

umbrella, constitutes time that must be included in the calculation of duty time to determine the rest required under § 121.377, whether or not that unit itself must adhere to the requirements of § 121.377. An employee using accrued vacation or credit time is not “on duty” even though the employee may receive compensation for that time. Nevertheless, the regulation aims to require repair stations to give its maintenance personnel at least one day off every week without requiring that employee to use accrued vacation time to be free from any responsibility for work.

Once Pratt relieves the employee from duty, the regulation does not require Pratt to monitor the employee’s activities. The scenario where an employee uses the time off from Pratt to work at another maintenance facility does not implicate Pratt’s compliance with § 121.377. Unlike the regulations governing crewmember duty time, § 121.377 does not contain a limit on an employee’s total accumulated working hours within a specified period of time. The FAA does not recommend this practice, however, for the reasons discussed in AC 120–72 related to fatigue. Thus, an employee relieved from duty by Pratt may perform other aviation related maintenance, even for other facilities which themselves are bound by § 121.377, provided the employee is provided the requisite time off by each facility for which the employee works. Pratt must use caution, however, not to create the appearance of requiring an employee to work during off hours for another facility that is just a corporate sister to the Pratt facility.

You also raise the question of whether a facility can schedule employees to work more than six consecutive days, thereby grouping required days off, and still remain in compliance with § 121.377. The regulatory standard requires 24 consecutive hours off duty during any seven consecutive days but also contains some flexibility in the phrase “or the equivalent thereof within any one calendar month.” The FAA intended that the regulation allow employees to work in excess of six consecutive days in the event of a national emergency or unusual occurrence in the air carrier industry. See Legal Interpretation 1987–15 (June 14, 1987). The regulatory flexibility found in § 121.377 allows maintenance personnel to work a schedule that maintains the “equivalent” to one day off every week even though that schedule might provide for more than six consecutive days of work.

The equivalent standard, however, does have limits. The tenants of

statutory and regulatory interpretation suggest that the specific standard of one day off every week cannot be rendered completely inoperative by the more general equivalent standard. A previous interpretation allowed that a work schedule that provides for personnel to have a group of 4 days off followed by up to 24 days of work, or vice versa, would still meet the standard of being “equivalent” to one day off in every seven within a month. Legal Interpretation to Ron Webb from Donald P. Byrne, Assistant Chief Counsel, Regulations (June 21, 1991). That interpretation, however, was issued prior to the findings relating fatigue to maintenance related errors in the air carrier industry discussed in AC 120–72. Webster’s dictionary defines “equivalent” as having logical equivalence, or corresponding or virtually identical in effect or function. Today, we would not view as compliant a schedule that provides over the course of eight weeks for four days off followed by 48 straight days of duty followed by four more days off. Such a work schedule that generally provides for an average of one day off over several weeks cannot be said to be “equivalent” to the more specific standard requiring one day off out of every seven days.

Lastly, you correctly note that the regulation does not address the length of the work day, only the length of the required time off work. The legal interpretation from Mr. Byrne to Mr. Webb also makes clear that the general equivalency provision in § 121.377 does not apply to the specific requirement to give 24 consecutive hours of time off. Time off may not be provided in smaller increments over several days even though the total time off over any seven day period may equal or exceed 24 hours.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267–3073. This response was prepared by Anne Bechdolt, Attorney in the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance and Air Transportation divisions of Flight Standards Service.

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## 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.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture (USDA), is proposing to establish a State-specific rule to provide management direction for conserving and managing inventoried roadless areas on National Forest System (NFS) lands in Colorado. A proposed rule was published in the July 25, 2008, *Federal Register*. In response to public comment on the 2008 Proposed Rule and a revised petition submitted by the State of Colorado on April 6, 2010, the Forest Service is publishing a new proposed rule.

The Agency is inviting public comment on this new proposed rule and accompanying revised draft environmental impact statement (RDEIS). The Agency is interested in public comments on the changes to exceptions and prohibitions on activities in roadless areas that have been developed in response to public comments on the 2008 Proposed Rule. The Agency is particularly interested in receiving public comments on the concept, management, and rationale for designation of specific areas within Colorado Roadless Areas identified as “upper tier.” In this proposed rule, these areas are provided a higher level of protection than the 2001 Roadless Rule, **DATES:** Comments must be received in writing by July 14, 2011.

**ADDRESSES:** Comments may be sent via e-mail to [COComments@fsroadless.org](mailto:COComments@fsroadless.org). Comments may also be submitted via the Internet at <http://www.regulations.gov>. Written comments concerning this notice should be addressed to: Colorado Roadless Rule/EIS, P.O. Box 1919, Sacramento, CA 95812.

All comments, including names and addresses, are placed in the record and are available for public inspection and copying. The public may inspect comments received at <http://roadless.fs.fed.us>.

**FOR FURTHER INFORMATION CONTACT:** Colorado Roadless Rule Team Leader Ken Tu at (303) 275–5156. 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).

Colorado's Roadless Areas are of great importance to the people of Colorado and the Nation. These magnificent landscapes provide a variety of resources and open space opportunities for all Americans. They provide the setting and backdrop for recreational experiences of all kinds, including non-motorized and/or motorized recreational trail use. They are sources of clean and safe public drinking water. They contain intact habitat for species dependent on large, undisturbed areas of land. The scenic quality of these naturally appearing landscapes is among the highest in the Nation. These areas serve as bulwarks against the spread of non-native invasive plant species and provide reference areas for study and research. The USDA, Forest Service, and State consider these areas an important component of the NFS and are committed to the conservation and protection of Colorado Roadless Areas (CRAs).

The unique perspectives and knowledge provided by the State and the public was of great assistance throughout the development of this proposed rule. Many of the CRAs form the setting and backdrop for Colorado communities and have become part of their identity. These areas help provide a high quality of life for local residents. They are also the backdrop for world-class skiing, hunting and fishing, and backcountry experiences for non-residents. Local communities are sensitive to the economic consequences of Federal land management, whether for tourism or other purposes.

The new proposed rule addresses both local and national interests in the management of Colorado Roadless Areas. Recommendations from the USDA Secretary's Roadless Area Conservation National Advisory

Committee (RACNAC) and public comment on the 2008 Proposed Rule both provided a national perspective. The RACNAC was specifically designed as an advisory committee composed of national interests to provide a national perspective, and it no longer exists. The vast majority of respondents to the 2008 Proposed Rule expressed a desire for a rule that protects roadless area characteristics now and for future generations. However, some respondents suggested alternative, less restrictive roadless regulations. This proposed rule includes prohibitions on tree-cutting, sale, or removal; road construction/reconstruction; and linear construction zones, all with limited exceptions tailored to address specific issues. This proposed rule requires, in many cases, the Regional Forester to make specific determinations prior to authorizing exceptions.

In this proposed rule, substantially altered acres have been removed from the roadless inventory and new acres with high level of roadless characteristics have been added. In the standard tier, 20,000 acres are in the North Fork coal mining area, where there is an exception for temporary roads for underground coal activities such as methane drainage wells. Existing ski areas (8,300 acres) have been removed from the roadless inventory, although only 1,700 acres would be currently restricted by the 2001 Rule due to the fact that there are existing permits on the other 6,600 ski area acres.

Linear construction zones are prohibited with some exceptions. There is no prohibition of linear construction zones in the 2001 Rule.

In the proposed rule, there are exceptions for temporary roads for fuels treatment and for ecosystem maintenance and restoration, but these are restricted to locations within one half mile of communities. Road construction for these purposes is not allowed in the 2001 Rule. There is an exception for roads for authorized water conveyance structures operated according to a State water court decree in existence at the time of the promulgation of the final rule. There is no exception for roads for water conveyance structures in the 2001 Rule.

In the proposed rule, the tree cutting exceptions for fuel treatment and ecosystem maintenance and restoration are restricted spatially in this proposed rule to a maximum of one and a half miles from communities. The only condition in which tree cutting could occur outside the community protection zone (CPZ) requires a Regional Forester determination that there is a significant

risk from wildfire to a municipal water supply system. The 2001 Rule exception for ecosystem maintenance and restoration allows tree cutting anywhere within roadless areas.

In the proposed rule, an upper tier of protection has been designated with fewer exceptions than the 2001 Rule for road construction and reconstruction and tree cutting. Exceptions are not allowed for road reconstruction and realignment, and temporary roads for public health and safety. The 2001 Rule tree-cutting exceptions for maintenance and restoration of ecosystem characteristics, and for habitat improvement for endangered, threatened or sensitive species are not allowed in the upper tier of the proposed rule.

##### *State of Colorado Petitions*

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 Colorado Senate Bill 05-243, the Roadless Areas Review Task Force legislation signed into Colorado law on June 8, 2005. The law identified membership and responsibilities of a 13-member bipartisan task force to make recommendations to the Governor regarding inventoried roadless areas in Colorado. The law also identified the Federal 2001 Roadless Area Conservation Rule (2001 Roadless Rule) as the starting point for the task force. The task force held nine public meetings throughout the State, reviewed and considered over 40,000 public comments, and conducted a comprehensive review of Colorado's 4.4 million acres of inventoried roadless areas included in the 2001 Roadless Rule.

Colorado's petition (2006 Petition) was submitted by then-Governor Owens on November 13, 2006, to the Secretary of Agriculture for consideration 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 additions (2007 Petition). After reviewing the recommendation from the RACNAC, the Secretary of Agriculture accepted the 2007 Petition on August 24, 2007, and directed the Forest Service to initiate rulemaking based on the petition. The State of Colorado was granted cooperating agency status for purposes of compliance with the National Environmental Policy Act (NEPA) pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations in a memorandum of

understanding dated January 8, 2008. A notice of intent (NOI) to prepare an environmental impact statement (EIS) was published in the **Federal Register** on December 26, 2007 (72 FR 72982). The public comment period ended on February 25, 2008. The Forest Service received about 88,000 responses.

On July 25, 2008, the Forest Service published the 2008 Proposed Rule to establish State-specific management direction for conserving roadless areas on NFS land in Colorado in the **Federal Register** (73 FR 43544). A notice of availability for the draft EIS was published in the **Federal Register** on August 1, 2008 (73 FR 44991). The availability of the regulatory risk assessment for the 2008 Proposed Rule was published in the **Federal Register** on September 18, 2008 (73 FR 54125). The comment period for all three documents closed on October 23, 2008.

Information applying to the 2008 Proposed Rule was provided to the Ute Mountain Ute and Southern Ute Indian Tribes, located in Colorado, prior to the release of the NOI. An introductory letter, the NOI, background information on the 2008 Proposed Rule, and an offer for additional information or meetings were sent to the Tribes. The 2008 Proposed Rule and DEIS were sent to each Tribe and each was contacted by phone to determine interest in meeting or obtaining information. The Tribes did not request additional government to government involvement, and no formal comments from any of the Tribes were received. A letter was sent to the Tribes with a draft version of this revised proposed rule and the Forest Service met with those Tribes requesting further consultation. In accordance with Executive Order 13175, consultation efforts will continue throughout the process and preparation of a final Rule.

As a result of its July, August, and September 2008 notices, the Forest Service received approximately 106,000 responses of which 105,000 were form letters. Responses included advocacy for a particular outcome or for specific regulatory language, and calls for compliance with laws and regulations. Some responses contained suggestions on further analyses and changes to

issues, alternatives, and CRA boundaries.

The RACNAC held public meetings in Washington, DC, and Salt Lake City, Utah, and submitted recommendations to the Secretary of Agriculture on December 5, 2008, to be considered in the development of the rule.

Throughout the public involvement process, the USDA, Forest Service, and State repeatedly heard comments requesting a reduction in the scope of the Colorado State Petition's proposed exceptions for tree-cutting, sale, or removal and road construction and reconstruction. Based on the comments, the State requested the USDA postpone further rulemaking efforts until the State considered revision of its 2007 Petition.

On August 3, 2009, the State of Colorado released a proposed revision of rule language to be used for its formulation of a revised petition to the public. The State received approximately 22,000 comments during the 60-day comment period, the majority of which were form letters. The State considered the public comments and submitted a revised petition to the Secretary on April 6, 2010 (2010 Petition).

Upon receipt of the revised petition and consideration of the public comments submitted on the petition, Secretary of Agriculture Thomas J. Vilsack instructed the Forest Service to "analyze the potential of adding substantially to the number of acres receiving a higher level of protection" (upper tier lands) than the 2001 Roadless Rule. The 2010 Petition contained 257,000 upper tier acres. Based on the Secretary's direction, acres were added such that there are now 562,200 upper tier acres in this proposed rule. These areas were selected to become upper tier based on their roadless characteristics, and that they were already designated for higher levels of protection in either draft or final forest plans.

