



This document is scheduled to be published in the Federal Register on 01/28/2015 and available online at <http://federalregister.gov/a/2015-01573>, and on FDsys.gov

[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

Use By Over-Snow Vehicles (Travel Management Rule)

36 CFR Parts 212 and 261

RIN 0596-AD17

AGENCY: Forest Service, USDA

ACTION: Final Rule

SUMMARY: The Forest Service manages winter uses to protect National Forest System (NFS) resources and to provide a range of opportunities for motorized and non-motorized recreation. In 2005, the agency regulated winter motorized use as a discretionary activity under its regulations for Use by Over-Snow Vehicles. Consistent with a court order dated March 29, 2013, the United States Department of Agriculture (the Department) amends the Department's travel management rule (TMR) to require designation of roads, trails, and areas on NFS lands to provide for over-snow vehicle (OSV) use. An over-snow vehicle is defined as "a motor vehicle that is designed for use over snow and that runs on a track and/or a ski or skis, while in use over snow". The Responsible Official will establish a system of routes and areas to provide for over-snow vehicle use. The regulations will continue to exempt over-snow vehicle use from the travel management rule, which provides for designation of a system of routes and areas for other types of motor vehicle use.

DATES: This rule is effective [insert date 30 days after publication in the FEDERAL REGISTER].

ADDRESSES: The record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the Office of the Director, Recreation, Heritage, and Volunteer Resources Staff, 5th Floor, Sidney R. Yates Federal Building, 1400 Independence Avenue, S.W., Washington, D.C., on business days between 8:30 a.m. and 4:00 p.m. Those wishing to inspect or copy these documents are encouraged to call Jamie Schwartz, Recreation, Heritage, and Volunteer Resources Staff, at 202□205□1589 beforehand to facilitate access into the building.

FOR FURTHER INFORMATION CONTACT: Jamie Schwartz, 202□205□1589, Recreation, Heritage, and Volunteer Resources Staff.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Rule

Between 1982 and 2009, the number of people who operated motor vehicles off road increased by more than 153 percent in the United States (“Outdoor Recreation Trends and Futures, a Technical Document Supporting the Forest Service 2010 RPA [Forest and Rangeland Renewable Resources Planning Act of 1974] Assessment,” p. 135 (H. Cordell, 2012)). While both motor vehicle use and OSV use are increasing in the National Forests and Grasslands, so are many other types of recreational activities. From 1982 to 2009, the number of people in the United States participating in viewing or photographing birds increased 304.2 percent, the number of people participating in day hiking increased 228.2 percent, the number of people participating in backpacking increased 167 percent, the number of people participating in fishing increased 36 percent, and the number of people participating in hunting increased 34 percent (*id.* at 135□36). Providing for the long-term sustainable use of NFS lands and resources is essential to

maintaining the quality of the recreation experience in the National Forests and Grasslands.

In 2005, the Forest Service (Agency) promulgated the TMR to provide more effective management of public motor vehicle use. The 2005 TMR includes subpart B, which requires designation of those NFS roads, NFS trails, and areas on NFS lands where public motor vehicle use is allowed (36 CFR 212.51(a)), and subpart C, under which the Responsible Official has the discretion to determine whether to regulate OSV use and to establish a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed. Subpart C of the 2005 TMR authorizes but does not require the Responsible Official to allow, restrict, or prohibit OSV use on NFS roads, on NFS trails, and in areas on NFS lands.

On March 29, 2013, the U.S. District Court for the District of Idaho ruled that subpart C of the TMR violated Executive Order (EO) 11644, as amended by EO 11989. *Winter Wildlands Alliance v. U.S. Forest Serv.*, 2013 WL 1319598, No. 1:11-cv-0586-REB (D. Idaho Mar. 29, 2013). The court did not rule that the Agency lacks the discretion to determine how to regulate OSV use. To the contrary, the court held that the Forest Service has the discretion to determine where and when OSV use can occur on NFS lands. The ruling requires the Agency to designate routes and areas where OSV use is permitted and routes and areas where OSV use is not permitted on NFS lands, consistent with EO 11644, as amended by EO 11989, sec. 3(a), but does not dictate where and when OSV use can occur on those lands. The court ordered the Forest Service to issue a new rule consistent with the EOs.

The Department is amending subpart C of the TMR to provide for management of

OSVs on NFS lands consistent with the EOs, the court's order, and subpart B of the TMR. Specifically, the Department is amending subpart C of the TMR to require the Responsible Official to designate NFS roads, NFS trails, and areas on NFS lands where OSV use is allowed in administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, where snowfall is adequate for OSV use to occur. The Department is not removing the exemption for OSVs from subpart B.

2. Unique Qualities of OSV Use and Management

The Department believes that a separate subpart for regulation of OSV use is appropriate because of the difference in management and impacts of OSV use and other types of motor vehicle use on NFS lands.

The difference between management of OSV use and management of other types of motor vehicle use on NFS lands stems from differences in their associated settings, activities, environmental impacts, and public preferences. National Forests and Grasslands change when snow blankets the landscape. Vegetation camouflages, animals burrow, and water transforms into ice. Recreationists and others accessing snow-covered National Forests and Grasslands typically trade hiking boots for skis and snowshoes and motor vehicles with tires for those with tracks and sleds.

Because of snowfall patterns, National Forests and Grasslands vary significantly in their need to address OSV use. National Visitor Use Monitoring (NVUM) data from 2008 to 2012 show that approximately 30 percent of NFS lands do not offer OSV recreation opportunities. OSV use occurs only when sufficient snow is present, in contrast to other types of motor vehicle use, which can occur at any time of the year.

Other types of motor vehicles operating over snow are regulated under subpart B of the TMR.

When properly operated and managed, OSVs do not make direct contact with soil, water, and vegetation; whereas most other types of motor vehicles operate directly on the ground. Unlike other types of motor vehicles traveling cross-country, OSVs generally do not create a permanent trail or have a direct impact on soil and ground vegetation. In some areas of the country, OSV use is therefore not always confined to roads and trails.

The public's OSV preferences and practices on NFS lands vary nationwide due to different terrain, snow typology and amount, recreational activities, and transportation needs. OSV use on NFS lands in the Northeast and Midwest is largely trail-based, while the larger, wide-open, powder-filled bowls in western mountains can support cross-country OSV use.

Subpart B of the TMR recognizes that cross-country travel by other types of motor vehicles is generally unacceptable. Subpart C of the TMR as originally promulgated and in the final rule recognizes that cross-country travel by OSVs may be acceptable in appropriate circumstances.

Recreational preferences are another factor accounting for the difference in management of OSV use and other types of motor vehicle use. The public's desire for recreational opportunities is different in the summer and the winter. The public enjoys the National Forests for a variety of winter activities including snowmobiling, cross country skiing, snowshoeing, and winter snow play. NVUM data from 2008 to 2012 indicate that 21 percent of public use of the National Forests (152 million visits) occurs

during the snow season. Most of this winter use (69 percent) occurs at alpine ski areas. Nearly 4 million people enjoy snowmobiling on the National Forests.

In summary, OSV route and area designations will sustain natural resource values, enhance user experiences, and be consistent with other types of motor vehicle use designations on NFS lands.

3. Impact on Existing Decisions

Consistent with §212.50(b) of subpart B of the 2005 TMR, existing decisions that allow, restrict, or prohibit OSV use on NFS roads, on NFS trails, or in areas on NFS lands that were made under prior authorities (part 295 or subpart C) will remain in effect under the final rule and will not have to be revisited.

