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36 CFR Part 294

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

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 294**

RIN 0596-AC74

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Colorado**AGENCY:** Forest Service, USDA.**ACTION:** Final rule and record of decision.

SUMMARY: The U.S. Department of Agriculture (USDA or Department), is adopting a State-specific final rule to provide management direction for conserving and managing approximately 4.2 million acres of Colorado Roadless Areas (CRAs) on National Forest System (NFS) lands. The final Colorado Roadless Rule is a rule that addresses current issues and concerns specific to Colorado. The State of Colorado and Forest Service, working in partnership, have found a balance between conserving roadless area characteristics for future generations and allowing management activities within CRAs that are important to the citizens and economy of the State of Colorado.

DATES: This rule is effective July 3, 2012.

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: This preamble states the basis and purpose of the rule, which includes responses to comments received on the proposed rule, and serves as the record of decision for this rulemaking. The preamble is organized into the following sections:

- Executive Summary
- Background
- Purpose and Need
- Decision
- Decision Rationale
- Public Involvement
- Tribal Involvement
- Alternatives Considered
- Environmentally Preferable Alternative
- Roadless Area Inventories
- Comments on the Proposed Rule and Changes Made in Response
- Regulatory Certifications

Executive Summary

The United States Forest Service manages approximately 14,520,000 acres of public lands in Colorado, which are distributed among eight national forests and two national grasslands. These national forests and grasslands are characterized by a diverse array of landscapes, ecosystems, natural resources, and land use activities.

In January 2001, the Roadless Area Conservation Rule (2001 Roadless Rule) was adopted into regulation. The 2001 Roadless Rule has been the subject of litigation for more than a decade, and is now currently in effect. Uncertainty about the future of the 2001 Roadless Rule, along with state-specific concerns, was a key factor that influenced Colorado to initiate a petition to manage roadless areas in Colorado in 2005.

The Department, the Forest Service, and the State of Colorado agree that a need exists to provide management direction for roadless areas in Colorado. In its petition to the Secretary of Agriculture, the State of Colorado indicated a need to develop regulations for the management of Colorado's roadless areas for the following reasons:

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

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

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

- Reducing the risk of wildfire to communities and municipal water supply systems

- Facilitating exploration and development of coal resources in the North Fork coal mining area

- Permitting construction and maintenance of water conveyance structures

- Restricting LCZs, while permitting access to current and future electrical power lines

- Accommodating existing permitted or allocated ski areas

- There is a need to ensure that Colorado Roadless Areas (CRAs) are accurately mapped.

The major provisions of the proposed rule would establish a system of CRAs with management direction to conserve roadless area characteristics. These areas would replace the roadless areas identified in the 2001 Roadless Rule for national forests in Colorado. The proposed rule conserves roadless area characteristics by prohibiting tree cutting, sale, or removal; road construction and reconstruction; and LCZs, with some limited exceptions. In addition, the rule establishes a system of upper tier acres within CRAs where additional restrictions apply, further limiting exceptions to the prohibitions.

The proposed CRAs encompass approximately 4.19 million acres of NFS land in Colorado, distributed among 363 separate roadless areas. The Colorado Roadless Rule provides for future adjustments to be made to CRA boundaries, subject to a public review and comment period, and applicable NEPA or other requirements. In addition, the rule provides for administrative corrections (defined as adjustments to remedy clerical and mapping errors) to upper tier boundaries, subject to a public review and comment period.

The rule adjusted roadless area boundaries from the 2001 inventory in the following ways:

- Correcting mapping errors that primarily resulted from improvements in inventory data and mapping technology.

- Excluding private land.

- Excluding land substantially altered by road construction and timber harvest activities.

- Excluding ski areas under permit or lands allocated in forest plans to ski area development.

- Excluding Congressionally designated lands, such as wilderness and other designations, that take legal precedence over roadless area regulations.

- Including unroaded areas outside IRAs that contain roadless area characteristics.

Official CRA and upper tier locations are contained in a set of maps at the Forest Service national headquarters. The Forest Service national headquarters office would maintain the official map of CRAs, including records of adjustments to such maps, pursuant to the final proposed rule. These maps will be available to the public.

The rule is expected to have a beneficial economic impact of about

\$65,000,000 per year, which is not considered to be economically significant under Executive Order (E.O.) 12866, Regulatory Planning and Review. Even though this rule is not considered economically significant, it is considered a significant regulatory action under E.O. 12866 and E.O. 13563.

Background

On June 8, 2005, then-Governor Bill Owens signed Colorado Senate Bill 05–243 which directed the formation of a 13-person bipartisan task force to make recommendations to the Governor on the appropriate management of CRAs on National Forest Systems in Colorado. The Colorado law also identified the USDA 2001 Roadless Area Conservation Rule (2001 Roadless Rule) as the starting point for the task force. 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.

Colorado's petition (2006 Petition) was submitted by then-Governor Owens on November 13, 2006, to the Secretary of Agriculture for consideration under the Administrative Procedure Act. On April 11, 2007, then-Governor Ritter resubmitted the 2006 petition with additions (2007 Petition). After reviewing the recommendation from the Roadless Area Conservation National Advisory Committee (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.

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 State of Colorado was granted cooperating agency status in a memorandum of understanding dated January 8, 2008. On July 25, 2008, the Forest Service published the 2008 proposed rule to establish State-specific management direction to provide, within the context of multiple use, lasting protection for roadless areas on NFS land in Colorado (73 FR 43544). A notice of availability for the draft EIS was published on August 1, 2008, (73 FR 44991). The availability of the regulatory risk assessment for the 2008 proposed rule was published on September 18, 2008, (73 FR 54125).

Based on the comments on the 2008 draft EIS and other public involvement efforts, the State requested the USDA postpone further rulemaking efforts until the State considered its 2007 Petition. On August 3, 2009, the State of Colorado sought additional public comment. The State considered the

public comments and submitted a revised petition to the Secretary on April 6, 2010 (2010 Petition).

On April 15, 2011, the Forest Service published a revised proposed rule (76 FR 21272) to provide State-specific direction for the protection of roadless areas on NFS lands in Colorado. A notice of availability for the revised draft EIS (RDEIS) was published on April 29, 2011, (76 FR 24021).

Since the promulgation of the 2001 Roadless Rule, it has been in litigation. The ongoing uncertainty regarding management of roadless areas was a key factor that influenced Governor Bill Owens to initiate a State-specific petition to manage Colorado roadless areas. On October 21, 2011, the U.S. Tenth Circuit Court of Appeals reversed the Wyoming District Court's decision to set aside the 2001 Roadless Rule and remanded the case to the District Court to vacate the permanent injunction. On February 24, 2012, the Tenth Circuit issued a mandate effectuating the October 21, 2011 opinion and requiring the injunction of the 2001 Roadless Rule to be vacated. As of the printing of this final rule, the 2001 Roadless Rule is in effect nationwide, except in Idaho, which has its own State-specific roadless rule.

Purpose and Need

The Department, Forest Service, and the State of Colorado agree there is a need to establish management direction for the conservation of roadless area values and characteristics in Colorado. In addition, there is a need to ensure that CRAs are accurately mapped. In its petition to the Secretary of Agriculture, the State of Colorado indicated a need to develop State-specific regulations for the management of Colorado's roadless areas.

Roadless areas are, among other things, sources of drinking water, important fish and wildlife habitat, semi-primitive or primitive recreation areas, including motorized and nonmotorized recreation opportunities, and natural-appearing landscapes. There is a need to provide for the conservation and management of roadless area characteristics.

The Department believes tree cutting, sale or removal, and road construction/reconstruction have the greatest likelihood of altering and fragmenting landscapes, resulting in immediate, long-term loss of roadless area values and characteristics, and there is a need generally to prohibit these activities in roadless areas. Some have argued that linear construction zones (LCZs) also need to be restricted in roadless areas.

The State has indicated flexibility is needed to accommodate State-specific situations and concerns in Colorado's roadless areas. These include: (1) Reducing the risk of wildfire to at-risk communities and municipal water supply systems; (2) facilitating exploration and development of coal resources in the North Fork coal mining area on the Grand Mesa, Uncompahgre, and Gunnison National Forests; (3) permitting the construction and maintenance of water conveyance structures; (4) restricting linear construction zones, while permitting access to current and future electrical power lines and telecommunication lines; and (5) accommodating existing permitted or allocated ski areas.

Decision

The Department hereby promulgates a regulation establishing CRAs and providing for management of CRAs as described in Alternative 2 of the "Rulemaking for Colorado Roadless Areas Final Environmental Impact Statement," USDA Forest Service, 2012, and the supporting record. This decision is not subject to Forest Service administrative appeal regulations.

Decision Rationale

Governor Ritter stated in his April 11, 2007 letter to Undersecretary Mark Rey that, "Colorado's roadless areas are a treasure to be enjoyed by the citizens of Colorado and the visitors who come here to recreate and enjoy the natural beauty of our National Forests. Roadless areas provide critical wildlife habitat, clean drinking water, recreation and unmatched scenery. Roadless areas belong to all Americans and are a resource to protect and pass on to future generations." The final rule will provide long-term management of CRAs to ensure roadless area values are passed on to future generations, while providing for Colorado-specific situations and concerns that are important to the citizens and economy of Colorado.

The final rule provides a high level of conservation of roadless area characteristics on approximately 4.2 million acres. The final rule achieves this by establishing prohibitions for tree cutting, road construction and reconstruction, and use of linear construction zones with limited exceptions and establishing upper tier acres. The final rule will be applied to 409,500 acres that were not covered in the 2001 Roadless Rule. It does not establish roadless management direction for 459,100 acres of lands that were associated with the 2001 Roadless Rule that have been determined to be

substantially altered and 8,300 acres for ski area management. The final rule provides a higher level of conservation for the designated CRA lands than management direction under either the forest plans or the 2001 Roadless Rule.

The final rule designates 1,219,200 acres of CRAs as upper tier, which are acres where exceptions to road construction and tree cutting are more restrictive and limiting than the 2001 Roadless Rule. Upper tier designations were designed to offset the limited exceptions for Colorado-specific concerns so that the final rule is more protective than the 2001 Roadless Rule.

Generally, the exceptions for Colorado-specific concerns allow for road construction and reconstruction beyond that which are allowed under the 2001 Roadless Rule where roadless acres are within the first 0.5 mile from an at-risk community as described in the definitions section of this final rule (about 250,000 acres) and within the 19,100-acre North Fork coal mining area. Tree cutting allowances in non-upper tier acres in the final rule are similar to the 2001 Roadless Rule, except within a community protection zone (CPZ) as described in the definitions section of this final rule. Tree cutting allowances in upper tier areas are much more restrictive in the final rule as compared to the 2001 Roadless Rule.

The use of LCZs is restricted under the final rule, unlike the 2001 Roadless Rule. The LCZ provisions of the final rule are designed to encourage placement of linear facilities outside of roadless areas to conserve the large tracts of undisturbed lands that roadless areas provide. The final rule also encourages co-locating facilities if they must be constructed within a CRA. Co-locating facilities within CRAs would minimize overall impacts by concentrating infrastructure and associated human activities in previously disturbed areas.

Although it is difficult to directly compare the level of protection afforded by the final rule and the 2001 Roadless Rule, the final rule clearly offers a higher level of conservation of roadless area characteristics within the upper tier acres. In addition, the 2001 Roadless Rule allows management activities to occur on more acres of roadless areas than the final rule does due to the upper tier designation.

Colorado-Specific Concerns

Ski Areas. Roadless areas provide the scenic backdrop to many of Colorado's 22 ski areas located on public lands managed by the Forest Service. These 22 ski areas received about 11.7 million

skier visits during the 2010–2011 ski season.

Colorado skiers spend about \$2.6 billion annually, about one third of the annual tourist dollars spent in the State. The roadless area inventory for the 2001 Roadless Rule included portions of either the permit boundary and/or forest plan ski area management allocation for 13 ski areas. The final rule inventory excludes approximately 8,300 acres of permitted ski area boundaries or ski area management allocations from CRAs, which include roadless acres with degraded roadless area characteristics due to the proximity to a major recreational development and is less than 0.2% of the CRAs. This will ensure future ski area expansions within existing permit boundaries and forest plan allocations are not in conflict with desired conditions provided through the final rule and address one of the State-specific concerns identified by the State of Colorado. However, this final rule does not approve any future ski area expansions; any expansion proposal would need site-specific environmental analysis, appropriate public input, and independent approval.

Energy Development/Infrastructure. All existing Federal coal leases within CRAs occur in the North Fork Valley near Paonia, Colorado on the Grand Mesa, Uncompahgre, and Gunnison National Forests. Coal from this area meets the Clean Air Act definition for compliant and super-compliant coal, which means it has high energy value and low sulphur, ash and mercury content, making it desirable for electric-generation plants throughout the country. Coal from these existing leases is currently being extracted at three underground mines, which collectively produce about 10 to 15 million tons of coal per year and accounts for about 40% of all the coal production in the State of Colorado. These mines provide about 2,100 jobs (direct, indirect and induced) and \$151.1 million annually of direct labor income within Colorado.

The final rule accommodates the continued operation of these three mines by defining an area called the North Fork coal mining area. This area is about 19,100 acres which is less than 0.5% of the CRAs. The North Fork coal mining exception allows for the construction of temporary roads for exploration and surface activities related to coal mining for existing and future coal leases. The final rule does not approve any future coal leases, nor does it make a decision about the leasing availability of any coal within the State. Those decisions would need to undergo separate environmental

analyses, public input, and decision-making.

Many comments were received on the 2008 DEIS and the 2011 RDEIS regarding whether the Currant Creek CRA should be included or excluded from the North Fork coal mining area. About 9,000 acres of the Currant Creek CRA was removed from the North Fork coal mining area in the RDEIS due to important wildlife habitats and juxtaposition of these habitats to nearby habitats. The Colorado Division of Parks and Wildlife reviewed comments regarding the inclusion of Currant Creek to the North Fork coal mining area, including the independent analysis of wildlife resources submitted by a commenter, and remains convinced of the importance of the wildlife habitat values in Currant Creek.

The Department agrees and will not include Currant Creek in the North Fork coal mining area to ensure conservation of these important wildlife habitats. The Department notes that there are no existing coal leases in Currant Creek. The Department reviewed likely scenarios of potential mining within the Currant Creek CRA and determined that the economic effects of including Currant Creek in the North Fork coal mining area would not be realized for more than three decades based on current coal production levels, current mining technologies, the assumption that an adjacent area on non-NFS lands known as Oak Mesa would be mined, and the fact that coal from Currant Creek would not be mined until Oak Mesa was mined out.

Oil and gas resources were another issue that generated substantial public input. Colorado has 8% of all dry natural gas reserves in the U.S., the third largest domestic reserves of onshore dry natural gas behind Texas and Wyoming. In 2009, Colorado wells produced 1.45 trillion cubic feet of natural gas for market, or 7% of U.S. production. In addition, about 28.3 million barrels of oil were produced in Colorado, or 1% of U.S. production. In 2010, of the \$287 million in total royalties collected on Federal oil and gas production in Colorado, \$117 million was paid to the State of Colorado and \$64 million was collected in severance taxes from federal oil and gas production.

Within CRAs, there are about 266,900 acres classified as "moderate to high" oil and gas potential and about 631,600 classified as "high" potential. Projected natural gas and oil production from CRAs with high development potential, although locally significant, does not change significantly under the final rule. A total of 355 firms affiliated with

oil and gas development and production are located within the affected region, of which 337 are estimated to be small businesses. However, there is no difference in estimated average annual natural gas or oil production between the final rule and the 2001 Rule (baseline conditions). The only difference in natural gas production across alternatives is under forest plans (Alternative 3) where average annual production is estimated to increase by 4 billion cubic feet per year compared to the final rule, which is below the Executive Order 13211 criterion for significant effects of 25 bcf/year. The only difference in oil production across the alternatives is under forest plans (Alternative 3) where oil production is estimated to increase by about seven barrels per day, compared to the final rule, which is an inconsequential difference compared to the E.O. 13211 criterion of 10,000 barrels per day.