The Forest Service analyzed four alternatives for managing roadless areas in this RDEIS. Alternative 1 uses provisions of the 2001 Roadless Rule and applies them to the 2001 roadless area inventory. Alternative 2 is the proposed rule, applies the rule to

inventoried Colorado Roadless Areas, and includes 562,200 acres in the upper tier. Alternative 3 uses forest plan direction to manage roadless areas, and alternative 4 uses the proposed rule direction, applies the direction to Colorado Roadless Areas, and includes approximately 2.6 million acres of upper tier. The RDEIS may be found at <http://roadless.fs.fed.us>. Following Secretarial instructions, as well as reviewing public comments received to date, and the RACNAC recommendations, the Forest Service in consultation with the State, made additional adjustments and clarifications to this proposed rule.

#### *Roadless Area Inventories in Colorado*

Finally, the proposed rule includes an updated inventory of roadless areas. The 2007 State Petition proposed using the inventories used in the 2001 Roadless Rule. In some cases, these were based on inventories from the late 70s. Those inventories used mapping technologies that are now outdated, and also roads had been constructed between the time of the original inventories and their use in the 2001 Roadless Rule. The Forest Service has reviewed and updated the 2001 inventories for the purpose of this rulemaking; making technical corrections, removing private property and making other boundary adjustments, including additions and deletions due to land exchanges. Newly congressionally-designated areas have also been removed from the CRA inventory.

During the public comment period on the 2008 Proposed Rule, comments were received on many of the boundaries of individual CRAs. The Forest Service and Colorado Department of Wildlife field staff worked jointly to identify corrections to the inventories used for the 2008 Proposed Rule. Further information on the boundary changes and a description of the uniqueness of each CRA can be found at <http://roadless.fs.fed.us>.

CRA boundaries have been adjusted where they overlap with ski areas that have special use authorizations or land use management plan allocations for ski areas that allow road construction.

PROPOSED NET CHANGE IN ROADLESS ACRES DESIGNATIONS BY FOREST—INVENTORIED ROADLESS AREA ACRES TO COLORADO ROADLESS AREA ACRES

	2001 rule total IRA acres	Corrected Colorado IRA acres <sup>1</sup>	Corrected IRA acres not included within Colorado roadless areas	Roadless acres added to Colorado roadless areas	Total roadless acres to be managed under Colorado rule	Proposed net change
<b>Region 2 Colorado</b>						
Arapaho-Roosevelt .....	391,000	352,500	10,800	5,400	347,100	(5,400)
GMUG .....	1,127,000	1,058,300	280,800	124,200	901,900	(156,500)
Pike San Isabel .....	688,000	667,300	63,000	170,300	774,600	107,300
Rio Grande .....	530,000	529,000	14,300	3,800	518,500	(10,500)
Routt .....	442,000	442,300	10,300	1,700	433,700	(8,600)
San Juan .....	604,000	543,600	76,600	98,900	565,900	22,300
White River .....	640,000	639,500	7,500	4,700	636,700	(2,800)
<b>Region 4 Colorado</b>						
Manti La Sal .....	11,000	11,000	3,800	500	7,700	(3,300)
<b>TOTAL STATE of COLORADO .....</b>	<b>4,433,000</b>	<b>4,243,600</b>	<b>467,100</b>	<b>409,500</b>	<b>4,186,000</b>	<b>(57,600)</b>

Column 1 acres rounded to nearest 1,000 acres; others rounded to nearest 100 acres. Totals may not add due to rounding.

<sup>1</sup> Net acres after technical corrections to 2001 rule IRA map acres.

### Land Management Planning Efforts

The Agency is continuing land management planning efforts at the national level as well on several forests in Colorado concurrent with this rulemaking. The Rocky Mountain Region is presently conducting a revision of the San Juan National Forest land management plan and the revision schedule may be found at <http://ocs.fortlewis.edu/forestplan>. A complete schedule of plan revisions is posted at <http://www.fs.fed.us/emc/nfma/includes/LRMPschedule.pdf>. At the national level, the Agency is engaging in a revision of its land management planning regulations. Information is posted at <http://www.fs.usda.gov/planningrule>. Some provisions of this proposed rule use terminology and concepts from existing plans and planning regulations (e.g. "sensitive species"). The use of such terminology is potentially subject to adjustment.

### Specific Request for Public Comment

The Agency is particularly interested in receiving public input regarding specific areas within the CRAs that should or should not be included in the upper tier lands including the reason for the inclusion or exclusion (see RDEIS, Appendix B and map packet); and what exceptions to the prohibitions on tree-cutting, sale, or removal, and road construction/reconstruction should apply to upper tier lands. In addition, the Agency is interested in receiving comments on effective means of managing linear facilities, such as electric power lines and telecommunications lines, within

roadless areas in context of this proposed rule.

### Section by Section Highlights of Changes From the July 2008 Proposed Rule

This proposed rule replaces the proposed rule published in July 2008. The section numbers of this proposed rule do not correspond with the numbering used in the 2008 Proposed Rule. Minor changes, edits, or corrections are not discussed.

#### Section 294.40 Purpose

The purpose remains to provide State-specific direction for the protection of roadless areas on NFS land in Colorado that sustains roadless area characteristics now and for future generations.

#### Section 294.41 Definitions

Several terms have been added for clarification and some terms have been removed where no longer needed.

The term *at-risk community* as defined in section 101 of the Healthy Forest Restoration Act (HFRA) has been added.

The term *Colorado Roadless Area upper tier acres* has been added. These are specific portions of or entire CRAs identified in the set of CRA maps. The proposed rule prohibits all tree-cutting, sale, or removal on these acres, except where incidental to the implementation of a management activity not otherwise prohibited by the rule, or as needed and appropriate for personal or administrative use. The proposed rule would prohibit all road construction or reconstruction on these lands, except

where needed pursuant to reserved or outstanding rights or as provided for by statute or treaty. All 562,200 acres analyzed in alternative 2 of the RDEIS are part of the preferred alternative (proposed rule).

The term *Wildland Urban Interface* (WUI) is removed and replaced by the term *Community Protection Zone* (CPZ). A CPZ is defined as either an area one-half mile from the boundary of an at-risk community or an area up to 1½ miles from the boundary of an at-risk community where: the land has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community; or has a geographic feature that aids in creating an effective fire break, such as a river or a ridge top; or where the trees are in condition class 3 as defined by the HFRA. The CPZ is measured from the boundary of the at-risk community and not from the boundary of the CRA.

The term *hazardous fuels* has been added. Hazardous fuels are defined as excessive live or dead wildland fuel accumulations that increase the potential for intense wildland fire and decrease the capability to protect life, property and other resources.

The term *roadless area characteristics* has been retained, but modified from the definition offered in the 2008 Proposed Rule. The 2008 definition indicated that the enumeration of the various resources and features was not intended to 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. The 2010 State Petition recommended removing that language from the definition and inserting interpretive language in the scope and applicability section of the regulation. The proposed rule states in § 294.40 that the intent of this regulation is to protect roadless areas. Activities must be designed to conserve the roadless area characteristics listed in § 294.41, although the proposed rule acknowledges that applying the exceptions in § 294.42, § 294.43, and § 294.44 may have effects to some roadless area characteristics.

The terms *catchment*, *native cutthroat trout*, and *water influence zone* have been added to describe requirements that provide additional protection for native cutthroat trout species when a road construction/reconstruction or linear construction zone exception is authorized.

The term *linear construction zone* has been added.

The term *utility* has been removed, and replaced by *linear facility* which includes pipelines, electrical power lines, and telecommunication lines.

The definition for *water conveyance structures* has been modified to include reservoirs to clarify that they are included under the exception for construction, reconstruction or maintenance of roads for authorized water conveyance structures. This exception in the proposed rule applies only to those water conveyance structures operated pursuant to a water court decree existing as of the date of the final rule.

The term *Pre-existing Water Court Decree* has been defined.

#### *Section 294.42 Prohibition on Tree-Cutting, Sale, or Removal*

On lands designated as upper tier, tree-cutting, sale, or removal would be prohibited except when the Responsible Official determines that the activity is consistent with the applicable land management plan (LMP), and incidental to the implementation of a management activity not otherwise prohibited, or as needed and appropriate for personal or administrative use. Upper tier areas provide for a higher level of protection than the 2001 Roadless Rule because the exceptions in the 2001 Roadless Rule to allow tree-cutting, sale or removal for species habitat and for maintenance and restoration of ecosystem composition and structure, including the reduction of risk of uncharacteristic wildfire effects, are not applied to upper tier in this proposed rule.

On the remaining CRA lands, the proposed rule would require the

Responsible Official to determine whether any proposed tree-cutting, sale, or removal project would be consistent with the applicable LMP, would maintain or improve one or more roadless area characteristic over the long-term, and would qualify as a listed exception. Tree-cutting incidental to a management activity otherwise authorized by this proposed rule or for personal or administrative use would not be required to maintain or improve one or more of the roadless area characteristics over the long-term.

The exceptions concerning tree-cutting, sale, or removal allowed to reduce fuel loadings to moderate the potential effects of a catastrophic wildland fire have been refined. The proposed rule takes into account that homes that have been constructed adjacent to Colorado's national forests and the increasing threat of fire to these at-risk communities. Treating hazardous fuels, and creating safety zones for fire crews in areas around communities can make a difference in the ability of firefighters to control wildfire moving toward an at-risk community. Such conditions have been a major consideration in developing the proposed rule language.

In Colorado, about 340 of the HFRA at-risk communities listed in the **Federal Register** (66 FR 753, January 4, 2001) are within 1½ miles of a CRA. In the period between 1980 and 2008, over 1,700 ignitions affecting over 45,000 acres occurred within roadless areas in Colorado. Over 45 percent of these ignitions and 25 percent of the acres burned were within the 1½ mile CPZ. The proposed rule allows flexible treatment prior to imminent fire activity and provides a more restrictive approach than the 2001 Rule by limiting fuel treatments to the CPZ. In addition, the proposed rule, by requiring treatment areas beyond one-half mile from an at-risk community to be identified in a Community Wildfire Protection Plan (CWPP), ensures consideration of community and practitioner knowledge about conditions in a specific area.

Within the CPZ, tree-cutting, sale, or removal may occur within the first one-half mile of a CPZ only when the Regional Forester determines it is needed to reduce the wildfire hazard to either an at-risk community or a municipal water supply system, including reservoirs and dams, diversion structures, headgates, canals, ditches, tunnels, pipelines, and other surface facilities and systems.

Within the outer one mile of the CPZ, tree-cutting, sale, or removal, if determined to be needed by the

Regional Forester, may only occur in an area identified in a CWPP. The CPZ would still be the maximum boundary for allowed treatments within CRAs. If the CPZ boundary exceeds the CWPP boundary, treatments would be limited to the CWPP area.

Projects within the CPZ are to be focused on small diameter trees to create fuel conditions to modify fire behavior while retaining large trees to the maximum extent practical, as appropriate to the forest type. In forest types such as lodgepole pine, trees may be dead or dying, regardless of size, and may need to be removed, both to prevent hazards to firefighters from falling and fallen trees, and for successful hazardous fuel reduction.

Tree-cutting, sale, or removal for the protection of municipal water supply systems outside of a CPZ is allowed only if the Regional Forester determines that a significant risk exists to the municipal water supply system or the maintenance of that system. This section states that a significant risk exists under conditions in which the history of fire occurrence and fire hazard and risk indicate a serious likelihood that a wildland fire disturbance event would present a high risk of threat to a municipal water supply system.

Projects outside of the CPZ are to be focused on small diameter trees to create fuel conditions to modify fire behavior, while retaining large trees to the maximum extent practical as appropriate to the forest type. It is expected such projects will be infrequent.

The requested exception that allows tree-cutting, sale, or removal to prevent or suppress an insect or disease epidemic has been replaced with an exception that allows tree-cutting, sale, or removal to restore the characteristics of ecosystem, composition, structure and processes. This exception is intended to be used infrequently.

Tree-cutting, sale or removal for the purposes of wildlife habitat improvement is limited to Federally threatened, endangered, and proposed species or those listed as a regionally designated sensitive species by the Forest Service, instead of all wildlife and plant species as was allowed in the previously proposed rule.

Tree-cutting that is incidental to a management activity that is otherwise not prohibited by the rule is allowed. Examples include, but are not limited to, trail construction or maintenance; removal of hazard trees adjacent to forest roads for public health and safety reasons; fire line construction for wildland fire suppression or control of

prescribed fire; survey and maintenance of property boundaries; or for road construction and linear construction zones where allowed by this rule.

Tree-cutting for personal or administrative use is allowed and includes, but is not limited to, activities such as Christmas tree and firewood cutting.

#### *Section 294.43 Prohibition on Road Construction and Reconstruction*

The proposed rule revises the exceptions to the prohibitions on road construction or reconstruction from the previous proposal. Upper tier land designations have been added that prohibit all road construction/reconstruction, except when pursuant to reserved or outstanding rights or as provided for by statute or treaty. Even in such a situation, the Responsible Official would be required to make a series of determinations to decide whether a proposal fits the exception within the upper tier lands. The determinations would include: consideration of technically feasible options without road construction; when proposing to construct a forest road, consideration of whether a temporary road would provide reasonable access; and within a native cutthroat trout catchment or identified recovery watershed, a determination whether road construction will diminish, over the long-term, conditions in the water influence zone and in the native cutthroat habitat.