Analogous to §212.52(a) of subpart B of the 2005 TMR, the final rule provides that public notice with no further public involvement is sufficient for previous administrative decisions, made under other authorities and including public involvement, that regulate OSV use on NFS roads, on NFS trails, and in areas on NFS lands over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur, and no change is required to these previous decisions. In short, units or Districts that have completed OSV use designations under other authorities and including public involvement do not have to revisit them.

For clarity, the final rule adds a provision in subpart C regarding the requirement for an OSV use map to display designations for OSV use, separate from the requirement in subpart B for a motor vehicle use map displaying designations for other types of motor vehicle use.

4. Public Comments and Response to Comments

Overview

On June 18, 2014, the Forest Service published a document in the Federal Register (79 FR 34678) seeking public comment on the proposed amendments to subpart C of the TMR. The proposed rule was posted electronically on the Federal Register site at *www.gpoaccess.gov* and at the Federal e-rulemaking site at *www.regulations.gov*. During the 45-day comment period that ended on August 4, 2014, the Agency received no requests for an extension of the comment period. The Forest Service received 20,210 comments on the proposed rule.

The respondents represented 37 States and the District of Columbia. The following lists the categories of respondents:

- Recreation interests, including permit holders;
- Government agencies;
- Environmental or conservation groups; and
- Individuals who did not identify an affiliation.

Comments came from organizations and individuals concerned about the impacts of OSV use on the environment and on non-motorized uses. Comments also came from organizations and individuals concerned about potential restrictions on OSV use.

Respondents offered general comments either supporting or not supporting the proposed rule or supporting or opposing OSV use in general on NFS lands. Respondents also offered specific comments about sections of the proposed rule that they would like to see revised. Many respondents offered suggestions for implementation, funding, and enforcement of the proposed rule at the local level and comments on other rulemaking

efforts or existing Forest Service policy, all of which are beyond the scope of this rulemaking.

General Comments

Comment: Some respondents believed that the Forest Service has successfully used current subpart C of the TMR for managing OSV use and that there is no reason to implement the proposed rule.

Response: The March 29, 2013, order requires the Agency to revise subpart C to require, rather than provide for, designation of routes and areas where OSV use is permitted and routes and areas where OSV use is not permitted on NFS lands, consistent with EO 11644, as amended by EO 11989.

Comment: Some respondents stated that the Forest Service should have addressed OSV use in the TMR; that failure to do so has resulted in use conflicts and resource damage; and that the TMR should be reviewed and used as a starting point for developing an over-snow rule.

Response: Current subpart C of the TMR addresses OSV use by providing for but not requiring designation of routes and areas for OSV use. The Department disagrees that the approach to management of OSV use in current subpart C has resulted in use conflicts and resource damage. As stated in the preamble to the proposed and final rules, the Forest Service is amending subpart C in response to a court order to require designation of those NFS roads, NFS trails, and areas on NFS lands that are open to OSV use and to prohibit OSV use that is inconsistent with those designations.

Comment: Some respondents stated that the Forest Service should have more vigorously defended subpart C of the TMR and the Agency's management of OSV use.

Response: The Federal Government vigorously defended subpart C of the TMR in the litigation that resulted in the March 29, 2013, order. This order requires the Agency to revise subpart C to require, rather than provide for, designation of routes and areas where OSV use is permitted and routes and areas where OSV use is not permitted on NFS lands, consistent with EO 11644, as amended by EO 11989.

Comment: Some respondents stated that the proposed rule should not have been published in the summer, when OSV users are not focused on winter recreation.

Response: This rulemaking is court-ordered and is subject to a court deadline. The Agency had to proceed as quickly as possible to comply with the court order. Moreover, no publication time is ideal for everyone. For example, in the winter time, OSV users could be recreating and not focused on rulemaking.

Comment: Some respondents stated that since OSV use is not adequately regulated, and since few current restrictions on OSV use are enforced, OSV use should not be expanded. Other respondents noted that enforcement of restrictions and prohibitions on OSV use is an issue in the backcountry and that OSVs are encroaching on non-motorized areas in search of fresh powder and are disregarding signage in the area. Other respondents stated that the registration fee for OSVs should be raised to pay for increased enforcement and signage for OSV use designations.

Response: Enforcement of the TMR, including subpart C, is beyond the scope of this rulemaking. Forest Service law enforcement personnel play a critical role in ensuring compliance with applicable laws and regulations, protecting public safety, and protecting

NFS resources. The Forest Service also maintains cooperative relationships with many State and local law enforcement agencies that provide mutual support across jurisdictional boundaries. Education and cooperative relationships with users support enforcement efforts by promoting voluntary compliance. The final rule will not increase the Agency's budget or the number of law enforcement officers. However, the final rule will enhance consistency and clarity in management of OSV use on NFS lands.

OSV use maps will be available at local Forest Service offices and, as soon as practicable, on Forest Service websites. Once an administrative unit or a Ranger District issues an OSV use map, OSV use in that unit or District that is inconsistent with the designations reflected on the map will be prohibited. The Forest Service plans to issue additional travel management guidance in its sign handbook to enhance consistency in content and use of standard interagency symbols in signs.

Comment: Some respondents stated that the Forest Service should not establish an artificial, predetermined date by which local units are required to complete winter travel planning across the NFS. Other respondents requested that the Forest Service establish a timeline for issuance of OSV use maps.

Response: The Department shares an interest in completing route and area designations for OSV use as quickly as possible. The Forest Service will make every effort, within its available resources, to complete route and area designations for OSV use as quickly as possible. However, the Department disagrees with establishing an enforceable deadline for completion of the process. Imposing an enforceable deadline for completing OSV use designations would subject the Forest Service to a legal challenge if, despite its best efforts (perhaps due to the controversy involved in the process), the

Agency is unable to meet the deadline. The Department believes that appropriate public input and coordination between the Responsible Official and Federal, State, Tribal, county, and municipal governments offers the best hope for long-term resolution of issues involving designations for motor vehicle use, including OSV use. An inflexible deadline can make collaborative solutions more difficult.

Comment: Some respondents stated that how the Agency will fund management of OSV use and enforce restrictions on OSV use should be considered in OSV designation decisions, and requested that the Agency consider pursuing alternative management practices in coordination with the States and organizations like the Interagency Off-Highway Vehicle (OHV) Working Group established by the State of Montana's Department of Fish, Wildlife, and Parks.

Response: Recreation management in general and recreation funding are beyond the scope of this rulemaking, which addresses designation of routes and areas on NFS lands for OSV use. Forest Service appropriations are authorized by Congress. The Forest Service is committed to using whatever funds it has available to accomplish the purposes of this final rule in a targeted, efficient manner. The Agency makes appropriate use of all other sources of available funding and has a number of successful cooperative relationships with State governments. Volunteer agreements with user groups and others have proven successful in extending Agency resources for trail construction, maintenance, monitoring, and mitigation. Regardless of the level of funding available, the Department believes that the final rule provides an appropriate procedural framework for management of OSV use on NFS lands that is consistent with EO 11644, as amended by EO 11989, the District Court's March 29, 2013, order, and regulation of other types of

motor vehicle use on NFS lands. While availability of resources for maintenance and administration must be considered in designating routes for OSV use (§§212.55(a) and 212.81(d) of the final rule), cooperative relationships and volunteer agreements may be included in this consideration.

