



# Federal Register

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**Tuesday,  
July 15, 2003**

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**Part II**

## **Department of Agriculture**

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**Forest Service**

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**36 CFR Parts 219 and 294  
National Forest System Land and  
Resource Management Planning; Special  
Areas; Roadless Area Conservation;  
Proposed Rules**

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Parts 219 and 294**

RIN 0596-AC05

**National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation**

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

**SUMMARY:** On July 10, 2001, the Forest Service published an advance notice of proposed rulemaking (ANPR) seeking public comment concerning how best to proceed with long-term protection and management of inventoried roadless areas. The 2001 ANPR expressed the Department's belief that inventoried roadless areas contain important environmental values that warrant protection, and identified a set of principles that would guide the Department in addressing this subject. This second ANPR solicits further public input concerning the applicability of the roadless area conservation rule to both the Tongass and the Chugach National Forests in Alaska. In conjunction with this second ANPR, a proposed rule has been published elsewhere in the same part of today's **Federal Register** that would amend the roadless area conservation rule's application to the Tongass National Forest. The agency is publishing the proposed rule and this ANPR in order to fulfill part of the Department's obligations under the June 10, 2003 settlement agreement for *State of Alaska v. USDA*, while also maintaining the ecological values of inventoried roadless areas in the Tongass and Chugach National Forests.

In *State of Alaska v. USDA*, the State of Alaska and other plaintiffs alleged that the roadless rule violated a number of federal statutes, including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Passed overwhelmingly by Congress in 1980, ANILCA sets aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas with the understanding that sufficient protection and balance would be ensured between protected areas and multiple-use managed areas, and that there would be no more administrative land withdrawals. The Alaska lawsuit alleged that USDA violated ANILCA by applying the requirements of the

roadless rule to Alaska's national forests. USDA settled the lawsuit by agreeing to publish the proposed rule (located elsewhere in the same part of today's **Federal Register**) to temporarily exempt the Tongass from the application of the roadless rule, and to publish this separate ANPR requesting comment on whether to exempt permanently the Tongass and the Chugach National Forests in Alaska from the application of the roadless rule.

Under the settlement, the vast majority of Alaska National Forests will remain off limits to development. Timber harvest will be prohibited on more than 95 percent of Alaska National Forests as required under existing forest plans. Exempting the Tongass National Forest from the application of the roadless rule would make approximately 300,000 roadless acres available for—forest management—slightly more than 3 percent of the 9.3 million roadless acres in the Tongass, or 0.5 percent of the total roadless acres nationwide. Exempting the Chugach National Forest, from the application of the roadless rule would permit roaded access on approximately 150,000 acres—less than 3 percent of the forest's 5.4 million roadless acres, or 0.3 percent of the total roadless acres nationwide. The proposals under the settlement would preserve all old-growth reserves, riparian buffers, beach fringe buffers, roadless areas, and other protections contained in the forest plans. The roadless rule would also continue to apply to the 43.7 million roadless acres in national forests outside of Alaska.

Public comment is invited and will be considered in the development of the proposed rule.

**DATES:** Comments must be postmarked by August 14, 2003.

**ADDRESSES:** Send written comments to: Roadless ANPR, USFS Content Analysis Team, P.O. Box 22777, Salt Lake City, Utah, 84122; by electronic mail to [roadlessanpr@fs.fed.us](mailto:roadlessanpr@fs.fed.us); or by facsimile to 801-880-3311. If you intend to submit comments in batched e-mails from the same server, please be aware that electronic security safeguards on Forest Service and Department of Agriculture computer systems intended to prevent commercial spamming may limit batched e-mail access. The Forest Service is interested in receiving all comments on this advance notice of proposed rulemaking, however, so please call (801) 517-1020 to facilitate transfer of comments in batched e-mail messages. Please note that all comments will be available for public inspection and copying. The agency cannot

confirm receipt of comments. Individuals wishing to inspect the comments should call Jody Sutton at (801) 517-1023 to facilitate an appointment.

**FOR FURTHER INFORMATION CONTACT:** In Washington, DC contact: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205-1019; and in Juneau, Alaska contact: Jan Lerum, Regional Planner, Forest Service, USDA, (907) 586-8796.

**SUPPLEMENTARY INFORMATION:****Background***Implementation and Review of Roadless Area Conservation Rule*

On May 4, 2001, the Secretary of Agriculture expressed the Administration's commitment to providing protection for roadless areas in the National Forest System. However, acknowledging concerns raised by local communities, tribes, and States impacted by the January 12, 2001, Roadless Area Conservation Rule (66 FR 3244), the Secretary also indicated that USDA would move forward with a responsible and balanced approach to re-examining the rule that fairly addressed those concerns.

On May 10, 2001, two days before the Roadless Area Conservation Rule was to become effective, the U.S. District Court for the District of Idaho issued a preliminary injunction order enjoining the Department from implementing the rule. This decision was appealed, and the Ninth Circuit Court of Appeals reversed and remanded this preliminary injunction order. In total, nine lawsuits challenging the roadless rule have been filed in six judicial districts and four federal circuits.

On June 7, 2001, in order to bring some stability to roadless area management given the legal uncertainties with implementing the rule, Chief Dale Bosworth instituted interim agency direction to protect roadless values in inventoried roadless areas. In view of the the Ninth Circuit's April 14, 2003, order reversing the preliminary injunction and remanding the matter, the agency's interim direction was allowed to expire on June 14, 2003.