The rule provisions concerning proposed road construction or reconstruction for authorized water conveyance structures have been modified. The definition of water conveyances has been expanded to include reservoirs, and the exception is limited only to those conveyances operated pursuant to a pre-existing water court decree as of the effective date of a final rule. Water court decrees dated after the final date of the rule would not be eligible for roaded access in CRAs. Finally, the Regional Forester would be required to determine the need for the road access.

The exception for temporary road construction associated with tree-cutting, sale, or removal to reduce the wildfire hazard to an at-risk community or municipal water supply system and tree-cutting associated with maintenance and restoration of characteristics of ecosystem composition, structure and processes, is limited to the first half mile of the CPZ and would require a determination by the Regional Forester.

The road construction exception for the management of livestock grazing has

been eliminated. New grazing authorizations would be limited to use of existing roads.

Temporary road construction may be authorized when associated with exploration or development of an oil and gas lease that was issued prior to the effective date of the rule and when the lease and stipulations do not prohibit surface occupancy or roading.

Approximately 9,000 acres of the Carrant Creek CRA, have been removed from the North Fork Coal Mining Area exception due to public comments regarding the wildlife values of this particular CRA and the lack of existing coal leases in this area. In the remaining proposed 20,000 acres, temporary road construction would be allowed for coal exploration and coal-related surface support activities, such as the drilling of vent holes to extract methane gas to facilitate miner safety. These same temporary roads could also be used for the purpose of collecting and transporting coal mine methane to avoid venting methane into the atmosphere. The authorized road right-of-way would serve as the site for buried infrastructure, such as pipelines. The proposed rule allows for the opportunity to develop this important low-sulfur, cleaner-burning coal resource in a limited portion of the CRA inventory, with areas being returned to long term management for roadless area protection following the decommissioning of the associated temporary roads.

Under all road exceptions, projects would have to be designed and completed to reduce unnecessary or unreasonable surface disturbance. All roads constructed would be decommissioned and the affected landscape restored when a road was no longer needed for the original purpose and/or when the authorization expired, whichever was sooner. These decommissioning requirements would be included in all related contracts or permits and could not be waived.

To prevent roads from affecting the landscape longer than intended, temporary roads authorized under this subpart would not be converted to a forest road (be designated as a permanent road), unless the specific exception under which the temporary road was constructed allows for forest road construction and reconstruction. All roads would also restrict use to the purpose for the road, limiting the traffic and overall impact to the area. Motorized use by the general public including use by off-highway vehicles would be prohibited. General use restrictions would not apply to administrative use by the Forest Service,

motor vehicle use that is specifically under an authorization issued under Federal law or regulation, or use for public health and safety or law enforcement reasons. Maintenance of temporary or forest roads would be permitted.

#### *Section 294.44 Prohibition on Linear Construction Zones*

Prohibitions on linear construction zones (LCZs) have been added to the proposed rule. The 2001 Roadless Rule did not restrict the use of LCZs. LCZs would be prohibited in CRAs unless they meet one of three exceptions: water conveyance structures with a pre-existing water court decree; electrical power or telecommunication lines; and pipelines associated with oil and gas leases that allow surface use within CRAs or an oil and gas lease outside of CRA that connects to infrastructure inside of CRAs. For all three LCZ exceptions, the Regional Forester would be required to determine that motorized access is not possible without an LCZ that the LCZ is consistent with applicable LMP, and that in the long term the LCZ will not diminish conditions in native cutthroat trout habitat.

The Regional Forester may authorize a LCZ when needed for construction, reconstruction, or maintenance of an authorized water conveyance structure that was operated pursuant to a pre-existing water court decree, as of the effective date of this rule. This exception is similar to the road construction/reconstruction for water conveyance structures, but can be selected when a road is not necessary.

Colorado's petition and public comment identify that the current electrical power line system, some of which is already located in CRAs, will need to be maintained and upgraded. Additionally, demand for additional lines is expected. The rule recognizes these possibilities and would allow LCZs, when appropriate, as the method requiring the least disturbance. For the construction, reconstruction, or maintenance of existing or future electrical power lines or telecommunication lines within a CRA, the Regional Forester would determine if a LCZ is needed. The rule further clarifies that any future electrical power lines or telecommunication lines could only be authorized within a CRA if there is no opportunity for the project to be implemented outside the CRA without causing substantially greater environmental damage. The agency is inviting public comments on this exception.

The rule similarly recognizes that it may be appropriate to authorize a LCZ within CRAs to allow the movement of product to market from within a pre-existing oil and gas lease within the CRA. The proposed rule also allows an LCZ when a proponent requests to connect from outside the CRA to an existing infrastructure within a CRA in order to avoid creation of a duplicate pipeline system and unnecessary environmental harm. The Regional Forester would be required to determine that such a connection would cause substantially less environmental damage than alternative routes. An LCZ would not be allowed for new pipelines that would merely pass through a CRA.

All LCZs would be constructed in a manner that minimizes ground disturbance, and would include a reclamation plan. After installation of the linear facility, the LCZ and all areas of surface disturbance would be reclaimed according to the reclamation plan, and those requirements would not be waived.

#### *Section 294.45 Environmental Documentation*

The Forest Service will comply with NEPA for activities within CRAs. The Forest Service NEPA regulations at 36 CFR 220.5(a)(2) normally require preparation of an EIS for any proposal that would substantially alter the undeveloped character of an inventoried roadless area, including CRAs.

The Forest Service would be required to offer the State of Colorado cooperating agency status for all proposed projects and planning events within CRAs. When the Forest Service is not the lead agency and does not have the authority to offer formal cooperating agency status to the State of Colorado, the Forest Service would offer to coordinate with the State.

#### *Section 294.46 Other Activities*

The proposed rule would prohibit temporary and permanent road construction and reconstruction associated with new oil and gas leases issued within a Colorado Roadless Area. Some comments suggested that the Colorado Roadless Rule establish restrictions to be applied retroactively to oil and gas leases within CRAs. The proposed rule does not implement that suggestion. Consistent with other past Department rulemakings concerning roadless area management, this proposed rule is not designed or intended to alter previously approved decisions but instead establishes prospective management direction for the protection and management of CRAs. Nevertheless, the proposed rule

would establish requirements to limit future discretionary decisions concerning oil and gas leasing within CRAs. Specifically, the proposed rule would require that only temporary roads could be developed in association with pre-existing leases. In addition, the proposed rule would prohibit the Agency from authorizing the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease, if doing so would result in any road construction within a Colorado Roadless Area beyond that authorized at the time of issuance of the lease.

Comments were also received for and against establishment of a prohibition on new oil and gas leasing or surface occupancy within CRAs. Again, like prior rules, the proposed rule does not establish such prohibitions. Instead, the proposed rule would allow only such leasing that can be accomplished without road construction or reconstruction and would require mandatory and non-waivable stipulations prohibiting road construction. The proposed rule identifies regulatory requirements in 36 CFR 294.44 that would be imposed for any linear construction zone associated with new leases.

The proposed rule also confirms that the forest travel management processes will continue to be used for all future decisions regarding motorized and non-motorized use on trails within CRAs. Motorized access not involving the construction or reconstruction of roads would continue according to existing authorizations. CRA designation would not eliminate or preclude any lands from being available for livestock grazing.

#### *Section 294.47 Modifications and Administrative Corrections*

The Chief of the Forest Service would be able to modify CRA boundaries based on a changed circumstance such as, the inclusion or exclusion of lands due to land exchanges, and updated inventories. Such changes to the boundaries would require public notice and a minimum 90-day public comment period. Changes due to new congressional designations would not require a modification, and would be adjusted to conform to the applicable statute.

The Chief of the Forest Service would be able to make administrative corrections to CRA boundaries. Administrative corrections would require public notice and a 30-day comment period. Administrative corrections include adjustments such as to correct clerical errors or to reflect

improved field data due to updated imagery, global positioning data, or other collected field data.

Rulemaking would be required for any modification to final rule language. The Secretary would provide for public notice and a minimum 90-day comment period, and the State would be consulted on any rulemaking proposals.

#### *Section 294.48 Scope and Applicability*

The proposed rule's applicability would be limited to authorizations for occupancy and use of NFS lands issued after the effective date of a final rule. The proposed rule's provisions would not affect project or activity decisions issued prior to the effective date of a final rule.

Components of a LMP can be more restrictive than the rule and will continue to provide guidance and direction for projects within CRAs. The proposed rule does not compel amendment or revision of a LMP. A project decision or LMP amendment or revision may not waive or supersede the provisions of this proposed rule.

The proposed rule does not waive any requirements during project analyses to consult with Tribes and other agencies, comply with applicable laws, and involve the public.

If any provision of the rule or its application were held to be invalid, the Department's intention is that the remainder of the regulation would remain in force.

After promulgation of a final rule, the rule promulgated on January 12, 2001, would have no effect within the State of Colorado.

#### *Section 294.49 List of Designated Colorado Roadless Areas*

There are 363 Colorado Roadless Areas in the proposed rule; an increase of 18 CRAs from the July 2008 Proposed Rule.

### **Regulatory Certifications**

#### *Regulatory Planning and Review*

The proposed rule was reviewed under USDA procedures, Executive Order 12866 (E.O. 12866), and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). E.O. 12866 addresses regulatory planning and review and requires agencies conduct a regulatory impact assessment 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. Total annual

output associated with oil, gas, and coal production in the affected areas is projected to be approximately \$970 million under the proposed rule, compared to approximately \$1,030 million under baseline conditions, implying the annual impact of the proposed rule is estimated to be a decrease of approximately \$60 million for energy mineral sectors. Due to the potential magnitude of economic impacts and the level of interest in inventoried roadless area management, this proposed rule has been designated as significant and is subject to Office of Management and Budget (OMB) review under E.O. 12866.

A regulatory impact assessment has been prepared for this proposed rule. OMB Circular A-4 as well as guidance regarding E.O. 12866 indicate that regulatory impact analysis should include an assessment of distributional effects. The benefits, costs, and distributional effects of four alternatives are analyzed over a 15-year time period. These four alternatives referred to as follows: Alternative 1—the provisions of the 2001 Roadless Rule (2001 rule); alternative 2—the proposed Colorado Roadless Rule (proposed rule); alternative 3—Forest Plans (no action); and alternative 4 (the proposed rule with public identified upper tier acreage). The difference between alternative 2 and 4 is the number and location of upper tier acres identified within the CRAs. For the purpose of regulatory impact assessment, the forest plan alternative represents baseline conditions or goods and services provided by NFS lands in the near future in the absence of the proposed rule. In August 2008, the Wyoming District Court set aside and enjoined the 2001 Roadless Rule. Colorado is under the Wyoming Court's ruling. In the revised DEIS the baseline conditions are therefore assumed to mean that IRAs in Colorado will be managed according to direction set forth in the applicable forest plan (alternative 3).

The proposed rule is programmatic in nature and intended to guide future development of proposed actions in 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 around communities to allow access to coal reserves in the North Fork coal mining areas, and to allow access to future water conveyances.

The proposed rule does not authorize the implementation of any ground-disturbing activities, but rather it describes circumstances under which certain activities may be allowed or restricted in 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 National Environmental Policy Act (NEPA) and its implementing regulations.

Because the proposed rule does not prescribe site-specific activities, it is difficult to predict changes in benefits and costs or other changes under the different alternatives. It should also be emphasized that the types of benefits derived from uses of roadless areas in Colorado 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 area 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 area characteristics in some cases (e.g., forest health). Access and designations for motorized versus non-motorized recreation is a topic raised in comments, 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 forest 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 reducing wildfire hazard are characterized by estimating the extent to which CPZ areas (i.e., 0.5 to 1.5 mile buffer areas surrounding communities at-risk from wildfire) overlap roadless areas where tree-cutting for fuel treatments has been identified as being likely to occur. Distributional effects or economic impacts are not evaluated for other economic sectors (e.g., timber harvest, recreation) due to evidence presented in Table 2 suggesting that the extent or magnitude of changes in output or services are not sufficient to cause significant changes in jobs and income for those economic sectors.

Details about the environmental impacts associated with the proposed rule can be found in the RDEIS. Effects on opportunities for small entities under the proposed rule are discussed in the context of E. O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The results of the regulatory impact assessment 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 alternatives 1, 2, 3 and 4. Table 3 summarizes distributional effects and economic impacts of the proposed rule and alternatives.