Comment: Some respondents supported the Forest Service policy for managing nonconforming uses in recommended wilderness and wilderness study areas and encouraged the Forest Service to codify this policy nationally in the final rule. Some respondents believed that inventoried roadless areas, areas recommended for wilderness in land management plans, and wilderness study areas should be more protected under the final rule. Other respondents suggested that the Forest Service amend 36 CFR 212.55(e) to state that “National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas, or primitive areas, inventoried roadless areas, areas recommended for wilderness in land and resource management plans, or wilderness study areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.”

Response: The issue regarding nonconforming uses in recommended wilderness and wilderness study areas is beyond the scope of this final rule. The Department believes that the National Forests and Grasslands should provide access for both motorized and non-motorized uses in a manner that is environmentally sustainable over the long term. Designations for motor vehicle use, including OSV use, are best made at the local level, in coordination with Federal, State, Tribal, and local governments and appropriate public involvement, as provided for in this final rule.

Protection of roadless areas is adequately addressed by the national and State-specific roadless rules and need not be addressed in this rulemaking.

Comment: Many respondents commented on the backcountry hut system in Colorado. Some of these respondents were in favor of allowing OSV use in the area surrounding these huts, while other respondents were opposed to OSV use in this area.

Response: Whether OSV use should be allowed in certain areas on NFS lands is beyond the scope of this final rule. This final rule addresses the procedural framework for making OSV use designations rather than OSV use designations themselves. The Department encourages public participation in local OSV use designations.

Comment: Some respondents stated that fat tire bicycles should be regulated under the proposed rule. Some respondents stated that the Forest Service should explicitly incorporate a definition of bicycles that unambiguously distinguishes them from motor vehicles, including OSVs, and should provide guidance to ensure that bicycles are managed as a non-motorized use. Some respondents commented that bicycles should be managed on their own merits and not as an afterthought to motorized travel management.

Response: Regulation of non-motorized use, including bicycles without motors, is beyond the scope of this final rule, which addresses motorized use, specifically, OSV use. The Forest Service has clearly defined the term “bicycle”, which includes new fat tire bicycles, in Forest Service Handbook 2309.18 as “a pedal-driven, human-powered device with two wheels attached to a frame, one behind the other.” Management of bicycles, including fat tire bicycles in winter, would be addressed as part of trail management

planning for non-motorized uses. New technologies that merge bicycles and motors, such as e-bikes, are considered motor vehicles under §212.1 of the TMR.

Comment: Some respondents stated that the proposed rule should require Forest Service employees to spend half their time in the field improving conditions and reducing fuels for fire.

Response: Allocation of employees' time with regard to conditions on the ground and reducing fuel loads is beyond the scope of this final rule, which addresses regulation of OSV use.

Comment: Some respondents stated that the term "Responsible Agency Official" should be clearly defined, and that identifying who this official is might help with potential inconsistency in implementing the rule.

Response: The Forest Service did not propose any changes pertaining to identification of the Responsible Official in the current TMR. Therefore, the request to define the term "Responsible Official" is beyond the scope of this final rule. The Department believes the meaning of this term is clear from the context of the TMR. The Responsible Official in the context of the TMR is the person who has responsibility for managing an administrative unit or a Ranger District and who has delegated authority to make designation decisions under the TMR for that unit or District.

Comment: Some respondents commented that education regarding outdoor ethics is paramount for backcountry activities such as OSV use and should be required in the final rule. These respondents believed that inexperienced users cause much of the environmental damage and use conflicts associated with OSV use and that better outdoor ethics training could prevent a lot of these problems.

Response: Outdoor ethics training is outside the scope of this rulemaking, which addresses designation of routes and areas for OSV use. The Department appreciates the valuable and long-standing contributions of nongovernmental organizations, including user groups, to promote environmental ethics and responsible behavior on Federal lands.

Comment: Some respondents commented that implementation of the proposed rule would have a direct impact on grooming programs and cooperative agreements for grooming among private organizations, counties, and the Forest Service.

Response: The Department disagrees. The final rule revises the procedural framework for designating routes and areas for OSV use consistent with EO 11644, as amended, and the March 29, 2013, court order and will not have any direct effect on grooming programs or cooperative agreements for grooming among private organizations, counties, and the Forest Service.

OSV Exemption in Subpart B

Comment: Some respondents stated that the Forest Service should remove the OSV exemption in subpart B to provide consistency between winter and summer travel management. Other respondents stated that OSVs are motor vehicles and therefore should be subject to the same regulation as other types of motor vehicles, such as OHVs. Some respondents stated that the OSV exemption in subpart B is appropriate given the differences between OSVs and other types of motor vehicles, including OHVs.

Response: The Department believes that there are enough differences between OSV use and other types of motor vehicle use to justify regulation of OSV use in a separate subpart. As stated above, the difference between management of OSV use and management of other types of motor vehicle use on NFS lands stems from differences in

their associated settings, activities, environmental impacts, and public preferences. For example, impacts from wheeled motor vehicles traveling directly on the soil differ from impacts from motor vehicles with tracks or skis traveling over snow. Therefore, the Department is retaining the OSV exemption in subpart B of the TMR.

Biological Resource Management

Comment: Some respondents stated that the Forest Service should limit OSV use off established trails to minimize damage to habitat for species like bear, ermine, dusky grouse, lynx, mountain goat, bighorn sheep, and snowshoe hare and that OSV use on trails should be limited to areas with no ecological value to ensure these species have adequate habitat. Other respondents stated that there is no credible evidence that OSVs cause resource damage or have an impact on wildlife and that the proposed rule should be rewritten to reflect that fact.

Response: The National Forests and Grasslands are managed by law for multiple uses, including wildlife, timber, grazing, mining, and outdoor recreation. These uses must be balanced, rather than given preference. OSV use may have an impact on NFS resources and wildlife. Managers must apply the so-called “minimization criteria” in §212.55 when determining which roads, trails and areas to authorize for OSV use in order to minimize effects on National Forest resources including wildlife. These criteria do not change with this rule. The Department believes that National Forests and Grasslands should provide access for both motorized and non-motorized uses in a manner that is environmentally sustainable over the long term. The Department believes that the analysis of effects to wildlife and other NFS resources for designations for motor vehicle use, including OSV use, are best made at the local level, in coordination with Federal,

State, Tribal, and local governments and with appropriate public involvement, as provided for in this final rule.

Comment: Some respondents stated that allowing OSV use everywhere hurts dedicated lynx and wolverine habitat. Some respondents stated that a large portion of wolverine habitat in North America is under Federal ownership and should be protected. These respondents requested that the final rule fully evaluate and disclose the effects of dispersed recreation on wolverines and their habitat and, where necessary, minimize the harm from those activities. These respondents also stated that the final rule should require the Forest Service to consult with the U.S. Fish and Wildlife Service to determine best mitigation practices regarding wolverines. Some respondents stated that OSV use compact snow, which gives larger predators like the coyote easier access to areas previously available to only smaller predators like the lynx and results in increased competition during sensitive lifecycles. Other respondents stated that there are fewer species in the winter season than in the summer, but that their protection is still important. Some respondents stated that Responsible Officials should be required to use the best available technology (BAT), as determined by the U.S. Environmental Protection Agency, in assessing impacts of OSV use in areas with sensitive species or special features. Some respondents stated that wildlife impacts from OSV use would be minimal because OSV users tend to favor higher elevations and because wildlife has typically migrated to lower elevations where conditions are more favorable.