The final rule provides for the conservation of roadless area characteristics by prohibiting road construction for future oil and gas leases and requiring a no surface occupancy (NSO) stipulation on all future oil and gas leases within upper tier acres. The final rule balances roadless protection with energy development by allowing continued temporary access across CRAs to explore, develop, and transport products from existing oil and gas leases that do not otherwise prohibit road construction or reconstruction. The 2001 Roadless Rule prohibited road construction to access mineral leases issued after the promulgation of the rule (January 12, 2001). Since 2001, the 2001 Roadless Rule has been subject to legal challenges, and leases have been issued in areas now identified as Colorado Roadless Areas. The Colorado Roadless Rule does not affect the terms or validity of leases existing prior to the promulgation date of the final rule. This rule preserves any surface development rights and limitations on surface development rights existing at the time of adoption of this rule on all oil and gas leases. Although the road prohibitions of the final rule could constrain development of future oil and gas leases within some CRAs, the economic impact of this prohibition would be negligible in the context of total energy production within the State of Colorado. The projected difference in potential natural gas production from CRAs under the final rule is an increase in total recovery of about 19.2 billion cubic feet over 30 years when compared to the existing condition. Averaged over the 30 year period, this represents about 0.1% of the current state-wide annual

production of natural gas in Colorado. For oil production, the final rule would result in a decrease of about 3,500 barrels over 30 years when compared to the existing condition. This averaged over 30 years, is minimal compared to the current annual oil production in Colorado.

The final rule would not restrict road construction to extract locatable minerals, which include metals such as gold, silver, lead, zinc, molybdenum, rare earth minerals, and uranium; non-metallic minerals such as fluorspar, feldspar, and gem stones; and uncommon varieties of sand, stone, gravel, pumice, pumicite, and cinders such as high calcium limestone used for cement. Like the 2001 Roadless Rule, the final rule contains a specific exception for roads provided for by statute which would allow access to develop these mineral resources, which are subject to location under the General Mining Law of 1872, as amended. This law provides United States citizens a possessory right to these minerals, use of the surface for purposes reasonably incident to mining, and a right of reasonable access to these minerals across Federal land. This statutory right also made it unnecessary to include a specific exception for mining roads in the final rule as requested by several commenters. Therefore, operations such as the Henderson Mine in Clear Creek County would not be affected by the final rule prohibitions should operations need to expand into or develop additional mineral resources in the adjacent CRA.

In January, 2009 energy transmission and distribution corridors were designated in 11 Western States, including Colorado, in an interagency effort known as the West-Wide Energy Corridor project. These corridors will facilitate interstate energy transmission and distribution as well as improving reliability, relieving congestion, enhancing the capability of the national grid to deliver electricity, and concentrating these uses. All the designated West-Wide Energy Corridors for oil, gas, and hydrogen pipelines and electric transmission and distribution facilities are located outside of CRAs. Therefore, interstate energy transmission is not expected to be affected by the final rule.

Water Supply/Infrastructure. Water in Colorado is used for a variety of downstream purposes including public water supply, agriculture, and industrial uses (including mining/mineral development). Growing populations in Colorado are expected to increase the demand for reliable quantities of high-quality water. Roadless areas contribute

to high quality water through high functioning watersheds, which provide for snow-pack retention and vegetative cover, resulting in reduced downstream sedimentation, lower water temperature, and decreased contaminants. The mountainous areas, where NFS lands are located, receive the highest amounts of precipitation in the State, primarily as snow. More than two-thirds of the water yield in Colorado originates on NFS lands. The streams and lakes within roadless areas generally have good to excellent water quality. Nearly all of the CRAs are located within watersheds that contribute to public supplies of surface or ground water.

Water projects are necessary to store and transport water from its origin in the mountains to where it is needed in downstream cities, towns, and farms. Storing water in mountain reservoirs provides more reliable year-round constant flows enabling distribution of water to places when needed. Water projects also allow for storage of excess water in one year to be saved and used in later years when water may not be as plentiful.

There are numerous reservoirs, diversions, ditches, tunnels and other water conveyance facilities located in CRAs. Access for operation and maintenance of these facilities is important to (1) ensure reliable delivery of needed water supplies to downstream users, and (2) prevent or mitigate failures in the water systems that could cause greater environmental impacts, such as an open ditch clogging with debris that overtops and carves a series of gullies into the hillside. The final rule allows access needed for the construction, reconstruction, or maintenance of authorized water conveyance structures operated pursuant to state decreed water rights.

With the current increased growth in the rural west, in and around the National Forests, the Forest Service anticipates proposals for new reservoirs and associated water conveyance structures on NFS lands. Existing permit holders are already asking for authorization to expand and enlarge existing reservoirs and water conveyance structures. The Department believes these circumstances require flexibility because in some cases, it may be preferable to expand existing facilities where impacts have already occurred than to construct new facilities in a relatively undisturbed area. In most cases, road access would be needed to transport the equipment and materials to complete new water projects or expansions efficiently, which is provided for in the final rule within non-upper tier areas through the road

construction exception and within upper tier areas through the LCZ exception for water rights with a pre-existing water court decree.

Community Protection. The ongoing mountain pine beetle epidemic has caused wide-spread tree mortality on more than three million acres across the State of Colorado. About 750,000 acres of this tree mortality has occurred in CRAs. This high level of tree mortality has increased the concern for high-intensity wildfires due to the increased amount of combustible material (fuels). High-intensity wildfires are more difficult to control, have the potential for greater environmental impacts, and increase risks to firefighter and public health and safety.

Colorado has a high number of residences in the vicinity of forests that are at risk of wildfire. The final rule defines the areas up to 1.5 miles of an at-risk community as CPZs if certain ground conditions exist. In some areas, where CRAs are adjacent to at-risk communities, some portion of the CRA's acres fall within the CPZ. Currently, about 250,000 acres of proposed CRAs (6% of total) are within 0.5 miles of an at-risk community, and over one million acres of the proposed CRAs (25% of total) are within 1.5 miles of an at-risk community. The ability to conduct fuel-reduction projects around at-risk communities is a concern and priority for the State of Colorado. Fuel treatments alter fuel profiles so that public and firefighter safety is improved and communities, watersheds, infrastructure, and other at-risk values are less vulnerable to impacts from wildfire. The final rule provides for this by allowing fuel treatments within the CPZs and allowing temporary road construction within 0.5 miles of an at-risk community.

Linear Construction Zones. Generally roadless areas are roadless because they are rugged, steep, and remote; the topography and juxtaposition of human developments have historically made going around roadless areas more practical than going through them; and they have limited economic development opportunities. For these reasons, opportunities to construct and the desire to construct linear facilities through roadless areas are expected to be limited. The majority of LCZ use in roadless areas is expected to come from the desire to move resources from inside roadless areas out of roadless areas, such as water, oil and gas. Although limited LCZ use is expected, it is a State-specific concern because the 2001 Roadless Rule does not restrict them and the potential for adverse impacts to roadless characteristics.

The final rule limits the potential impacts by prohibiting the use of LCZs across the 1,219,200 acres designated as upper tier except for reserved and outstanding rights; provided by statute or treaty; or water conveyance structures operated pursuant to a pre-existing water court decree.

The final rule further limits the potential impacts of LCZs by encouraging co-locating linear facilities within CRAs. Co-locating linear facilities would increase the width of the right-of-way, as power lines, pipelines or other linear facilities would parallel but not completely fall within the existing footprint. However, overall impacts would be reduced by concentrating infrastructure and associated human activities. These potential impacts, which would occur at a higher level under the 2001 Roadless Rule, include displacement of wildlife species sensitive to noise and human disturbance; soil compaction and erosion; fragmentation of aquatic and terrestrial habitats; and most notably an increased risk of the spread of invasive species. Many non-native plants establish themselves preferentially along disturbed habitats, which can lead to loss of native plants, loss of quality forage, and lowered reproductive success of native plants and wildlife. Expanding the width of existing right-of-ways would further amplify the magnitude and duration of these effects on roadless area values including fish, wildlife, and rare plants.

The increasingly high level of development that exists outside of roadless and wilderness areas accentuates the function of roadless areas as refugia for aquatic and terrestrial animal species. Refugia provide source populations that are not subject to high levels of angling or hunting pressure or frequent human disturbances, and can repopulate adjacent landscapes. This is why the final rule emphasizes placement of LCZs outside of roadless areas when at all possible. If additional LCZs need to be used in roadless areas, then the emphasis will be on co-locating or widening of existing right-of-ways.

Other Considerations. Roadless areas provide for unaltered and high quality fish and wildlife habitat. Based on a U.S. Fish and Wildlife National Survey (2006 National Survey of Fishing Hunting, and Wildlife-Associated Recreation), it is estimated that hunters and anglers spent about 8,750,000 days hunting and fishing in Colorado expending approximately \$1,584,779 million annually; and 1,819,000 people spend about 9,404,000 days watching wildlife expending approximately \$1.4

billion annually. Based on the 2006 National Survey, Colorado residents and nonresidents spent about \$3.0 billion in 2006 on wildlife recreation within the State. The final rule provides for conservation of native cutthroat trout through a requirement to ensure the native cutthroat trout habitat is not diminished over the long-term and the implementation of water conservation practices. In addition to the final rule protections, native cutthroat trout in Colorado are protected through the Endangered Species Act and/or the National Forest Management Act implementing regulations. Greenback cutthroat trout are listed as Threatened under the Endangered Species Act, and Colorado and Rio Grande cutthroat trout are listed as Sensitive on the Regional Forester's Sensitive Species list. These listings provide a high level of protection for native cutthroat trout in Colorado and provide for special management emphasis. The final rule ensures conservation of roadless area characteristics over the majority of the 4.2 million acres of CRAs, which will provide for wildlife dependent on large tracts of undisturbed land.

Based on a 2009 report by the Colorado Off-Highway Vehicle Coalition, it is estimated that 210,000 Colorado residents and nonresidents participated in the 2006–2007 season's off-highway vehicle recreation in Colorado, expending approximately \$784 million. The final rule does not prohibit use of existing authorized motorized trails nor does it prohibit the future development of motorized trails in CRAs (see 36 CFR 294.46(f)). The final rule allows continued motorized trail use of CRAs if determined appropriate through local travel management planning.

Alternatives Considered. Alternative 1, the 2001 Roadless Rule and No Action Alternative, was not selected as the final rule because it does not provide for Colorado specific concerns. The 2001 Roadless Rule limits economic opportunities important to the people of Colorado, such as coal development and ski area expansion. The 2001 Roadless Rule also poses a greater risk to communities adjacent to CRAs than the final rule by limiting fuel treatments designed to reduce wildfire intensities; and potentially impacting the efficient management of water needed to ensure an adequate future supply to the State in light of growing demands and increasing fluctuations in precipitation patterns.

Alternative 3, provisions of the Forest Plans, was not selected as the final rule because it does not provide for roadless area conservation to the degree that

Alternative 2 does. Although Alternative 3 does provide greater flexibility to provide for Colorado specific concerns, such as community protection and economic development, Alternative 2 balances Colorado specific concerns with roadless conservation, which is also important to the State. As stated in the purpose and need, roadless areas provide for sources of drinking water, important fish and wildlife habitat, semi-primitive and primitive recreation opportunities, and natural appearing landscapes as well as other attributes. It is important to balance the conservation of these roadless characteristics, while providing for the State-specific concerns, which Alternative 2 does.

Alternative 4 was not selected as the final rule because the amount of upper tier acres and location of those acres limit the ability of the Forest Service to accomplish its management objectives. Approximately 121,600 acres of Alternative 4 upper tier acres are within 0.5 mile of an at-risk community. This upper tier designation would prohibit fuels treatment within the CPZ, which would increase risk to public health and safety. In addition, some of the upper tier acres designated in Alternative 4 are located in areas with existing oil and gas leases, and should those existing leases be developed the designation of these acres as upper tier would be inconsistent with the purpose and desired condition of upper tier designations.

Public Involvement

The Forest Service and the State of Colorado have solicited public involvement and comments on the development of a Colorado Roadless Rule. Between the Forest Service and State efforts, there have been five formal public involvement processes, which have resulted in approximately 312,000 public comments. Public involvement efforts of the Forest Service and the State of Colorado included:

- Senate Bill 05–243, signed into Colorado law on June 8, 2005, created and identified a 13-member bipartisan task force. The task force held nine public meetings throughout the State, held six deliberative meetings that were open to the public, and reviewed and considered over 40,000 public comments.

- On December 27, 2007, the Forest Service published a notice of intent in the **Federal Register** to prepare an EIS on roadless area conservation on NFS lands in Colorado (72 FR 72982). The Forest Service also solicited comments from interested parties on the notice of intent from December 27, 2007 through

February 25, 2008. Approximately 88,000 comments were received.

- On July 25, 2008, the Forest Service published a proposed rule to establish State-specific management direction for conserving roadless areas in Colorado (73 FR 43544). A notice of availability for the DEIS was published in the **Federal Register** (73 FR 44991). The availability of the regulatory risk assessment for the proposed rule was published on September 18, 2008 (73 FR 54125). Nine public meetings were held around the State of Colorado and in Washington, DC during the comment period. All comment periods closed on October 23, 2008. In total, approximately 106,000 comments were received.

- The State of Colorado held a comment period from August 3 to October 3, 2009 on a State-modified version of the Colorado Roadless Rule. Approximately 22,000 comments were received.

- On April 15, 2011, the Forest Service published a revised proposed rule (76 FR 21272). A notice of availability for the RDEIS was published in the **Federal Register** (76 FR 24021) on April 29, 2011. Nine public meetings were held around the State of Colorado and in Washington, DC during the comment period. Comment periods closed on July 14, 2011. Approximately 56,000 comments were received.

In addition to the five formal comment periods, the Forest Service and Colorado participated in Roadless Area Conservation National Advisory Committee (RACNAC) meetings that were open to the public in Washington, DC in June of 2007 and January, July and November of 2008. Also, a RACNAC meeting was held in Salt Lake City, Utah in October of 2008. Public comments were accepted at these meetings, which helped the RACNAC develop its December 5, 2008 recommendations to the Secretary of Agriculture.

On May 4, 2012, the notice of availability for the final EIS (FEIS) was published in the **Federal Register** (77 FR 26548). Although the Forest Service did not formally solicit comments, 181 comments were received.

Tribal Involvement

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 and in good faith.

A vital part of the State of Colorado's public process in developing its petition was receiving the recommendations and comments 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 Indian Tribes (consisting originally of the Weeminuche, Capote, Tabeguache, and Mouaches Bands) under the Brunot Agreement of 1874 have reserved hunting rights on certain lands 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 claim inherent aboriginal rights within the State.

The Forest Service has consulted with Colorado-affiliated Tribes regarding this rulemaking action and analysis process. Information on the proposed Colorado Roadless Rule was provided to the Ute Mountain Ute and Southern Ute Indian Tribes 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 the final rule changes hunting 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 25 Tribes 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 of these Tribes and each was contacted by phone to determine their level of 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 each Tribe outlining the key points of this revised proposed rule, and the Forest Service met with those Tribes requesting further consultation.

In October 2010, the Forest Service met with Tribal members of the Ute Mountain Ute and Southern Ute tribes to obtain information. In April 2011, the Proposed Rule was sent to 25 Tribes

based on their current proximity to Colorado and their current and historic use of lands within Colorado to determine their interest in meeting or obtaining information. Follow-up phone calls were made to each of the 25 Tribes. Additional information was sent to Tribes as requested. The Tribes did not request additional government-to-government involvement, and no formal comments from any of the Tribes were received.

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," the Department has assessed the impact of this rule on Indian Tribal Governments and has determined that the proposed rule does not significantly or uniquely affect Indian Tribes. The final rule establishes direction governing the management and protection of CRAs. However, the final rule respects prior existing rights, and it addresses discretionary Forest Service management decisions involving road construction, tree cutting, and some mineral activities. The Department has also determined that the final rule does not impose substantial direct compliance costs on Indian Tribal Governments. The final rule does not mandate tribal participation in roadless management or the planning of activities in CRAs. 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.