TABLE 1—FRAMEWORK FOR ANALYSIS: COMPARISON OF ROADLESS AREA ACREAGE, ROAD MILES, AND TREE-CUTTING

	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres <sup>1</sup>
Roadless Areas .....	Inventoried Roadless Areas (IRAs) = 4,243,600 acres.	Colorado Roadless Areas (CRAs) = 4,186,000 acres.	4,243,600 acres .....	Colorado Roadless Areas (CRAs) = 4,186,000 acres.
Total Existing Authorized Road Miles in Roadless Areas <sup>1</sup> .	1,260 miles in IRAs .....	8.5 miles in CRAs .....	1,260 miles in IRAs .....	8.5 miles in CRAs.

TABLE 1—FRAMEWORK FOR ANALYSIS: COMPARISON OF ROADLESS AREA ACREAGE, ROAD MILES, AND TREE-CUTTING—Continued

	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres <sup>1</sup>
Road Construction and Reconstruction Projected in the Analysis Area.	14 miles/year (11 miles in IRAs).	20 miles/year (16 in CRAs) .....	28 miles/year .....	18 miles/year (14 in CRAs).
Tree-cutting Projected in the Analysis Area.	2,300 acres/year (1,200 in IRAs).	7,000 acres/year (5,800 acres in CRAs).	16,900 acres/year .....	3,000 acres/year (1,800 acres in CRAs).

<sup>1</sup> Approximately 24 miles of roads are projected to be decommissioned in IRAs and 8 miles decommissioned in CRAs. Alternative 4 is the same as Alternative 2 with the exception that more roadless areas are assigned to the upper tier restrictions.

TABLE 2—COMPARISON OF ENVIRONMENTAL CONSEQUENCES BY ALTERNATIVE

Issue or affected resource	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 (No Action) Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres
<b>Local Challenges and Resources: Roadless Area Management</b>				
Fire and Fuels (Hazardous Fuel Reductions).	Tree-cutting projected for 1,800 acres per year in the analysis area to reduce hazardous fuels (900 of which are within IRAs); this amounts to 3% of average annual fuel treatments on all NFS lands in CO. Least flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems.	Tree-cutting projected for 5,900 acres per year in the analysis area to reduce fuels (5,300 of which are within CRAs); this amounts to 9% of annual fuel treatments on all NFS lands in CO. More flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems. Unable to conduct hazardous fuels reduction on 12% of 0.5 mile CPZ and 13% of 1.5 mile CPZ due to upper tier acre prohibitions.	Tree-cutting projected for 13,100 acres per year in the analysis area to reduce fuels; this amounts to 20% of annual fuel treatments on all NFS lands in CO. Greatest flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems.	Tree-cutting projected for 2,200 acres per year in the analysis area to reduce fuels (1,600 of which are within CRAs); this amounts to 3% of annual fuel treatments on all NFS lands in CO. Within the CRAs that are not upper tier acres, the flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems is identical to alternative 2, but there are more upper tier acres that cannot be treated. Unable to conduct hazardous fuels reduction on 48% of 0.5 mile CPZ and 52% of 1.5 mile CPZ due to upper tier acre prohibitions.
Ecosystem Maintenance and Restoration Treatments.	500 acres per year in the analysis area have projected tree-cutting activities (300 acres within IRAs). Fewest opportunities to maintain and restore ecosystem characteristics, including resilience to insect and disease outbreaks and climate-induced stressors.	1,000 acres per year in the analysis area have projected tree-cutting activities (400 acres within CRAs). More opportunities than alternatives 1 and 4, but fewer opportunities than alternative 4 to maintain and restore ecosystem characteristics, including resilience to insect and disease outbreaks and climate-induced stressors. Unable to treat upper tier acres.	3,500 acres per year within the analysis area have projected tree-cutting activities. Greatest opportunities to maintain and restore ecosystem characteristics, including resilience to insect and disease outbreaks and climate-induced stressors.	800 acres per year in the analysis area have projected tree-cutting activities (200 acres within CRAs). More opportunities to maintain and restore ecosystem characteristics, including resilience to insect and disease outbreaks and climate-induced stressors than alternative 1 but less than alternative 3 and alternative 2 due to upper tier acres.
Timber .....	Tree-cutting (sale or removal) in the roadless analysis area is projected to occur in association with treatments on 2,300, 3,000, 7,000, and 16,900 acres per year respectively under Alternatives 1, 2, 3, and 4. However, average annual treatment acreage on all NFS land is not expected to be affected substantially by the alternatives, with the only change being the extent to which treatments occur in roadless versus non-roadless areas on NFS lands. Minimal impacts to the wood products sector are therefore expected.			
Oil and Gas .....	Projections are for approximately 686 oil and gas wells in the analysis area with access to 1,046 bcfg over a 15-year period (same for Alternatives 1, 2, and 4). Projected annual road construction and reconstruction is about 10 miles in roadless areas.		Projections are for approximately 783 oil and gas wells in the analysis area with access to 1,154 bcfg over a 15-year period, providing slightly more opportunity compares to the other alternatives. Annual road construction/reconstruction is 11 miles.	
			Same as Alternative 1 and 2.	

TABLE 2—COMPARISON OF ENVIRONMENTAL CONSEQUENCES BY ALTERNATIVE—Continued

Issue or affected resource	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 (No Action) Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres
Coal Analysis Area .....	Projections are for 16 miles of new roads in the analysis area, of which 7 are in IRAs. Restricts access to potential coal resources in IRAs more than other alternatives. 8,600 acres of road-accessible reserves (7,100 in current leases; 1,500 in unleased areas outside of IRAs) with access to 157 million tons.	Projections are for 52 miles of new roads in the analysis area, of which 50 are in CRAs. Reduces restrictions on access to potential coal resources in CRAs compared to the 2001 rule, but is more restrictive than Alternative 3 (limits new roads to the North Fork coal mining area). 27,500 acres of road-accessible reserves (7,100 in current leases; 18,900 in unleased areas outside of CRAs) with access to 514 million tons. Within North Fork coal mining area, 15,600 unleased within CRAs, 5300 in unleased areas outside of CRAs.	Projections are for 73 miles of new roads in the analysis area, of which 64 are in areas that overlap IRAs. Least restrictive on access to potential coal resources in IRAs compared to the other two alternatives. 39,600 acres of road-accessible reserves (7,100 in current leases; 32,500 in unleased areas) with access to 724 million tons.	Same as Alternative 2.
Geothermal .....	Opportunities for geothermal development in roadless areas would not occur under the 2001 rule, the proposed rule, and Alternative 4 due to new road prohibitions. Opportunities for geothermal development in roadless areas would occur under the forest plans alternative as most land management plans allow new roads in roadless areas for this purpose. There are no current leases on NFS lands in Colorado, though potential for geothermal resources is being studied.			
Public Safety .....	All of the alternatives provide flexibility to respond to emergency situations or major threats to public health and safety in roadless areas (refer to features common to all alternatives). In contrast, the potential for accidents and safety hazards increases as the amount of activity and traffic increases. 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 rule and forest plans. Upper tier acres in Alternatives 2 and 4 do not have a specific public health and safety exception for road construction, as does alternative 1.			
Special Uses: Non-recreational (pipelines, electrical or telecommunication lines, water conveyances).	Special use authorizations issued prior to the effective date of rulemaking would be unaffected.			
	Future special use authorizations in IRAs would generally prohibit road construction, but there would be no prohibition on the use of LCZs. 3.2 miles per year of LCZs projected.	Future special use authorizations in CRAs would generally prohibit road construction. Limited exceptions for the construction of LCZ for future oil and gas pipelines, electrical power lines or telecommunication lines, and water conveyance structures in CRAs. 3.2 miles per year of LCZs projected.	Future special use authorizations would generally allow for road construction; except where prohibited under forest plans. There would be no prohibition on the construction of LCZs. 3.6 miles per year of LCZs projected.	Same as alternative 2.
Developed Ski Areas .....	Least opportunities for ski area development and expansion. Road construction and tree-cutting permitted on 6,600 acres within IRA boundaries and also under permit prior to the effective date of this rule. Roads and tree-cutting would be prohibited in 1,700 acres of ski areas allocated under forest plans but outside of existing permits.	Greater opportunity for ski area development and expansion. Road construction and tree-cutting permitted on 6,600 acres under permit as well as the additional 1,700 acres of ski areas allocated under forest plans and located outside existing permits.	Same as alternative 2 ..... Forest plans can be amended or revised to expand ski area allocations beyond the current allocation.	Same as alternative 2.
Other Developed Recreation ...	Only one mile of new road is current projected for recreational purposes over the next 15 years under No Action; effects on developed recreation opportunities therefore do not differ substantially across alternatives.			
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.			
<b>Roadless Area Characteristics and Values</b>				
Scenic Quality .....	Projected activity levels (e.g., tree-cutting) occur on relatively small percentages of total roadless area under all alternatives.			
	Least risk to scenic resources.	More risk to scenic resources than alternatives 1 and 4. Upper tier acres same as alternative 1.	Greatest risk to scenic resources.	Same as alternative 2 within CRA boundaries that are not upper tier; upper tier areas same as alternative 1.

TABLE 2—COMPARISON OF ENVIRONMENTAL CONSEQUENCES BY ALTERNATIVE—Continued

Issue or affected resource	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 (No Action) Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres
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 outside the roadless areas that are the subject of each alternative. Effects on areas in forest plans as recommended wilderness would not differ by alternative as land management plans generally prohibit road construction and tree-cutting and removal activities in those areas. However, 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 and forest plans.			
	Indirect effects on wilderness area characteristics or experience from activities in adjacent roadless areas are expected to be low under Alternatives 1 and 2 because projected activities are not expected to occur adjacent to wilderness area boundaries.	Higher risk of indirect adverse effects on wilderness experience from activities in the analysis area due to higher likelihood that activities could occur adjacent to wilderness boundaries.		Similar to Alternatives 1 and 2. Greater opportunity to establish uniform management approaches for recommended wilderness through placement of roadless areas in upper tier.
Soil .....	No major difference among alternatives related to the risk of soil impacts. Alternative 1 and 4 would have the least risk of adverse effects, and alternative 2 would have a slightly higher risk, followed by alternative 3. However, these differences are expected to be small in magnitude and spread over a wide geographic area. Most of the potential effects would be mitigated by site-specific mitigation measures. The risk of post-fire soil erosion may be higher under Alternative 1 and lowest under Alternative 3 as a result of projected levels of fuel treatments.			
Water and Water Quality .....	Activities under all alternatives are unlikely to contribute to water quality impairment ( <i>i.e.</i> , exceeding water quality standards) due to application of mitigation measures and BMPs as a result of NEPA process and site-specific analysis.			
	Lowest risk of direct adverse effects from tree-cutting and road construction. Higher risk from adverse impacts from floods and sedimentation resulting from wildfires.	Slightly greater risk of direct adverse effects from tree-cutting and road construction. Decreased risks from floods and sedimentation resulting from wildfire, relative to alternatives 1 and 4, due to increased fuel treatments to protect communities and/or water supplies.	Higher risk of direct adverse effects from tree-cutting and road construction. Greatest decrease in risk from floods and sedimentation resulting from wildfire due to increased fuel treatments to protect communities and/or water supplies.	Similar to Alternative 2 though slightly lower risk from tree-cutting and road construction activities.
Air Resources .....	Differences in effects on air quality do not substantially differ between the alternatives. Atmospheric emissions within the analysis area are not expected to increase to a level that would be likely to exceed State or Federal air quality standards.			
Threatened Endangered or Sensitive Plants.	No adverse impacts to threatened or endangered plants because no road construction or tree-cutting, sale, or removal is projected to occur where threatened or endangered plants exist. Site-specific design criteria and mitigation measures are expected to minimize risk. Individual sensitive plants may be affected by projected activities; however, none of the alternatives are expected to result in the loss of viability nor cause a trend toward Federal listing of sensitive species.			
	Least risk to adverse impacts to sensitive plants, including threats from invasives.	More risk of adverse impacts to sensitive plants, including threats from invasives, than alternatives 1 or 4; less than alternative 3.	Greatest risk of adverse impacts to sensitive plants, including threats from invasives.	More risk of adverse impacts to sensitive plants, including threats from invasives, than alternative 1; less than alternatives 2 or 3.
Aquatic Species and Habitat ...	No long-term adverse effects are expected on threatened and endangered (T&E) species, sensitive species, and MIS population trends; downstream T&E species; or wetlands and riparian areas under any alternative due to the assumption that mitigation measures and best management practices would help avoid or minimize impacts from the projected activities.			
	Least risk for adverse impacts on aquatic species.	Increase in risk of adverse impacts to aquatic species. Provides greater protection for cutthroat trout compared to alternatives 1 and 3.	Greatest potential for adverse impacts to aquatic species.	Lower risk of adverse impacts to aquatic species compared to alternative 2 and 3. A portion of upper tier acres are within watersheds occupied by TES fish, implying potential improvements in protection relative to Alternative 2.
Terrestrial Species and Habitat	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.			
	Least risk to terrestrial species and habitat. Limitations of tree-cutting to small diameter trees helps maintain larger trees and variability in forest structure.	Increased risk to terrestrial species and habitat due to activity projections.	Greatest risk to terrestrial species and habitat due to activity projections.	Increased risk to terrestrial species and habitat, but less than Alternative 2 due to activity projections and acreage allocation to upper tier.

