

**ADDRESSES:** The docket for this deviation, [USCG–2016–1029] is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this modified temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email [Hal.R.Pitts@uscg.mil](mailto:Hal.R.Pitts@uscg.mil).

**SUPPLEMENTARY INFORMATION:** On November 25, 2016, the Coast Guard published a temporary deviation entitled “Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC” in the **Federal Register** (81 FR 85160). Under that temporary deviation, the bridge will remain in the closed-to-navigation position and open on signal during daylight hours, if at least 3 hours notice is given. The CSX Corporation, owner and operator of the CSX Hilton Railroad Bridge across the Northeast Cape Fear River, mile 1.5, in Wilmington, NC, has requested a modified temporary deviation from the current operating regulations due to an electrical casualty to the submarine cable and electrical components caused by Hurricane Matthew. The bridge is limited to manual operation, which requires personnel to manually operate components of the bridge in locations where additional safety measures are required, limiting the bridge to daylight operations. This modified temporary deviation, extending the date until 6 p.m. on December 30, 2016, is necessary for completion of repairs to the bridge. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 4 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.829(b). Under this modified temporary deviation, the bridge will remain in the closed-to-navigation position and open on signal during daylight hours, if at least 3 hours notice is given. Communications with the bridge tender may be interrupted during drawbridge operations. Notice may be given via 904–381–5793 (CSX Engineering Help Desk), if unable to contact the bridge tender via normal established methods.

The Northeast Cape Fear River is used by a variety of vessels including small commercial fishing vessels, recreational vessels and tugs and barges. The Coast Guard has carefully coordinated the restrictions with waterway users.

Vessels able to safely pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 13, 2016.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2016–30354 Filed 12–16–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2016–0962]

#### Safety Zone; Captain of the Port Boston Fireworks Display Zone, Boston Harbor, Boston, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the subject safety zone for First Night Fireworks on December 31, 2016, to provide for the safety of life on navigable waterways during the fireworks display. Our regulation for Captain of the Port (COTP) Boston fireworks display zone, Boston Harbor, Boston, MA identifies the regulated area for this fireworks display. During the enforcement period, no vessel may transit this regulated area without approval from the COTP Boston or a designated representative.

**DATES:** The regulation in 33 CFR 165.119(a)(2) will be enforced Saturday, December 31, 2016 from 10 p.m. until 11:59 p.m.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Mark Cutter, Sector Boston Waterways Management Division, U.S. Coast Guard; telephone

617–223–4000, email [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in 33 CFR 165.119(a)(2) on Saturday, December 31, 2016 from 10 p.m. until 11:59 p.m., for the First Night Fireworks in Boston Inner Harbor. This action is being taken to provide for the safety of life on navigable waterways during the fireworks display. Our regulation for COTP Boston fireworks display zone, Boston Harbor, Boston, MA, 33 CFR 165.119(a)(2), specifies the location of the regulated area as all U.S. navigable waters of Boston Inner Harbor within a 700-foot radius of the fireworks barge in the approximate position 42°21′41.2″ N, 071°02′36.5″ W. (NAD 1983), located off of Long Wharf, Boston, MA. The safety zone will include all U.S. navigable waters of Boston Inner Harbor within a 700-foot radius of the firework barge when in position. As specified in 33 CFR 165.119(e), during the enforcement period, no vessel may transit this regulated area without approval from the COTP Boston or a COTP designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.119 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide mariners with advanced notification of this enforcement period via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: December 7, 2016.

**C.C. Gelzer,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. 2016–30313 Filed 12–16–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 294

RIN 0596–AD26

#### Roadless Area Conservation; National Forest System Lands in Colorado

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule and record of decision.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is reinstating the North Fork Coal Mining Area exception to the Colorado Roadless Rule. The Colorado Roadless Rule is a State-specific rule that establishes management direction for the conservation of roadless area values and

characteristics across approximately 4.2 million acres of land located within the State of Colorado in Roadless Areas on National Forest System (NFS) lands. The North Fork Coal Mining Area exception to the Colorado Roadless Rule provides for the construction of temporary roads, if needed, for coal exploration and coal-related surface activities in the 19,700-acre area defined as the North Fork Coal Mining Area. The Colorado Roadless Rule was promulgated on July 3, 2012, but the U.S. District Court for the State of Colorado ruled that the environmental analysis performed by the U.S. Forest Service on behalf of the USDA pursuant to the National Environmental Policy Act was deficient. The Forest Service prepared a Supplemental Environmental Impact Statement (SEIS) to respond to the specific deficiencies identified in that U.S. District Court ruling. In addition, an administrative correction is being conducted by the USDA for Colorado Roadless Area (CRA) boundaries associated with the North Fork Coal Mining Area based on updated information. The correction adds an additional 200 acres to the roadless area in the 2012 Colorado Roadless Rule. These boundary corrections address changes identified by new road survey information.

**DATES:** This rule is effective February 17, 2017.

**ADDRESSES:** The public may inspect the project record for this final rule at the USDA, Forest Service, Rocky Mountain Regional Office, Strategic Planning Staff, 740 Simms Street, Golden, Colorado, between 8 a.m. and 4:30 p.m. on business days. Those wishing to inspect the project record at the Regional Office should call 303-275-5103 ahead of arrival to facilitate an appointment and entrance to the building. In addition, key documents from the project record are posted on the Forest Service Web site at [www.fs.usda.gov/goto/coroadlessrule](http://www.fs.usda.gov/goto/coroadlessrule).

**FOR FURTHER INFORMATION CONTACT:** Jason Robertson; Acting Director; Recreation, Lands, and Minerals; Rocky Mountain Regional Office, at 303-275-5470. Individuals using telecommunication devices for the deaf may call the Federal Information Relay Services at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** This preamble describes the basis and purpose of the rule, summarizes public comments received and Agency responses, describes alternatives considered, and serves as the record of decision for this rulemaking. The

preamble is organized into the following sections:

- Executive Summary
- Background
- Purpose and Need
- Decision
- Decision Rationale
- Public Involvement
- Alternatives Considered
- Environmentally Preferable Alternative
- Comments on the Proposed Rule
- Regulatory Certifications

### Executive Summary

The Forest Service manages approximately 14.5 million acres of public lands in Colorado distributed among eight National Forests and two National Grasslands. Of this, the Forest Service designated about 4.2 million acres as CRAs under the 2012 Colorado Roadless Rule.

In January 2001, the Roadless Area Conservation Rule (2001 Roadless Rule) was adopted into regulation (36 CFR 294, Subpart B (2001)). The 2001 Roadless Rule was subject to litigation for more than a decade that created uncertainty over the management of roadless areas throughout the Nation. This uncertainty, along with State-specific concerns, was a key factor that influenced the State of Colorado to petition the USDA for a State-specific roadless rule in 2006.

On July 3, 2012, the USDA promulgated the final Colorado Roadless Rule (36 CFR 294, Subpart D) which replaced the 2001 Roadless Rule authority over roadless areas in Colorado. The Colorado Roadless Rule included a provision that allowed for construction of temporary roads when needed for coal exploration and/or 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. In July 2013, High Country Conservation Advocates, WildEarth Guardians, and the Sierra Club challenged the North Fork Coal Mining Area exception of the Colorado Roadless Rule, and in June 2014 the District Court of Colorado found the environmental documents supporting the Colorado Roadless Rule to be in violation of the National Environmental Policy Act due to analysis deficiencies. In September 2014, the District Court of Colorado vacated the North Fork Coal Mining Area exception of the Colorado Roadless Rule, but left the remainder of the Rule intact. On April 7, 2015, the Forest Service published a Notice of Intent to prepare a SEIS for rulemaking to reinstate the North Fork Coal Mining Area exception and address the concerns raised by the court (80 FR

18598). On November 20, 2015, the Forest Service published the proposed rule and Supplemental Draft Environmental Impact Statement (SDEIS) for public comment (80 FR 72665).