Alternatives Considered

The Forest Service analyzed four alternatives for managing roadless areas in the FEIS. Alternative 1 the No Action Alternative and the 2001 Roadless Rule, continues the use of the 2001 Roadless Rule prohibitions, exceptions and mapping. Alternative 2, selected as the final rule, examines a two tier approach for prohibitions and exceptions designed to protect CRAs. Alternative 3, provisions of Forest Plans, examines reliance on forest plan direction without the 2001 Roadless Rule, to manage roadless areas. Alternative 3 would consist of a Colorado Rule that exempts the State from the 2001 Roadless Rule. Alternative 4 uses the same parameters for management described in Alternative 2 but includes approximately 2.6 million acres in the upper tier. The only difference between Alternative 2 and 4 is the location and amount of upper tier acres. The FEIS may be found at <http://www.fs.usda.gov/goto/coroadlessrule>.

Environmentally Preferable Alternative

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

All the alternatives presented in the FEIS meet the national environmental policy, as described in Section 101 of NEPA, to varying degrees. All the alternatives provide for safe, healthful, productive and aesthetically and culturally pleasing surroundings, now and into the future, by conserving and managing roadless area characteristics to a varying degree. However, of the four alternatives, Alternative 2 is the environmentally preferable alternative because it best promotes the national environmental policy. Alternative 2 is the environmentally preferable alternative because it attains the widest range of beneficial uses of the environment and achieves a balance between population and resource use while conserving roadless area characteristics. While Alternative 4 would cause the least amount of direct impact to the environment of all the alternatives, Alternative 4 limits activities, such as fuel treatments, that could protect the environment from wildfire. Under Alternative 4, hazardous fuels activities around at-risk communities that would reduce the severity of a wildfire and reduce impacts to watersheds would be limited due to upper tier designations. The higher amount of tree cutting projected for Alternative 2 is a result of hazardous fuel treatments around at-risk communities and is thus limited across the CRAs mainly to the 250,000 acres within the 0.5 mile CPZ. Alternative 4 does not provide as good of a balance between population and resource use, part of the national environmental policy. Alternative 2 provides for community protection and activities that are important to the economic well-being of the citizens of Colorado. Although Alternative 2 has a higher amount of road construction projected, this is mainly a result of allowing temporary roads within the North Fork

coal mining area and within the CPZ. Thus this impact is limited in scope to the 19,100 acres of the North Fork coal mining area and the 250,000 acres within the 0.5 mile CPZ. This limited impact is offset by the 1,219,200 acres designated as upper tier, which would have less activities (tree cutting and road construction/reconstruction) occurring within them than what would occur under the 2001 Roadless Rule (Alternative 1, the No Action Alternative) or the forest plans (Alternative 3). The "Decision Rationale" section describes how the rule provides for these activities as well as why they are important to Colorado. Alternatives 1 and 4 do not provide for these benefits to the degree that Alternative 2 does.

Roadless Area Inventories

The final rule includes an updated inventory of roadless areas. The 2007 State Petition proposed starting with the inventories used in the 2001 Roadless Rule and updating them as necessary. In some cases, these inventories were conducted in the late 1970's and used mapping technologies that are now outdated. In addition, roads had been constructed in some areas between the time of the original inventories and their use in the 2001 Roadless Rule. The Forest Service has reviewed and updated the old inventories for use in this rulemaking by making technical corrections, removing private property, and making other boundary adjustments, including additions and deletions due to land exchanges. All congressionally-designated areas that overlapped roadless 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. Based on public comment received and work with the Colorado Division of Parks and Wildlife field staff, corrections were made to the inventories used for the 2008 Proposed Rule. Additional administrative corrections were made between the 2011 Proposed Rule and the final rule. Further information on the boundary changes and a description of the uniqueness of each CRA can be found at <http://www.fs.usda.gov/goto/coroadlessrule>.

Colorado Roadless Area boundaries have been adjusted where they overlap with ski areas that have special use authorizations (6,600 acres) or land use management plan allocations for ski areas that allow for possible future expansion of the permitted area (1,700 acres). Table 1 displays a comparison of

2001 Inventoried Roadless Area (IRA)
acres and final CRA acres.

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

	2001 Rule total IRA acres with forest plan vintage	IRA acres in Colorado database	IRA acres not included within CRAs	Roadless acres added to CRAs	Total roadless acres to be managed under Colorado rule	Net change between 2001 IRA and CRA acres
Arapaho-Roosevelt	391,000 (1997)	352,500	10,800	5,400	347,100	(5,400)
GMUG	1,127,000 (1979)	1,058,300	281,500	124,200	901,100	(157,200)
Manti La Sal	11,000 (1979)	11,000	3,800	500	7,700	(3,300)
Pike San Isabel	688,000 (1979)	667,300	62,900	170,300	774,700	107,400
Rio Grande	530,000 (1996)	529,000	14,200	3,800	518,600	(10,400)
Routt	442,000 (1998)	442,300	10,400	1,700	433,600	(8,800)
San Juan	604,000 (1979)	543,600	76,500	98,900	566,100	22,500
White River	640,000 (2002)	639,500	7,400	4,700	636,700	(2,800)
Total, State of Colorado	4,433,000	4,243,600	467,400	409,500	4,185,600	(58,000)

Column 2 acres rounded to nearest 1,000 acres; others rounded to nearest 100 acres. Acres do not add due to rounding.

Comments on the Proposed Rule and Changes Made in Response

Approximately 56,000 comments were received in response to the proposed rule and RDEIS. The Forest Service considered all substantive comments as part of the rulemaking. The following is a section-by-section description of changes to the final rule as compared to the proposed rule, comments received regarding that section, and the Agency response. A detailed analysis and response to public comment is contained in Appendix H of the FEIS.

§ 294.40 Purpose. No substantive changes were made to this section. Only a minor edit was made to utilize the full name of “Colorado Roadless Areas” rather than CRA because it is the first time this term is used in the rule text.

Comments on the purpose of the rule: Some respondents asked for clarification regarding the intent of the Colorado Roadless Rule.

Response: The intent of the final rule is contained in the FEIS Purpose and Need for Action section in Chapter 1 and in the Purpose and Need section of this preamble. Section 294.40 of the rule states the purpose of the rule is to provide “State-specific direction for protection of roadless areas in Colorado.” It also states that the intent is to “protect roadless area characteristics * * * within CRAs.”

§ 294.41 Definitions. Four changes were made to the definitions section based on comments received and/or concerns identified by the Forest Service.

(1) The definition of an LCZ was modified to clarify the difference between it and a temporary road. The term “maintain” was added to the

definition of an LCZ to clarify that LCZs could be used to maintain a linear facility as well as install one.

(2) The definition of linear facilities was expanded to include dams.

(3) A definition of a permanent road was added.

(4) The definition of pre-existing water court decree was changed to include decreed water rights that were filed by the promulgation date of the final rule. In addition, the definition was changed to clarify that moving a head gate within a roadless area would not change the status of a pre-existing water court decree.

(5) The definition of Watershed Conservation Practices (WCPs) was added to clarify that all project-level activities within cutthroat trout habitat would apply WCPs.

Comments on the definition of at-risk community: Respondents asked for clarification of the definition of at-risk community.

Response: The final rule utilizes the definition of an at-risk community from the Healthy Forests Restoration Act (HFRA). HFRA defines the term as a community listed in the notice entitled “Wildland Urban Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire” (66 FR 751) or as a group of homes and other structures with basic infrastructure and services, such as utilities, and collectively maintained transportation routes, within or adjacent to Federal land in which conditions are conducive to a large-scale wildland fire disturbance event and for which a significant threat to human life or property exists as a result of a wildland fire disturbance event.

Comments on the definition of temporary road: Some respondents requested further discussion and reconsideration of the definition for temporary road, given that temporary roads can impact soil and water resources.

Response: A temporary road is defined as a road necessary for emergency operations or authorized by contract, permit, lease, or other written authorization. A temporary road is not considered a forest road and does not become part of the transportation atlas. Although a temporary road is decommissioned at the end of its authorized use, temporary roads can be in operation for a few years to a decade or more. Temporary roads are not open to public travel. Any temporary roads would be subject to existing forest plan standards and guidelines that protect ecosystem conditions, including water quality. An appendix is included in the FEIS that describes the planning, design, approval, administration, construction, operation, maintenance and decommissioning of temporary roads as they would be applied in CRAs.

§ 294.42 Prohibitions on tree cutting, sale, or removal. No substantive changes were made to this section.

Comments on tree cutting near communities and consultation with the Colorado Division Parks and Wildlife. Some respondents would like to see the Colorado Division of Parks and Wildlife consulted on tree cutting for fuels reduction treatments and ecosystem restoration projections.

Response. The rule offers cooperating agency status to the State of Colorado, which would include the Division of Parks of Wildlife, on all proposed projects and planning activities

occurring on CRAs (§ 294.45(b)). Tree cutting for community protection beyond the first 0.5 mile of the CPZ must be consistent with a Community Wildfire Protection Plan, which is generally developed with assistance of State agencies.

Comments on tree cutting in upper tier. Many respondents indicated concern over the ability to treat upper tier acres to manage for a multitude of environmental conditions. Some respondents indicated that the rule should include a tree cutting exception in upper tier acres to treat hazardous fuel loads, in areas that supply municipal water systems, to allow wildlife habitat improvements, watershed health, to treat for insects and diseases, acres that are adjacent to ski areas, and for fire suppression, emergencies, and public safety. Other respondents indicated that no tree cutting should occur in upper tier areas.

Response: The rule strikes a balance between the need for tree cutting to protect at-risk communities and municipal water supply systems, habitat improvement projects, and ecosystem restoration, and the need to protect roadless area characteristics. Tree cutting for hazardous fuels treatment in upper tier is prohibited; however, the majority of the existing CPZs excluded upper tier acres in the final rule. The Colorado Roadless Rule provides for the State-specific concern of reducing the risk of wildfire to communities, despite the inclusion of 6,100 acres of the 0.5 mile CPZ in upper tier. This composes only about 2% of all the 0.5 mile CPZ, which is minimal, and it is likely that many of these acres would never be treated regardless of whether it is designated upper tier or non-upper tier. We note that although upper tier designation reduces the flexibility for fuel treatment on these particular 6,100 acres due to the limited exceptions, there are about 247,800 acres in the non-upper tier that are located within 0.5 miles of an at-risk community that will have increased flexibility compared to the 2001 Roadless Rule to cut trees and construct roads in order to minimize the risk of fire.

In addition fuel reduction, as well as other objectives, such as watershed protection and insect/disease treatments, can be accomplished through the use of prescribed fire, limbing to reduce ladder fuels, and piling and burning. Fire line construction would be allowed in conjunction with prescribed burning, including incidental tree cutting to ensure effective fire lines. Tree cutting for wildlife habitat improvements in upper tier is prohibited; however,

prescribed fire could be used for terrestrial wildlife habitat improvement. Tree cutting around ski areas is addressed by removal of existing ski area permit boundaries and forest plan allocated ski areas from CRAs.

The only tree cutting allowed in upper tier is incidental to the implementation of a management activity not otherwise prohibited or for personal or administrative use. The responsible official determines if an activity is consistent with a tree cutting exception in upper tier. Examples of activities not otherwise prohibited include but are not limited to trail construction and maintenance; hazard tree removal along trails; fire line construction for wildland fire suppression or prescribed fire; survey and maintenance of property boundaries; maintenance of linear facilities such as existing electrical power lines, water conveyance structures with a pre-existing water court decree, and pipelines; use of LCZs associated with water conveyance structures; or road construction and reconstruction where allowed by the final rule. Tree cutting is allowed for imminent, direct risks to public safety and other emergency situations. Personal use includes activities such as Christmas tree and firewood cutting. Administrative use includes providing materials for activities such as construction of footbridges or fences.

Comments on tree cutting in roadless areas to treat hazardous fuels. Many respondents indicated a need to cut trees for hazardous fuel management around communities and to protect infrastructure such as transmission lines and water conveyance facilities.

Response: The rule recognizes the need for tree cutting to reduce the risk of wildfire to at-risk communities. It allows tree cutting in non-upper tier within 0.5 miles from the boundary of an at-risk community, or up to 1.5 miles if certain conditions exist and the area is within a Community Wildfire Protection Plan (CWPP). A temporary road may be constructed to facilitate hazardous fuel reduction within 0.5 miles of the boundary of an at-risk community. Tree cutting for protection of linear facilities such as transmission lines and water conveyance facilities is considered to be maintenance of those facilities, which is allowed under the final rule.

In addition, tree cutting is allowed in non-upper tier acres if a significant risk exists to the municipal water supply system or the maintenance of that system. The final rule 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 could present a high risk or threat to a municipal water supply system. Examples of determining the risk to municipal water supply systems include the watershed assessments completed by the Front Range Watershed Wildfire Protection Group. These assessments were based on methods used by the Pinchot Institute for Conservation and considered wildfire hazard, flooding, debris flow risk, soil erodibility, and water uses to identify zones of concerns.

§ 294.43 Prohibition on road construction and reconstruction. An exception in upper tier CRAs to allow for road construction to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event was added. In addition, the word “imminent” was added to this exception as it is applied to non-upper tier CRAs. The timeframe for the term imminent is situational dependent and could vary from hours to years. For example, for a flood or fire, imminent is likely hours but for dam failures, this could mean years. This exception does not constitute permission to engage in routine forest health activities, such as temporary road construction for thinning to reduce mortality due to insect and disease infestation. In addition, the responsible official must ensure conditions outlined in section 294.43, paragraph (b)(3) are met, which will ensure road construction is minimized and permanent roads are rare. Examples of appropriate uses of this exception include but are not limited to: A circumstance in which a road is needed to repair a dam that without intervention would fail and cause the loss of life or property; burned area emergency rehabilitation activities to protect municipal water supply systems; or activities to prevent or mitigate rock fall or a rock slide above a highway that without intervention could result in the loss of life or property.

The phrase “subject to the legal rights identified in 36 CFR 294.43(b)(1)” was added to the provision outlining items the responsible official must determine to utilize one of the two road exceptions for upper tier. This change in paragraph (b)(3) was to make the language consistent with paragraph (c)(2) and to clarify that the determinations made by the responsible official are subject to the legal rights pursuant to reserved or outstanding rights or as provided by statute or treaty in upper tier as well as non-upper tier.

The phrase “technically feasible” has been changed to “feasible” in

paragraphs (b)(3)(i) and (c)(2)(i). This change was made to clarify that the determination of what is feasible includes more factors than just technical issues.

The condition that road construction must be consistent with applicable land management plan direction was added to (b)(3) to make it consistent with paragraph (c)(2) and to clarify that roads must be consistent with forest plan direction in upper tier as well as non-upper tier.

The phrase “extent of the occupied” was added to the provisions regarding whether road construction will diminish, over the long-term, conditions in the water influence zone and in occupied native cutthroat trout habitat (paragraph (b)(3)(iv) and paragraph (c)(2)(iv)). This term was added because almost all perennial streams in CRAs are historic native cutthroat trout habitat and the intent of this provision is not to have it applied to all streams, rather only those with native cutthroat trout within them.

A provision was added that WCPs will be applied for all activities occurring in occupied cutthroat trout habitat. The WCP provision is to highlight that while some activities may appear disruptive to trout habitat and resources in the short-term, over the long-term, WCP techniques and methods are used to ensure that impact to trout habitat is minimized to only what is necessary, and that over time the overall trout habitat is restored and improved. Any project, including trout habitat restoration activities, may have short-term disturbances to roadless area characteristics. The rule includes flexibility to allow such projects to go forward, with WCPs applied, in order to improve or maintain roadless area characteristics and fish habitat conditions over the long-term.

The term authorized use in paragraph (c)(1)(ii) was clarified to include uses authorized under permit, easement or other legal instrument.

The phrase “with the use of the road limited to the water right identified in the pre-existing water court decree” was added to paragraph (c)(1)(iv) to clarify that a road constructed under this exception cannot be used for other uses. In addition, it was clarified that the Regional Forester would determine the need for a temporary road under this provision.

Road decommissioning was added to the title of paragraph (d) and reconstruction was added to the title of paragraph (d)(1) for clarification. In addition, paragraph (d)(2) was modified to clarify that road decommissioning would occur upon termination of the

authorizing instrument if possible. Examples of activities related to road decommissioning was added to paragraph (d)(2) to clarify the concept of road decommissioning.

Three other edits were made for clarification.