TABLE 2—COMPARISON OF ENVIRONMENTAL CONSEQUENCES BY ALTERNATIVE—Continued

Issue or affected resource	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 (No Action) Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres
		<p>Tree-cutting to improve habitat for threatened, endangered, and protected species (TEPS) prohibited in upper tier acres but fewer upper tier acres compared to Alternative 4.</p> <p>Opportunities to improve early seral stage and lower elevation habitat is higher as a result of improved capacity to treat fuels. Restricting tree-cutting inside and outside of CPZs to small diameter trees helps maintain larger trees and forest structure (also applies to Alternative 4).</p>	<p>Opportunities to improve early seral stage and lower elevation habitat is highest as a result of increased flexibility to treat fuels.</p>	<p>Tree-cutting to improve habitat for TEPS species prohibited on a greater number of upper tier acres compared to Alternative 2. Opportunities to improve early seral stage and lower elevation habitat is lower than alternative 2 but higher than alternative 1 (due to treatment projections).</p>
Biodiversity .....	<p>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 the forest plans alternative. Increasing opportunities for treatments under Alternatives 4, 2, and 3 respectively to address hazardous fuels and maintenance and restoration of ecosystem characteristics may have off-setting beneficial effects on long-term biodiversity.</p>			
Invasive Plants .....	<p>Site-specific design criteria and mitigation measures are expected to minimize risk.</p>			
	<p>Lowest risk of spread due to low projections of road construction or tree-cutting.</p>	<p>Some higher risk of the spread due to greater projections of road construction or tree-cutting. Acres removed may experience increased rates of spread while acres added may have decreased rates (same applies for Alternative 4).</p>	<p>Greatest risk of the spread due to the greatest projections for road construction or tree-cutting compared to other alternatives.</p>	<p>Slightly higher risk of the spread compared to Alternative 1 but less than alternatives 2 and 3 due to projected levels of road construction and tree-cutting.</p>
Recreation—Primitive and Semi-primitive Recreation Settings and Opportunities.	<p>Tree-cutting activity is projected to occur on only a small percentage of roadless areas over 15 years across the alternatives. Dispersed recreation opportunities (including hunting and fishing) are therefore not expected to change under any alternative, but feelings of remoteness and solitude may change for periods of time in areas where activity occurs.</p>			
	<p>Likely to retain the greatest proportion of IRA acreage in a primitive or semi-primitive setting.</p> <p>The substantially altered areas and developed ski areas in IRAs may continue to appear inconsistent with semi-primitive characteristics expected in roadless areas.</p> <p>The newly identified roadless acres (409,500 acres) where road construction and tree-cutting, sale or removal is projected to occur that are not within the IRAs could shift to less primitive settings.</p>	<p>Likely to retain a high proportion of CRA acreage in a semi-primitive setting; although some CRA acres would shift toward roaded natural settings in areas where the most roads and energy operations are projected to occur in CRAs.</p> <p>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.</p>	<p>Greatest risk of shifts from primitive/semi-primitive settings to roaded natural settings in areas where the most roads and energy operations are projected to occur.</p>	<p>Same as Alternative 2 but more likely to retain high proportion of primitive/semi-primitive acres given slight reductions in construction and tree-cutting activity.</p>
Outfitters and Guides (recreation).	<p>Out of 1,390 recreational special use permits authorized on NFS lands in Colorado, 1,066 are associated with outfitters and guides, some of which are likely to operate in roadless areas. The alternatives are expected to have negligible adverse effects on recreational special uses, including outfitter and guide opportunities, based on the magnitude and distribution of reasonably foreseeable activity projections; 7,000 acres of tree-cutting and 20 miles of road construction per year are projected over more than 4 million CRA acres under the proposed rule. Limitations on road construction and tree-cutting under any alternative would not be likely to affect ability to obtain or use a recreation use authorization.</p>			
Cultural Resources .....	<p>Least risk of damage to cultural resources because this alternative has the least projections for tree-cutting, sale, or removal.</p> <p>Site-specific design criteria and mitigation measures are expected to minimize risk.</p>	<p>Slightly higher risk of damage to cultural resources because this alternative has a high projection of tree-cutting, sale, or removal and road construction.</p> <p>Site-specific design criteria and mitigation measures are expected to minimize risk.</p>	<p>Highest risk of damage to cultural resources because this alternative has the highest projection of tree-cutting, sale, or removal and road construction.</p> <p>Site-specific design criteria and mitigation measures are expected to minimize risk.</p>	<p>Same or less than alternative 2 due to larger number of acres in the upper tier.</p> <p>Site-specific design criteria and mitigation measures are expected to minimize risk.</p>

TABLE 2—COMPARISON OF ENVIRONMENTAL CONSEQUENCES BY ALTERNATIVE—Continued

Issue or affected resource	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 (No Action) Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres
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 the forest plans alternative that invasive plants would increase from the higher levels of ground-disturbance, thereby increasing this threat to native plant communities.			
Geological and Paleontological Resources.	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.			
Climate Change .....	None of the alternatives are expected to cause a measurable change in the amount of carbon dioxide or other greenhouse gas emissions. With regard to energy resources, it is assumed that if production is not allowed in roadless areas, the same greenhouse impacts will be moved to sites outside roadless areas and contribute the same amount to the atmosphere. In terms of fuels treatments, biomass removed can be burned, used in products, replace fossil fuels, or be left in piles elsewhere on the landscape. Except for prescribed burning, any of these disposal methods would slow release of carbon to the atmosphere.			
<b>Agency Costs</b>				
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 CPZs.	Management flexibility is similar to Alternative 2, but projected treatment amounts are lower due to constraints imposed by more upper tier acreage under Alternative 4.
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. Overall need to address invasive plants is expected to remain relatively constant across alternatives; although new roads can contribute to the spread of invasive plants, roads can also be an asset in helping to effectively control invasive populations.			

TABLE 3—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE PROPOSED RULE AND ALTERNATIVES

	Alternative 1 2001 Roadless Rule	Alternative 2 Proposed Rule	Alternative 3 (No Action) Forest Plans	Alternative 4 Proposed Rule with Public Identified Upper Tier Acres
Leaseable Minerals: Coal, Oil and Gas—Output Value, Jobs and Income (2006\$) Contributed (1).	\$636 million/yr Output. 1,557 Jobs supported. \$101.4 million per year Labor Income.	\$969 million/yr Output. 2,679 Jobs supported. \$183.2 million per year Labor Income.	\$1,026 million/yr Output. 2,796 Jobs supported. \$190 million per year Labor Income.	\$969 million/yr Output. 2,679 Jobs supported. \$183.2 million per year Labor Income.
Revenue Sharing: Mineral Lease Payments and Tax Revenues (2007\$) (2).	State Total: \$28.4 million. Energy-Affected Counties: \$7.3 million. All other CO Counties: \$1.1 million.	State Total: \$47.3 million. Energy-Affected Counties: \$10.2 million. All other CO Counties: \$1.9 million.	State Total: \$49.7 million. Energy-Affected Counties: \$11.1 million. All other CO Counties: \$2.0 million.	State Total: \$47.3 million. Energy-Affected Counties: \$10.2 million. All other CO Counties: \$1.9 million.
Values at risk: Number of Counties Where Potential for Fuel Treatments in CPZs May Increase or Decrease Compared to Baseline Conditions (3).	Decrease: 13 counties. Increase: 1 county.	Decrease: 2 county. Increase: 3 counties.	NA.	Decrease: 18 counties. Increase: 5 counties.

(1) Jobs and income contributed annually (2006 dollars) based on projected levels of coal, oil, and gas production and regional economic modeling multipliers derived from an IMPLAN model representing the five counties where employment effects are assumed to occur (Delta, Garfield, Mesa, Montrose, and Rio Blanco).  
 (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) CPZs = community protection zones (0.5 to 1.5 mile buffer area surrounding communities that have been identified as being at-risk to wildfire. "Potential for fuel treatments" implies that at least one CPZ area in a county overlaps with an IRA or CRA where tree-cutting has at least a low likelihood of occurring, according to national forest unit field staff.

*Proper Consideration of Small Entities*

The proposed rule has also been considered in light of Executive Order 13272 (E. O. 13272) regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Forest Service 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 directly impose small entities to regulatory requirements. The effects on small businesses will not be substantial. 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), there are minimal differences

between the proposed rule and baseline or no-action conditions (i.e., forest plans alternative). As a result, there is little or no potential for significant adverse economic impacts to small businesses under the proposed rule relative to forest plans.

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 recreation use authorizations. Impacts under the proposed rule compared to forest plans are not expected to be significant due to the small percentage of acreage affected (7,000 acres of tree-cutting per year) and roads constructed (20 miles per year) spread across more than 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 community protection zones where primitive or semi-primitive settings may already be affected. 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 1,557 under the 2001 rule alternative to 2,679 jobs under the proposed rule (as well as alternative 4), and 2,796 jobs under the no action (forest plans) alternative. Labor income increases by a similar degree from \$101 million to \$183.2 million and 190 million per year under all alternatives. There is slightly higher job numbers (2,796) under the forest plan alternative (alternative 3) relative to the proposed rule (2,679) alternatives (alternatives 2 and 4), but the magnitude of the difference between these alternatives does not suggest that

adverse impacts will be significant if choosing between the proposed rule and forest plans. These results indicate minimal adverse impacts to small entities associated with energy resource development and extraction under the proposed rule relative to the forest plans alternative.

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 (as well as alternative 4), and forest 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 forest plans relative to the 2001 rule. There are slight increases in payments under forest plans, relative to the proposed rule (aggregate payments increase from \$10.2 million to \$11.1 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.

Under the proposed rule, as compared to the no action alternative, the potential opportunities for fuel treatments near communities-at-risk (*i.e.*, within community protection zones (CPZs)) may increase for two 'small population' counties (*i.e.*, populations less than 50,000). In contrast, potential opportunities for fuel treatments near communities-at-risk may decrease for nine and eight 'small population' counties under Alternative 1 (2001 rule) and Alternative 4 (proposed rule with additional upper tier acreage) respectively, compared to the no action alternative. 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 proposed rule 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 not expected to significantly decrease under the proposed rule relative to forest plans. 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.

#### *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 the involvement of local governments. The State is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for the development of the supporting environmental impact statement. 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. The relationship extends 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 November 5, 2009, President Obama signed a Memorandum emphasizing his commitment to "regular and meaningful consultation and collaboration with Tribal officials in policy decisions that have Tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175." He charged agencies with engaging in consultation and collaboration with Indian Tribal governments; strengthening government-to-government relationship between the United States and Indian Tribes; and reducing the imposition of unfunded mandates upon Indian Tribes.

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. Tribal concerns surfaced during phone or e-mail consultations. Information applying to the proposed Colorado Roadless Rule was provided to the Ute Mountain Ute and Southern Ute Indian Tribes, located in Colorado prior to the release of the NOI. The San Juan National Forest staff held meetings with both Tribes to discuss the proposed rule as well as other Forest issues. At these meetings, the Tribes expressed concerns about hunting access, and unauthorized roads. Nothing in this rule changes access or existing rights. The management of unauthorized roads is addressed through travel management processes.

Additionally, an introductory letter and the NOI along with background information on the proposed Colorado Roadless Rule and an offer for additional information or meetings was sent to the following Tribes and committees: Hopi Tribal Council, Navajo Nation, Northern Cheyenne Tribal Council, Pueblo of Jemez, Pueblo of Nambé, Ohkay Owingeh, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Ildefonso, Pueblo of Santa Clara, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zuni, Jicarilla Apache Nation, Cheyenne and Arapaho Tribes of Oklahoma, Ute Business Committee, Shoshone Business Committee, and the Arapaho Business Committee. These 18 Tribes and committees were selected based on their current proximity to Colorado, their current use of lands in Colorado, and their historic use of lands within Colorado.

The 2008 Proposed Rule and DEIS were sent to each Tribe and each was contacted by phone to determine interest in meeting or obtaining information. The Tribes did not request additional government-to-government involvement, and no formal comments from any of the Tribes were received. A letter was sent outlining the key points of this revised proposed rule and the FS met with those Tribes requesting further consultation. Consultation efforts will continue throughout the process and for the final Rule.

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*

The 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*

The 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*

Based on guidance for implementing Executive Order 13211 (E.O. 13211) of

May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or 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 constitutes a “significant energy action” as defined in E.O. 13211 because projected reductions in coal production under the proposed rule are in excess of 5 million tons per year after 2024.