Response: The impact of OSV use on specific species, including threatened and endangered species, in specific locations is beyond the scope of this final rule. This final rule addresses the procedural framework for making OSV use designations, rather than

OSV use designations themselves. OSV use designations are made at the local level, with appropriate public input and coordination with Federal, State, Tribal, and local governments based on the criteria in the final rule (§§212.55 and 212.81(d)). The final rule does not provide for designating routes and areas for OSV use everywhere it may occur. Rather, the final rule provides for designation of a system of routes and areas where OSV use is allowed and for prohibition of OSV use that is inconsistent with the designations.

The final rule will not have any effect on the ground until designation of roads, trails, and areas for OSV use is complete for a particular administrative unit or Ranger District, with appropriate public involvement and coordination with Federal, State, Tribal, and local governments. Designation decisions at the local level will be accompanied by appropriate consideration of potential impacts on threatened and endangered species. In making designations for OSV use, the Forest Service will consult with the U.S. Fish and Wildlife Service, as appropriate, under Section 7 of the Endangered Species Act. BAT is not required for assessing impacts from motor vehicle use. The Forest Service encourages public participation in local OSV decision making.

Other Environmental Impacts and Use Conflicts

Comment: Some respondents noted that OSVs are heavy and compact the snow, leaving deep tracks that make slopes unusable and dangerous for cross-country skiing. These respondents stated that this impact could be avoided by separating motorized and non-motorized uses. Some respondents commented that motorized and non-motorized uses should be located in separate staging areas, where possible, to limit use conflicts. Some respondents believed that snow pack from track compaction decreases snow melt. Other respondents stated that OSVs come in direct contact with the soil when OSV users search for adequate snow and that OSVs come in contact with the top of vegetation, which has an impact on the soil and vegetation. Some respondents stated that motorized and non-motorized recreational activities are legitimate uses of Federal land, but they should be separated to ensure safe enjoyment for all involved. Other respondents believed that OSV use is incompatible with non-motorized uses and should be excluded from all NFS lands or should be restricted to trails and subject to a licensing requirement. Some respondents commented that the Responsible Official should have to address OSV use in the same manner as other motorized recreational uses on NFS lands. These respondents reasoned that the issue of use conflicts between motorized and non-motorized recreation is the same regardless of the level of snowfall or the season.

Other respondents stated that OSVs are loud and that their noise carries, in some cases for several miles, which disturbs the quiet recreational experience of non-motorized users. Some respondents believed that OSVs compromise air and water quality, the landscape, and the quiet of the natural forest setting. Some respondents believed that OSV users leave behind trash and litter that adversely affects other users. Other

respondents stated that the Forest Service should endorse the minimization of OSV use in the backcountry and that mechanized travel spoils the wilderness experience.

Some respondents stated that the proposed rule should protect the quiet use of NFS lands, as this use predates any motorized use. Some respondents stated that the Forest Service failed to address non-motorized winter recreational uses like skiing and snowshoeing, which predate OSV use, and that these non-motorized uses are most likely to be heavily impacted by OSV use and should be addressed. Some respondents commented that it is difficult for non-motorized winter users to reach the backcountry, but when they do and find it overrun with OSVs, it can detract from their experience. These respondents believed that motorized winter uses should be limited to certain areas so that non-motorized winter users can seek solitude and quiet elsewhere. Other respondents stated that advances in technology have allowed OSVs to go places they never have before, further decreasing the areas available for quiet recreation. Some respondents believed that non-motorized uses should be given priority over motorized uses when undertaking winter travel management planning.

Some respondents believed that OSVs with two-cycle motors are obsolete and environmentally wasteful and should be banned in favor of modern four-cycle motors. These respondents noted that the exhaust from an OSV not only smells but lingers in the area for several hours.

Other respondents stated that OSVs do not come in direct contact with the ground and often ride on a cushion of snow several feet thick, and that when the snow melts, the tracks are washed away. Some respondents believed that OSVs on NFS roads do little to no harm compared to other motor vehicles and therefore should not be restricted. Other

respondents believed that motorized winter use is an appropriate use of NFS lands and should not be limited in favor of non-motorized winter uses. Some respondents suggested that winter travel planning be based on an equitable process that eliminates the perceived bias that the OSV community has dealt with for many years. These respondents stated that non-motorized users like cross-country and backcountry skiers, snowshoe enthusiasts, split boarders, and dog-sledders have unlimited access to the backcountry, including areas that they could not realistically reach without the aid of an OSV, while OSVs are limited to small fractions of the National Forests and Grasslands. These respondents believed that limiting OSVs to small areas would result in more use conflicts and greater environmental impacts.

Response: The site specific potential effects of OSV use on non-motorized winter recreational use and natural resources and the designation of certain types of OSVs in specific locations are beyond the scope of this final rule. This final rule addresses the procedural framework for making OSV use designations, rather than OSV use designations themselves. OSV use designations are made at the local level, with appropriate public input and coordination with Federal, State, Tribal, and local governments based on the criteria in the final rule (§§212.55 and 212.81(d)). The same criteria are applied to designations for OSV use and designations for other types of motor vehicle use. Potential effects of OSV use on non-motorized winter recreational use and natural resources are addressed in the procedural framework for OSV use designations in the final rule. The criteria for designation of roads, trails, and areas for OSV use in the final rule require the Responsible Official to consider, with the objective of minimizing, effects of OSV use on natural resources and conflicts between OSV use and existing or

proposed recreational uses of NFS lands, including non-motorized winter recreational uses. In addition, the criteria for designation of routes and areas for OSV use require the Responsible Official to consider the compatibility of OSV use with existing conditions in populated areas, taking into account sound, emissions, and other factors (§§212.55(b) and 212.81(d) of the final rule).

The Department believes that National Forests and Grasslands should provide access for both motorized and non-motorized uses in a manner that is environmentally sustainable over the long term. The NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the NFS to provide different opportunities for recreation. The Department believes that designations for motor vehicle use, including OSV use, are best made at the local level, in coordination with Federal, State, Tribal, and local governments and with appropriate public input, as provided for in this final rule. The Forest Service encourages public involvement in local OSV decisions.

The Department agrees that OSVs have different impacts from other types of motor vehicles that run on the ground. However, per EO 11644, as amended, and the court order, the Forest Service must designate those routes and areas where OSV use is allowed and those routes and areas where OSV use is prohibited.

Economic Impacts

Comment: Some respondents believe that increased regulation of OSV use will have a negative impact on small-town economies that depend on OSV users for income.

Response: The final rule revises the procedural framework for local decision-making regarding OSV use and will not have any effect until designation of roads, trails,

and areas for OSV use is complete for a particular administrative unit or Ranger District, with appropriate public involvement and coordination with Federal, State, Tribal, and local governments. Even after OSV designations are complete, the final rule will have no direct impact on small business entities because designations merely will regulate where OSV use will occur on NFS roads, on NFS trails, and in areas on NFS lands. The Department has determined that the final rule will not have a significant economic impact on a substantial number of small entities because the final rule will not impose recordkeeping requirements on them, nor will it affect their competitive position in relation to large entities or their cash flow, liquidity, or ability to remain in the market.

Comment: Some respondents stated that non-motorized winter users of NFS lands use staging areas and trails that in many cases have been plowed or groomed with revenue from OSV users; that non-motorized users do not pay for plowed trailhead parking or groomed trails but want increased access to these areas; and that non-motorized users should be required to share the cost of plowing trailhead parking and grooming trails by paying for a trail pass or parking pass or paying a use fee. Some respondents stated that if non-motorized users want a separate system of trails, they should have to pay a separate fee to fund maintenance of those trails. Other respondents stated that the motorized recreation community has many partnerships in place to maintain and improve existing trails that are used by both motorized and non-motorized users.