(1) In paragraph (c)(1)(ix) the word “or” was added between coal exploration and coal related surface activities to allow for only one purpose for road construction and not both purposes.

(2) In paragraph (d)(4)(ii) the words “an authorization issued under” were removed because they were not necessary.

(3) In paragraph (d)(1) the words “to the extent practicable” were removed because they were not necessary.

Comments on road construction and reconstruction. Many respondents expressed concerns regarding access in upper tier areas for the operation, maintenance or development of water supply systems, for access to private properties, for mining and recreation and for grazing permit holders. Some respondents wanted additional exceptions and others wanted to eliminate exceptions for road construction altogether.

Response: The rule strikes a balance between the need for roads for community protection, existing rights, economic interests, and the need to protect roadless area characteristics. Currently, there are no forest roads within CRAs, and it is the intent of the rule to limit road construction. Any road constructed under any of the exceptions in the rule will not provide public access, whether these roads are within upper tier portions of CRAs or not. The rule prohibits road construction in upper tier acres for the development of a future water supply structures but allows for development using a LCZ. In addition, areas with high potential for future water development projects were excluded from the areas designated as upper tier, reducing the potential limitations on future water supply projects.

The rule provides for roads needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty. “Reserved or outstanding rights” is a legal term of art that deals with a class of real property rights conveyed through sale or exchange. “Reserved rights” are property interests held back when land is conveyed between parties, such as split estate surface/subsurface conveyances. “Outstanding rights” are third party rights in real property retained when the property is transferred or acquired. The “reserved or outstanding right” exception is

intended to apply only when the agency lacks the authority or discretion to prohibit roads because the roads were reserved or outstanding prior to federal acquisition of the property. This reserved and outstanding exception would not provide the legal basis to access State created water rights as the State grant of a water right is not a reserved or outstanding right. Instead, access to State water rights on federal lands would occur in accordance with federal statutes, such as the Federal Land Policy and Management Act.

The rule provides for an exception for road construction to accommodate public health and safety concerns, which would include necessary reconstruction or maintenance of water conveyance structures in cases of emergency situations that threaten life or property. In addition, the rule allows motorized and non-motorized access into CRAs and does not affect reasonable exercise of reserved, outstanding, statutory, or treaty rights for access, occupancy and use of NFS lands within CRAs when the Agency lacks legal discretion to forbid such activities, for example exploration and mining of locatable minerals under the 1872 Mining Law.

Comments were received indicating the need for an exception in all roadless acres to allow for post-fire recovery efforts. Burned area emergency rehabilitation activities to protect roads, private property or municipal water supply systems would be an appropriate use under the public health and safety exception. An example of this could be the need for a temporary road to construct sediment traps and check dams to control debris flows that could block culverts or jam bridges or damage reservoir capacity after a fire.

One comment pointed out an inconsistency in the construct of the regulatory language between paragraph (b)(2) and paragraph (c)(2) of the proposed rule (paragraph (b)(2) is now (b)(3) in the final rule), expressing concern that it could be construed as an attempt to preclude roads for activities under the 1872 Mining Law in upper tier acres. In response, the final rule adds language to current paragraph (b)(3) to make it consistent with the wording of paragraph (c)(2) and reflects that the determinations to be made by the responsible official under both paragraphs are subject to the legal rights pursuant to reserved or outstanding rights, or as provided for by statute or treaty. The final rule also modified the language in paragraph (c)(2) to clarify its reference to the legal rights provided for in paragraph (c)(1) and that determinations are made by the

responsible official. These changes underscore that the right of reasonable access to locatable mineral exploration and development is not affected by the final rule or any of the alternatives analyzed in the FEIS, regardless of roadless designation as upper tier acres or non-upper tier acres.

Comments on line officer authority for use of road construction exceptions. Some respondents indicated that there should be limitations to the discretionary authority granted to line officers (responsible officials) especially concerning road construction and reconstruction in upper tier acres.

Response: The final rule limits the responsible official discretion by providing a narrow range of activities that are permitted in CRAs and several determinations must be made for road construction or reconstruction to be allowed. In addition, the Forest Service has very limited discretion for the two exceptions for road construction or reconstruction in upper tier. The exception for reserved or outstanding rights or as provided by statute or treaty means the Forest Service has limited authority to deny access. Examples of this include Revised Statute 2477 rights; access to inholdings under the Alaska National Interest Lands Conservation Act (ANILCA); access to locatable minerals under the General Mining Law of 1872; response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Federal Aid Highway project authorized pursuant to Title 23 of the United States Code; or Federal Railroad project authorized pursuant to Title 49 of the United States Code.

The other exception for road construction or reconstruction in upper tier is for roads needed to protect public health and safety in cases of an imminent threat of flood, fire or other catastrophic event that without intervention would cause the loss of life or property. This exception is anticipated to be applied infrequently because threats to life or property are relatively infrequent. Limiting the discretion of a responsible official for these types of cases could result in greater loss of life or property.

Many of the exceptions would require a Regional Forester's determination on whether a proposed activity is consistent with the final rule. Activities allowed under the final rule which were not allowed under the 2001 Rule and the use of LCZs would require a Regional Forester determination. This higher level of review will provide for greater consistency on the implementation of the rule.

Comment on constructing roads for coal mining. Some respondents specifically commented that there should be no exception for road construction for coal mining.

Response. The final rule includes an exception to the prohibitions on road construction associated with coal mining only in the North Fork coal mining area. Coal mining is a valuable economic consideration to the State of Colorado and to many communities around the North Fork coal mining area. Roads are necessary for exploration and other coal related activities. Some of the areas within the North Fork coal mining area are under lease and others are not. Coal-related roads are used only by the coal operator and agency personnel, and are not open to the general public.

Experience in the West Elk IRA on the Grand Mesa, Uncompahgre, Gunnison National Forests shows that decommissioning roads by obliteration, along with land reclamation, effectively restores these underground mined areas.

Comment on road decommissioning. Some respondents requested that the rule provide more direction for road decommissioning.

Response. The final rule provides the broad programmatic requirement of road decommissioning in paragraph (d)(2). Providing specific requirements of road decommissioning in a programmatic regulation is problematic due to the high variability of ground conditions and road situations that could be encountered across 4.2 million acres. Defining road decommissioning restrictions at the programmatic level limits the flexibility needed to address specific and possibly unique purposes for temporary roads in a variety of landscapes. This type of direction is generally best provided as Forest Service handbook direction, guidance, or in a site-specific decision in which each unique situation can be assessed.

The FEIS includes Appendix F, page F-5 specifically, which outlines temporary road decommissioning requirements based on Forest Service manual and handbook. This section of the appendix describes direction for road decommissioning that would apply to temporary roads in CRAs.

§ 294.44 Prohibition on linear construction zones. This section was reorganized into an upper tier section, paragraph (b), and non-upper tier section, paragraph (c), to accommodate limiting the use of linear construction zones in upper tier. Under the final rule, LCZs are limited in upper tier to just two circumstances: (1) Reserved or outstanding rights, or as provided by statute or treaty; and (2) for water

conveyance structures pursuant to a pre-existing water court decree.

Paragraph (b) was changed from "the Regional Forester may authorize a linear construction zone" to "the Regional Forester determines a linear construction zone is needed". This change was made to parallel other Regional Forester determination language in the final rule and to clarify that this determination is not a formal decision under the National Environmental Policy Act (NEPA).

The phrase "technically feasible" has been changed to "feasible" in paragraph (d)(1). This change was made to clarify that the determination of what is feasible includes more factors than just technical issues.

The phrase "extent of the occupied" was added to the provision regarding whether LCZs will diminish, over the long-term, conditions in the water influence zone and in occupied native cutthroat trout habitat. This word was added for the same reasons described in the parallel language for road construction and reconstruction in § 294.43.

Provisions were added including LCZs would be no wider than its intended use; reclamation of LCZs will not diminish roadless area characteristics; and WCPs will be applied for all activities occurring in occupied cutthroat trout habitat. The WCP provision parallels the road provision and has been added for the same reasons, to minimize short-term impact with the long-term objective of restoring or improving native cutthroat trout habitat.

The phrase "while conserving roadless area characteristics over the long-term" was added to paragraph (e) to clarify that decommissioning of LCZs needs to be conducted in a manner that minimizes impacts to roadless area characteristics over the long-term.

Comment on linear construction zones. Some respondents indicated that LCZs should be prohibited in upper tier and others indicated that no LCZs should be allowed under the rule. Others offered various suggested limitations or exceptions for the use of LCZs for a variety of management activities. Some respondents were concerned about the rule's affect to maintenance, development and expansion of reservoirs and oil and gas development.

Response. Linear construction zones were not prohibited under the 2001 Roadless Rule. One of the State-specific concerns is to restrict the use of LCZs, while permitting access to current and future electrical power lines and meeting the other State-specific

concerns. Linear construction zones are prohibited under the Colorado Roadless Rule with specific exceptions if a responsible official determines that the LCZ meets certain conditions.

The rule accommodates the development and expansion of reservoirs by the use of road construction (in non-upper tier acreage) or LCZs (in all CRA acreage) where the water right has been filed with the State prior to July 3, 2012. Future known reservoir locations are not within upper tier acreage, acknowledging the fact that for the most part, a road will not need to be constructed in upper tier for development of a reservoir.

The rule provides that the Regional Forester may authorize an LCZ for construction, reconstruction, and maintenance of existing or future authorized electrical power and communication lines within non-upper tier acres if there is no opportunity for the project to be implemented outside the CRA without causing substantially greater environmental damage. In doing this the Forest Service and the State of Colorado seek a balance between protecting roadless area characteristics and accommodating State-specific concerns. LCZs for electric power and communication lines are not allowed within upper tier acres.

The rule prohibits oil and gas pipelines within CRAs, except on oil and gas leases within CRAs where surface use is allowed and for leases outside of CRAs that need to connect to infrastructure within a CRA. Surface use would not be allowed on any new leases issued in upper tier acres, so pipelines would not be allowed. Pipelines would be allowed for new leases in non-upper tier acres where the forest plan allows surface occupancy. However, it is anticipated that there would be few new leases actually issued in non-upper tier areas as they would have to be developed by directional drilling from locations outside of CRAs. The limited applicability of the LCZ exception in the rule is a reasonable approach to addressing the issues of preventing the loss of roadless area characteristics and preventing the loss of opportunity to feasibly transport oil and gas resources using pipelines. The LCZ exceptions are allowed because water development is critical to Colorado and many other western states; energy sources need to be connected to the electrical grid, and oil and gas developments need pipelines for product removal. Within upper tier acres, LCZs are only allowed for oil and gas leases existing as of July 3, 2012 that allow surface occupancy.

Some commenters indicated a desire to utilize existing disturbed areas as

much as possible for future linear facilities. Nothing in the final rule would prohibit an LCZ being routed through a previously used LCZ. In addition, the rule encourages utilization of previously disturbed areas as provided in section 294.44, paragraph (e), which requires LCZs to minimize ground disturbance, including the placement within existing right-of-ways where feasible. Also, section 294.46, paragraph (d)(6) encourages co-location of oil and gas linear facilities, consistent with health and safety standards, within areas of existing areas of disturbance. However, industry standards for separation of utilities or other factors could reduce the ability to do so.

Comments on Regional Forester determinations for LCZ: Some respondents indicated that the Regional Forester should not have determinations for LCZ decisions.

Response. The final rule includes Regional Forester determination for LCZs to ensure a level of consistency. This is of particular importance with LCZs because of the potential overlap of certain aspects of an LCZ and a temporary road. Both are utilized by motorized vehicles to move from one point to another on a temporary basis. However, key differences exist that separate the two, including location selection, design, and use. Generally, the location of a temporary road is defined largely by the desired end points with substantial discretion of road location in between the end points. On the other hand, the location of an LCZ on the landscape is often constrained by the linear facility requirements, which limits the discretion of where an LCZ can be put. For example, it is difficult and often impractical to design a pipeline with a sharp turn. However a temporary road can be designed to go around obstacles and areas of concerns more readily.

Both LCZs and temporary roads need to consider environmental/resource conditions and safety issues during design. However, traffic requirements, level of service, traffic management, user efficiency, stopping distance, and surfacing are rarely considered in the design of an LCZ. Rather construction right-of-way width is a main consideration for LCZ design, which includes the determination of how much surface disturbance is needed to install or maintain the linear facility. Often an LCZ is created at the same time it is being used. For example, a pipeline being constructed across flat ground, an LCZ can be “developed” as the trench is being dug. In this example, no construction is needed to “use” the LCZ. In contrast, temporary roads are

constructed prior to use. Gradients of LCZs, especially for power lines, are often much steeper than would typically be found on a temporary road.

Due to the relatively new concept of LCZs and the potential for confusion with temporary roads, it was deemed important to centralize the determination for use of LCZs in CRAs with the Regional Forester. This would also facilitate identification of any additional guidance needed to ensure resource protection as well as appropriate use of LCZs. Regional Forester determination is a review process designed to be separate from the NEPA process. The Regional Forester is required to review the project but will not be the “responsible official” in the NEPA context.

Comment on linear construction zone decommissioning. Some respondents were concerned that the LCZ decommissioning direction was not addressing roadless area characteristics over the long-term.

Response. The language “while conserving roadless area characteristics over the long-term” was added to (c) to address the need to reclaim the affected landscape but also retain and or improve the roadless area characteristics.

§ 294.45 Environmental documentation. The sentence in paragraph (a) that states “proposals that substantially alter the undeveloped character of a Colorado Roadless Area require an EIS” was changed to “proposed actions that would significantly alter the undeveloped character of a Colorado Roadless Area would require an EIS”. This change was made so the final rule is consistent with the Agency’s environmental policies for EISs as described in FSH 1909.15.21.

The words “subject to this rule that would” were added in paragraph (b) to read: “* * * all proposed projects and planning activities subject to this rule that would be implemented on lands within CRAs* * *”. This change was made because the intent of offering the cooperating agency status to the State is to ensure consistent implementation of the final rule. Many projects, such as trail construction projects or reissuance of a grazing permit, are not subject to the final rule and therefore, may not be appropriate for State involvement.

Comments on “substantially alter” definition: Some respondents requested that the definition of “substantially alter” should be clarified in the context of certain activities.

Response. There no longer is a need to define “substantially alter” in the final rule because the term has been replaced with “significantly alter.” This

change was made so paragraph (a) is consistent with agency policy and regulations on when an EIS is required. The term "significantly" is defined in 40 CFR 1508.27.

§ 294.46 Other activities. A new paragraph was inserted, paragraph (a), to address the concern regarding the modification of a water right. This change was needed to clarify that a water right with a pre-existing water court decree could be modified and still be accommodated by the exceptions in the final rule for water conveyance structures despite having a new filing date.

Sentences were added to paragraph (b) to clarify that the intent of the rule is to maintain the status quo in terms of existing leases, including surface development rights, and limitations on surface developments. The final rule does not validate nor invalidate any existing leases.

A new paragraph was inserted, paragraph (c), to require a no surface occupancy stipulation for oil and gas leases issued within upper tier after the promulgation date of the final rule. This provision was added to provide greater protection for upper tier acres.

In paragraph (d) the phrase "and consistent with lease rights" was added to clarify that the conditions (d)(1) to (d)(8) must be consistent with the existing lease rights to be applied to the surface use plan of operation.

In paragraph (d)(3) the text "to the extent practical" was removed, as it was determined to be not necessary. Also, "topography" was removed and "surface conditions" was replaced with "surface and/or operational conditions" for clarification.

In paragraphs (d)(1), (d)(4), (d)(5) and (d)(6) the qualifying language "to the extent possible" and "to the extent feasible" were removed as not necessary.

Paragraph (d)(8) was changed from "utilize the best available technology" to "consider the best available technology". This change was made because the Forest Service does not have the authority to mandate the use of best available technology, which is a Clean Air Act term used in the context of limiting pollutant discharges.

Comments on water conveyance structures. Comments were received requesting that the rule allow for the construction and maintenance of existing and future water conveyance structures in response to future and pre-existing water rights.

Response. The rule does not confer any right to existing or future use of water or occupancy of NFS lands within the State of Colorado. Such rights must

be acquired in accordance with applicable State and Federal laws. The final rule exempts activities associated with conditional and absolute water rights decreed by the Colorado Water Courts prior to promulgation of the final rule. In addition, the final rule accommodates modification of water rights with a pre-existing water court decree.