This Final Rule and Supplemental Final Environmental Impact Statement (SFEIS) focuses on the court-identified deficiencies as well as Endangered Species Act compliance. To address the court-identified deficiencies, the Forest Service quantified carbon dioxide and methane emissions from potential coal-mining operations and combustion of coal from the North Fork Coal Mining Area that could occur from reinstatement of the North Fork Coal Mining Area exception. In addition, the Forest Service conducted a market substitution analysis of coal absent the North Fork Coal Mining Area exception to address the court-identified deficiencies. The Forest Service also reinitiated consultation under the Endangered Species Act due to new species listings that did not exist in 2012 when the original Colorado Roadless Rule was released and changed critical habitat designations as required by the Endangered Species Act; and provided new information regarding fisheries that were not included or available for the 2012 analysis.

The Forest Service analyzed three alternatives in detail in the SEIS. Alternative A is the no action alternative in which the North Fork Coal Mining Area exception is not reinstated and the area is managed as general roadless areas under the Colorado Roadless Rule. Alternative B is the selected alternative and reinstates the North Fork Coal Mining Area exception as written in the 2012 Colorado Roadless Rule to an area of about 19,700 acres. Alternative C is similar to Alternative B in that it reinstates the North Fork Coal Mining Area exception as written in the 2012 Colorado Roadless Rule but would only apply it to an area of about 12,600 acres.

### Background

The history of the Colorado Roadless Rule and, in particular, the North Fork Coal Mining Area exception, provide important context for the current rulemaking effort. Colorado Senate Bill 05-243, signed into Colorado law on June 8, 2005, created and identified a 13-member bipartisan task force to examine protection of NFS roadless areas within Colorado. The task force was directed to make recommendations to the Governor regarding management of these lands. On November 13, 2006, then-Governor Bill Owens submitted a petition to the USDA to develop a State-

specific roadless rule. The petition reflected the task force recommendations and included the North Fork Coal Mining Area exception. Governor Owens stated that the petition weighed Colorado's interests and reflected the concerns of the entire State. Specific to coal resources, the task force recommended that the Colorado Roadless Rule not apply to about 55,000 acres of CRAs within the Grand Mesa, Uncompahgre, and Gunnison National Forests. However, the rule would be applied to and protect areas with potential coal resources within CRAs on the Pike-San Isabel, Routt, White River, and San Juan National Forests, eliminating future road access to coal resources in those CRAs. The North Fork Coal Mining Area, as originally petitioned by Governor Owens, was about 55,000 acres and included all or portions of Currant Creek, Electric Mountain, Flatirons, Flattops-Elk Park, Pilot Knob, and Sunset CRAs.

After Governor Owens submitted the State's petition, Bill Ritter, Jr. was elected Governor of Colorado. In April 2007, then-Governor Ritter resubmitted the petition with minor modifications. Governor Ritter supported the concept of the Colorado Roadless Rule and the North Fork Coal Mining Area but explicitly asked that the area remain in the Colorado roadless inventory, rather than having the acres removed.

In July 2008, in response to public comments and discussions with coal interests, the USDA reduced the size of the North Fork Coal Mining Area to about 29,000 acres in the proposed Colorado Roadless Rule and included all or portions of Currant Creek, Electric Mountain, Flatirons, Pilot Knob, and Sunset CRAs (73 FR 43543). In 2010, John Hickenlooper was elected Governor of Colorado. Governor Hickenlooper also supported having a North Fork Coal Mining Area exception. In April 2011, in response to additional public comments, the USDA further reduced North Fork Coal Mining Area to approximately 20,000 acres in the revised proposed Colorado Roadless Rule and included all or portions of Currant Creek, Electric Mountain, Flatirons, Pilot Knob, and Sunset CRAs (76 FR 21272).

The State of Colorado, USDA, Forest Service, and the public worked in partnership for many years to find a balance between conserving roadless area characteristics for future generations and allowing management activities—including the construction of temporary roads that would not foreclose coal exploration and development—within CRAs that are important to Colorado's citizens and the

economy. Throughout the rulemaking process, a total of five formal comment periods were held by the State and Forest Service resulting in 27 public meetings and more than 312,000 comments. In addition, five meetings open to the public were held by the Roadless Area Conservation National Advisory Committee, which provided recommendations to the Secretary of Agriculture. The USDA believes that designation of the North Fork Coal Mining Area and its road exception strikes an appropriate balance between conserving roadless area characteristics and addressing State-specific concerns regarding the continued exploration and development of coal resources in the North Fork Valley.

On July 3, 2012, the USDA promulgated the final Colorado Roadless Rule, which replaced the 2001 Roadless Rule authority over roadless areas in Colorado (36 CFR 294, Subpart D). The 2012 Colorado Roadless Rule included a North Fork Coal Mining Area exception for temporary road construction but further reduced its size by removing the acreage in the Currant Creek CRA in response to public concerns and to balance the value of roadless characteristics with economic development. The final rule included a North Fork Coal Mining Area of 19,100 acres but U.S. Forest Service has since learned that number was misrepresented; the actual acreage is 19,500 acres. The reduced North Fork Coal Mining Area included all or portions of the Flatirons, Pilot Knob, and Sunset CRAs (less than 0.5% of the total CRAs). While the North Fork Coal Mining Area was included under the protections of the current rule, that rule also provided for the construction of temporary roads, if needed, for future coal exploration and development activities.

In July 2013, High Country Conservation Advocates, WildEarth Guardians, and the Sierra Club challenged the North Fork Coal Mining Area exception of the Colorado Roadless Rule in part of a larger lawsuit regarding Forest Service and Bureau of Land Management (BLM) decisions related to coal lease modifications and an exploration proposal within the North Fork Coal Mining Area (*High Country Conservation Advocates v. United States Forest Service*, 52 F. Supp. 3d 1174, D. Colo. 2014). With respect to the challenge to the Colorado Roadless Rule, in June 2014, the District Court of Colorado identified environmental analysis deficiencies including failure to disclose greenhouse gas emissions associated with potential mine operations; failure to disclose

greenhouse gas emissions associated with combustion of coal potentially mined from the area; and failure to address a report about coal substitution submitted during a public comment period. In September 2014, the District Court of Colorado vacated the North Fork Coal Mining Area exception of the Colorado Roadless Rule (36 CFR 294.43(c)(1)(ix)) but otherwise left the rule intact and operational. The court also vacated Forest Service and BLM decisions on lease modifications and exploration proposal. *High Country Conservation Advocates v. United States Forest Service*, 67 F. Supp. 3d 1262 (D. Colo. 2014).

On April 7, 2015, the Forest Service published a Notice of Intent to prepare a SEIS to reinstate the North Fork Coal Mining Area exception in the **Federal Register** (80 FR 18598). The SEIS complements the 2012 Final Environmental Impact Statement for the Colorado Roadless Rule and is limited in scope to address the deficiencies identified by the District Court of Colorado in *High Country Conservation Advocates v. United States Forest Service*. The Forest Service prepared the SEIS on behalf of the USDA to reinstate the North Fork Coal Mining Area exception with the Department of the Interior's BLM and Office of Surface Mining Reclamation and Enforcement, and the State of Colorado, Department of Natural Resources all serving as cooperating agencies under the National Environmental Policy Act regulations (40 CFR 1501.6).

