264 ..	Big Ridge to South Fork B
265 ..	Black Lake East
266 ..	Black Lake West
267 ..	Blair Mountain
268 ..	Boulder
269 ..	Budges
270 ..	Buffer Mountain
271 ..	Burnt Mountain
272 ..	Chicago Ridge
273 ..	Corral Creek
274 ..	Crystal River
275 ..	Deep Creek
276 ..	Dome Peak
277 ..	East Divide/Four Mile Park
278 ..	East Vail
279 ..	East Willow
280 ..	Elk Creek B
281 ..	Elliot Ridge
282 ..	Fawn Creek/Little Lost Park
283 ..	Freeman Creek
284 ..	Gallo Hill
285 ..	Game Creek
286 ..	Grizzly Creek
287 ..	Gypsum Creek
288 ..	Hardscrabble
289 ..	Hay Park
290 ..	Holy Cross City
291 ..	Homestake
292 ..	Hoosier Ridge
293 ..	Housetop Mountain
294 ..	Hunter
295 ..	Little Grand Mesa
296 ..	Lower Piney
297 ..	Mamm Peak
298 ..	Maroon East
299 ..	Maryland Creek
300 ..	McClure Pass
301 ..	McFarlane
302 ..	Meadow Mountain A
303 ..	Meadow Mountain B
304 ..	Morapos A
305 ..	Morapos B
306 ..	Mormon Creek
307 ..	No Name
308 ..	North Elk
309 ..	North Independent A
310 ..	North Independent B
311 ..	North Woody
312 ..	Pagoda Peak
313 ..	Piney Lake
314 ..	Porcupine Peak
315 ..	Ptarmigan A
316 ..	Ptarmigan B
317 ..	Ptarmigan C
318 ..	Ptarmigan Hill A
319 ..	Ptarmigan Hill B
320 ..	Red Dirt A
321 ..	Red Dirt B
322 ..	Red Mountain
323 ..	Red Table
324 ..	Reno Mountain
325 ..	Ripple Creek Pass/Trappers Lake
326 ..	Ryan Gulch
327 ..	Salt Creek
328 ..	Sloan Peak
329 ..	Spraddle Creek A
330 ..	Spraddle Creek B
331 ..	Sweetwater A
332 ..	Sweetwater B
333 ..	Tenderfoot Mountain
334 ..	Tenmile
335 ..	Thompson Creek
336 ..	Tigiwon
337 ..	Treasure Mountain
338 ..	West Brush Creek
339 ..	West Lake Creek
340 ..	Wildcat Mountain
341 ..	Wildcat Mountain B
342 ..	Wildcat Mountain C
343 ..	Williams Fork
344 ..	Willow
345 ..	Woods Lake

Dated: July 21, 2008.

Abigail R. Kimbell,

Chief, U.S. Forest Service.

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