Comments requesting no surface occupancy in upper tier: Some respondents requested the rule require no surface occupancy in upper tier acres.

Response. Based on public comments that were received and additional analysis, prohibiting surface occupancy in upper tier acres was added to the preferred alternative in the FEIS and is part of the final rule.

Comments on oil and gas. Many responses were received concerning various aspects of oil and gas development and the rule. Some respondents requested that roadless areas that have high potential for oil and gas development be excluded from roadless area protection or that exceptions for oil and gas be provided to allow for development. Other respondents felt the rule should prohibit oil and gas leasing, or exceptions for roads for leasing, within CRAs. Still other respondents requested that the rule prohibit road construction specifically on leases issued after the 2001 Roadless Rule was promulgated.

Response. Roadless inventory procedures follow Forest Service Handbook 1909.12, Land Management Handbook procedures. Whether or not an area is identified as having high mineral potential is not an inventory criterion and a high potential for mineral occurrence does not always equate to a high potential for mineral development. The purpose of the rule was to provide for the management of roadless areas, not to prohibit oil and gas leasing. Under the rule, existing legal oil and gas leases as of the date of the final rule can continue to operate under their lease stipulations. The 2001 Roadless Rule prohibited road construction to access mineral leases issued after the promulgation of the rule (January 12, 2001). Since 2001, the 2001 Roadless Rule has been subject to legal challenges, and leases have been issued in areas now identified as Colorado Roadless Areas. The Colorado Roadless Rule does not affect the terms or validity of leases existing prior to the promulgation date of the final rule. This rule preserves any surface development rights and limitations on surface development rights existing at the time

of adoption of this rule on all oil and gas leases.

However, in response to public comment, the rule has been modified to include stipulations for no-surface occupancy for new oil and gas leases (leases issued after the promulgation date of the final rule) within the upper tier. Under the rule, leasing could still occur, but occupancy of the surface with roads, wellpads, or other infrastructure within the upper tier is prohibited. In non-upper tier areas, surface occupancy but not road construction would still be allowed for new oil and gas leases.

The final rule does not distinguish whether existing oil and gas leases were issued before or after the original promulgation date of the 2001 Roadless Rule. Forest Service actions concerning leases issued within roadless areas in Colorado since promulgation of the 2001 Roadless Rule were done in compliance with all legal requirements and forest plans/leasing decisions in effect at the time consent was provided to the BLM. Once issued by the BLM, leases grant the exclusive right to drill for, extract, remove, and dispose of all the oil and gas from the lease, subject to terms and stipulations made as part of the lease. For purposes of the FEIS, all existing oil and gas leases within roadless areas, including post-2001 leases, are considered to be "existing authorizations". None of the alternatives in the FEIS restrict or prohibit activities associated with existing authorizations, including the construction of temporary roads and pipelines reasonably necessary to exercise lease rights.

All oil and gas leases issued by the BLM are considered valid regardless of whether they were issued before or after the 2001 Roadless Rule. If an existing lease is found at a later date to be invalid through a court of law, then any rights associated with that particular lease, including surface occupancy rights, would not be provided for by the final rule.

§ 294.47 Modifications and administrative corrections. No substantive comments specifically related to modifications and administrative corrections of the rule were received. However, the Forest Service recognized a need to be able to correct boundaries for upper tier designations. Therefore, paragraph (b) for administrative correction to boundaries was modified to include the ability to correct upper tier boundaries based on clerical errors or improvements in mapping technology.

§ 294.48 Scope and applicability. No changes were made to this section. No substantive comments were specifically related to scope and applicability.

§ 294.49 *List of designated Colorado Roadless Areas.* No substantive comments were received specifically related to the list of designated CRAs. However, a column was added to the list of CRAs to indicate which CRA includes upper tier acres. This change was made to clarify locations of upper tier.

Comments received related to the rule but not to a particular section. Many comments were received related to the rule but not specific to a particular provision or section of the rule. For example, the designation of upper tier acres and the North Fork coal mining area is not specifically addressed in the provisions of the rule but certainly an important outcome of the final rule. The following sections summarize those comments.

Based on public comments, the amount of upper tier acres designated was increased to about 1,219,200 acres. This change was needed to balance the conservation of roadless area characteristics with activities to provide for State-specific concerns. In addition, the North Fork coal mining area was reduced to 19,100 acres based on additional consideration of potential mineable coal.

Comments on the authority of the Secretary to make rules. There were concerns expressed that there is no congressionally approved authority for designation of upper tier acres and that a future Secretary could change the prohibitions and exceptions in the current rule.

Response. The Constitution provides the fundamental basis for control, acquisition, disposition, use and management of all federally owned lands, including NFS lands. Article IV, Section 3, paragraph 2 of the Constitution provides: The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States. Congress has authorized the Secretary of Agriculture to manage NFS lands under conditions described in various acts, including the Organic Administration Act of 1897 and the Multiple-Use Sustained Yield Act of 1960. The Organic Administration Act of 1897 provides the Secretary of Agriculture with the authority to make "rules and regulations" that will provide protection from fire and depredation, regulate occupancy and use, and preserve the forest from destruction. The Secretary of Agriculture has the authority to make rules and regulations such as the Colorado Roadless Rule and future Secretaries will also have the authority to make, or change, such rules.

Comments on multiple uses. Some respondents requested that the rule address recreation and management of recreational areas and areas of multiple uses.

Response. The Agency's mission is to manage multiple uses across NFS lands, including developed and dispersed recreation opportunities. The rule restricts only tree cutting, sale, and removal; road construction and reconstruction; and LCZs (with some exceptions) in CRAs. None of the alternatives affect access or use of existing roads and trails, including motorized travel on roads and trails, nor do they regulate recreational activities such as hunting, fishing, hiking, camping, mountain biking, summer/winter motorized recreation and skiing.

Comments on protection of resources: Comments were received that the Forest Service should increase protection on a variety of resources including, but not limited to: Municipal water supplies, cold water resources, fisheries, big game habitat, wildlife viability, etc.

Response. One of the primary purposes of the Colorado Roadless Rule is the conservation of roadless area characteristics, which includes sources of public drinking water and diversity of plants and animals, as well as other resources. The provisions of the final rule provide for an increased level of conservation of roadless area characteristics while balancing State-specific concerns, when compared to Alternatives 1 or 3.

Comments to modify the rule to expand, reduce, or eliminate upper tier designations. Many comments were received regarding upper tier designation in the rule. Respondents either favor the designation of upper tier acres or oppose the designation of any upper tier areas in the rule. Some respondents indicated that there is a need for more upper tier acres to increase protection for fish and wildlife habitats and Colorado's recreational resources. Some comments suggested substantially increasing the number of acres within the upper tier, while others consider the upper tier "de facto wilderness" and therefore inappropriate. Some comments suggested provisions that would allow for expansion of the upper tier in the future. Respondents in favor of the upper tier often had specific suggestions on CRAs to be included in upper tier. Some respondents suggested removing all upper tier acres from the Colorado Roadless Rule.

Response. Upper tier acres are a subset of the CRAs which have limited exceptions to provide a high-level of conservation. Upper tier acres in the

rule represent areas with the highest-quality roadless area characteristics where there are no known conflicts, or limited conflicts, such as existing oil and gas leases, existing or future coal leases, known water conveyance structures or the high likelihood of future development needs for water development. A common theme heard from the public was to allow tree cutting and minimal road construction to reduce the risk of a high severity wildfire threatening Colorado's at-risk communities within upper tier acres. Therefore, the majority of the upper tier acres were removed from CPZs in the final rule. The designation of upper tier is distributed among all of the forests in the final rule.

The final rule increases the amount of upper tier to about 1,219,200 acres (29% of CRAs) for the final rule, which is about 657,000 acres more than what was proposed action in the RDEIS. The Department, Forest Service and State of Colorado agreed that an increase in the amount of upper tier acres provides a better balance of protection and uses. Substantially more upper tier acres than have been designated for the final rule could hinder the Forest Service's ability to provide for State-specific concerns. Substantially less upper tier acres than have been proposed in the RDEIS would not offset the greater flexibility the final rule provides for the State-specific concerns.

Upper tier acres are not a designation of *de facto* wilderness. Upper tier only restricts tree cutting, road construction and use of LCZs. Upper tier allows for the use of motorized and mechanized equipment, while official wilderness does not. Upper tier allows for motorized recreation, including future development of off-highway vehicle trails; official wilderness prohibits motorized recreation. Upper tier prohibitions can be modified through rulemaking, while wilderness changes require an act of Congress.

Comment. The Forest Service should reconsider upper-tier restrictions, including their overlap with CPZs, to ensure that options are available for fuels and forest health treatments.

Response. In response to public comments, the final rule excludes the majority of upper tier acres from the CPZ. Not all CPZs were excluded from upper tier designation due to topography, forest plan desired conditions, and manageability of an area.

Comments on Curren Creek CRA and the North Fork coal mining area. Many respondents had concerns regarding Curren Creek CRA and the North Fork coal mining area. Some respondents felt

that the rule should exclude Currant Creek from the North Fork coal mining area, while others felt the rule should include Currant Creek in the North Fork coal mining area. Some respondents felt the rule should not reduce the size of the North Fork coal mining area. Some respondents felt the rule should revise road construction provisions related to the North Fork coal mining area.

Response. After consideration of public input and additional analyses, the final rule excludes the Currant Creek CRA from the North Fork coal mining area. Therefore, no roads will be constructed in the Currant Creek CRA related to coal mining activities. The residual North Fork coal mining area includes 19,100 acres where temporary roads can be constructed for coal related activities. The Forest Service consulted with BLM and State agencies, and considered information on the presence and mineability of coal resources in Currant Creek CRA and adjacent areas. The Forest Service also weighed public input and economic factors, information on wildlife resources, and the best available geologic information available from the United States Geological Survey (USGS), Colorado Geological Survey, and BLM when making determinations on the boundaries of the North Fork coal mining area.

Currant Creek CRA was not added to the North Fork coal mining area due to the presence of high priority habitat as identified by the Colorado Division of Parks and Wildlife, the juxtaposition of these habitats to adjacent important habitat, and the need to maintain contiguous areas insulated from roads and fragmentation. In addition, Currant Creek CRA was not added because it is a relatively unique roadless area due to its low elevation and the potential that road development for coal mining activities could displace the two elk herds currently utilizing this area increasing wildlife-human conflicts.

Comments regarding effect to mining interests. Some respondents suggested modifying the roadless area boundaries to exclude the Henderson Mine and other mining interests, because it may prevent their ability to develop future potential sites and respond in the case of emergencies. Additionally, some respondents are concerned that the proposed rule will prohibit mineral extraction, such as quarries to construct roads and highways.

Response. The rule does not prohibit mineral extraction or the development of mineral material sites. Any person prospecting, locating, and developing mineral resources on NFS lands under the 1872 mining law has a statutory right of reasonable access for those

purposes. Roads that are reasonably necessary for an activity conducted under the 1872 mining law are provided for by statute, and therefore exempt from the road construction and reconstruction prohibitions of the rule. With the right of access preserved under the rule, it was not necessary to exclude any unpatented mining claims from designated roadless areas. Road construction and reconstruction are allowed under the rule for emergency situations that threaten human life and property.

Comments regarding modification of the West Needles CRA boundary near Durango Mountain Resort. A commenter requested that the West Needles CRA boundary be modified to exclude activities permitted to the Durango Mountain Resort ski area.

Response. The Forest Service reviewed the activities authorized under the current Durango Mountain Resort ski area permit against the boundary of the West Needles CRA. Authorized activities on the east side of Highway 550 include a proposed sleigh/accessible trail, a nordic ski trail system, and a trailhead. The trailhead and associated parking are outside of the West Needles CRA. Portions of the proposed sleigh/accessible trail and nordic ski trail system are within the West Needles CRA. Construction and maintenance of the proposed sleigh/accessible trail and nordic trail system as authorized by the September 2008 Record of Decision for the Durango Mountain Resorts 2008 Improvement Plan are not prohibited under the Colorado Roadless Rule. Future tree cutting needed to construct or maintain these trails could occur under the exception for tree cutting incidental to the implementation of a management activity not otherwise prohibited. For these reasons, the Forest Service did not see the need to change the boundary of the West Needles CRA.

Regulatory Certifications

Regulatory Planning and Review

The final rule was reviewed under USDA procedures, E.O. 12866 issued September 30, 1993 as amended by E.O. 13497 on Regulatory Planning and Review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These executive orders require that agencies conduct a regulatory analysis for economically significant regulatory actions. Economically significant regulatory actions are those that have an annual effect on the economy of \$100 million or more or adversely affect the economy or economic sectors. Total annual output associated with oil, gas, and coal production in the affected areas is projected to be approximately \$760 million under the final rule, compared to \$694 million under baseline conditions, implying the annual incremental monetized impact of the final rule is an increase of \$65 million per year for total oil, gas, and coal output. The monetized economic impacts for the final rule are therefore estimated to be less than \$100 million per year. However, this rule has been designated a significant regulatory action although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. This final rule is not expected to interfere with an action taken or planned by another agency, or to raise new legal or policy issues. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

The benefits, costs, and distributional effects of four alternatives are analyzed over a 15-year time period. The four alternatives evaluated are referred to as follows: Alternative 1—the 2001 Roadless Rule; Alternative 2—the final Colorado Roadless Rule (final rule); Alternative 3—provisions of Forest Plans; and Alternative 4—a modified version of Alternative 2 with additional upper tier acreage. The baseline condition for regulatory impact analysis is the 2001 Roadless Rule (Alternative 1). The final rule is programmatic in nature and intended to guide future development of proposed actions in CRAs. The final rule is intended to provide greater management flexibility under certain circumstances to address unique and local land management challenges, while continuing to conserve roadless area characteristics. Increased management flexibility is primarily needed to reduce hazardous fuels around at-risk communities, to allow access to coal reserves in the North Fork coal mining area, and to

allow access to future water conveyances.

The final rule does not authorize the implementation of any ground-disturbing activities, but rather it describes circumstances under which several activities may be allowed or restricted in CRAs. Before authorizing land use activities in roadless areas, the Forest Service must complete a more detailed and site-specific environmental analysis pursuant to NEPA and its implementing regulations.

Because the final 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 final 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 final rule does not provide direction on where and when off-highway vehicle 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, 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 at-risk communities from wildfire) overlap CRAs 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 Tables 2 and 3 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 effects of the final rule can be found in the FEIS. Effects on opportunities for small entities under the final rule are discussed in the context of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The results of the regulatory impact assessment for the final rule are summarized in the following tables. Table 2 provides information related to roadless area acreage, road miles, and tree cutting. Table 3 summarizes the potential benefits (i.e., protection of roadless area characteristics and values) and costs (i.e., local resource challenges, agency costs) of Alternatives 1, 2, 3 and 4. Table 4 summarizes distributional effects and economic impacts of the proposed rule and alternatives.

TABLE 2—FRAMEWORK FOR ANALYSIS: COMPARISON OF ROADLESS AREA ACREAGE, ROAD MILES, AND TREE CUTTING

	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final Rule	Alternative 3— forest plans	Alternative 4— proposed rule with public identified upper tier acres ¹
Roadless Area Acreage ²	IRAs = 4,243,600 acres (4.24 million acres).	CRAs = 4,186,000 acres (4.19 million acres). Upper Tier CRAs = 1,219,200 acres.	IRAs = 4,243,600 acres	CRAs = 4,186,000 acres (4.19 million acres). Upper Tier CRAs = 2,614,200 acres.
Roadless Acres in Upper Tier.	Not applicable	1,219,200 acres	Not applicable	2,614,200 acres.
Total Existing Authorized Road Miles in Roadless Areas ³ .	1,235 miles in IRAs	0 miles in CRAs	1,235 miles	0 miles in CRAs.
Road Construction and Re- construction Projected in the Analysis Area.	13.8 miles/year (11 miles in IRAs).	19.7 miles/year (16 in CRAs). 5.9 miles/year more than 2001 Roadless Rule.	25.8 miles/year 12.0 miles/year more than 2001 Roadless Rule.	17.9 miles/year (14 in CRAs). 4.1 miles/year more than 2001 Roadless Rule.
Tree cutting Projected in the Analysis Area.	2,670 acres/year (1,520 acres within IRAs).	7,320 acres/year (5,970 acres within CRAs, ma- jority within CPZs). 4,650 acres/year more than 2001 Roadless Rule.	17,380 acres/year 14,710 acres/year more than 2001 Roadless Rule.	3,140 acres/year (1,790 acres within CRAs). 470 acres/year more than 2001 Roadless Rule.