#### **Purpose and Need**

The overarching purpose and need for reinstating the North Fork Coal Mining Area exception is the same as the purpose and need for the 2012 Colorado Roadless Rule. However, the specific purpose and need for reinstating the North Fork Coal Mining Area exception is to provide management direction for conserving approximately 4.2 million acres of CRAs while addressing the State's interest in not foreclosing opportunities for exploration and development of coal resources in the North Fork Coal Mining Area. The original purpose of and need for action as articulated in the 2012 FEIS is as follows:

The USDA, the Forest Service, and the State of Colorado agree that a need exists to provide management direction for conserving roadless area characteristics within roadless areas in Colorado. In its petition to the Secretary of Agriculture, the State of Colorado indicated a need to develop State-specific regulations for the management

of Colorado's roadless areas for the following reasons:

- Roadless areas are important because they are, among other things, sources of drinking water, important fish and wildlife habitat, semi-primitive or primitive recreation areas that include both motorized and non-motorized recreation opportunities, and naturally appearing landscapes. A need exists to provide for the conservation and management of roadless area characteristics.

- The USDA, the Forest Service, and the State of Colorado recognize that timber cutting, sale, or removal and road construction/reconstruction have the greatest likelihood of altering and fragmenting landscapes, resulting in immediate, long-term loss of roadless area characteristics. Therefore, there is a need to generally prohibit these activities in roadless areas. Some have argued that linear construction zones also need to be restricted.

- A need exists to accommodate State-specific situations and concerns in Colorado's roadless areas. These include:

- reducing the risk of wildfire to communities and municipal water supply systems,
- facilitating the exploration and development of coal resources in the North Fork Coal Mining Area,
- permitting construction and maintenance of water conveyance structures,
- restricting linear construction zones, while permitting access to current and future electrical power lines, and
- accommodating existing permitted or allocated ski areas.
- There is a need to ensure CRAs are accurately mapped.

#### Decision

USDA hereby reinstates part 294 of Title 36 of the Code of Federal Regulations, 36 CFR 294.43(c)(1)(ix), as described in Alternative B of the "Rulemaking for Colorado Roadless Areas Supplemental Final Environmental Impact Statement." This decision is not subject to Forest Service administrative review regulations.

In addition, USDA is administratively correcting CRA boundaries based on the increased accuracy of the inventory of forest road locations obtained since the promulgation of the Colorado Roadless Rule in 2012.

#### Decision Rationale

The Colorado Roadless Rule as promulgated in 2012 provides a high level of conservation of roadless area characteristics on approximately 4.2

million acres. The Colorado Roadless Rule achieves this by establishing prohibitions for tree cutting, road construction/reconstruction, and the use of linear construction zones. The 2012 Colorado Roadless Rule also addressed State-specific concerns that are important to the citizens and economy of Colorado. These concerns included: (1) Reducing the risk of wildfire to communities and municipal water supply systems, (2) permitting construction and maintenance of water conveyance structures, (3) restricting linear construction zones, (4) accommodating ski areas, and (5) facilitating exploration and development of coal resources in the North Fork Coal Mining Area. Providing for the State-specific concerns generally allows for tree cutting and road construction/reconstruction beyond what was allowed under the 2001 Roadless Rule. The 2012 Colorado Roadless Rule designated about 1.2 million acres of CRAs as upper tier to offset the potential impacts of providing the exceptions. The upper tier are acres within CRAs where exceptions to road construction/reconstruction and tree cutting are more restrictive and limiting than the 2001 Roadless Rule. The selection of Alternative B as the final rule restores the balance between providing for the conservation of roadless area characteristics across the 4.2 million acres of CRAs and addressing the State-specific concern of preserving the exploration and development opportunities of coal resources in the North Fork Coal Mining Area.

The 2012 Colorado Roadless Rule was developed in a highly collaborative manner. Five formal comment periods were held, which included 27 public meetings and resulted in about 312,000 comments. The final amount of CRA and upper tier acreage was arrived at through a collaborative process between the Forest Service and stakeholders. The final North Fork Coal Mining Area is a result of a series of compromises. The North Fork Coal Mining Area was originally proposed in Governor Owens' 2006 petition as about 55,000 acres including six different CRAs. Through the collaborative process, the North Fork Coal Mining Area was reduced to 29,000 acres in July 2008; then to 20,000 acres in April 2011; and finally to 19,500 acres in July 2012. The reinstatement of the North Fork Coal Mining Area demonstrates USDA's commitment to the public collaborative process and respects the stakeholders' good faith compromises and engagement during the original effort to

develop the 2012 Colorado Roadless Rule.

The main purpose of the SEIS and this rulemaking is to address the deficiencies identified by the District Court of Colorado, which included the quantification of greenhouse gas emissions associated with potential mine operations and coal combustion from the North Fork Coal Mining Area and consideration of coal substitution if the coal in the North Fork Coal Mining Area remained inaccessible. In addition, some public comments to the proposed version of this rule expressed concern regarding the impact the final rule could have on greenhouse gas emissions and climate change. The SEIS estimates that gross greenhouse gas emissions of recovering and combusting all 172 million short tons of coal estimated to be made accessible by the final rule could result in approximately 443 million metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) occurring between 2016 and 2054 (the projected timeframe over which coal resources could be produced). The SEIS also estimates gross annual greenhouse gas emissions of approximately 13.5 million metric tons of CO<sub>2</sub>e at the projected low production level and 39.9 million metric tons of CO<sub>2</sub>e at the projected high production level based on established air quality permits. These estimated emissions are conservative and likely overestimate potential greenhouse gas emissions because the analyses assumed all coal in the North Fork Coal Mining Area would be recovered and the upper bound of the analyses utilized the maximum production rates authorized under state air quality permits, which is unlikely ever to be reached.

The Forest Service conducted an analysis to determine the impact the final rule would have on net greenhouse gas emissions and considered the substitution of North Fork Coal Mining Area coal with other energy sources. This analysis assumes that if the no action alternative were selected, coal that would have otherwise become accessible via the North Fork Coal Mining Area exception would be substituted with other forms of energy or other coal to meet electricity generation demands. This analysis also assumes for modeling purposes that electricity generation across all fuel sources, by year, would remain constant across alternatives. Under the average production scenario, the North Fork Coal Mining Area would produce about 10 million short tons annually.

Results from models used by the Forest Service indicate that absent the final rule, most North Fork Coal Mining Area coal would likely be substituted

with other coal (both underground and surface coal), natural gas, and minor amounts of renewable energies contributing to electrical generation. The Integrated Planning Model (maintained by ICF International) was used by the Forest Service for coal market estimates which included a number of updates to key energy outlooks and regulatory factors (80 FR 64662), as requested by the public and the Environmental Protection Agency during the comment period for the proposed rule and SDEIS.

The SFEIS estimates the final rule would result in a net increase in carbon emissions from energy production, transportation, and combustion of about 17 million metric tons of CO<sub>2</sub> from 2016 to 2054 based on substitution effects. Similarly, the final rule could result in a net increase in methane gas emissions from coal operation releases of 16.7 million metric tons of CO<sub>2</sub>e from 2016 to 2054 based on substitution effects.

According to data retrieved from EPA's Greenhouse Gas Data Inventory Explorer, coal mining in the United States accounted for 73.9 million metric

tons CO<sub>2</sub>e of GHG emissions in 2014. Estimated annual emissions from extraction of North Fork Coal Mining Area coal would be about 1.5–4.5% of the 2014 coal-mining emissions, depending upon the scenario (assuming a constant emissions rate for comparison purposes). If transportation of North Fork Valley coal is included, estimated emissions would be about 2.4–7% of National 2014 coal-mining emissions (this is likely an overestimate as the National figure does not include transportation). National emissions of CO<sub>2</sub> from fossil fuel combustion for electricity generation were estimated at 2,039 million metric tons in 2014. Estimated annual CO<sub>2</sub> emissions from combustion of North Fork Coal Mining Area coal, including combustion assumed to occur outside the United States, would therefore be about 0.6–1.7% of the 2014 national estimate (assuming a constant emissions rate for comparison purposes). For additional context, the City of Denver estimated its 2013 annual GHG emissions to be about 13 million metric tons CO<sub>2</sub>e (Denver Environmental Health, 2015). For the

State of Colorado in 2010 total GHG emissions were about 130 million metric tons CO<sub>2</sub>e, of which 96 million metric tons resulted from fossil fuel combustion and 36 million metric tons resulted from coal combustion (CDPHE, 2014).