Projections of natural gas production are discussed in the RDEIS and the Regulatory Impact Analysis for the proposed Colorado Roadless Rule. Based on those projections, it has been determined that natural gas production varies across alternatives for only two National Forests (the Grand Mesa, Gunnison, and Uncompahgre (GMUG) and White River National Forests). It has also been determined that there is no appreciable difference in projected natural gas production between Alternatives 1 (2001 rule) and 2 (proposed rule) or alternative 4. The difference in potential natural gas production between alternatives 1, 2, or 4 (27 billion cubic feet per year) and alternative 3 (no action) (31 billion cubic feet per year) is a decrease of only 4 bcf/year, or 4 million mcf/year, which is well below the E. O. 13211 criterion for adverse effects of 25 million mcf.

Projected oil production ranges from approximately 50,000 barrels under Alternatives 1, 2, and 4 to approximately 110,000 barrels under Alternative 3 over a period of 15 to 30 years. The corresponding reduction in oil production per day under alternatives 1 or 2 or alternative 3 (no action) is inconsequential compared to the E. O. 13211 criterion of 10,000 barrels per day.

Based on average annual coal production rates estimated for economic impact analysis purposes, annual aggregate production across the three mines operating in the affected area is projected to be the same under the proposed rule and the no action alternative (*i.e.*, forest plans alternative) for the first 24 years after implementation (2011 to 2034). Coal production and production schedules are also projected to be the same for the proposed rule and alternative 4. It is only after 24 years (2035) that annual coal production is projected to decrease under the proposed rule compared to the no action alternative by an amount of 5.6 million tons per year which is the average annual production from the Elk Creek mine which ends after 2034. This estimated decrease is based on the known extent of coal resources and the

exclusion of the Currant Creek area from the North Fork coal mining area. A decrease of 5.6 million tons is only slightly above the E. O. 13211 criterion of 5 million tons per year for significant adverse effects. Production is estimated to decrease by 6.0 million tons per year under the proposed rule compared to no action by 2058 when production ceases for all mines under the proposed rule. Coal production is projected to continue for an additional 22 years (until 2079) under the no action alternative.

The total reduction in recoverable coal reserves from roadless areas that are made accessible under the proposed rule, relative to no action alternative, is estimated to be 210 million tons (*i.e.*,  $724 - 514 = 210$  million ton reduction). In comparison, the recoverable coal reserves<sup>1</sup> reported for the State of Colorado by the U.S. Energy Information Administration ranges from 629 million tons in 2002 to 328 million tons by 2007,<sup>2</sup> recognizing that direct comparisons of accessible coal reserves under the alternatives with recoverable reserves estimated by USEIA are difficult due to differences in estimation procedures. However, the reduction of 210 million tons made accessible under the proposed rule is only 2% of the total estimated recoverable reserves<sup>3</sup> for the State of Colorado in 2007 (9,692 million tons) and less than 0.1% of total estimated recoverable reserves for the nation in 2007 (262,689 million tons).

The estimated reductions in the production life of affected mines under the proposed rule compared to the no action alternative may be significant, particularly when considering potential increases in demand for coal from western mines<sup>4</sup> and the Nation as a

whole.<sup>5</sup> However, both the proposed rule and the no action alternatives are projected to sustain similar production rates over an extended period of 24 years after implementation of the rule, and there are many other factors that are likely to have a more significant effect on energy markets after that time, compared to the effect of reduced production under the proposed rule which begins 25 years after implementation of this rule would occur (*i.e.*, 2034). It is also noted that approximately 67% of all coal produced from Colorado in 2008 (32.7 million tons) was exported to other States, suggesting that regional markets and prices are likely to be heavily influenced by national prices, supplies, and market trends.

The reduction in coal production under the proposed rule (as well as alternative 4), relative to the no action alternative are not expected to have adverse effects on the productivity, competition, or prices in the energy sector regionally (or nationally) due to the following observations:

- Potential reductions in coal production under the proposed rule, relative to no action are not projected to occur until 24 years in the future (2035) and estimated reductions after year 24 (*i.e.*, 5.6 million tons/yr) exceed the criterion of 5.0 million tons per year by only a small fraction. A second decrease in production of similar magnitude (6.0 million tons per year) is projected to occur farther in the future (2059) when all mines cease operation under the proposed rule.
- The reduction in total accessible coal reserves under the proposed rule relative to the no action alternative amounts to a relatively small percentage of total estimated recoverable reserves in the State of Colorado (2%) and the nation (<0.1%), and
- The reductions in reserves and production rates under the proposed rule compared to no action are estimated to occur well into the future (*e.g.*, 24 and 48 yrs), and the relative impact of these reductions is expected to be insignificant compared to the impact of other factors that could affect regional and national energy markets by that time.

The reductions in annual production under the 2001 rule, compared to the no

<sup>1</sup>“Recoverable Coal Reserves” consist of the quantity of coal that can be recovered (*i.e.*, mined) from existing coal reserves at reporting mines. Source: U.S. Energy Information Administration (EIA), Independent Statistics and Analysis (Table 14—Recoverable Coal Reserves and Average Recovery Percentage at Producing Mines by State, 2000—2007) <http://www.eia.doe.gov/cneaf/coal/reserves/reserves.html>.

<sup>2</sup>“2008 Coal Production and Employment for Colorado” Colorado Mining Association, Denver CO. <http://www.coloradomining.com>.

<sup>3</sup>“Estimated recoverable reserves” consist of coal in the demonstrated reserve base considered recoverable after excluding coal estimated to be unavailable due to land use restrictions or currently economically unattractive for mining. Source: U.S. Energy Information Administration (EIA), Independent Statistics and Analysis (Table 15—Recoverable Coal Reserves at Producing Mines, Estimated Recoverable Reserves, and Demonstrated Reserve Base by Mining Method, 2000—2007) <http://www.eia.doe.gov/cneaf/coal/reserves/reserves.html>.

<sup>4</sup>In 2007, the Energy Information Administration called for a 5% per year increase in coal production from western mines, but revised this statement in 2009, suggesting a slower rate of increase.

<sup>5</sup>Demand for coal is anticipated to increase as a consequence of 153 new coal-fired electricity plants to be built by 2025, many of which will be in States such as FL, TX, IL, KY that import Colorado coal. (“Colorado Mineral and Energy Industry Activities, 2006”, Colorado Geological Survey, Department of Natural Resources, Denver CO.)

action (reductions range from 5.6 million tons per year beginning as early as 2013 and increase to 11.6 million tons by 2019) are somewhat greater than the reductions noted for the proposed rule (and Alternative 4), and production life is anticipated to extend for only 7 to 10 years under the 2001 rule compared to a longer production life under the no action alternative.

There is a substantial reduction in annual production under the 2001 rule alternative compared to the no action alternative (reductions range from 5.6 million tons per year beginning as early as 2013 and increase to 11.6 million tons by 2019), and production life is anticipated to extend for only 7 to 10 years under the 2001 rule compared to a longer production life under the no action alternative. The production reductions under the 2001 rule (*i.e.*, 11.6 million tons/yr beginning around 2019) exceed the criterion of 5 million tons per year for adverse effects (but reductions are still relatively small), and decreases in operating life of the mines as well as total reserves may suggest the potential for adverse effects to regional markets. The impacts of a number of other factors affecting energy markets and national market trends are still expected to outweigh the effects of implementing the 2001 rule alternative.

Alternative 1 has the greatest reduction in production, and alternatives 2 and 4 have some reduction compared to forest plans.

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 RDEIS, 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. As this action is a significant energy action, the above constitutes the Statement of Energy Effects.

#### 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 Area Management

Sec.

294.40 Purpose.

294.41 Definitions.

294.42 Prohibitions on tree-cutting, sale, or removal.

294.43 Prohibition on road construction and reconstruction.

294.44 Prohibition on linear construction zones.

294.45 Environmental documentation.

294.46 Other activities.

294.47 Modifications and administrative corrections.

294.48 Scope and applicability.

294.49 List of designated Colorado Roadless Areas.

#### Subpart D—Colorado Roadless Area Management

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

##### § 294.40 Purpose.

The purpose of this subpart is to provide, within the context of multiple use management, State-specific direction for the protection of roadless areas on National Forest System lands in Colorado. The intent of this regulation is to protect roadless values by restricting tree cutting, sale, and removal, road construction and reconstruction, and linear construction zones within CRAs, with narrowly focused exceptions. Activities must be designed to conserve the roadless area characteristics listed in § 294.41, although applying the exceptions in § 294.42, § 294.43, and § 294.44 may have effects to some roadless area characteristics.

##### § 294.41 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).

*Catchment:* A watershed delineation beginning at the downstream point of occupation of native cutthroat trout and encompassing the upstream boundary of waters draining in the stream system.

*Colorado Roadless Area Upper Tier Acres:* A subset of Colorado Roadless Areas identified in a set of maps maintained at the national headquarters office of the Forest Service where not all exceptions for tree-cutting, sale, or removal and road construction/reconstruction would apply in order to provide a higher level of protection.

*Colorado Roadless Areas:* Areas designated pursuant to this subpart and identified in a set of maps maintained at the national headquarters office of the Forest Service. Colorado Roadless Areas established by this subpart shall constitute the exclusive set of National Forest System lands within the State of Colorado to which the provisions 36 CFR 220.5(a)(2) shall apply.

*Community Protection Zone:* An area extending one-half mile from the boundary of an at-risk community; or an area within one and a half miles from the boundary of an at-risk community, where any land:

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

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

(3) Is in condition class 3 as defined by Healthy Forest Restoration Act (Pub. L. 108–148).

*Community Wildfire Protection Plan:* As defined under section 101 of the Healthy Forest Restoration Act (Pub. L. 108–148), and used in this subpart, 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

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

**Fire Hazard:** A fuel complex defined by volume, type, condition, arrangement and location that determines the ease of ignition and the resistance to control; expresses the potential fire behavior for a fuel type, regardless of the fuel type's weather influenced fuel moisture condition.

**Fire Occurrence:** One fire event occurring in a specific place within a specific period of time; a general term describing past or current wildland fire events.

**Fire Risk:** The probability or chance that a fire might start, as affected by the presence and activities of causative agents.

**Forest road:** As defined at 36 CFR 212.1, the term means 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.

**Hazardous Fuels:** Excessive live or dead wildland fuel accumulations that increase the potential for intense wildland fire and decrease the capability to protect life, property and natural resources.

**Linear Construction Zone:** A temporary linear area of surface disturbance over 50 inches wide that is used for motorized transport by vehicles or construction equipment to install a linear facility. It is not used as a motor vehicle route and is not engineered to road specifications.

**Linear Facility:** Linear facilities include pipelines, electrical power lines, telecommunications lines, ditches and canals.

**Municipal Water Supply System:** As defined under Section 101 of the Healthy Forests Restoration Act (Pub. L. 108-148), and used in this subpart, the term means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.

**Native Cutthroat Trout:** Collectively, all the native subspecies of cutthroat trout historically occurring in Colorado before European settlement which includes yellowfin, Rio Grande, Greenback, and Colorado River Trout.

**Pre-existing Water Court Decree:** A decree issued by the Colorado Water

Courts prior to [final rule effective date] adjudicating as the point of a diversion or the place of use, a location within a Colorado Roadless Area. A pre-existing decree does not include decrees adjudicated prior to [final rule effective date] which right includes a point of diversion or place of use outside of a Colorado Roadless Area, the holder of which proposes to change or move the point of diversion or place of use within a Colorado Roadless Area. Nothing in this subpart shall be construed as affecting the jurisdiction or responsibilities of the Forest Service.

**Responsible Official:** The Forest Service line officer with the authority and responsibility to make decisions about protection and management of Colorado Roadless Areas pursuant to this subpart.

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

**Roadless Area Characteristics:** Resources or features that are often present in and characterize Colorado Roadless Areas, including:

- (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) Naturally-appearing landscapes with high scenic quality;
- (8) Traditional cultural properties and sacred sites; and
- (9) Other locally identified unique characteristics.

**Temporary Road:** As defined at 36 CFR 212.1, the term means 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.

**Water Conveyance Structures:** Facilities associated with the transmission, storage, impoundment, and diversion of water on and across National Forest System lands. Water conveyance structures include, but are not limited to: reservoirs and dams, diversion structures, headgates, pipelines, ditches, canals, and tunnels.

**Water Influence Zone:** The land next to water bodies where vegetation plays a major role in sustaining long-term

integrity of aquatic systems. It includes the geomorphic floodplain (valley bottom), riparian ecosystem, and inner gorge. Its minimum horizontal width (from top of each bank) is 100 feet or the mean height of mature dominant late-seral vegetation, whichever is greater.

**§ 294.42 Prohibition on tree-cutting, sale, or removal.**

(a) *General.* Trees may not be cut, sold, or removed in Colorado Roadless Areas, except as provided in paragraph (b) and (c) of this section.