¹ Alternative 4 is the same as Alternative 2 with the exception that more roadless areas are assigned to the upper tier restrictions.

² The total analysis area is approximately 4.65 million acres and is the same across all four alternatives.

³ Approximately 117 miles of roads are projected to be decommissioned in IRAs and 0 miles decommissioned in CRAs.

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
Local Challenges and Resources: Roadless Area Management				
Fire and Fuels (Hazardous Fuel Reductions).	Tree cutting projected for 890 acres per year in the analysis area to reduce hazardous fuels (30 acres of which are within IRAs substantially altered acres); this amounts to 1% of average annual fuel treatments on all NFS lands in Colorado. Least flexibility to conduct hazardous fuel reduction and reduce fire hazard around at-risk communities and municipal water supply systems.	Tree cutting projected for 5,510 acres per year in the analysis area to reduce fuels (4,900 of which are within CRAs, mostly with the CPZ); this amounts to 9% of annual fuel treatments on all NFS lands in CO and is 4,620 acres more than the 2001 rule and 7,869 acres less than forest plans. More flexibility than the 2001 rule (and Alternative 4) to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems. Less flexibility than forest plans. Limited amounts of the CRAs within either the 0.5 or 1.5 mile CPZs are in the upper tier acres.	Tree cutting projected for 13,350 acres per year in the analysis area to reduce fuels; this amounts to 21% 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. Options available for fuel reduction include prescribed fire, mechanical treatment, and road construction as needed to facilitate treatment.	Tree cutting projected for 2,000 acres per year in the analysis area to reduce fuels (1,390 of which are within CRAs, mostly within the CPZ); this amounts to 3% of annual fuel treatments on all NFS lands in CO and is 110 acres more than the 2001 rule and 11,350 less than forest plans. Within the CRAs that are non-upper tier acres, the flexibility to conduct hazardous fuel reduction and reduce fire risk to communities and municipal water supply systems is identical to the final rule. Greater amount of upper tier acres with tree cutting prohibited results in least number of acres for tree cutting for fuels reduction. 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.
Forest Health including reduced risk from Insect and Disease Outbreaks.	Forest health treatments are limited to some degree due to the characteristics and locations of roadless areas, as well as economic viability of treatments, under all alternatives. Most or large portions of roadless areas will remain unmanaged (i.e., with no treatments) under the alternatives and baseline conditions. Roadless areas that remain unmanaged will likely continue to depart from desired conditions. Declines in forest health would result in some landscapes being less resilient to large-scale insect and disease outbreaks.			
	Fewest opportunities to improve forest health. Tree cutting for treatment purposes is projected for 2,670 acres per year.	Greater opportunity to improve forest health compared to the 2001 rule and Alternative 4 but lower than forest plans. Tree cutting for treatment purposes projected for 7,320 acres per year (4,650 acres more than the 2001 rule and 10,060 acres less than forest plans). Increased likelihood of achieving management objectives in CPZs but similar to Alternative 1 outside of CPZs.	Greatest opportunity and flexibility to improve forest health. Tree cutting for treatment purposes projected for 17,380 acres per year. Higher likelihood of achieving management objectives.	Similar effects compared to the final rule but slight decrease in opportunities to improve forest health due to restrictions on tree-cutting in upper tier roadless areas. Tree-cutting for treatment purposes projected for 3,140 acres per year (470 acres more than the 2001 rule and 14,240 less than forest plans). Increased likelihood of achieving management objectives in CPZs but similar to Alternative 1 outside of CPZs.

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
Timber	Reduction in allowable sale quantity (ASQ) estimates, may occur. However, foreseeable timber production (volume of timber sold) is well below the ASQ and is expected to remain so under the alternatives and baseline conditions. Therefore, timber supplies outside of roadless areas are available to substitute for decreases in timber availability within roadless. Timber output is expected to vary only by location (i.e., proportion of cutting occurring within versus outside of roadless areas). Tree cutting (sale or removal) in the roadless analysis area is projected to occur in association with treatments on 2,670, 7,320, 17,380, and 3,140 acres per year respectively under the 2001 rule, the final rule, forest plans, and Alternative 4 respectively. Average annual treatment acreage on all NFS land is not expected to be affected substantially by the alternatives.			
Oil and Gas	Projections are for approximately 732 oil and gas wells drilled in the analysis area with access to 1,276 bcfg over a 15-year period [wells produce for 30 yrs] (same for the final rule and Alternative 4). Projected development activities within IRAs over 15 years: 143 miles of road, 705 wells, 146 well pads.	Projections are for approximately 732 oil and gas wells drilled in the analysis area with access to 1,276 bcfg over a 15-year period [wells produce for 30 yrs] (same for the 2001 rule and Alternative 4). Projected development activities within CRAs over 15 years: 146 miles of road, 715 wells, 162 well pads.	Projections are for approximately 819 oil and gas wells in the analysis area with access to 1,384 bcfg over a 15-year period [wells produce for 30 yrs], providing slightly more opportunity compares to the other alternatives. Projected development activities within IRAs over 15 years: 159 miles of road, 787 wells, 160 well pads.	Same as Alternative 2.
Coal (North Fork mining area).	Projections are for 16 miles of new roads in the analysis area, of which 7 are in IRAs. Foreseeable production opportunities would be limited to 8,600 acres of accessible coal reserves (157 million tons). Approximately 7,100 acres out of 8,600 acres are leased (5,900 leased acres are within IRAs), and 1,500 acres are unleased. A total of 2,700 acres out of 8,600 acres are outside of IRAs.	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 forest plans (limits new roads to the North Fork coal mining area). Foreseeable production opportunities are estimated to be 19,125 acres of accessible reserves (504 million tons) of which 7,100 acres are leased (4,000 leased acres are within CRAs) and 12,025 acres are unleased. A total of 15,025 out of 19,125 acres are outside of CRAs. Accessible reserves are 347 million tons greater than the 2001 rule and 211 million tons less than forest plans.	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. Foreseeable production opportunities are estimated to be 715 million tons of reserves on 36,400 acres of accessible reserves, of which 7,100 are leased (5,900 leased acres within IRAs) and 29,300 acres are unleased. A total of 32,400 out of 36,400 acres are outside of IRAs.	Same as the final rule.
Geothermal	Opportunities for geothermal development in roadless areas would not occur under the final rule, Alternative 4, or the 2001 rule due to new road prohibitions. Opportunities for some geothermal development in roadless areas may occur under forest plans as most land management plans allow new roads in roadless areas for this purpose. However, there are no current leases on NFS lands in Colorado.			
Public Safety	The final rule, Alternative 3, and Alternative 4, as well as baseline conditions provide adequate flexibility to respond to emergency situations or major threats to public health and safety in roadless areas (refer to features common to all alternatives). 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 final rule, and would be expected to be temporary under the 2001 rule and forest plans.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
	Road construction or reconstruction is allowed in IRAs where needed to: Address road safety hazards and imminent threats of flood, fire, and other catastrophic events that may threaten loss of life or property.	Road construction permissions are similar to the 2001 rule within both standard tier and upper tier acres.	Same as the 2001 rule, per agency regulations and policy directives.	Same as the final rule within both standard and upper tier acres.
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 under the alternatives and baseline conditions.			
	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. LCZs for future oil and gas pipelines, electrical power lines and telecommunication lines would be prohibited in upper tier. 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, for future electrical power lines or telecommunication lines, water conveyance structures or oil and gas pipelines. 3.6 miles per year of LCZs projected.	More restrictions than Alternative 2, due to the greater proportion of upper tier acres. 3.2 miles per year of LCZs.
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 than the 2001 rule. Opportunities similar to forest plans except expansion of ski areas into roadless areas through plan amendments not permitted under the final rule. 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 that would not be allowed under the 2001 rule.	Same as the final rule, recognizing that Forest plans can be amended or revised to expand ski area allocations beyond the current allocation.	Same as the final rule.
Other Developed Recreation.	Effects on developed recreation opportunities are not projected to differ substantially across alternatives compared to baseline conditions.			
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.			
Saleable and Locatable Minerals.	Impacts and differences in impacts to or from these resources are found to be minimal or insignificant across alternatives. There are no effects to the statutory right of reasonable access to prospect, explore and develop locatable minerals under any alternative or baseline conditions. There will be no roads for saleable mineral development except under forest plans if road construction is allowed, although need is expected to be minimal.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
Roadless Area Characteristics and Values				
Scenic Quality	Projected activity levels (e.g., tree cutting) occur on relatively small percentages of total roadless area under the alternatives compared to baseline conditions.			
	Maintains the most IRA acreage at high to very high scenic integrity levels where it exists. However, many substantially altered IRAs would continue to exhibit low scenic integrity.	Greater percentages of roadless areas would retain high to very high scenic integrity compared to the 2001 rule due to removal of substantially altered areas under the final rule. Retains majority of CRAs at high or very high integrity, including CRAs in upper tiers; the scenic integrity of some areas would be reduced by the roads and road-related activities projected as likely to occur in CRAs. Lower risk to scenic integrity compared to forest plans. New unroaded areas would add to areas protected for high scenic integrity compared to the 2001 rule. More opportunities for treatments to contribute to scenic quality in long-run compared to the 2001 rule.	Highest risk to scenic integrity, as more unroaded acres may shift to a moderate to low scenic integrity as a result of projected road and tree cutting activities. Greater opportunities for treatments may contribute more to high quality scenic levels in the long-term.	Similar to the final rule within CRAs that are not upper tier. Greater assurances about preserving high quality scenic levels in upper tier acres, compared to the final rule.
Wilderness and Other Congressionally Designated Areas.	No major difference among the alternatives and baseline conditions 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 recommended as wilderness would not differ across alternatives and baseline conditions as land management plans generally prohibit road construction and tree cutting and removal activities in those areas.			
	Indirect effects on wilderness area characteristics or experience from activities in adjacent roadless areas are expected to be low and similar to the 2001 rule because projected activities are not expected to occur adjacent to wilderness area boundaries. Unlike the 2001 rule, the final rule provides opportunities to establish uniform management approaches for recommended wilderness through placement of roadless areas in upper tier.		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.	Effects similar to the final rule and the 2001 rule. 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. The 2001 rule and Alternative 4 would have the least risk of adverse effects, and the final rule would have a slightly higher risk than the 2001 rule but lower than forest plans. 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 under the final rule may be higher compared to forest plans and lower relative to the 2001 rule as a result of projected levels of fuel treatments.			
Water Quality, Quantity, and Stream Flow.	Projected activities under the alternatives and baseline conditions are unlikely to contribute to water quality impairment (i.e., exceeding water quality standards) due to adverse effects being mitigated through the use of site-specific Watershed Conservation Practices, Best Management Practices, and other mitigation measures and regulatory (Clean Water Act) permit requirements, as well as compliance with wetland regulations (E.O. 11990 and Section 404(b)(1) guidelines. Water quantity effects expected to be minimal as the area of tree-cutting on any one watershed affected is likely to be small.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
	Lowest risk of direct adverse effects from tree cutting and road construction. Slightly greater potential for adverse effects from severe fire to water supplies.	Slightly greater risk of direct adverse effects from tree cutting and road construction compared to the 2001 rule, but lower compared to forest plans. Fewer restrictions on fuel treatments and slightly lower potential for adverse effects to water supplies from fire compared to the 2001 rule, but slightly higher potential compared to forest plans.	Higher risk of direct adverse effects from tree cutting and road construction. Least restrictions on fuel treatments and slightly lowest potential for adverse effects from severe fire.	Similar to the final rule though slightly lower direct risk due to more upper tier acres. More restrictions on fuel treatments and slightly greater risk to water supplies from severe fire, compared to the final rule and forest plans.
Air Resources	Differences in effects on air quality do not substantially differ between the alternatives and baseline conditions. 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. Potential for smoke related impacts under the final rule would be only slightly lower than the 2001 rule and slightly greater than forest plans.			
Threatened Endangered or Sensitive Plants.	No direct 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 or baseline conditions are expected to result in the loss of viability, nor cause a trend toward Federal listing of sensitive species.			
	Least risk of adverse impacts to sensitive plants, including threats from invasives.	More potential risk of adverse impacts to sensitive plants, including threats from invasives, compared to the 2001 rule but less risk than forest plans.	Greatest risk of adverse impacts to sensitive plants, including threats from invasives.	More risk of adverse impacts to sensitive plants compared to the 2001 rule, including threats from invasives; but less risk than the final rule or forest plans.
Aquatic Species and Habitat (also includes Threatened Endangered or Sensitive).	No measurable declines 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 the alternatives or baseline conditions due to the assumption that mitigation measures and best management practices would help avoid or minimize impacts from the projected activities.			
	Greatest level of protection and least risk of adverse impacts. Provides most protection of cutthroat trout (similar to Alternative 4).	Some limited potential for reduced protection and increased risk of adverse impacts compared to the 2001 rule and Alternative 4 (but less risk than forest plans). Provides greater protection for cutthroat trout compared to forest plans.	Least amount of protection and greatest potential for adverse impacts.	Greatest level of protection and least risk for adverse impacts. Provides most protection of cutthroat trout (similar to the final rule).
		Increasing amounts of fuel reduction and forest health treatments under the final rule and forest plans could have long-term beneficial effects on aquatic habitat and species, compared to the 2001 rule.		
Terrestrial Species and Habitat (also includes Threatened, Endangered or Sensitive).	For the final rule, Alternative 3, Alternative 4, and baseline conditions, site-specific design criteria and mitigation measures are expected to avoid or minimize adverse effects from projected tree-cutting and road construction; projected activities are not likely to adversely affect federally listed species or designated critical habitat, nor result in the loss of viability or cause a trend toward Federal listing for sensitive species. Given the large acreage afforded roadless protection under the final rule, Alternative 4, and the 2001 rule, any changes in population trends for MIS would likely be an increase above current Forest Plan projections.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
	Least risk to terrestrial species and habitat from projected tree-cutting and road construction.	Increased risk to terrestrial species and habitat from projected tree-cutting and road construction compared to the 2001 rule and Alternative 4 (though effects are expected to be minimal and short-lived). More opportunities for tree-cutting (when combined with prescribed fire) to improve habitat and reduce potential for adverse effects from severe wildfire compared to the 2001 rule, but fewer opportunities compared to forest plans. Updated inventory of roadless areas provides higher quality portfolio of wildlife habitat within roadless areas compared to the 2001 rule.	Greatest risk to terrestrial species and habitat from projected tree-cutting and road construction. Greatest opportunity for tree-cutting (in combination with prescribed fire) to improve habitat and reduce adverse effects from severe wildfire.	Reduced risk to terrestrial species and habitat from projected activities, compared to the 2001 rule and the final rule. Reduced opportunity for tree-cutting to improve habitat and reduce adverse effects from severe wildfire compared to forest plans and the final rule. Updated inventory of roadless areas provides higher quality portfolio of wildlife habitat within roadless areas compared to the 2001 rule.
Diversity of Plant and Animal Communities.	The value of roadless areas in conserving plant and animal diversity 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 secure habitat, biological strongholds, and habitat connectivity would be greatest for the 2001 rule and lowest under forest plans. Increasing opportunities for treatments under Alternative 4, the final rule, and forest plans respectively to address hazardous fuels and ecosystem restoration may have beneficial effects on long-term diversity compared to the 2001 rule.			
Invasive Plants	Site-specific design criteria and mitigation measures are expected to minimize risk. The magnitude and extent of spread of invasives in roadless areas would be relatively small under the alternatives and baseline conditions.			
	Lowest risk of spread due to low projections of road construction or tree cutting.	Intermediate risk of spread, higher than the 2001 rule and Alternative 4, but less than forest plans, due to greater projections of road construction or tree cutting.	Substantially greater risk of spread due to the greatest projections for road construction, tree cutting, fuels management, and future oil, gas, and coal activities compared to other alternatives.	Slightly higher risk of spread than the 2001 rule but less than the final rule and forest plans due to lower projections of road construction and tree cutting.
Recreation—Primitive and Semi-Primitive Recreation Settings and Opportunities.	Tree cutting activity is projected to occur on only a small percentage of roadless areas over 15 years under the alternatives and baseline conditions. Dispersed recreation opportunities (including hunting and fishing) are therefore not expected to change under the final rule and Alternative 4, but feelings of remoteness and solitude may change for periods of time in areas where activity occurs compared to the 2001 rule.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
	Likely to retain a high proportion of IRA acreage in a primitive or semi-primitive setting. The substantially altered areas and developed ski areas in IRAs may continue to appear inconsistent with semi-primitive characteristics expected in roadless areas. The newly identified roadless acres (409,500 acres) where road construction and tree cutting are projected to occur but are not within the IRAs could shift to less primitive settings.	Likely to retain a high proportion of CRA acreage in a primitive or semi-primitive setting; although some CRA acres would shift toward roaded natural settings in areas where the most roads, tree-cutting, and energy operations are projected in CRAs. By not including substantially altered areas and developed ski areas in CRAs and adding newly identified roadless areas to CRAs, the CRAs would appear more consistent with semi-primitive characteristics expected in roadless areas, compared to less consistency within IRAs under the 2001 rule.	Greatest risk of shifts from primitive/semi-primitive settings to roaded natural settings in areas where the most tree cutting, roads, or energy operations are projected to occur.	Likely to retain greatest greater proportion of CRA acreage in primitive/semi-primitive setting compared to the final rule given slight reductions in construction and tree cutting activity and larger percent of CRAs in upper tier. 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 compared to less consistency within IRAs under the 2001 rule.
Outfitters and Guides (recreation).	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 final rule, Alternative 4, and baseline conditions are expected to have negligible adverse effects on recreational special uses, including outfitter and guide opportunities, based on the projected magnitude and distribution of reasonably foreseeable activities. 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.			
Cultural and Heritage Resources.	Site-specific inventories, design criteria, and mitigation measures are expected to minimize risk. Under the final rule, Alternative 3, Alternative 4, and baseline conditions, there may be small, localized impacts from a number of ongoing activities. The magnitude of human activities in roadless areas would continue to be much lower than on other NFS lands.			
	Least risk of damage to cultural and heritage resources due to lowest projected amounts of tree-cutting and road construction.	Intermediate risk of damage to cultural and heritage resources because of higher projected tree cutting and road construction, compared to the 2001 rule, but lower risk than forest plans.	Highest risk of damage to cultural and heritage resources because of highest projected amounts of tree cutting and road construction.	Same as the final rule.
Geological and Paleontological Resources.	None of the projected activities in roadless areas that vary across alternatives and baseline conditions would be likely to adversely affect geological or paleontological resources, which would be avoided or otherwise protected from potential adverse impacts. Management of these resources does not require road construction or tree cutting and would be the same under the alternatives and baseline conditions.			
Climate Change	Future emission of GHGs associated with projected activities under the alternatives and baseline conditions are too speculative for estimation. Potential releases of greenhouse gases due to the net effect of energy development and changes in wildfire conditions might be highest for forest plans and lowest for the 2001 rule, with the final rule being less than forest plans but more than the 2001 rule. Strategy options for adapting to climate change are more restrictive under the 2001 rule and Alternative 4, more flexible under the final rule, and most flexible under forest plans.			