Response: The extent to which the costs of plowing trailhead parking and grooming trails are borne by users is beyond the scope of this rulemaking. The Forest Service does not typically plow trailhead parking or groom trails and does not run

programs that generate revenue to pay for these services. States or private organizations typically plow trailhead parking and groom trails using revenue derived from the States' sales tax or the sale of stickers issued by the States. The final rule revises the procedural framework for local decision-making regarding OSV use and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with appropriate public involvement and in coordination with Federal, State, Tribal, and local governments. The Forest Service's authority to charge and retain fees for use of recreational facilities and services is contained in the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814), which is beyond the scope of this rulemaking. The Department agrees that cooperators make valuable contributions to maintenance and improvement of NFS trails for both motorized and non-motorized users.

Demographics of OSV Use

Comment: The demographics used in the proposed rule are outdated and should be updated to reflect current OSV use.

Response: The demographics for OSV use used in the proposed rule are provided for background purposes and date from a 2012 Resource Planning Assessment. These figures are current, as figures in Resource Planning Assessments conducted under the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (16 U.S.C. 1600 note, 1600-1614) are normally updated every 5 to 10 years. The increase in cross-country skiing between 1992–93 and 1999–2000 is 2.6 million visits, while the increase in OSV use for those periods is 6.1 million visits.

Comment: The percentages used in the proposed rule to demonstrate an increase in recreational activities like bird-watching and fishing can be misleading; the Forest Service should replace them with actual numbers.

Response: This information was provided for background purposes and came from research data in “Outdoor Recreation Trends and Futures, a Technical Document Supporting the Forest Service 2010 RPA Assessment,” p. 135 (H. Cordell, 2012) at http://www.srs.fs.usda.gov/pubs/gtr/gtr_srs150.pdf.

Recreational Preferences

Comment: Some respondents stated that wilderness areas have increased steadily over the last 40 years, which has limited all forms of motorized recreation and given more access to non-motorized uses. These respondents stated that Federal lands should be open to all members of the public.

Response: This final rule does not encourage or discourage motor vehicle use, but rather requires designation of roads, trails, and areas for OSV use. The Department believes that a well-designed system of routes and areas designated for OSV use can reduce maintenance needs and environmental damage while enhancing the recreational experience for all users, both motorized and non-motorized.

Comment: Some respondents commented that motor vehicle access for the elderly and persons with disabilities should not be limited.

Response: Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all NFS lands that are open to foot travel and are specifically

exempted from the definition of a motor vehicle in §212.1 of the TMR, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OSVs on NFS roads, on NFS trails, and in areas on NFS lands where OSV use is prohibited because such an exemption could fundamentally alter the nature of the Forest Service’s travel management program (7 CFR 15e.103). Reasonable restrictions on OSV use, applied consistently to everyone, are not discriminatory.

Comment: Some respondents believed that the Forest Service should remove references to “play areas” from the final rule because all types of terrain are conducive to OSV travel and recreation.

Response: Like the proposed rule, the final rule does not include a reference to “play areas.”

Comments Related to Specific Sections of the Proposed Rule

Part 212—Travel Management

Subpart A—Administration of the Forest Transportation System

212.1—Definitions

Comment: Some respondents commented that designation of areas as big as a Ranger District would not comply with the language or intent of EO 11644, as amended. Some respondents commented that the proposed definition for an area would not resolve use conflicts and would only exacerbate them. One respondent suggested that designated areas should be limited to watersheds no larger than those assigned hydrologic unit code 6 by the U.S. Geological Survey. Other respondents supported the proposed definition of an area.

Response: EO 11644, as amended, does not define the term “area.” The amended definition for “area” in the proposed and final rules is based on the characteristics of OSV use, which presents a distinct suite of issues. An OSV traveling over snow has different impacts on natural resource values than motor vehicles traveling over the ground. Unlike other motor vehicles traveling cross-country, OSVs traveling cross-country generally do not create a permanent trail or have a direct impact on soil and ground vegetation. However, OSV use may have an impact on NFS resources and wildlife. The Department anticipates that it may be appropriate to designate areas for cross-country OSV use and that it may be appropriate to designate larger areas for cross-country OSV use than for cross-country use by other types of motor vehicles. Accordingly, the definition for an area in the proposed and final rules exempts OSVs from the statement that in most cases an area will be much smaller than a Ranger District. The definition of “area” in the proposed and final rules does not provide that areas designated for OSV use will necessarily be as large as a Ranger District, but rather that they do not have to be much smaller than a Ranger District. As with evaluation of areas proposed for other types of motor vehicle use, proposed OSV areas will be subject to the minimization criteria in §212.55(b)(1)□(4), pursuant to §212.81(d) of the final rule.

Comment: Some respondents commented that the definition of the term “over-snow vehicle” needs to be expanded to allow for modified vehicles, such as snowcats and fat tire bicycles, to be used on the trail system if permitted by State law.

Response: Regulation of non-motorized uses such as bicycle use is beyond the scope of this rulemaking. The definition of “over-snow vehicle” is also beyond the scope

of this rulemaking, as it was not proposed for revision. The Department does not believe it is necessary or appropriate to revise the definition of “over-snow vehicle” at this time.

Subpart C—Over-snow Vehicle Use

212.81(a)—Over-snow Vehicle Use, General

Comment: Some respondents believed that local officials should be given the discretion to designate a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed.

Some respondents believed that the Responsible Official should not have the discretion to designate a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed. These respondents stated that winter travel management planning should be more consistent with travel management planning in other seasons by producing a system of routes and areas where OSV use is prohibited unless allowed. These respondents noted that this approach is easily understood by the public and is more enforceable. Other respondents stated that where appropriate (for example, where no natural resource issues are identified), the Forest Service should be consistent regarding designations for OSV use across District, Forest, and Regional boundaries. These respondents believed that District, Forest, and Regional boundaries can be confusing to the public and that consistent designations for OSV use would improve public understanding as well as provide consistent opportunities for OSV use.

Other respondents commented that the proposed rule violates EO 11644, as amended, and the March 29, 2013, court decision by continuing to allow designation of a system that is open unless closed to OSV use, which circumvents analysis of impacts

from OSV use. Other respondents commented that, to be consistent with the EO 11644, as amended, the Agency must designate trails and areas where OSV use is allowed and trails and areas where OSV use is not allowed.

Response: In its March 29, 2013, ruling, the Federal District Court held that under EO 11644, as amended, the Forest Service has the discretion to determine how to regulate OSV use, but that the Agency does not have the discretion to determine whether it will regulate OSV use. The proposed rule is consistent with the court's ruling in that it requires the Agency to designate routes and areas for OSV use, but gives the Responsible Official the discretion to determine whether to designate a system of routes and areas that is open unless designated closed to OSV use or a system of routes and areas that is closed unless designated open for OSV use. In either case, the decision would be based on an analysis of the impacts from the proposed designations and anticipated uses in accordance with subpart B, as modified in subpart C to provide for consistency in terminology.

The Department agrees that it would be clearer for the public and would enhance consistency in travel management planning and decision-making if the Responsible Official were required to designate a system of routes and areas where OSV use is prohibited unless allowed. Accordingly, the Department has revised §212.81(a) in the final rule to state that, subject to specified exemptions, OSV use on NFS roads, on NFS trails, and in areas on NFS lands must be designated by the Responsible Official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, where snowfall is adequate for that use to occur and, as appropriate, must be

designated by class of vehicle and time of year. Under §261.14 of the final rule, OSV use that is not in accordance with the designations reflected on an OSV use map is prohibited.