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas upper tier acres if the Responsible Official determines the activity is consistent with the applicable land management plan, and:

(1) Tree-cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart; or

(2) Tree-cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, trees may be cut, sold, or removed in Colorado Roadless Areas outside upper tier acres if the Responsible Official, unless otherwise noted, determines the activity is consistent with the applicable land management plan, one or more of the roadless area characteristics will be maintained or improved over the long-term with the exception of paragraphs (c)(5) and (6) of this section, and one of the following circumstances exists:

(1) The Regional Forester determines tree-cutting, sale, or removal is needed to reduce hazardous fuels to an at-risk community or municipal water supply system that is:

(i) Within the first one-half mile of the community protection zone, or

(ii) Within the next one-mile of the community protection zone, and is within an area identified in a Community Wildfire Protection Plan.

(iii) Projects undertaken pursuant to paragraphs (c)(1)(i) and (ii) of this section will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(2) The Regional Forester determines tree-cutting, sale, or removal is needed outside the community protection zone where there is a significant risk that a wildland fire disturbance event could adversely affect a municipal water

supply system or the maintenance of that system. A significant risk exists where the history of fire occurrence, and fire hazard and risk indicate a serious likelihood that a wildland fire disturbance event would present a high risk of threat to a municipal water supply system.

(i) Projects will focus on cutting and removing generally small diameter trees to create fuel conditions that modify fire behavior while retaining large trees to the maximum extent practical as appropriate to the forest type.

(ii) Projects are expected to be infrequent.

(3) Tree-cutting, sale, or removal is needed to maintain or restore the characteristics of ecosystem composition, structure and processes. These projects are expected to be infrequent.

(4) Tree-cutting, sale, or removal is needed to improve habitat for Federally threatened, endangered, proposed, or Agency designated sensitive species; in coordination with the Colorado Department of Natural Resources, including the Colorado Division of Wildlife.

(5) Tree-cutting, sale, or removal is incidental to the implementation of a management activity not otherwise prohibited by this subpart.

(6) Tree-cutting, sale, or removal is needed and appropriate for personal or administrative use, as provided for in 36 CFR part 223, subpart A.

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

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

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road may only be constructed or reconstructed in Colorado Roadless Area upper tier acres if the Responsible Official determines that:

(1) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For any road construction/reconstruction authorized pursuant to this provision, the Responsible Official must determine:

(i) Motorized access, without road construction is not technically feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access; and

(iii) Within a native cutthroat trout catchment or identified recovery watershed, whether road construction will diminish, over the long-term, conditions in the water influence zone and in the native cutthroat habitat.

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a road or temporary road may only be constructed or reconstructed in Colorado Roadless Areas outside upper tier acres if the Responsible Official determines:

(1) That one of the following exceptions exists:

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

(ii) 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. Road realignment may occur under this paragraph only if the road is deemed essential for administrative or public access, public health and safety, or other authorized use;

(iii) 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;

(iv) The Regional Forester determines a road is needed to allow for the construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see also § 294.44(b)(1));

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

(vi) The Regional Forester determines a temporary road is needed to facilitate tree-cutting, sale, or removal (§ 294.42(c)(1)) within the first one-half mile of the community protection zone to reduce the wildfire hazard to an at-risk community or municipal water supply system;

(vii) The Regional Forester determines a temporary road is needed to facilitate tree-cutting, sale or removal (§ 294.42(c)(3)) within the first one-half mile of the community protection zone to maintain or restore characteristics of ecosystem composition, structure and processes;

(viii) A temporary road is needed within a Colorado Roadless Area pursuant to the exploration or development of an existing oil and gas lease that does not prohibit road construction or reconstruction, including the construction of infrastructure necessary to transport the product, on National Forest System lands that are under lease issued by the Secretary of the Interior as of [final rule

effective date]. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction or tree cutting within a Colorado Roadless Area beyond that which was authorized by the terms and conditions of the lease at the time of issuance; or

(ix) A temporary road is needed for coal exploration and coal-related surface activities for certain lands within Colorado Roadless Areas 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 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.

(2) If proposed road construction/reconstruction meets one of the exceptions, subject to the legal rights identified in 36 CFR 294.43(c)(1), the following must be determined:

(i) Motorized access, without road construction is not technically feasible;

(ii) When proposing to construct a forest road, that a temporary road would not provide reasonable access;

(iii) Road construction is consistent with the applicable land management plan direction;

(iv) 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 in the native cutthroat habitat; and

(d) *Road construction/reconstruction project implementation and management.* Incorporate the following elements into any road construction/reconstruction projects implemented within Colorado Roadless Areas.

(1) *Road construction.* If it is determined that a road is authorized in a Colorado Roadless Area, conduct construction in a manner that reduces, to the extent practicable, effects on surface resources, and prevents unnecessary or unreasonable surface disturbance.

(2) *Road decommissioning.* Decommission any road and restore the affected landscape when it is determined that the road is no longer needed for the established purpose, or upon termination or expiration of a

contract, authorization, or permit, whichever is sooner. Require the inclusion of a road decommissioning provision in all such 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.

(3) *Road designations.* The designation of a temporary road constructed or reconstructed pursuant to this subpart may not be changed to forest road except where a forest road is allowed under paragraphs (b) and (c) of this section.

(4) *Road use.* Use of motor vehicles for administrative purposes by the Forest Service and by fire, emergency, or law enforcement personnel is allowed. All roads constructed pursuant to paragraphs (b) and (c) of this section shall prohibit public motorized vehicles (including off-highway vehicles) except:

(i) Where specifically used for the purpose for which the road was established;

(ii) Motor vehicle use that is specifically authorized under an authorization issued under Federal law or regulation.

(5) *Road maintenance.* Maintenance of roads is permissible in Colorado Roadless Areas.

**§ 294.44 Prohibition on linear construction zones.**

(a) *General.* A linear construction zone may not be constructed or reconstructed in Colorado Roadless Areas except as provided in paragraph (b) of this section.

(b) *Linear Construction Zones.* Notwithstanding the prohibition in paragraph (a) of this section, the Regional Forester may authorize a linear construction zone within a Colorado Roadless Area for:

(1) The construction, reconstruction, or maintenance of an authorized water conveyance structure which is operated pursuant to a pre-existing water court decree (see § 294.43(c)(1)(iv));

(2) The construction, reconstruction, or maintenance of existing or future authorized electrical power lines or telecommunication lines. Authorize electrical power lines or telecommunication lines within Colorado Roadless Areas only if there is no opportunity for the project to be implemented outside of a Colorado Roadless Area without causing substantially greater environmental damage; or

(3) The construction or reconstruction of a pipeline associated with operation of an oil and gas lease that allows surface use within a Colorado Roadless

Area or the construction or reconstruction of a pipeline needed to connect to infrastructure within a Colorado Roadless Area from outside a Colorado Roadless Area where such a connection would cause substantially less environmental damage than alternative routes. The construction of pipelines for the purposes of transporting oil or natural gas through a Colorado Roadless Area, where the source(s) and destination(s) of the pipeline are located exclusively outside of a Colorado Roadless Area, shall not be authorized.

(4) If a proposed linear construction zone meets one of the exceptions, then the following must be determined:

(i) Motorized access, without a linear construction zone, is not technically feasible;

(ii) A linear construction zone is consistent with the applicable land management plan direction;

(iii) Within a native cutthroat trout watershed, a linear construction zone will not diminish, over the long-term, conditions in the water influence zone and in the native cutthroat habitat; and

(c) *Linear construction zone decommissioning.* Where a linear construction zone is constructed in a Colorado Roadless Area, installation of the linear facility will be done in a manner that minimizes ground disturbance, including placement within existing right-of-ways where feasible. All authorizations approving the installation of linear facilities through the use of a linear construction zone shall include a Responsible Official approved reclamation plan for reclaiming the affected landscape. Upon completion of the installation of a linear facility via the use of a linear construction zone, all areas of surface disturbance shall be reclaimed as prescribed in the authorization and the approved reclamation plan and may not be waived.

**§ 294.45 Environmental documentation.**

(a) Environmental documentation will be prepared pursuant to Section 102 of the National Environmental Policy Act, 40 CFR 1500, and 36 CFR part 220 for any proposed action within a Colorado Roadless Area. Proposals that substantially alter the undeveloped character of a Colorado Roadless Area require an Environmental Impact Statement (EIS).

(b) The Forest Service will offer cooperating agency status to the State of Colorado, for all proposed projects and planning activities to be implemented on lands within Colorado Roadless Areas. Where the Forest Service does

not have the authority to offer formal cooperating agency status, the Forest Service shall offer to coordinate with the State.

**§ 294.46 Other activities.**

(a) *Oil and Gas Lease Stipulations.* Oil and gas leases issued within a Colorado Roadless Area after [final rule effective date] will prohibit road construction/reconstruction. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction within a Colorado Roadless Area.

(b) *Oil and Gas Surface Use Plans of Operation.* Where applicable, during the review of any application for a surface use plan of operations affecting lands within a Colorado Roadless Area, the Responsible Official will:

(1) Locate, to the extent possible without compromising health and safety standards, roads, well sites, and facilities on pre-existing areas of surface disturbance. Project design shall minimize the amount of necessary temporary road construction or reconstruction.

(2) Consider an alternative for proposed operations that addresses locating directional drilling of multi-well sites on pre-existing areas of surface disturbance. Such an alternative can be dismissed from detailed analysis with clear justification.

(3) Restrict road construction for leases partially within Colorado Roadless Areas, to the extent practical, to portions of the lease outside of Colorado Roadless Areas except when doing so will be substantially more environmentally damaging, compromise safety standards, or is unfeasible due to topography or surface conditions.

(4) Perform, to the extent feasible, reclamation of surface disturbances incrementally, to minimize the total area of disturbance at any given point in time during the exploration or development of a lease.

(5) Design, to the extent feasible, temporary roads and facilities to blend with the terrain to minimize visual impacts and to facilitate restoration when the road is no longer needed.

(6) Co-locate, wherever possible and consistent with health and safety standards, power lines, flow lines and pipelines within the right-of-way of roads to minimize the area of surface disturbance.

(7) Consider new and developing low impact techniques and technologies and either apply or dismiss with justification.

(8) Utilize the best available technology, to the extent possible, to minimize noise and air emissions.

(c) *Trails*. Nothing in this subpart shall affect the current or future management of motorized and non-motorized trails in Colorado Roadless Areas. Decisions concerning the management or status of motorized and non-motorized trails within Colorado Roadless Areas under this subpart shall be made during the applicable forest travel management processes.

(d) *Motorized access*. Nothing in this subpart shall be construed as limiting the authority of the responsible official to approve existing and future motorized access not requiring road construction or reconstruction in Colorado Roadless Areas associated with grazing permits, special use authorizations, and other authorizations.

(e) *Livestock grazing*. The authority to issue livestock grazing permits on national forest system lands within a Colorado Roadless Area is not affected by this subpart; however no new temporary or forest roads shall be authorized through grazing permits issued after [final rule effective date].

#### **§ 294.47 Modifications and administrative corrections.**

Modifications and administrative corrections pursuant to this subpart, after coordination with the State, may be made under the following circumstances:

(a) *Modifications to boundaries*. The Chief of the Forest Service may modify the boundaries of any designated Colorado Roadless Area identified in § 294.49 or add new Colorado Roadless Areas based on changed circumstances. Modifications and additions will be reflected in the set of maps maintained at the national headquarters office of the Forest Service. The construction or reconstruction of a temporary road or tree-cutting, sale, or removal will not result in any boundary modification of a Colorado Roadless Area. Public notice with a minimum 90-day comment period will be provided for any proposed Colorado Roadless Area boundary modifications or additions.

(b) *Administrative corrections to boundaries*. The Chief of the Forest Service may issue administrative corrections after public notice and a 30-day comment period. Administrative corrections to the maps of any designated Colorado Roadless Areas identified in § 294.49 are adjustments to remedy errors such as clerical, topographical, or improvements in mapping technology. Other than clerical errors, an administrative correction is

based on improved field data due to updated imagery, global positioning system data, or other collected field data.

(c) *Amendments to rule language*. Any amendment of this subpart will include coordination with the State and the appropriate level of NEPA analysis. A minimum 90-day comment period will be provided.

#### **§ 294.48 Scope and applicability.**

(a) This subpart does not revoke, suspend, or modify any permit, contract, lease, or other legal instrument authorizing or granting rights to the occupancy and use of National Forest system land issued prior to [final rule effective date] nor does it affect the authority or the discretion of the responsible official to reissue any such permit, contract, or other legal instrument upon its expiration or termination.

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

(c) The provisions set forth in this subpart provide the maximum level of tree-cutting, sale and removal, and road construction and reconstruction activity allowed within Colorado Roadless Areas. Land management plan components can be more restrictive than this subpart and will continue to provide direction and guidance for projects and activities within Colorado Roadless Areas. Nothing in this subpart shall prohibit a responsible official from further restricting activities allowed within Colorado Roadless Areas. 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.

(e) Nothing in this subpart waives any applicable requirements regarding site specific environmental analysis, public involvement, consultation with Tribes and other agencies, or compliance with applicable laws.

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

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

#### **§ 294.49 List of designated Colorado Roadless Areas.**

All National Forest System lands within the State of Colorado listed in this section are hereby designated as Colorado Roadless Areas.