The Forest Service monetized the climate impacts associated with these projected GHG changes using a range of estimates of the social cost of carbon (SCC) and social cost of methane (SCM) developed by the U.S. Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). The IWG social cost of carbon and methane metrics provide a monetary estimate of the future damages associated with a marginal increase in carbon dioxide and methane emissions, respectively, in a particular year. See Table 1 for the results of this analysis. When accounting for the social cost of both carbon dioxide and methane emissions, the quantified net benefits of the final rule are mostly negative based on the range of social cost of carbon and methane estimates recommended by the IWG for use in regulatory analysis.

TABLE 1—PRESENT NET VALUES OF THE FINAL RULE, 2016–2054  
[Millions of 2014 dollars]

Analysis	Lower estimate	3% Discount avg. (lower)	3% Discount avg. (upper)	Upper estimate
SDEIS (carbon dioxide only) .....	–\$12,468	–\$3,363	–\$1,624	\$1,920
SFEIS (carbon dioxide only) .....	–1,394	–197	253	457
SFEIS (carbon dioxide and methane) .....	–3,440	–964	–479	206

USDA reviewed the social cost of carbon and social cost of methane analyses contained in the SEIS. While USDA considered the full range of values presented in the analyses, it primarily focused on the 3% discount average rates for the upper and lower estimates.

USDA recognizes the provisional nature and uncertainties associated with efforts to characterize net benefits of this regulatory action. This is demonstrated by the differences in results used in the SDEIS and SFEIS (see Table 1). At the extreme, the estimated net benefits when excluding the social cost of methane emissions changed from –\$12.5 billion to –\$1.4 billion. These differences were due to a number of changes to future market and regulatory projections between the SDEIS and the SFEIS that include changes to assumptions used in the substitution analysis affected the estimates that were largely based on changes in energy markets:

- Electricity demand was revised downward;

- The natural gas supply assumption was revised, leading to lower gas prices;
- Coal supply was revised, leading to lower coal prices;
- Coal transportation costs were revised due to a higher diesel outlook; and
- The final Clean Power Plan is represented in the SFEIS while a proxy for the proposed Clean Power Plan was represented in the SDEIS.<sup>1</sup>

The substantial differences in the estimates conducted only 6 months apart, in addition to the differences across production scenarios and discount rates, demonstrate the provisional nature of this type of analysis. The analysis of the costs of emissions impacts spans 50 years. Greater changes will likely occur during those 50 years in the context of energy

<sup>1</sup>The United States is currently defending the legality of the Clean Power Plan. *West Virginia v. Environmental Protection Agency*, No. 15–1363 (D.C. Cir.). On February 9, 2016, the U.S. Supreme Court stayed the Clean Power Plan pending judicial review before the D.C. Circuit Court of Appeals and any subsequent proceedings in the Supreme Court.

markets, policies for management of greenhouse gases, and new technologies affecting carbon dioxide output than have occurred over the last 6 months. For example, the Department of the Interior announced in January of 2016 it would undertake a broad, programmatic review of the Federal coal program as well as pause from holding lease sales, issuing coal leases, and approving lease modification, with exceptions, during the programmatic review (Dept. of the Interior Sec. Order No. 3338, Jan 15, 2016).

According to the U.S. Energy Information Administration, in 2014 coal provided 39% of U.S. electricity generation and 60% of Colorado's energy generation. The final rule reinstates the exception for temporary road construction and reconstruction within the North Fork Coal Mining area that would facilitate future coal exploration and potential development, which in turn preserves access to approximately 172 million short tons of coal. North Fork Valley coal meets the definition for compliant and super-

compliant coal, indicating the coal has high energy value and low sulfur, ash, and mercury content, making it desirable for generation of electricity. The final rule does not authorize any coal leasing, exploration, or development. These actions would only occur after additional environmental review, public involvement, and Agency decision-making.

The USDA, Forest Service, and State of Colorado maintain that coal production in the North Fork Coal Mining Area provides an important economic contribution and stability for the communities in the North Fork Valley. Employment and income are not considered measures of benefits (in the SEIS, nor in the 2012 analysis), but are a descriptor of distribution of potential impacts of the decision on local or regional economies and populations, consistent with Office of Management and Budget Circular A-4, and Forest Service Manual 1970 and Handbook 1909.17. The SEIS analyzed a study area most affected by mining operations in the North Fork Valley and indicates mining, including all other mining activities in addition to coal mining, could account for approximately 9,500 jobs and \$871 million in labor income (2013 dollars), depending on the number of mines operating in the area. Jobs in the mining sector typically show higher average labor income than both State and study area averages. The SFEIS estimates that implementation of this final rule could support approximately 410 to 1,050 direct jobs and 840 to 2,180 total jobs (direct, indirect, and induced), which could result in \$47 to \$67 million in direct labor income and \$122 to \$172 million in total labor income (direct, indirect, and induced). It is important to note that these economic impact figures are estimates based on available information and analytical assumptions that are subject to changes in coal and energy markets, policies for management of greenhouse gases, technological advancements, and other factors.

Almost half (49%) of mineral royalties collected by the Federal Government on coal leases go to the State in which the lease is located. Of the royalties paid in Colorado, 50% goes to public school funding and 10% funds the Water Conservation Board. The remaining 40% goes to local impact programs with half going directly to the counties and towns and the other half available through a grant program for local governments. The SFEIS estimates that implementation of the final rule could result in about \$6.8 million in Federal mineral royalties. However, any new

leases could undergo negotiations with the BLM and result in a lower royalty rate.

The USDA believes that the final rule is in the public interest because the North Fork Coal Mining Area and its temporary road construction exception strikes an appropriate balance between conserving roadless area characteristics and addressing the State's interest in not foreclosing opportunities for exploration and development of coal resources in the North Fork Valley. As the Colorado Department of Natural Resources noted in its comment letter on the proposed rule, this exception is "fundamental to this balance . . . to ensure that the coal mines in that area would be able to expand and continue to provide critical jobs for Coloradans." The North Fork Coal Mining Area exception applies to about 0.5% of CRAs. Its current size of 19,700 acres represents a substantial reduction of the 55,000-acre area originally proposed by the State of Colorado to be excluded from the Rule entirely. As noted in the District Court of Colorado's decision, the Colorado Roadless Rule is a product of "collaborative, compromise-oriented policymaking" and represents "a balance of important conservation interests with the also important economic need to develop natural resources in Colorado." This decision restores that balance.

USDA has given serious consideration to the potential environmental effects of this decision. This decision preserves the opportunity for subsequent coal exploration and development but does not represent an irreversible or irretrievable commitment of coal resources. Coal resources would not be leased or developed without additional environmental review, public involvement, and decision making.

The USDA considered Alternatives A and C for the final rule. However, Alternative A was not selected as the final rule because it does not meet the purpose of and need for the action to address the State's interest in not foreclosing opportunities for exploration and development of coal resources in the North Fork Coal Mining Area. Alternative C was not selected as the final rule because it provides fewer local economic benefits and makes less coal available than Alternative B.