The Department has removed the definition of “designated road, trail, or area” from §212.1, as with promulgation of this final rule it is no longer accurate to define designated routes and areas as those that are designated for motor vehicle use pursuant to §212.51 on a motor vehicle use map. Under this final rule, routes and areas will also be designated for OSV use pursuant to §212.81 on an OSV use map.

Comment: Most respondents commented that OSV designation decisions should be made at the local level, not at the national level. Some respondents commented that the local Forest Service official should retain the discretion to manage OSV use to address local conditions.

Many respondents stated that whether there is adequate snowfall for OSV use should be determined at the local level and should not be based on specific starting and ending dates because of the unpredictability of snowfall. Some respondents suggested that adequate snowfall be determined by a minimum depth, rather than a specific timeframe. Other respondents suggested that OSV use be zoned by timeframe as well as by location.

Response: The Department agrees that OSV designation decisions, including adequacy of snowfall for OSV use, should be made at the local level, as reflected in the final rule. Designation of OSV use in specific locations, including determination of where snowfall is adequate for OSV use to occur, is beyond the scope of this rule. The final rule revises the procedural framework for local decision-making regarding OSV use, utilizing

the criteria for designation of roads, trails, and areas (§§212.55 and 212.81(d) of the final rule).

Section 212.81(a) of the proposed rule provides, subject to certain exceptions, that OSV use on NFS roads, on NFS trails, and in areas on NFS lands must be designated on administrative units and Ranger Districts, or parts of those units and Districts, where snowfall is adequate for that use to occur. The Forest Service intended the phrase, “where snowfall is adequate for that use to occur,” to have two applications. First, the Agency intended the phrase to exempt units like the National Forests of Florida that never have enough snowfall for OSV use to occur from the designation requirement in §212.81(a). Second, where snowfall may occur, but is not consistently adequate for OSV use to occur, the Agency intended the phrase to provide for the Responsible Official to determine when snowfall is adequate in designating OSV use. To clarify these intentions, the Department has added the phrase, “and if appropriate, shall be designated by class of vehicle and time of year,” after the phrase, “where snowfall is adequate for that use to occur.” The Department has included the phrase, “class of vehicle,” to enhance consistency with subpart B, in accordance with the preceding comment and response, and to allow Responsible Officials to take into account changing technology in OSVs. The Department has included the qualifier, “as appropriate,” because it may not always be appropriate or necessary to designate OSV use by class of vehicle or time of year. The Department believes that determinations of when snowfall is adequate for OSV to occur should be based on local conditions, including, as appropriate, variability in the weather.

Comment: Many respondents commented that the proposed rule recognizes the difference between OSV use in the East and OSV use in the Midwest and West. These

respondents stated that cross-country travel is the preferred method of OSV use in the Midwest and West and should be allowed to continue under the final rule. Other respondents believed that OSV use in the West should not be limited to designated trails and that experienced riders would not ride off route in an area that is not conducive to OSV use because they are aware that riding in this type of area would damage the expensive tracks on OSVs. Some respondents stated that OSVs should be given the same opportunity to travel cross-country as skiers and snowshoers. Some respondents suggested that the ability to travel cross-country on an OSV is what brings people to snow-covered areas and that by limiting OSV use to routes, the Forest Service would decrease the number of people who will visit these areas. Some respondents believed that the proposed rule recognizes that OSV use is a legitimate use on NFS lands and that OSV use should not be limited to designated trails and roads, but should also be allowed to occur in open areas. These respondents stated that the proposed rule should be implemented as written.

Other respondents believed that cross-country OSV use should not be allowed because OSV users can quickly become lost and end up in a non-motorized area. Some respondents suggested that areas 3 to 5 square miles beyond trailheads and parking lots should be closed to cross-country OSV use during the snow months. These respondents believed that this approach would allow OSVs to access the backcountry while leaving the more accessible areas to snowshoers and cross-country skiers.

Response: The Department agrees that OSV use presents a distinct suite of issues. An OSV traveling over snow has different impacts on natural resource values than motor vehicles traveling over the ground. Unlike other motor vehicles traveling cross-country,

OSVs traveling cross-country generally do not create a permanent trail or have a direct impact on soil and ground vegetation. Therefore, the Department anticipates that it may be appropriate to designate areas for cross-country OSV use and that it may be appropriate to designate larger areas for cross-country OSV use than for cross-country use by other types of motor vehicles. Accordingly, the definition for an area in the proposed and final rules exempts OSVs from the statement that in most cases an area will be much smaller than a Ranger District. Whether specific areas should be designated for OSV use is beyond the scope of this final rule. This final rule addresses the procedural framework for making OSV use designations, rather than OSV use designations themselves. OSV use designations are made at the local level, with appropriate public input and coordination with Federal, State, Tribal, and local governments, based on the criteria in the final rule (§§212.55 and 212.81(d)).

Comment: Some respondents commented that the proposed rule should restrict OSV use to designated routes and prohibit cross-country OSV use near wilderness and that the routes should be designated so as to minimize impacts on wilderness and wildlife and to avoid impairment of the visitor experience in wilderness.

Response: The Department does not believe it would be appropriate for this rule to restrict OSV use to designated routes and prohibit cross-country OSV use near wilderness. Responsible officials will consider impacts of OSV use on nearby wilderness and wildlife during the designation process by applying the minimization criteria of 212.55 to minimize effects to National Forest resources and to other users.

Comment: Some respondents commented that Forest Service units will need to conduct site-specific analysis for all resources within an area to be designated for OSV

use, which would require a “hard look” under the National Environmental Policy Act (NEPA). These respondents believed that the NEPA process for designating an area for OSV use could be onerous. Other respondents commented that NEPA documentation for winter travel management decisions does not adequately reflect how the Forest Service applied the minimization criteria in the TMR in those decisions and is inconsistent with the TMR.

Response: Regulations implementing NEPA are issued by the Council on Environmental Quality and are found at 40 CFR part 1500. Agency direction on NEPA compliance is found in 36 CFR part 220 and FSH 1909.15. The Department believes that the scope, content, and documentation of NEPA analysis associated with designating routes and areas for OSV use will ultimately depend on site-specific factors, including the local history of travel planning, public input, and environmental impacts at the local level. Therefore, the Department is not addressing NEPA compliance in this final rule. The Responsible Official will address application of the minimization criteria pursuant to §§212.55(b)(1)–(4) and 212.81(d) of the final rule in documentation for OSV designation decisions.

Comment: Some respondents stated that the Forest Service should clarify in the final rule the need to apply the minimization criteria in the TMR to trails within areas that are proposed for designation for OSV use. Other respondents commented that by failing to provide for analysis of trails within areas, the proposed rule does not address the requirement to show that OSV use on those routes will not have a negative impact on the environment or other uses.

Response: The Department believes that if an area is analyzed appropriately under NEPA for OSV use utilizing the criteria established in the final rule (§§212.55 and 212.81(d)), there is no need for additional analysis to evaluate effects of OSV use on specific trails in that area, which are typically covered by snow. As units analyze an area, impacts on the environment and other users will be minimized within that area as specified in §212.55(b)(1)-(4)). Consistent with the EOs, the proposed and final rules do not require the Forest Service to show the absence of any adverse impacts from OSV use on the environment or other uses. Rather, the proposed and final rules require the Agency to consider, with the objective of minimizing, certain environmental impacts and use conflicts (§212.55(b)(1)-(4)).