TABLE 3—COMPARISON OF THE FINAL RULE AND ALTERNATIVE 4 WITH BASELINE CONDITIONS—Continued

Issue or affected resource	Alternative 1— 2001 Roadless Rule (baseline condition)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— proposed rule with public identified upper tier acres
Agency Costs				
Vegetation and Fuel Treatments.	Treatments are likely to be less efficient and more costly in IRAs.	Decreased flexibility to achieve management objectives in critical insect and disease areas compared to forest plans (but increased flexibility compared to the 2001 rule). Decreased ability to strategically and cost effectively locate treatments and improve efficiency as compared to forest plans but increased treatment cost effectiveness compared to the 2001 rule.	Capacity to shift the greatest amount of treatment acreage into roadless areas; increased efficiency, cost effectiveness and timeliness of wildfire suppression response as well as fuel reductions in CPZs compared to the final rule and Alternative 4.	Management flexibility is similar to the final rule, but projected treatment amounts are lower due to constraints imposed by more upper tier acreage under Alternative 4.
Other Costs	Administrative costs are estimated to not change. 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 and baseline conditions. Although new roads can contribute to the spread of invasive plants, roads can also be an asset in helping to cost effectively control invasive populations.			

TABLE 4—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE FINAL RULE AND ALTERNATIVES

	Alternative 1— 2001 Roadless Rule (no action)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— Proposed rule with public identified upper tier acres
Leaseable Minerals: Coal, Oil and Gas—Output Value, Jobs and Income (2009\$) Contributed ¹ .	\$694 million/yr Output. 2,100 Jobs supported. \$147 million per year Labor Income.	<i>\$760 million/yr Output</i> * \$33 million/yr less than forest plans. * \$66 million/yr greater than the 2001 rule. <i>2,300 Jobs supported</i> * 100 fewer jobs than forest plans. * 200 more jobs than the 2001 rule. <i>\$164 million/year Labor Income</i> * \$5 million/yr less than forest plans. * \$17 million/yr more than the 2001 rule.	\$793 million/yr Output. 2,400 Jobs supported. \$169 million per year Labor Income.	Same as the final rule.
Revenue Sharing: Mineral Lease Payments and Tax Revenues per year (2009\$) ² .	State Total: \$28.8 million Energy-Affected Counties: \$5.9 million. All other CO Counties: \$2.9 million.	<i>State Total: \$31.2 million</i> * \$1.4 million less than forest plans. * \$2.4 million more than the 2001 rule. <i>Energy-Affected Counties: \$6.2 million</i> * \$0.4 million less than forest plans. * \$0.3 more than the 2001 rule. <i>All other CO Counties: \$3.2 million</i> * \$0.1 million less than forest plans. * \$0.3 more than the 2001 rule.	State Total: \$32.6 million Energy-Affected Counties: \$6.6 million. All other CO Counties: \$3.3 million.	Same as the final rule.

TABLE 4—SUMMARY OF DISTRIBUTIONAL EFFECTS AND ECONOMIC IMPACTS OF THE FINAL RULE AND ALTERNATIVES—Continued

	Alternative 1— 2001 Roadless Rule (no action)	Alternative 2— Final rule	Alternative 3— Forest plans	Alternative 4— Proposed rule with public identified upper tier acres
Values at risk: Number of Counties Where Potential for Fuel Treatments in CPZs may Increase or Decrease Compared to Alternative 3 and Baseline Conditions ³ .	In comparison to forest plans: Decrease: 13 counties Increase: 0 county.	In comparison to forest plans: Decrease: 2 counties. Increase: 2 counties. In comparison to the 2001 rule: Decrease: 1 county. Increase: 13 counties.	In comparison to 2001 rule: Decrease: 0 counties. Increase: 13 counties.	In comparison to forest plans: Decrease: 16 counties. Increase: 2 counties. In comparison to 2001 rule: Decrease: 6 counties. Increase: 13 counties.

¹ Jobs and income contributed annually (2009 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, 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 final rule has also been considered in light of Executive Order 13272 (E.O. 13272) regarding proper consideration of small entities and the SBREFA, which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The Forest Service 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 final rule does not directly subject small entities to regulatory requirements. Therefore, an initial regulatory flexibility analysis is not required for this final rule. However, given public interest in the final rule's potential effects on small entities, including rural counties and economies, and efforts to be consistent with related rule-making analysis in the past, the indirect effects or reasonably foreseeable losses in potential small entity opportunities resulting from the final rule are analyzed.

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 final rule and baseline or no-action condition (2001 Roadless Rule). As a result, there is little or no potential for significant adverse economic impacts to small businesses under the final rule relative to baseline conditions.

There are about 1,390 recreation special use permits currently authorized within National Forest System 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 no difference between alternatives with respect to recreation special use authorizations in roadless areas, because limitations on road construction and tree cutting under any alternative would not be likely to affect ability to obtain or use recreation use authorizations. Impacts under the final rule compared to the baseline condition are not expected to be significant due to the small percentage of acreage affected and roads constructed per year spread across more than 4 million acres of CRAs. It is also noted that a significant percentage of road construction and tree cutting activity will occur within or near the CPZs where primitive or semi-primitive settings may already be affected. Timber sales and harvest levels for Colorado national forests as a whole are projected to be similar during the 15-year analysis period across the alternatives.

Flat and declining budgets imply the percentage of harvest from roadless areas may change under the alternatives, but aggregate volumes across all NFS land in Colorado are expected to remain relatively unchanged, on average based on budget, implying little potential for adverse impacts to small entities.

For leasable minerals associated with energy resources (coal, oil and gas), 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 (i.e. jobs associated with oil, gas and coal development) within this five-county area, supported annually by projected activity within roadless areas, are estimated to increase from 2,100 under the 2001 Roadless Rule alternative to 2,300 jobs under the final rule (as well as Alternative 4). Estimated jobs supported decrease from 2,400 under Alternative 3 to 2,300 under the final rule. Labor income for oil, gas and coal sectors increases by a similar degree from \$147 million per year under the 2001 rule to \$164 million under the final rule; estimated labor income decreases from \$169 million under forest plans to \$164 million under the final rule. Estimated job and labor income contributions for oil, gas and coal sectors are equivalent for the final rule and Alternative 4. These results indicate that the final rule will not have significant adverse impacts to small entities associated with energy resource development and extraction relative to Alternative 1.

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

roadless areas. 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 final rule (as well as Alternative 4), and Alternative 3. Changes in mineral lease payments would be minimal in Montrose County. All of these counties, with the exception of Mesa can be considered small governments (population less than 50,000). The small population counties within the energy impact area (i.e., Delta, Garfield, Gunnison, and Pitkin), are forecasted to receive increases in aggregate payments associated with property tax receipts, severance tax distributions, and federal royalty distributions from coal, and oil and gas production, under the final rule relative to the 2001 Roadless Rule. There are slight decreases in aggregate payments to the small population counties under the final rule relative to Alternative 3 (aggregate payments decrease from \$4.9 million to \$4.7 million per year).

Under the final rule, as compared to forest plans, the potential opportunities for fuel treatments near at-risk communities (i.e., within CPZs) may increase for two "small population" counties and decrease for one "small population county" (i.e., populations less than 50,000). In contrast, potential opportunities for fuel treatments near at-risk communities may increase for ten "small population" counties and decrease for one county under the final rule compared to 2001 Roadless Rule. These results indicate that adverse impacts to small governments, regarding protection of values at risk from wildfire, are not likely, when comparing the final rule with 2001 Roadless Rule.

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 final rule relative to baseline conditions. 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 rule does not call for any additional recordkeeping 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 final rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), Federalism. The Department has made an assessment that the final rule conforms with the Federalism principles set out in E.O. 13132; would not impose any compliance costs on the State; and would not have substantial direct effects on the State, on the relationship between the national government and the State, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this rule does not have Federalism implications. This 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 were encouraged to comment on the final rule, in the course of this rulemaking process.

No Takings Implications

The final 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 rule does not pose the risk of a taking of private property.

Civil Justice Reform

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this rule; and (3) this rule would not require the use of administrative proceedings before parties could file suit in court 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 final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of 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 final rule does not constitute a "significant energy action" as defined in E.O. 13211 because projected changes in oil, gas, and coal production under the final rule are not sufficient to cause exceedance of criteria for significance.

Projections of natural gas production are discussed in the FEIS and the "Minerals and Energy: Analysis of Alternatives—Oil and Gas" and "Distributional Effects: Economic Impacts" sections within this report. Based on those projections, it has been determined that natural gas production from the combined roadless analysis area varies across alternatives for only two National Forests (Grand Mesa, Uncompahgre, Gunnison National Forests and White River National Forest). For the San Juan National Forest, production occurs within roadless areas but does not vary across alternatives for that National Forest. It has also been determined that there is no appreciable difference in projected natural gas production between Alternatives 1 and 2 or Alternative 4. The difference in potential average annual natural gas production between Alternatives 1, 2, or 4 (35 billion cubic feet per year) and Alternative 3 for the Grand Mesa, Uncompahgre, Gunnison and White River National Forests (39 billion cubic feet per year) is a decrease of about 4 bcf/year, or 4 million mcf/year, which is well below the E.O. 13211 criterion for adverse effects of 25 million mcf/year.

Projected oil production ranges from approximately 50,000 barrels under 2001 Roadless Rule, final rule, and Alternative 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 the 2001 Roadless Rule, final rule, or Alternative 3 is inconsequential compared to the

E.O. 13211 criterion of 10,000 barrels per day.

Natural gas pipeline mileage across roadless areas is projected to be similar for the final rule, Alternative 4, and the 2001 Roadless Rule, implying that gas distribution costs are also projected to be similar across these alternatives (i.e., distribution costs will not increase under the final rule compared to the 2001 Roadless Rule). Average annual coal production is projected to be greater under the final rule (and Alternative 4) compared to the 2001 Roadless Rule, implying that economic impacts associated with coal are positive under the final rule, compared to the 2001 Roadless Rule. The final rule will increase access to an estimated 347 million tons of coal reserves over the 2001 Roadless Rule (the baseline condition) and could extend coal mining activity in the North Fork Valley by as much as 34 years. It should be noted that one of the existing mining companies in the North Fork Valley has announced plans to shift its operations to BLM and private lands once currently leased reserves under NFS lands have been recovered. This shift would occur regardless of roadless area alternatives considered.

Approximately 53% of all coal produced from Colorado in 2010 (25.2 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 impacts of a number of other factors affecting energy markets and national market trends may outweigh the effects of implementing 2001 Roadless Rule.

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 FEIS, 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 CRAs.

The final rule does not restrict access to privately held mineral rights, or mineral rights held through existing claims or leases, and allows for disposal of mineral materials. The final rule does not prohibit future mineral claims or mineral leasing in areas otherwise open for such. The rule also provides a regulatory mechanism for consideration of requests for modification of restrictions if adjustments are determined to be necessary in the future. Based on the evidence above, criteria for "significance" under E.O. 13211 are not exceeded for the final

rule. The final rule is therefore not considered a significant energy action.

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 is amending part 294 of Title 36 of the Code of Federal Regulations by adding 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.

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

Subpart D—Colorado Roadless Area Management

§ 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 Colorado Roadless Areas (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 Forests Restoration Act (HFRA).

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 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.

Colorado Roadless Areas 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 which have limited exceptions to provide a high-level of protection for these areas.

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 HFRA.

Community Wildfire Protection Plan: As defined under section 101 of the HFRA, 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 HFRA 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 construction equipment to install or maintain a linear facility. The sole purpose of the linear disturbance is to accommodate equipment needed to construct and transport supplies and personnel needed to install or maintain the linear facility. It is not a road, not used as a motor vehicle route, not open for public use, and is not engineered to road specifications.

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

Municipal Water Supply System: As defined under Section 101 of the HFRA, 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.

Permanent Road: Roads that are either a forest road; private road (a road under private ownership authorized by an easement granted to a private party or a road that provides access pursuant to a reserved or outstanding right); or public road (a road under the jurisdiction of and maintained by a public road authority and open to public travel).

Pre-Existing Water Court Decree: An adjudicated conditional or absolute decree issued by a Colorado Court, the initial application for which was filed prior to July 3, 2012, adjudicating as the point of a diversion or the place of use a location within a Colorado Roadless Area. A pre-existing water court decree does not include decrees for water rights with a point of diversion and place of use outside of a Colorado Roadless Area, the holder of which proposes to change the point of diversion or place of use to within a Colorado Roadless Area, except for a change in location of a head gate and associated ditch pursuant to Colorado Revised Statute 2011 § 37–86–111.

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) Natural-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.