#### Public Involvement

The Forest Service and cooperating agencies solicited public comments on the reinstatement of the North Fork Coal Mining Area exception through two public comment periods. The first comment period began on April 7, 2015, with the publication of the notice of

intent to prepare an SEIS in the **Federal Register**. The initial comment period ended on May 22, 2015, (45-day comment period), and approximately 119,400 letters were received. The second comment period began on November 20, 2015, with the publication of the notice of availability for the SDEIS in the **Federal Register**. This comment period ended on January 15, 2016, (45-day comment period with 11-day extension to allow for sufficient time to comment over the holiday season), and approximately 104,500 letters were received, with approximately 700 unique letters and the remainder were form letters. An additional 33,000 letters were received after the close of the comment period. In addition, two public open houses were held, one on December 7, 2015, in Paonia, Colorado, and one on December 9, 2015, in Denver, Colorado, to allow the public to ask questions and clarify information on the proposal to reinstate the North Fork Coal Mining Area exception.

#### Alternatives Considered

The Forest Service analyzed three alternatives in detail in the SEIS. Alternative A is the required no action alternative and reflects the continuation of current management. The District Court of Colorado vacated only the North Fork Coal Mining Area exception, leaving the remaining Colorado Roadless Rule intact. Currently the North Fork Coal Mining Area is being managed the same as non-upper tier acres with general prohibitions on tree cutting, sale, and removal; road construction/reconstruction; and use of linear construction zones within CRAs.

Alternative B, selected as the final rule, reinstates the North Fork Coal Mining Area exception as written in the 2012 Colorado Roadless Rule. It would apply the exception to about 19,700 acres, which varies from the 2012 North Fork Coal Mining Area by an additional 200 acres to align it with corrected CRA boundaries based on updated road inventory data.

Alternative C is similar to Alternative B in that it reinstates the North Fork Coal Mining Area exception as written in the 2012 Colorado Roadless Rule. The difference is that the North Fork Coal Mining Area boundaries would not include "wilderness capable" acres identified in the 2007 Draft GMUG Forest Plan revision effort per Alternative C. The exception would apply to about 12,600 acres.

All alternatives, including Alternative A, add the administrative boundary correction to CRA boundaries associated with the North Fork Coal Mining Area.

This correction is part of the final decision and will update the official CRA boundaries. The changes are based on road inventories utilizing global positioning systems of roads that existed prior to 2012 in the vicinity of the North Fork Coal Mining Area. The boundaries of the CRAs will be adjusted to match the actual location of the roads on the ground.

In addition to the alternatives analyzed in detail, the Forest Service also considered another 12 alternatives that were not carried into detailed analysis. These alternatives were raised during the public comment process and included:

- methane capture and use or reduction,
- carbon offset,
- carbon fee,
- limit of sale of North Fork coal to facilities using Integrated Gasification Combined Cycle or carbon capture/storage technologies,
- utilizing greenhouse gas and climate effects for determining the value of coal,
- energy efficiency measures and renewable energy,
- providing assistance to coal companies and local communities with switching to renewable energy,
- issuance of new leases based on bond obligations,
- requirement of an irrevocable bond,
- exclusion of the Pilot Knob CRA,
- increased upper tier acreage, and
- increased recreational opportunities.

#### **Environmentally Preferable Alternative**

The environmentally preferable alternative is the one that would best promote the national environmental policy as expressed in Section 101 of NEPA, 42 U.S.C. 4331. Generally, this means the alternative that causes the least damage to the biological and physical environment. It also means the alternative that best protects, preserves, and enhances the historic, cultural, and natural resources. In addition, it means the alternative that attains the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable or unintended consequences.

Of the three alternatives analyzed in detail, Alternative A is the environmentally preferable alternative because it would likely result in the least environmental damage. However, Alternative A does not meet the purpose of and need for the action to address the State's interest in not foreclosing opportunities for exploration and development of coal resources in the North Fork Coal Mining Area.

#### **Comments on the Proposed Rule**

U.S. Forest Service received approximately 104,500 timely comments in response to the proposed rule and SDEIS. The Forest Service considered and responded to all substantive comments and modified its analysis as appropriate in the Final SEIS. However, the final rule remains the same as the proposed rule. The following section summarizes the major themes from comments received that suggested a change in the rule and the Agency response. Substantive comments not suggesting a change in the rule (that is, changes to analyses, alleged violation of laws, and so forth) are not included here and can be found in the Supplemental Final Environmental Impact Statement SFEIS, Appendix E.

*Comment:* The Forest Service should not rely on the BLM's methane rulemaking process to determine the Forest Service's policy on methane capture.

*Response:* The USDA believes the BLM's effort will provide valuable insight into development of sound public policy on mitigating the effects of waste mine methane. Therefore, the USDA is deferring this issue to the required environmental review that is performed when specific lands are being considered for leasing because the analysis will be better informed and more efficient by:

1. A site-specific proposal when unknown factors that influence the selection of potential capture systems are better known,
2. Agencies in charge of mine safety and mine operations can be consulted, and
3. Knowing the results of BLM's waste mine methane rulemaking effort.

*Comment:* The Forest Service must utilize the original purpose and need as articulated during scoping. The SDEIS purpose and need was arbitrarily modified and expanded to all CRAs and not just the North Fork Coal Mining Area.

If the Forest Service is going to rely on the arbitrarily modified purpose and need statement, then a broader range of alternatives needs to be developed to address protection of all CRAs.

*Response:* The purpose and need statements in the scoping notice and SDEIS are paraphrased from the 2012 FEIS. As stated on page 1 of the SDEIS, the purpose and need statement is the same as the 2012 purpose and need statement for the rule. To avoid confusion, the 2012 purpose and need statement is now included verbatim in the SFEIS.

*Comment:* There is no demonstrated need or immediate need for the exception. There is no demonstrated need for leaving the Pilot Knob Roadless Area in for potential coal exploration and development.

*Response:* The North Fork Coal Mining exception considers the future long-term opportunities for coal exploration and development, not just the current situation or short-term opportunities. The established legal and regulatory framework governing Federal coal resources has not changed; therefore, the USDA retains responsibility within context of these laws and regulations to manage the surface resources in areas where Federal coal occurs. The Colorado Roadless Rule addresses this established and on-going responsibility. Further, the USDA must honor its commitment to address the concerns of the State of Colorado for management of CRAs.

*Comment:* The bankruptcy of Arch Coal renders some or all of this proposal moot. It is not the Forest Service's job to prevent bankruptcies.

*Response:* The reinstatement of the North Fork Coal Mining Area exception is not for the benefit of any specific mining company. The State-specific concern is the stability of local economies in the North Fork Valley and recognition of the contributions that coal mining have provided in the past and may provide in the future to those communities.

The commenter is correct that it is not the role of the Forest Service to prevent bankruptcies of any individual company.

*Comment:* The North Fork Valley is not dependent on the coal industry, a major argument for the proposal.

*Response:* It is the position of the State of Colorado that providing the North Fork Coal exception provides a major benefit to the North Fork Valley. It was a concern expressed by the State of Colorado when it identified 55,000 acres in this area for exemption from coverage of the roadless rule. In addition, the SEIS highlights the total employment and labor income for the six-county study area as well as the State of Colorado in 2013 for major industry sectors. The largest study area industries in terms of employment include construction, retail trade, real estate, accommodation/food services, and government. In terms of labor income, the SEIS shows that mining, construction, manufacturing, information, transportation, and the government sectors all show higher average labor income than both the State and the study area total employment averages.

The estimated annual average economic impacts by alternative are displayed in the SEIS. Potential loss of jobs and associated labor income with no additional production associated with the North Fork Coal Mining Area have been disclosed. The energy market's fluctuations have been extensively discussed. The SEIS further recognized that layoffs have occurred within the study area for the coal mining, oil/gas, and dairy sectors, and the impact of the loss of direct jobs within any sector would be followed by changes to other sectors as the ripple effects of lost wages work their way through the economy. The SEIS also acknowledged that any new layoffs within a community can be difficult, from the directly affected workers, to real estate values and local school enrollment. Not all communities within the economic study area would be affected the same; for example, some communities have diversified economies, have attracted retiree populations, or are less dependent on coal mining. Those communities that are still dependent on coal mining would be most directly affected.