Comment: Some respondents commented that there is a master memorandum of understanding between the Forest Service's Alaska Region and the Alaska Department of Fish and Game (ADF&G) and that ADF&G has authority to regulate fish and wildlife populations on NFS lands, except to the extent that authority is superseded by Federal law. These respondents also noted that, with regard to designated wilderness in Alaska, administrative use of OSVs by governmental agencies is allowed pursuant to the Alaska National Interest Lands Conservation Act (ANILCA) and Forest Service Manual Supplement no. R-10 2300-2003-2, 2326.1, Conditions Under Which Use May Be Approved. These respondents suggested amending the exemption from OSV designations in proposed §212.81(a)(1) for limited administrative use by the Forest Service to add administrative use by State fish and wildlife management agencies. These respondents believed that an exemption should be granted for all administrative use because the

qualifier “limited” is not defined and is redundant, since Agency administrative field work and travel are presumably necessary rather than superfluous.

Response: The Department disagrees that the exemption from OSV designations in §212.81(a)(1) of the proposed rule and from the prohibition in §261.14(a) of the TMR for limited administrative use by the Forest Service should be revised to add limited administrative use by State fish and wildlife management agencies. The Department has retained the qualifier “limited administrative use” in the exemption. A broad exemption from OSV designations could undercut the purposes of the final rule. The Department is not making the requested revision so as to stay consistent with the corresponding exemption in §§212.51(a)(4) and 261.13(d) of the TMR. The Forest Service has the ability to authorize OSV use by State fish and wildlife management agencies on a case-by-case basis.

Comment: Some respondents stated that there should be a process for administrative review of OSV designation decisions prior to their enforcement.

Response: OSV designation decisions that are documented with a decision notice or record of decision associated with an environmental assessment or environmental impact statement are subject to the predecisional objection process in 36 CFR part 218.

212.81(b)—Previous Comprehensive Over-snow Vehicle Decisions

Comment: Some respondents believed that all areas on NFS lands that are open to OSV use should remain that way.

Other respondents stated that the final rule should allow areas and routes to be designated for OSV use only after comprehensive analysis has been made available for public review and comment.

Response: The final rule's prohibition on OSV use off the designated system (§261.14) goes into effect on an administrative unit or a Ranger District once that unit or District has designated those NFS roads, NFS trails, and areas on NFS lands that are open to OSV use and published an OSV use map identifying those roads, trails, and areas (§212.81(c) of the final rule). Until designations for a unit or District are complete and an OSV use map identifying those designations is published, existing OSV travel management policies, restrictions, and orders remain in effect. Use of NFS roads, NFS trails, and areas on NFS lands consistent with current OSV travel management decisions and management objectives may continue. Forest Supervisors may continue to issue travel management orders pursuant to part 261, subpart B, and impose temporary, emergency closures based on a determination of considerable adverse effects pursuant to §§212.52(b)(2) and 212.81(d) of the final rule. Under §§212.80(b) and 212.81(b) of the final rule, previous administrative decisions that allow, restrict, or prohibit OSV use on NFS roads and NFS trails or in areas on NFS lands and that were made under other authorities may remain in effect.

As stated above, units or Districts that have completed OSV use designations under other authorities and including public involvement do not have to revisit them and may, with public notice but no further analysis or decision-making, establish those decisions as the designation pursuant to this final rule for the unit or District, effective upon publication of an OSV use map.

In that situation, the only substantive change effected by this final rule will be enforcement of the restrictions pursuant to the prohibition in §261.14, rather than pursuant to an order issued under part 261, subpart B. Section 212.81(b) of the final rule

provides that no further public involvement is required in this special case. Alternatively, Responsible Officials may revise OSV designations under §§212.54 and 212.81(d) of the final rule.

New OSV designation decisions will be subject to the procedural requirements in the final rule, including appropriate public involvement (§§212.52(a) and 212.81(d) of the final rule). Nothing in this final rule requires reconsideration of any previous administrative decisions that allow, restrict, or prohibit OSV use on NFS roads and NFS trails or in areas on NFS lands and that were made under other authorities, including decisions made in land management plans and travel plans. Section 212.80(b) of the final rule provides that these decisions may be incorporated into OSV designations made pursuant to this final rule.

Comment: Some respondents suggested that the Forest Service establish an expiration date for all previous OSV use decisions to ensure that an administrative unit or a Ranger District is not relying on OSV use decisions or winter travel plans that are woefully out of date. Other respondents stated that previous OSV use decisions should not be given undue weight, and that just because they were made under previous authorities does not mean that they should not be reviewed. Some respondents suggested that all existing OSV use decisions be reviewed for compliance with the minimization criteria in the TMR and EO 11644, as amended. Other respondents believed that if previous OSV use decisions addressed the minimization criteria in EO 11644, as amended, and were made with public involvement, they should not have to be reviewed, but that previous OSV use decisions that do not meet these criteria should have to be reviewed under the proposed rule. Some respondents suggested that the Forest Service

retain only previous OSV use decisions that were based on application of the minimization criteria, as required by EO 11644, and that all other previous OSV use decisions are deemed invalid.

Some respondents believed that previous OSV use decisions should not have to be reviewed, as they were made in accordance with the legal authorities in effect at that time, and as the Forest Service does not have the budget or personnel to review all previous OSV use decisions while making new OSV use decisions. These respondents believed that requiring review of all previous OSV use decisions would result in a backlog that would negatively affect all winter recreationists.

Response: The Department does not believe that previous OSV use decisions made under other authorities should be subject to an expiration date or a requirement for review. As with prior administrative decisions governing other types of motor vehicle use, nothing in this final rule requires reconsideration of any previous administrative decisions that allow, restrict, or prohibit OSV use on NFS roads and NFS trails or in areas on NFS lands and that were made under other authorities, including decisions made in land management plans and travel plans. To the contrary, §§212.80(b) and 212.81(b) of the final rule provide for these decisions to be given effect. The Department believes that previous OSV use decisions made under other authorities are valid and that requiring review of previous OSV use decisions would be inefficient and disrespectful of public involvement in past OSV use decision-making. The final rule recognizes that designations of roads, trails, and areas for OSV use are not permanent. Unforeseen environmental impacts, changes in public demand, route construction, and monitoring

conducted under §§212.57 and 212.81(d) of the final rule may lead Responsible Officials to consider revising OSV designations under §§212.54 and 212.81(d) of the final rule.

212.81(c)—Decision-making Process

Comment: Some respondents stated that the specific requirements for management of OSV use in EO 11644, as amended, as reinforced by the March 29, 2013, court ruling, should be incorporated into the proposed rule.

Response: The Department agrees and believes that the final rule is consistent with EO 11644, as amended, and the March 29, 2013, court ruling in requiring the Responsible Official to designate those routes and areas where OSV use is allowed and in prohibiting OSV use off the designated system.

Comment: Some respondents suggested expanding the criterion to consider conflicts between motorized and non-motorized uses under §212.55(b)(3) in making OSV designations to state that (1) remote lands that are not readily reachable by non-motorized winter recreationists but are readily reachable by OSV users should not be counted against OSV users; (2) OSV users should be credited for maintaining restrooms, parking facilities, and trails that benefit non-motorized recreationists; and (3) lands that are open to OSV use generally remain open to non-motorized winter recreation and so provide value to non-motorized recreationists.

Response: The Department does not believe that it would be appropriate to make this revision. Section 212.55(b)(3) of the TMR applies to all types of motor vehicle use, including OSV use, and tracks the corresponding wording in Section 3(a)(3) of EO 11644, as amended. Decisions regarding where OSV use may occur are best made at the

local level based on site-specific conditions and with appropriate public involvement, including input from motorized and non-motorized users and other interested parties.