Watershed Conservation Practice: The watershed conservation practices are stewardship actions based upon scientific principles and legal requirements to protect soil, aquatic and riparian resources. Each watershed conservation practice consists of a management measure, a set of design criteria used to achieve the management measure, and guidance for monitoring and restoration. For specific information, refer to Forest Service Manual 2509.25.

§ 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 paragraph (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 Parks and 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 the conditions in subsection 1 or 2 are met.

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

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

(3) For any road construction/reconstruction authorized pursuant to this provision, subject to the legal rights identified in 36 CFR 294.43(b)(1), the responsible official must determine:

(i) Motorized access, without road construction is not 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 the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout 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 uses authorized

under permit, easement or other legal instrument;

(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 or temporary 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 with the use of the road limited to the water right identified in the pre-existing water court decree (see also § 294.44(b)(2));

(v) A temporary road is needed to protect public health and safety in cases of imminent 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 July 3, 2012. 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 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/or 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 § 294.43(c)(1), the responsible official must determine:

- (i) Motorized access, without road construction is not 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 the extent of the occupied native cutthroat trout habitat; and

(v) That watershed conservation practices will be applied to all projects occurring in native cutthroat trout habitat.

(d) *Road construction/reconstruction/decommissioning project implementation and management.* The following elements will be incorporated into any road construction/reconstruction projects implemented within Colorado Roadless Areas.

(1) *Road construction/reconstruction.* If it is determined that a road is authorized in a Colorado Roadless Area, conduct construction in a manner that reduces 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 prior to, or upon termination or expiration of a contract, authorization, or permit, if possible; or upon termination or expiration of a contract, authorization, or permit, whichever is sooner. Require the inclusion of a road decommissioning provision in all contracts or permits. Design decommissioning to stabilize, restore, and revegetate unneeded roads to a more natural state to protect resources and enhance roadless area characteristics. Examples include

obliteration, denial of use, elimination of travelway functionality, and removal of the road prism (restoration of the road corridor to the original contour and hydrologic function).

(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; or
- (ii) Motor vehicle use that is specifically authorized under a 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 authorized in Colorado Roadless Areas except as provided in paragraph (b) and (c) of this section and § 294.48 (a).

(b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For 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));

(c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be authorized within Colorado Roadless Area non-upper tier acres if the Regional Forester determines the LCZ is needed:

(1) Pursuant to reserved or outstanding rights, or as provided for by statute or treaty.

(2) For 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));

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

(4) For the construction, reconstruction or maintenance of a pipeline associated with operation of an oil and gas lease that allows surface use within a Colorado Roadless Area or the construction, reconstruction or maintenance 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.

(d) *Proposed Linear Construction Zones.* If a proposed linear construction zone meets one of the above exceptions, then the following must be determined:

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

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

(3) A linear construction zone is no wider than its intended use;

(4) Within a native cutthroat trout catchment or identified recovery watershed, a linear construction zone will not diminish, over the long-term, conditions in the water influence zone and the extent of the occupied native cutthroat trout habitat;

(5) Reclamation of a linear construction zone will not diminish, over the long-term, roadless area characteristics; and

(6) That watershed conservation practices will be applied to all projects occurring in catchments with occupied native cutthroat trout habitat.

(e) *Linear construction zone decommissioning.* Where a linear construction zone is authorized 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 while conserving roadless area characteristics over the long-term. 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 part 1500, and 36 CFR part 220 for any proposed action within a Colorado Roadless Area. Proposed actions that would significantly 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 subject to this rule that would 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) *Water Rights.* This subpart in no manner restricts any party from seeking modification of a pre-existing water court decree, but after July 3, 2012 any Forest Service authorization required for road construction, road reconstruction, tree cutting, or linear construction zones associated with a modified water court decree must conform to the requirements in this subpart; provided that road construction or reconstruction may be authorized where necessary to change the location of a headgate and associated ditch, pursuant to Colorado Revised Statute 2011 § 37–86–111.

(b) *Oil and Gas Leases.* Oil and gas leases issued within a Colorado Roadless Area after July 3, 2012 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. For oil and gas leases issued in a Colorado Roadless Area prior to July 3, 2012, the rule preserves any existing leases and surface development rights. The rule also preserves any existing limitations on surface development rights arising from lease terms, lease stipulations,

conditions of approval, 36 CFR 228.100, and Onshore Oil and Gas Orders.

(c) *Oil and Gas Leases on Upper Tier Acres.* Oil and gas leases issued within upper tier acres after July 3, 2012 will require a no surface occupancy stipulation. 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 surface occupancy within an upper tier area.

(d) *Oil and Gas Surface Use Plans of Operation.* Where applicable and consistent with lease rights, 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, 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 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 surface and/or operational conditions.

(4) Perform 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 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, consistent with health and safety standards, power lines, flow lines and pipelines within the right-of-way of roads or other LCZs 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) Consider the best available technology to minimize noise and air emissions.

(e) *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.

(f) *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.

(g) *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 July 3, 2012.

§ 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, including upper tier acres are adjustments to remedy errors such as clerical 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 July 3, 2012 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 July 3, 2012.

(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 July 3, 2012 36 CFR 294.10 through 294.14 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. An "X" in the third column indicates that some or all of that CRA contains upper tier acres.

Line No.	Colorado roadless area name	Includes upper tier acres
Arapaho-Roosevelt National Forest		
1	Bard Creek	X
2	Byers Peak	X
3	Cache La Poudre Adjacent Areas	X
4	Cherokee Park	
5	Comanche Peak Adjacent Areas	X
6	Copper Mountain	
7	Crosier Mountain	
8	Gold Run	X
9	Green Ridge -East	X
10	Green Ridge -West	X
11	Grey Rock	
12	Hell Canyon	
13	Indian Peaks Adjacent Areas	X
14	James Peak	
15	Kelly Creek	X
16	Lion Gulch	
17	Mount Evans Adjacent Areas	X
18	Mount Sniktau	X
19	Neota Adjacent Area	X
20	Never Summer Adjacent Area	
21	North Lone Pine	X
22	North St. Vrain	X
23	Rawah Adjacent Areas	X
24	Square Top Mountain	X
25	Troublesome	X
26	Vasquez Adjacent Area	X
27	White Pine Mountain	
28	Williams Fork	X
Grand Mesa, Uncompahgre, Gunnison National Forest		
29	Agate Creek	
30	American Flag Mountain	
31	Baldy	
32	Battlements	
33	Beaver	X
34	Beckwiths	
35	Calamity Basin	
36	Cannibal Plateau	
37	Canyon Creek-Antero	
38	Canyon Creek	
39	Carson	X
40	Castle	
41	Cataract	X
42	Cimarron Ridge	

Line No.	Colorado roadless area name	Includes upper tier acres
43	Clear Fork	
44	Cochetopa	X
45	Cochetopa Hills	
46	Cottonwoods	
47	Crystal Creek	
48	Crystal Peak	X
49	Curecanti	X
50	Currant Creek	
51	Deer Creek	
52	Dominguez	
53	Double Top	
54	East Elk	
55	Electric Mountain	
56	Failes Creek-Soldier Creek	X
57	Flatirons	
58	Flattop Mountain	
59	Flattops-Elk Park	
60	Gothic	
61	Granite Basin	X
62	Hightower	
63	Hope Lake	X
64	Horse Ranch Park	
65	Horsefly Canyon	X
66	Huntsman Ridge	
67	Italian Mountain	
68	Johnson Basin	X
69	Kannah Creek	
70	Kelso Mesa	
71	Last Dollar-Sheep Creek	
72	Little Cimarron	X
73	Long Canyon	
74	Matchless Mountain	
75	Matterhorn	X
76	McClure Pass	
77	Mendicant	X
78	Mineral Mountain	X
79	Mirror Lake	
80	Mount Lamborn	X
81	Munsey-Erickson	X
82	Naturita Canyon	X
83	North Henson	
84	Pilot Knob	
85	Poverty Gulch	X
86	Salt Creek	
87	Sanford Basin	X
88	Sawtooth	X
89	Schofield Pass	
90	Soap Creek	X
91	Steuben	
92	Sunnyside	
93	Sunset	
94	Texas Creek	
95	Tomahawk	
96	Turner Creek	
97	Turret Ridge	X
98	Unaweep	X
99	Union	
100	Whetstone	
101	Whitehouse Mountain	X
102	Willow Creek	
103	Wilson	X
104	Windy Point	
Manti-La Sal National Forest		
105	Roc Creek	X
Pike-San Isabel National Forest		
106	Antelope Creek	
107	Aspen Ridge	X
108	Babcock Hole	
109	Badger Creek	X

Line No.	Colorado roadless area name	Includes upper tier acres
110	Boreas	
111	Buffalo Peaks East	X
112	Buffalo Peaks South	
113	Buffalo Peaks West	X
114	Burning Bear	X
115	Chicago Ridge	
116	Chipeta	
117	Cuchara North	
118	Cuchara South	
119	Elk Mountain-Collegiate North	X
120	Elk Mountain-Collegiate South	
121	Elk Mountain-Collegiate West	X
122	Farnum	
123	Green Mountain	
124	Greenhorn Mountain: Badito Cone to Dry Creek	X
125	Greenhorn Mountain: Cisneros Creek to Upper Turkey Creek	
126	Greenhorn Mountain: Graneros Creek to Section 10	X
127	Greenhorn Mountain: Little Saint Charles Creek to Greenhorn Creek	
128	Gunbarrel	
129	Hardscrabble	
130	Highline	
131	Holy Cross	X
132	Hoosier Ridge	X
133	Jefferson	
134	Kaufman Ridge	
135	Kreutzer-Princeton	X
136	Little Fountain Creek	X
137	Lost Creek East	
138	Lost Creek South	
139	Lost Creek West	
140	Methodist Mountain	
141	Mount Antero	
142	Mount Elbert	
143	Mount Evans	X
144	Mount Massive	X
145	Pikes Peak East	
146	Pikes Peak West	
147	Porphyry Peak	
148	Puma Hills	
149	Purgatoire	X
150	Rampart East	X
151	Rampart West	
152	Reveille Canyon	
153	Romley	X
154	Saint Charles Peak	
155	Sangre de Cristo: Alvarado Campground to Music Pass	X
156	Sangre de Cristo: Blanca Peak to Slide Mountain	X
157	Sangre de Cristo: Lake Creek to Hermit Creek	X
158	Sangre de Cristo: Medano Pass to Carbonate Mountain	X
159	Sangre de Cristo: Silverheels Gulch to Hunts Creek	
160	Sangre de Cristo: West Creek to Big Cottonwood	
161	Schoolmarm Mountain	
162	Scraggy Peaks	
163	Sheep Rock	
164	Silverheels	X
165	Spanish Peaks	X
166	Square Top Mountain	X
167	Starvation Creek	
168	Tanner Peak	X
169	Thirtynine Mile Mountain	X
170	Thunder Butte	
171	Weston Peak	X
Rio Grande National Forest		
172	Alamosa River	X
173	Antora Meadows-Bear Creek	X
174	Beartown	X
175	Beaver Mountain	X
176	Bennet Mountain-Blowout-Willow Creek-Lion Point-Greenie Mountain	X
177	Big Buck-Kitty-Ruby	X
178	Box-Road Canyon	X
179	Bristol Head	X

Line No.	Colorado roadless area name	Includes upper tier acres
180	Butterfly	
181	Chama Basin	X
182	Conejos River-Lake Fork	
183	Copper Mountain-Sulphur	X
184	Cotton Creek	
185	Crestone	
186	Cumbres	X
187	Deep Creek-Boot Mountain	X
188	Dorsey Creek	X
189	Elkhorn Peak	X
190	Four Mile Creek	X
191	Fox Creek	X
192	Fox Mountain	X
193	Gibbs Creek	
194	Gold Creek-Cascade Creek	X
195	Hot Springs	
196	Indian Ridge	X
197	Kitty Creek	
198	La Garita	X
199	Lake Fork	X
200	Lower East Bellows	X
201	Middle Alder	X
202	Miller Creek	
203	Pole Creek	
204	Pole Mountain-Finger Mesa	X
205	Red Mountain	X
206	Ruby Lake	X
207	Sawlog	X
208	Sheep Mountain	X
209	Silver Lakes-Stunner	X
210	Snowshoe Mountain	X
211	Spectacle Lake	
212	Spruce Hole-Sheep Creek	X
213	Stunner Pass-Dolores Canyon	X
214	Sulphur Tunnel	
215	Summit Peak-Elwood Pass	X
216	Taylor Canyon	X
217	Tewksberry	X
218	Tobacco Lakes	X
219	Trout Mountain-Elk Mountain	X
220	Ute Pass	X
221	Wason Park	X
222	Wightman Fork-Upper Burro	X
223	Wightman Fork -Lookout	X
224	Willow Mountain	X

Routt National Forest

225	Barber Basin	
226	Black Mountain	
227	Bunker Basin	X
228	Bushy Creek	
229	Chatfield	X
230	Chedsey Creek	
231	Dome	
232	Dome Peak	X
233	Elkhorn	
234	Gold Creek	
235	Grizzly Helena	
236	Kettle Lakes	X
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	X
244	Nipple Peak South	X
245	Pagoda Peak	X
246	Shield Mountain	X
247	South Fork	X
248	Sugarloaf North	
249	Sugarloaf South	X

Line No.	Colorado roadless area name	Includes upper tier acres
250	Troublesome North	X
251	Troublesome South	X
252	Walton Peak	
253	Whalen Creek	
San Juan National Forest		
254	Baldy	
255	Blackhawk Mountain	
256	East Animas	X
257	Fish Creek	
258	Florida River	
259	Graham Park	X
260	HD Mountains	
261	Hermosa	X
262	Lizard Head Adjacent	X
263	Piedra Area Adjacent	X
264	Runlett Park	
265	Ryman	X
266	San Miguel	X
267	South San Juan Adjacent	X
268	Storm Peak	
269	Treasure Mountain	X
270	Turkey Creek	X
271	Weminuche Adjacent	X
272	West Needles	X
273	Winter Hills/Serviceberry Mountain	
White River National Forest		
274	Adam Mountain	
275	Ashcroft	
276	Assignment Ridge	X
277	Baldy Mountain	
278	Basalt Mountain A	
279	Basalt Mountain B	
280	Berry Creek	
281	Big Ridge to South Fork A	X
282	Big Ridge to South Fork B	X
283	Black Lake East	
284	Black Lake West	
285	Blair Mountain	
286	Boulder	
287	Budges	
288	Buffer Mountain	
289	Burnt Mountain	
290	Chicago Ridge	X
291	Corral Creek	X
292	Crystal River	
293	Deep Creek	X
294	Dome Peak	X
295	East Divide-Four Mile Park	
296	East Vail	
297	East Willow	
298	Elk Creek B	
299	Elliot Ridge	X
300	Fawn Creek-Little Lost Park	
301	Freeman Creek	X
302	Gallo Hill	
303	Game Creek	
304	Grizzly Creek	
305	Gypsum Creek	X
306	Hardscrabble	
307	Hay Park	
308	Holy Cross City	
309	Homestake	
310	Hoosier Ridge	X
311	Housetop Mountain	
312	Hunter	X
313	Little Grand Mesa	X
314	Lower Piney	
315	Mamm Peak	
316	Maroon East	

Line No.	Colorado roadless area name	Includes upper tier acres
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	X
325	No Name	
326	North Elk	
327	North Independent A	X
328	North Independent B	
329	North Woody	
330	Pagoda Peak	
331	Piney Lake	
332	Porcupine Peak	X
333	Ptarmigan A	
334	Ptarmigan B	X
335	Ptarmigan C	X
336	Ptarmigan Hill A	
337	Ptarmigan Hill B	
338	Red Dirt A	
339	Red Dirt B	
340	Red Mountain	
341	Red Table	X
342	Reno Mountain	
343	Ripple Creek Pass-Trappers Lake	X
344	Ryan Gulch	
345	Salt Creek	
346	Sloan Peak	X
347	Spraddle Creek A	X
348	Spraddle Creek B	
349	Sweetwater A	X
350	Sweetwater B	
351	Tenderfoot Mountain	X
352	Tenmile	
353	Thompson Creek	
354	Tigiwon	X
355	Treasure Mountain	X
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	X

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Arthur L. Blazer,

*Deputy Under Secretary, Natural Resources
and Environment.*

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