*Comment:* The Forest Service must evaluate an alternative that forecloses exploration and mining on some of the North Fork Coal Mining Area to conserve roadless character. Alternative C is not the only reasonable alternative that the Forest Service must analyze to provide the public and decision maker a range of reasonable alternatives.

The SDEIS fails to evaluate a range of reasonable alternatives as required by NEPA and case law.

*Response:* The Forest Service evaluated a total of 15 alternatives, which included three alternatives considered in detail (the no action alternative and two action alternatives) and 12 alternatives that were considered but eliminated from detailed study. As an SEIS, the scope of this analysis is narrowly focused on the reinstatement of the North Fork Coal Mining Area exception into the Colorado Roadless Rule. The purpose of the Rule is to conserve roadless area characteristics while accommodating State-specific concerns, which include not foreclosing exploration and development of coal resources in the North Fork Valley. The Colorado Roadless Rule is a landscape-level programmatic rule that addresses roadless areas and prohibits road construction and tree cutting. The Colorado Roadless Rule is not a coal-mining regulation but a regulation to manage CRAs. Therefore, many of the alternatives suggested through public comments that would regulate coal mining operations were dismissed from

detailed analyses. These alternatives are better considered when site-specific proposals are submitted and additional necessary information is known. At this time, 80% of the area has not been explored and little is known. Mining may or may not occur throughout the area. It is less speculative and more efficient and practical to evaluate these alternatives in subsequent environmental analyses.

One of the purposes of a range of alternatives is to sharply define the issues and provide a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). From a roadless conservation standpoint, the primary decision is if and how much the North Fork Coal Mining Area exception should apply to roadless areas under the 2012 Colorado Roadless Rule. The range of alternatives is adequate to define this issue and provides a clear basis for choice; in this case, whether to apply the exception to 0, 12,600, or 19,700 acres.

*Comment:* The SDEIS fails to evaluate mitigation measures as required by NEPA and case law. The SDEIS contains no mitigation measures, instead asserting measures can wait until later stages of analyses. Then there is no description of what those measures actually are. The SDEIS fails to evaluate alternatives and mitigation measures.

*Response:* As an initial matter, the Colorado Roadless Rule mitigates for the exceptions that accommodate the State-specific concerns. Specifically, the Colorado Roadless Rule added 409,500 acres into the roadless inventory that were not managed under the 2001 Roadless Rule; designated 1,219,200 acres as upper tier roadless lands where exceptions to tree cutting and road construction are more restrictive and limiting than the 2001 Roadless Rule; and restricted the use of linear construction zones, which were not restricted under the 2001 Roadless Rule. These features offset or mitigated the environmental impacts of the Colorado Roadless Rule exceptions, such as the North Fork Coal Mining Area exception, to provide a final rule that is more protective to CRAs than the 2001 Roadless Rule.

The Colorado Roadless Rule includes regulatory provisions to mitigate impacts of road construction within CRAs. Specifically:

- Within a native cutthroat trout catchment or identified recovery watershed, road construction will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat (36 CFR 294.43(c)(2)(iv)).

- Watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat (36 CFR 294.43(c)(2)(v)).

- Conduct road construction in a manner that reduces effects on surface resources and prevents unnecessary or unreasonable surface disturbance (36 CFR 294.43(d)(1)).

- Decommission any road and restore the affected landscape when it is determined that the road is no longer needed for the established purpose prior to, or upon termination or expiration of a contract, authorization, or permit, if possible. Require the inclusion of a road decommissioning provision in all contracts or permits. Design decommissioning to stabilize, restore, and revegetate unneeded roads to a more natural state to protect resources and enhance roadless area characteristics (36 CFR 294.43(d)(2)).

Moreover, mitigation measures would be discussed and considered in connection with NEPA compliance at the project-specific stage. Listing of potential mitigation measures that would and could be applied to future coal mining activities and then describing what they are would be redundant, inefficient, and marginally useful at the rulemaking stage. Standard mitigation measures, performance standards, and reclamation requirements applied to coal mining activities by the Forest Service, BLM, Office of Surface Mining Reclamation and Enforcement, and the State of Colorado have proven to be sufficient to protect resources based on the condition of areas previously used for surface activities related to coal mining. Hundreds of standard mitigation measures are applied to mining operations and to describe all of them in this SEIS would be encyclopedic and detract from the primary reason for this SEIS, which is to decide whether or not temporary road construction should be allowed in the North Fork Coal Mining Area.

*Comment:* Methane flaring should be reconsidered because it is a safe practice, and would reduce 90% of methane emissions.

*Response:* The Agency reconsidered methane flaring, as well as other capture and reduction measures, and did not carry this alternative through detailed study (See Chapter 2, *Alternatives Considered but Eliminated from Detailed Study* section). Methane flaring (like capture) is best considered at the leasing stage when there is more information on the specific minerals to be developed and the lands that would be impacted by a flaring operation. This decision does not foreclose any future

lease stipulations related to methane capture and use or reduction. Temporary roads authorized under this exception may also be used for collecting and transporting coal mine methane, including any buried infrastructure, such as pipelines needed for the capture, collection, and use of coal mine methane.

In addition, making flaring a regulatory requirement for coal mining operations in the North Fork Coal Mining Area could be problematic because the Mine Safety and Health Administration could ultimately decide not to allow flaring if it determined it jeopardizes the safety of the miners. To date, the Mine Safety and Health Administration has not approved a flaring system for a coal mine in the Western United States. This could result in the coal mining company being required to flare by two agencies but not allowed to flare by another agency charged with miner safety, which would be inappropriate from the perspective of agency-to-agency coordination.

*Comment:* If an exception is being made for coal mining, then an exception should be made to allow companies to harvest dead and diseased trees in the area.

*Response:* Tree cutting, including the harvesting of dead and diseased trees, is generally prohibited in CRAs with limited exceptions. The Colorado Roadless Rule allows tree cutting in non-upper tier:

- within the first 0.5 mile of a community protection zone;
- within the first 0.5 to 1.5 miles of a community protection zone if a community wildfire protection plan identifies the area as a need for treatment;
- outside of a community protection zone if there is a significant risk to a municipal water supply;
- to maintain or restore ecosystem composition, structure, and processes;
- incidental to a management activity not otherwise prohibited by the Rule; or
- for personal or administrative use.

Just because an exception is made for temporary road construction for coal removal, it does not follow that an exception should be made for tree removal. The purpose of this rule is to amend the North Fork Coal Mining Area exception by addressing identified analysis deficiencies, not to expand the existing prohibitions or exceptions that have already been decided in the 2012 Colorado Roadless Rule.

*Comment:* The Roadless Rule is too restrictive. The rule leaves very little flexibility for safety, fire suppression, water demands, or forest health.

*Response:* The Colorado Roadless Rule has several other exceptions specifically designed to address fire and fuels, water supply, and forest health. The Rule balances the need to address these issues while conserving roadless area characteristics.

*Comment:* Please also consider allowing bikes on all (or most) trails. The original intent of wilderness was not to preclude human powered exploration of our forests, but rather to encourage it. This rule has been warped over the years and needs to be amended.

*Response:* This rulemaking does not propose any activity within designated Wilderness areas. The Wilderness Act prohibits mechanized use (including bicycles) in designated Wilderness Areas. The Colorado Roadless Rule only prohibits tree-cutting, sale, or removal and road construction or reconstruction—with some exceptions in CRAs. Mountain biking access is considered as a part of individual forests' travel management plans, but is not necessarily precluded from roadless areas.