*First Advance Notice of Proposed Rulemaking*

On July 10, 2001, the Forest Service published an advance notice of proposed rulemaking (ANPR) seeking public comment concerning how best to proceed with long-term protection and management of inventoried roadless areas. The first ANPR indicated that

how the Department ultimately addresses protecting roadless values would depend on a number of factors. Those included court decisions, public comments, and practical options for amending the current rule or using other administrative tools to implement inventoried roadless area protections.

During the public comment period for the first ANPR that closed on September 11, 2001, the Forest Service received over 726,000 responses. The responses represented two main points of view on natural resource management and perspectives on resource decisionmaking: (1) Emphasis on environmental protection and preservation, and support for making national decisions; and (2) emphasis on responsible active management, and support for local decisions made through the forest planning process. A 1,200 page summary of this public comment was prepared in May of 2002, and is available on the Forest Service internet site for Roadless Area Conservation at <http://www.roadless.fs.fed.us>.

#### *Relationship of Rulemaking Proposals to Alaska Litigation*

In January of 2001, the State of Alaska and six other parties filed a lawsuit against USDA contending that the roadless rule violated various statutes. On June 10, 2003, a settlement agreement was signed by the U.S. Department of Justice, the State of Alaska, and intervenor-plaintiffs to resolve and dismiss this litigation. This settlement agreement calls for the Federal Government to publish in the **Federal Register**, within 60 days: (1) A proposed temporary regulation that would exempt the Tongass National Forest from the application of the roadless rule until completion of the rulemaking process for any permanent amendments to the roadless rule; and (2) an advance notice of proposed rulemaking to exempt both the Tongass and the Chugach National Forests from the application of the roadless rule. This advance notice of proposed rulemaking, and a proposed rule published elsewhere in today's **Federal Register** to exempt the Tongass National Forest from the applicability of the roadless rule, fulfill these terms of the settlement agreement.

#### *A Unique Situation Exists in the State of Alaska*

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). In ANILCA, Congress found that the Act provided the proper balance between the protection of environmental values while providing

opportunity for the satisfaction of the economic and social needs of the people in Alaska. The Act set aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges and Wilderness Areas.

If the Tongass and the Chugach National Forests are exempted from the roadless rule, the Forests would continue to be managed pursuant to the existing Forest Plans. Both the 1997 Revised Forest Plan (as readopted by the February 2003 Record of Decision) for the Tongass and the 2002 Revised Forest Plan for the Chugach were developed through fair and open planning processes, based on years of extensive public involvement and thorough scientific review, and provide full consideration of social, economic, and ecological values. The net effect of amending the roadless rule to exclude National Forest System lands in the State of Alaska would be to allow timber harvest in approximately 300,000 additional acres (approximately 3 percent) on the Tongass out of 9.34 million inventoried roadless acres, and possible access and development on 150,000 additional acres out of 5.4 million roadless acres on the Chugach. Timber harvest would be prohibited on approximately 95 percent of National Forest System lands in the State of Alaska under the existing forest plans, if both the Tongass and the Chugach National Forests were excluded from application of the prohibitions of the roadless rule.

#### **Public Comment Solicitation**

All interested parties are encouraged to express their views in response to this request for public comment on the following question:

Should any exemption from the applicability of the roadless rule to the Tongass National Forest be made permanent and also apply to the Chugach National Forest?

#### **Regulatory Findings**

This second advance notice of proposed rulemaking is being issued to report on public input received and to obtain public comment regarding the protection and management of inventoried roadless areas in the State of Alaska. Because the Department is not proposing any specific action at this time, there are no regulatory findings associated with this notice. Comments received will help the Department determine the extent and scope of any future rulemaking.

#### **Conclusion**

The Department of Agriculture is considering a permanent exemption for the Tongass and Chugach National Forests from the applicability of the roadless rule. Public input and comment received through this second advance notice of proposed rulemaking will help inform the Department's consideration of future rulemaking proposals.

Dated: June 30, 2003.

**Dale N. Bosworth,**  
*Chief.*

[FR Doc. 03-17419 Filed 7-14-03; 8:45 am]

BILLING CODE 3410-11-P

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## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

#### **36 CFR Part 294**

#### **RIN 0596-AC04**

#### **Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed rulemaking; request for comment.

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**SUMMARY:** The Department of Agriculture, Forest Service is proposing to amend regulations concerning the Roadless Area Conservation Rule (hereinafter, referred to as the roadless rule) to exempt the Tongass National Forest (hereinafter, referred to as the Tongass) from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas until a final rule is promulgated as announced by the Forest Service on July 10, 2001, in an advance notice of proposed rulemaking.

In seeking public comment on this proposal to amend the roadless rule, the agency is fulfilling part of the Department's obligations under the June 10, 2003 settlement agreement for *State of Alaska v. USDA*, while maintaining the ecological values of inventoried roadless areas in the Tongass National Forest.

In *State of Alaska v. USDA*, the State of Alaska and other plaintiffs alleged that the roadless rule violated a number of federal statutes, including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Passed overwhelmingly by Congress in 1980, ANILCA sets aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas with the