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##### **Arapaho-Roosevelt National Forest**

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1. Bard Creek.
2. Byers Peak.
3. Cache La Poudre Adjacent Area.
4. Cherokee Park.
5. Comanche Peak Adjacent Area.
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 Area.
14. James Peak.
15. Kelly Creek.
16. Lion Gulch.
17. Mount Evans Adjacent Area.
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 Ptarmigan Adjacent.

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##### **Grand Mesa, Uncompahgre, Gunnison National Forest**

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29. Agate Creek.
30. American Flag Mountain.
31. Baldy.
32. Battlements.
33. Beaver.
34. Beckwiths.
35. Calamity Basin.
36. Cannibal Plateau.
37. Canyon Creek—Antero.
38. Canyon Creek.
39. Carson.
40. Castle.
41. Cataract.
42. Cimarron Ridge.
43. Clear Fork.
44. Cochetopa.
45. Cochetopa Hills.
46. Cottonwoods.
47. Crystal Creek.
48. Crystal Peak.
49. Curecanti.
50. Curren Creek.
51. Deer Creek.
52. Dominguez.
53. Double Top.
54. East Elk.
55. Electric Mountain.
56. Failes Creek-Soldier Creek.
57. Flatirons.
58. Flattop Mountain.
59. Flattops—Elk Park.
60. Gothic.
61. Granite Basin.
62. Hightower.
63. Hope Lake.

64. Horse Ranch Park.  
 65. Horsefly Canyon.  
 66. Huntsman Ridge.  
 67. Italian Mountain.  
 68. Johnson Basin.  
 69. Kannah Creek.  
 70. Kelso Mesa.  
 71. Last Dollar—Sheep Creek.  
 72. Little Cimarron.  
 73. Long Canyon.  
 74. Matchless Mountain.  
 75. Matterhorn.  
 76. McClure Pass.  
 77. Mendicant.  
 78. Mineral Mountain.  
 79. Mirror Lake.  
 80. Mount Lamborn.  
 81. Munsey-Erickson.  
 82. Naturita Canyon.  
 83. North Henson.  
 84. Pilot Knob.  
 85. Poverty Gulch.  
 86. Salt Creek.  
 87. Sanford Basin.  
 88. Sawtooth.  
 89. Schofield Pass.  
 90. Soap Creek.  
 91. Steuben.  
 92. Sunnyside.  
 93. Sunset.  
 94. Texas Creek.  
 95. Tomahawk.  
 96. Turner Creek.  
 97. Turret Ridge.  
 98. Unaweep.  
 99. Union.  
 100. Whetstone.  
 101. Whitehouse Mountain.  
 102. Willow Creek.  
 103. Wilson.  
 104. Windy Point.

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**Manti-La Sal National Forest**

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105. Roc Creek.

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**Pike-San Isabel National Forest**

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106. Antelope Creek.  
 107. Aspen Ridge.  
 108. Babcock Hole.  
 109. Badger Creek.  
 110. Boreas.  
 111. Buffalo Peaks East.  
 112. Buffalo Peaks South.  
 113. Buffalo Peaks West.  
 114. Burning Bear.  
 115. Chicago Ridge.  
 116. Chipeta.  
 117. Cuchara North.  
 118. Cuchara South.  
 119. Elk Mountain—Collegiate North.  
 120. Elk Mountain—Collegiate South.  
 121. Elk Mountain—Collegiate West.  
 122. Farnum.  
 123. Green Mountain.  
 124. Greenhorn Mountain: Badito Cone to Dry Creek.  
 125. Greenhorn Mountain: Cisneros Creek to Upper Turkey Creek.  
 126. Greenhorn Mountain: Graneros Creek to Section 10.  
 127. Greenhorn Mountain: Little Saint Charles Creek to Greenhorn Creek.  
 128. Gunbarrel.  
 129. Hardscrabble.

130. Highline.  
 131. Holy Cross.  
 132. Hoosier Ridge.  
 133. Jefferson.  
 134. Kaufman Ridge.  
 135. Kreuzer—Princeton.  
 136. Little Fountain Creek.  
 137. Lost Creek East.  
 138. Lost Creek South.  
 139. Lost Creek West.  
 140. Methodist Mountain.  
 141. Mount Antero.  
 142. Mount Elbert.  
 143. Mount Evans.  
 144. Mount Massive.  
 145. Pikes Peak East.  
 146. Pikes Peak West.  
 147. Porphyry Peak.  
 148. Puma Hills.  
 149. Purgatoire.  
 150. Rampart East.  
 151. Rampart West.  
 152. Reveille Canyon.  
 153. Romley.  
 154. Sangre de Cristo: Alvarado Camp-ground to Music Pass.  
 155. Sangre de Cristo: Blanca Peak to Slide Mountain.  
 156. Sangre de Cristo: Lake Creek to Hermit Creek.  
 157. Sangre de Cristo: Medano Pass to Carbonate Mountain.  
 158. Sangre de Cristo: Silverheels Gulch to Hunts Creek.  
 159. Sangre de Cristo: West Creek to Big Cottonwood.  
 160. Schoolmarm Mountain.  
 161. Scraggy Peaks.  
 162. Sheep Rock.  
 163. Silverheels.  
 164. Spanish Peaks.  
 165. Square Top Mountain.  
 166. St. Charles Peak.  
 167. Starvation Creek.  
 168. Tanner Peak.  
 169. Thirtynine Mile Mountain.  
 170. Thunder Butte.  
 171. Weston Peak.

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**Rio Grande National Forest**

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172. Alamosa River.  
 173. Antora Meadows-Bear Creek.  
 174. Beartown.  
 175. Beaver Mountain.  
 176. Bennet Mountain-Blowout-Willow Creek-Lion Point-Greenie Mountain.  
 177. Big Buck-Kitty-Ruby.  
 178. Box-Road Canyon.  
 179. Bristol Head.  
 180. Butterfly.  
 181. Chama Basin.  
 182. Conejos River-Lake Fork.  
 183. Copper Mountain-Sulphur.  
 184. Cotton Creek.  
 185. Crestone.  
 186. Cumbres.  
 187. Deep Creek-Boot Mountain.  
 188. Dorsey Creek.  
 189. Elkhorn Peak.  
 190. Four Mile Creek.  
 191. Fox Creek.  
 192. Fox Mountain.  
 193. Gibbs Creek.  
 194. Gold Creek-Cascade Creek.  
 195. Hot Springs.

196. Indian Ridge.  
 197. Kitty Creek.  
 198. La Garita.  
 199. Lake Fork.  
 200. Lower East Bellows.  
 201. Middle Alder.  
 202. Miller Creek.  
 203. Pole Creek.  
 204. Pole Mountain-Finger Mesa.  
 205. Red Mountain.  
 206. Ruby Lake.  
 207. Sawlog.  
 208. Sheep Mountain.  
 209. Silver Lakes-Stunner.  
 210. Snowshoe Mountain.  
 211. Spectacle Lake.  
 212. Spruce Hole-Sheep Creek.  
 213. Stunner Pass-Dolores Canyon.  
 214. Sulphur Tunnel.  
 215. Summit Peak-Elwood Pass.  
 216. Taylor Canyon.  
 217. Tewksberry.  
 218. Tobacco Lakes.  
 219. Trout Mountain-Elk Mountain.  
 220. Ute Pass.  
 221. Wason Park.  
 222. Wightman Fork—Upper Burro.  
 223. Wightman Fork—Lookout.  
 224. Willow Mountain.

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**Routt National Forest**

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225. Barber Basin.  
 226. Black Mountain.  
 227. Bunker Basin.  
 228. Bushy Creek.  
 229. Chatfield.  
 230. Chedsey Creek.  
 231. Dome.  
 232. Dome Peak.  
 233. Elkhorn.  
 234. Gold Creek.  
 235. Grizzly Helena.  
 236. Kettle Lakes.  
 237. Little Green Creek.  
 238. Long Park.  
 239. Mad Creek.  
 240. Morrison Creek.  
 241. Never Summer North.  
 242. Never Summer South.  
 243. Nipple Peak North.  
 244. Nipple Peak South.  
 245. Pagoda Peak.  
 246. Shield Mountain.  
 247. South Fork.  
 248. Sugarloaf North.  
 249. Sugarloaf South.  
 250. Troublesome North.  
 251. Troublesome South.  
 252. Walton Peak.  
 253. Whalen Creek.

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**San Juan National Forest**

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254. Baldy.  
 255. Blackhawk Mountain.  
 256. East Animas.  
 257. Fish Creek.  
 258. Florida River.  
 259. Graham Park.  
 260. HD Mountains.  
 261. Hermosa.  
 262. Lizard Head Adjacent.  
 263. Piedra Area Adjacent.  
 264. Runlett Park.  
 265. Ryman.

266. San Miguel.  
267. South San Juan Adjacent.  
268. Storm Peak.  
269. Treasure Mountain.  
270. Turkey Creek.  
271. Weminuche Adjacent.  
272. West Needles.  
273. Winter Hills/Serviceberry Mountain.

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**White River National Forest**

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274. Adam Mountain.  
275. Ashcroft.  
276. Assignment Ridge.  
277. Baldy Mountain.  
278. Basalt Mountain A.  
279. Basalt Mountain B.  
280. Berry Creek.  
281. Big Ridge to South Fork A.  
282. Big Ridge to South Fork B.  
283. Black Lake East.  
284. Black Lake West.  
285. Blair Mountain.  
286. Boulder.  
287. Budges.  
288. Buffer Mountain.  
289. Burnt Mountain.  
290. Chicago Ridge.  
291. Corral Creek.  
292. Crystal River.  
293. Deep Creek.  
294. Dome Peak.  
295. East Divide-Four Mile Park.  
296. East Vail.  
297. East Willow.  
298. Elk Creek B.  
299. Elliot Ridge.  
300. Fawn Creek-Little Lost Park.  
301. Freeman Creek.  
302. Gallo Hill.  
303. Game Creek.  
304. Grizzly Creek.  
305. Gypsum Creek.  
306. Hardscrabble.  
307. Hay Park.  
308. Holy Cross City.  
309. Homestake.  
310. Hoosier Ridge.  
311. Housetop Mountain.  
312. Hunter.  
313. Little Grand Mesa.  
314. Lower Piney.  
315. Mamm Peak.  
316. Maroon East.  
317. Maryland Creek.  
318. McClure Pass.  
319. McFarlane.  
320. Meadow Mountain A.  
321. Meadow Mountain B.  
322. Morapos A.  
323. Morapos B.  
324. Mormon Creek.  
325. No Name.  
326. North Elk.  
327. North Independent A.  
328. North Independent B.  
329. North Woody.  
330. Pagoda Peak.  
331. Piney Lake.  
332. Porcupine Peak.  
333. Ptarmigan A.  
334. Ptarmigan B.  
335. Ptarmigan C.  
336. Ptarmigan Hill A.  
337. Ptarmigan Hill B.  
338. Red Dirt A.

339. Red Dirt B.  
340. Red Mountain.  
341. Red Table.  
342. Reno Mountain.  
343. Ripple Creek Pass-Trappers Lake.  
344. Ryan Gulch.  
345. Salt Creek.  
346. Sloan Peak.  
347. Spraddle Creek A.  
348. Spraddle Creek B.  
349. Sweetwater A.  
350. Sweetwater B.  
351. Tenderfoot Mountain.  
352. Tenmile.  
353. Thompson Creek.  
354. Tigiwon.  
355. Treasure Mountain.  
356. West Brush Creek.  
357. West Lake Creek.  
358. Wildcat Mountain.  
359. Wildcat Mountain B.  
360. Wildcat Mountain C.  
361. Williams Fork.  
362. Willow.  
363. Woods Lake.

Dated: April 11, 2011.

**Jay J. Jensen,**

*Deputy Under Secretary, NRE.*

[FR Doc. 2011-9119 Filed 4-14-11; 8:45 am]

**BILLING CODE P**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 158**

[EPA-HQ-OPP-2010-0670; FRL-8857-7]

**RIN 2070-AJ80**

**Pesticides; Microbial Pesticide Definitions and Applicability; Clarification and Availability of Draft Test Guideline for Comment**

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

**ACTION:** Proposed rule.

**SUMMARY:** As promulgated, EPA's regulations distinguish "isolates" and "strains" in a confusing and non-obvious manner. This has resulted in significant uncertainty within the regulated industry. This proposed rule addresses this problem by proposing new regulatory language that clarifies the requirements applicable to new strains that are considered to be new active ingredients under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is also soliciting comment on a draft microbial pesticide test guideline, explaining the deposition of a sample in a nationally recognized culture collection data requirement, for comment. The revisions proposed in this rule also include several other minor corrections to words and references. The changes should enhance

the ability of industry to efficiently manage their microbial pesticide registration submissions.

**DATES:** Comments must be received on or before July 14, 2011.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2010-0670, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2010-0670. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form