*Comment:* Attempts to create de facto wilderness through alternate means such as removing "wilderness capable lands" from the North Fork Coal Mining Area are beyond the scope of this analysis. For this reason, we find Alternative C to be fatally flawed due to the inclusion of such a provision. We suggest that no special consideration be given to "wilderness capable lands" in any alternatives included in future versions of the SEIS.

*Response:* Recommendations for Wilderness under the 1982 forest planning regulations were processed through several screens to determine if an area was to be recommended. One of the first screens was "wilderness capable." The polygons identified to be removed from the North Fork Coal Mining Area in Alternative C did not pass through the next wilderness review screen to move forward. The SEIS states that removing these acres from the North Fork Coal Mining Area does not recommend them for Wilderness. The use of the term "wilderness capable" is only a mechanism to identify these lands that were requested for removal in a scoping comment for consideration as an alternative.

*Comment:* The process used to create the Colorado Roadless Rule revealed that much of the land identified as "roadless" were not in-fact roadless and had contained roads used for mining, grazing, and recreational vehicles. Once, reclamation is completed, there will be more roadless than there was before. As the roaded lands recover, they will serve as a carbon sink.

*Response:* It is correct that some of the CRAs once contained roads used for mining, grazing, recreation, and other uses. The basis of keeping the North Fork Coal Mining Area within the roadless inventory is recognition that areas with temporary roads can regain roadless character once roads are reclaimed and the area has had time to recover.

*Comment:* There is increasing pressure on National Forests and wilderness by summer campers and fall hunters seeking, naturalness, solace, isolation, and peace so more roadless areas are needed.

*Response:* About 29% of NFS lands in Colorado have been identified as roadless and are managed under the Colorado Roadless Rule. About 22% of NFS lands in Colorado have been congressionally designated as Wilderness. Activities in Wilderness are limited to non-motorized uses, while activities in roadless areas can be motorized, mechanized, as well as non-motorized uses. The final rule reasonably balances the multiple use mandate for use of NFS lands and conservation of roadless area characteristics.

*Comment:* The Pilot, Sunset, and Flatiron Roadless Areas were designated precisely because they meet the criteria for roadless areas and thus should not be opened up for an exception.

*Response:* During the Governor's petition process, the North Fork Coal Mining area was specifically identified as an area that many interest groups desired to see managed as roadless with an exception for temporary road construction for coal development. USDA evaluated this approach and determined that these lands are best managed as described in the final rule.

*Comment:* Mining operations should include mitigation strategies that will minimize the environmental impact.

*Response:* Coal mining operations are subject to performance standards, mitigation measures, and reclamation requirements set forth in the Surface Mining Control and Reclamation Act of 1977, as well as State-specific coal mining statutes, among other Federal and State laws. The Colorado Division of Reclamation, Mining and Safety ensures that coal mining operations in the state comply with these laws. In addition, under its legal and regulatory authority associated with coal leasing, the Forest Service applies mitigation measures in the form of lease stipulations when an application for a new coal lease or lease modification has been received. The Forest Service provides these mitigation measures (stipulations) to the BLM as a condition

of consent to lease (43 CFR 3425.3, 3432.3). At the permitting stage, the Forest Service also brings forward conditions within its jurisdiction to mitigate use and effects on NFS lands for the State to include in coal mine permits.

*Comment:* Regulatory authorities must conduct due diligence on the financial positions of present and future self-bond guarantors, particularly with respect to prior or duplicate encumbrance of their assets. If surface mine reclamation self-bonds are found to be secured by assets that will not be available in the event of a reclamation claim, State regulatory authorities must require alternative, collateralized financial assurance. The danger of effectively unsecured reclamation bonds is especially acute in a time of significant debt loads and shrinking coal markets.

*Response:* The State of Colorado administers reclamation bonds under its delegated Surface Mining Control and Reclamation Act authority from Office Surface Management Reclamation and Enforcement.

*Comment:* The Forest Service and Office of Surface Mining Reclamation and Enforcement should require all bonding as necessary to complete all future reclamation and restoration needs in the exception area considering the company's recent bankruptcy filing will not jeopardize the prior or future commitments to reclamation and restoration associated with any and all operations of the West Elk Mine. The Office of Surface Mining Reclamation and Enforcement has admitted that bonding is not high enough to complete remediation.

*Response:* Reclamation bonds are required and administered by the State of Colorado under its delegated Surface Mining Control and Reclamation Act authority from the Office Surface Mining Reclamation and Enforcement. It is inefficient and impractical for the Forest Service to engage in this analysis, which is focused on the prohibition of road construction/reconstruction and tree cutting within roadless areas.

*Comment:* The road construction will open up the area to off road activities. Temporary roads never stay temporary because of things like pipelines and management facilities. The temporary roads should be open to off road vehicles/motorcycles. The temporary roads should only be open to recreational access.

*Response:* The 2012 Colorado Roadless Rule is specific on future road use in order to maintain the roadless character of the CRAs. For any use of an exception that allows for a temporary

road, those temporary roads are not open to public travel. For further information, please see 36 CFR 294.43(c)(4):

*Comment:* A legally sufficient analysis would have found that Pilot Knob provides winter range for deer and bald eagles, and that it alone provides the only severe winter range for elk.

*Response:* The specialist reports, Biological Evaluation, and Biological Assessment for the 2012 Colorado Roadless Rule Final Environmental Impact Statement used explicit information about occurrence of wildlife and special status species by roadless area that were available at the time from accepted reputable sources, including Colorado Parks and Wildlife records, Colorado Natural Heritage Program, and Forest Service records. This included information similar to what the commenter describes for the roadless areas associated with the North Fork Coal Mining Area. The data did inform the evaluation of alternatives for the Colorado Roadless Rule. The Forest Service is unaware of substantial new information since that time for general fish and wildlife resources or concerns, whether for the larger roadless network or specifically for the North Fork exception area. Consequently, the evaluations in the SEIS focus on those species of plants and animals for which there was substantial new information since the 2012 rulemaking, specifically related to more recent Endangered Species Act listings and critical habitat designations affecting National Forests in Colorado. The Agency also reconsidered the effects of the roadless rule and North Fork Coal Mining Area exception and changed the 2012 determination for the endangered fishes of the Upper Colorado River. Wildlife-related concerns like the commenter identified will be addressed and mitigated as appropriate in future NEPA evaluations, forest plan consistency reviews, and Forest Service decisions. Site-specific information existing at the time a proposal is made to explore for or mine coal—which could be 50 years in the future—will better inform the analysis.

*Comment:* Rural areas could make a lot of money from drought resistant farming if we would fix our rail lines. Make Arch build more rail lines rather than more roads.

*Response:* The Forest Service is not familiar with the success of drought resistant farming on the privately held lands in and around the North Fork Valley. The Agency is not familiar with problems with the existing rail lines. It is not within the Forest Service's authority to make companies build

infrastructure that is outside the purview of the Forest Service.

*Comment:* The proposed action is not in the public interest because it would release climate pollution, waste methane, adversely impact the global economy and environment with billions in climate damages, degrade high elevation-forests and wildlife habitat, and benefit only one company—now bankrupt Arch Coal.

The new decision should be based on the SDEIS analysis and not the prior deals made. The SDEIS demonstrates the 2012 FEIS was wrong in its conclusion, and the Rule would have little impact on climate change.

*Response:* The Secretary of Agriculture or his designee considered the public interest, SFEIS, comments received on the SDEIS, and additional information contained in the project record, as needed, to determine whether to reinstate the North Fork Coal Mining Area exception.

*Comment:* Many commenters urged the selection of a certain alternative for multiple reasons. Support and opposition were voiced for all the alternatives presented in the SDEIS. The majority of comments urged the selection of Alternative A, the no action alternative, for a wide variety of reasons including, but not limited to:

- Adverse impacts to roadless areas, climate change, local real estate values, wildlife habitat, listed species, recreation values, and human health/safety;
  - Ecosystem services are greater than the benefits of the coal;
  - Social cost and damage to the global environment;
  - Contribution to social unrest;
  - Undermining of the renewable energy industry;
  - Coal is available elsewhere;
  - Lack of rationale presented in the SDEIS for selection of an action alternative; and
  - Lack of need.
- Reasons commenters gave for the selection of Alternative B included, but were not limited to:
- The multi-year collaborative effort to develop the 2012 final rule;
  - Mining jobs are among the highest paying jobs in the area;
  - Quality of North Fork Valley coal;
  - Impacts to local economies; and
  - U.S. energy needs.

Reasons commenters gave for selection of Alternative C included, but were not limited to: It protects the most sensitive and wilderness capable areas while providing economic opportunities, and protects nearly as much resources as Alternative A.

*Response:* The Secretary of Agriculture or his designee considered

the public interest, SFEIS, and comments received on the SDEIS, and additional information contained in the project record, as needed, to determine whether to reinstate the North Fork Coal Mining Area exception.

### Regulatory Certifications

#### *Regulatory Planning and Review*

When the proposed rule was circulated for public comment, USDA identified that it had been designated as a non-significant regulatory action under Executive Order 12866. USDA consulted with the Office of Management and Budget (OMB) during the preparation of the final rule, and OMB determined that the regulation was economically significant. The SFEIS includes a detailed benefit-cost analysis.

#### *Regulatory Flexibility Act and Consideration of Small Entities*

The USDA certifies that the final regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as determined in the 2012 Regulatory Flexibility Analysis because the final rule does not subject small entities to regulatory requirements. Therefore, notification to the Small Business Administration's Chief Council for Advocacy is not required pursuant to Executive Order 13272.

#### *Energy Effects*

The Colorado Roadless Rule and the North Fork Coal Mining Area exception do not constitute a "significant energy action" as defined by Executive Order 13211. No adverse effects to supply, distribution, or use of energy are anticipated beyond what has been addressed in the 2012 FEIS or the Regulatory Impact Analysis prepared in association with the final 2012 Colorado Roadless Rule. The reinstatement of the North Fork Coal Mining Area exception does not restrict access to privately held mineral rights, or mineral rights held through existing claims or leases, and allows for disposal of mineral materials. The final rule does not prohibit future mineral claims or mineral leasing in areas otherwise open for such. The rule provides a regulatory mechanism for consideration of requests for modification of restriction if adjustments are determined to be necessary in the future.

#### *Federalism*

The USDA has determined that the final rule conforms to the Federalism principles set out in Executive Order 13132 and does not have Federalism implications. The rule would not

impose any new compliance costs on any State, and the rule would not have substantial direct effects on 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.

The final 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 USDA regulations at 7 CFR 1.28. The State's petition was developed through a task force with local government involvement. The State of Colorado is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for implementation of NEPA.

#### *Takings of Private Property*

The USDA analyzed the final rule in accordance with the principles and criteria contained in Executive Order 12630. The Agency determined that the final rule does not pose the risk of a taking of private property.

#### *Civil Justice Reform*

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

#### *Executive Order 13175/Tribal Consultation*

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

The Forest Service has assessed the impact of this final rule on Indian tribes and determined that this rule does not,

to our knowledge, have tribal implications that require consultation under E.O. 13175. If a Tribe requests consultation, the Forest Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

#### *Unfunded Mandates*

The USDA has assessed the effects of the Colorado Roadless Rule on state, local, and tribal governments and the private sector. This 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 title II of the Unfunded Mandates Reform Act of 1995 is not required.

#### *Paperwork Reduction Act*

This final rule does not call for any additional recordkeeping, reporting requirements, or other information collection requirements as defined in 5 CFR 1320 that are not already required by law or not already approved for use. The rule imposes no additional paperwork burden on the public. Therefore the Paperwork Reduction Act of 1995 does not apply to this proposal.

### List of Subjects in 36 CFR Part 294

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

For the reasons set forth in the preamble, the Forest Service amends part 294 of title 36 of the Code of Federal Regulations as follows:

### PART 294—SPECIAL AREAS

#### Subpart D—Colorado Roadless Area Management

- 1. The authority citation for part 294, subpart D, continues to read as follows:

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

- 2. In § 294.43, revise paragraph (c)(1)(ix) to read as follows:

#### **§ 294.43 Prohibition on road construction and reconstruction**

(c) \* \* \*

(1) \* \* \*

(ix) A temporary road is needed for coal exploration and/or coal-related surface activities for certain lands with Colorado Roadless Areas within the North Fork Coal Mining Area of the Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork Coal Mining Area displayed on the final Colorado

Roadless Areas map. Such roads may also be used for collecting and transporting coal mine methane. Any buried infrastructure, including pipelines, needed for the capture, collection, and use of coal mine methane, will be located within the rights-of-way of temporary roads that are otherwise necessary for coal-related surface activities including the installation and operation of methane venting wells.

\* \* \* \* \*

**Robert Bonnie,**

*Under Secretary, Natural Resources and Environment.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 35

[EPA-HQ-OW-2016-0569; FRL-9953-24-OW]

RIN 2040-AF63

### Credit Assistance for Water Infrastructure Projects

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing an interim final rule to implement a new program authorized under Subtitle C of the Water Resources Reform and Development Act of 2014 (WRRDA), which is referred to as the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA). WIFIA authorizes EPA to provide secured (direct) loans and loan guarantees to eligible water infrastructure projects. Projects will be evaluated and selected by the Administrator of the EPA based on criteria set out in this rule using weightings established in a separate Notice of Funding Availability (NOFA). Following project selection, individual credit agreements will be developed through negotiations between the project sponsors and EPA. EPA is soliciting comments on an interim final rule that establishes the guidelines for the new credit assistance program for water and infrastructure projects and the process by which EPA will administer such credit assistance. The interim final rule primarily restates and clarifies statutory language while establishing approaches to specific procedural issues left to EPA's discretion. This interim final rule pertains to a matter involving a federal

loan and loan guarantee program and is therefore exempt from the rulemaking requirements of the Administrative Procedure Act. As such, EPA is issuing this rule as interim final.

**DATES:** Effective December 19, 2016.

Comments must be received on or before February 17, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2016-0569, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa.dockets>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

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- II. Water Infrastructure Needs and Current Sources of Financing
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  - A. Executive Order 12866: Regulatory Planning and Review & Executive Order 13563: Improving Regulation and Regulatory Review
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  - H. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
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## I. Background

Congress enacted the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) as part of the Water Resources Reform and Development Act of 2014, as amended by sec. 1445 of Public Law 114-94<sup>1</sup> and codified at 33 U.S.C. 3901-3914. WIFIA establishes a new federal credit program for water infrastructure projects to be administered by EPA.

Congress authorized EPA to provide federal credit assistance through WIFIA in the form of loans or loan guarantees to eligible entities: Corporations; partnerships; joint ventures; trusts; Federal, State, or local governmental entities, agencies, or instrumentalities; tribal governments or consortiums of tribal governments; or State infrastructure finance authorities.

WIFIA authorizes EPA to provide assistance for a wide variety of projects.

<sup>1</sup> Section 1445 of Public Law 114-94 amends WIFIA by deleting 33 U.S.C. 3907(a)(5) which prohibited EPA from providing credit assistance to a project financed (directly or indirectly) by the proceeds of a tax-exempt obligation.