Comment: Some respondents commented that the final rule should require the Responsible Official to coordinate with State and local officials before making any preliminary or final OSV designation decision.

Response: The Department agrees that travel management decisions should be coordinated with appropriate Federal, State, Tribal, county, and other local governments, as provided for in §§212.53 and 212.81(d) of the final rule.

Comment: Some respondents commented that the proposed rule appropriately requires the Responsible Official to recognize Sections 811(b) and 1110(a) of ANILCA when implementing the rule in Alaska and that the proposed rule should reference OSV use authorized under other applicable provisions of ANILCA.

Response: The Department declines to make this change, as sections 811(b) and 1110(a) are the only provisions in ANILCA that directly address OSV use.

Comment: Some respondents stated that the OSV use map, a requirement under the proposed rule, must have sufficient detail in order to be useful, and that the final rule should identify more clearly what should be included on an OSV use map.

Response: The Forest Service plans to develop a standard national format for OSV use maps issued under this final rule. The Forest Service also plans to issue additional travel management guidance in its sign handbook to enhance consistency in content and use of standard interagency symbols in signs. In addition, the Department has added a definition for “over-snow vehicle use map” to 36 CFR 212.1 and has moved the requirement for an OSV use map in subpart C to a separate section, §212.81(c) of the

final rule, to underscore that this requirement is separate from the requirement for a motor vehicle use map under subpart B. Consistent with §212.81(a) of the final rule, §212.81(c) of the final rule provides for an OSV use map to display the classes of vehicles and the time of year designated for OSV use, if applicable.

Comment: Some respondents stated that NFS roads, NFS trails, and areas on NFS lands designated for OSV use should be clearly marked. Other respondents believed that restrictions on OSV use should be more clearly relayed to the public so incidents of OSV use off the designated system could be reported to the proper authorities. These respondents recommended increasing signage around areas designated for OSV use to increase awareness of these designations by both motorized and non-motorized users.

Response: The Department declines to adopt this suggestion. The Forest Service has found that posting routes as open or closed to particular uses has not always been effective in controlling use, partly because new unauthorized routes continue to appear even in areas that are closed to motor vehicle use. Requiring each undesignated route and area to be posted as closed would be an unreasonable and unnecessary burden on Agency resources and would tend to defeat the purpose of the final rule. Signs have also proven to be difficult to maintain and subject to vandalism. The final rule places more responsibility on users to get OSV use maps from Forest Service offices or Websites and to remain on routes and in areas designated for OSV use. This approach is consistent with subpart B of the TMR.

Part 261—Prohibitions

Subpart A—General Prohibitions

261.14—Over-snow Vehicle Use

Comment: Some respondents suggested that the Forest Service require a special use permit for or prohibit activities and events involving OSV use on NFS lands. Other respondents commented that day use permits should be required for OSV use to limit impacts on natural resources and non-motorized users.

Response: Regulation of activities and events involving OSV use on NFS lands is beyond the scope of this rulemaking, which involves designation of routes and areas for OSV use. OSV use designations are made at the local level, with appropriate public input and coordination with Federal, State, Tribal, and local governments based on the criteria in the final rule (§§212.55 and 212.81(d)). The Department does not believe it would be appropriate to establish a prohibition on activities and events involving OSV use, which is a legitimate use of NFS lands. Permit requirements for OSV use are governed by the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)).

5. Regulatory Certifications for the Final Rule

Regulatory Impact

This final rule has been reviewed under USDA procedures and EO 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this final rule is nonsignificant and is therefore not subject to OMB review under EO 12866.

Environmental Impact

This final rule requires designation at the field level, with appropriate public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to OSV use. This final rule will have no effect on users or on the environment until designation of NFS roads, NFS trails, and areas on NFS lands for OSV use is complete for a particular

administrative unit or Ranger District, with appropriate public involvement. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.” The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

The Department has considered this final rule in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not directly affect small businesses, small organizations, and small governmental entities. The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act because it will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Department has considered this final rule under the requirements of EO 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this EO. The final rule will not impose any compliance costs on the States and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that

no further assessment of federalism implications is necessary at this time.

Moreover, this final rule does not have Tribal implications as defined by EO 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” and therefore advance consultation with Tribes is not required.

No Takings Implications

The Department has analyzed this final rule in accordance with the principles and criteria contained in EO 12630. The Department has determined that this final rule will not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. 1320 that are not already required by law or not already approved for use. 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.

Energy Effects

The Department has reviewed this final rule under EO 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Department has determined that this final rule does not constitute a significant energy action as defined in the EO.

Civil Justice Reform

The Department has reviewed this final rule under EO 12988 on civil justice reform. After adaptation of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted;

(2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may 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), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, Tribal, and local governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, Tribal, or local government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects

36 CFR Part 212

Highways and roads, National Forests, Public lands—rights-of-way, and Transportation.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set out in the preamble, the Forest Service amends parts 212 and 261 of title 36 of the Code of Federal Regulations as follows:

PART 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

1. The authority citation for subpart A continues to read as follows:

AUTHORITY: 16 U.S.C. 551, 23 U.S.C. 205.

2. Amend §212.1 by revising the definition for “area,” adding definitions for “designation of over-snow vehicle use” and “over-snow vehicle use map” in alphabetical order, and removing the definition for “designated road, trail, or area” to read as follows:

§212.1 Definitions.

* * * * *

Area. A discrete, specifically delineated space that is smaller, and, except for over-snow vehicle use, in most cases much smaller, than a Ranger District.

* * * * *

Designation of over-snow vehicle use. Designation of a National Forest System road, a National Forest System trail, or an area on National Forest System lands where over-snow vehicle use is allowed pursuant to §212.81.

* * * * *

Over-snow vehicle use map. A map reflecting roads, trails, and areas designated for over-snow vehicle use on an administrative unit or a Ranger District of the National Forest System.

* * * * *

Subpart C—Over-snow Vehicle Use

3. Revise the heading of subpart C to read as set forth above.

4. The authority citation for subpart C continues to read as follows:

AUTHORITY: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

5. Revise §212.80 to read as follows:

§ 212.80 Purpose, scope, and definitions.

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for over-snow vehicle use. After these roads, trails, and areas are designated, over-snow vehicle use not in accordance with these designations is prohibited by 36 CFR

261.14. Over-snow vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.14.

(b) *Scope.* The Responsible Official may incorporate previous administrative decisions regarding over-snow vehicle use made under other authorities in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for over-snow vehicle use under this subpart.

(c) *Definitions.* For definitions of terms used in this subpart, refer to §212.1.

6. Revise §212.81 to read as follows:

§ 212.81 Over-snow vehicle use.

(a) *General.* Over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by the Responsible Official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the National Forest System where snowfall is adequate for that use to occur, and, if appropriate, shall be designated by class of vehicle and time of year, provided that the following uses are exempted from these decisions:

(1) Limited administrative use by the Forest Service;

(2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(3) Authorized use of any combat or combat support vehicle for national defense purposes;

(4) Law enforcement response to violations of law, including pursuit; and

(5) Over-snow vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Previous over-snow vehicle decisions.* Public notice with no further public involvement is sufficient if an administrative unit or a Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict over-snow vehicle use to designated routes and areas over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur, and no change is proposed to these previous decisions.

(c) *Identification of roads, trails, and areas for over-snow vehicle use.*

Designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands for over-snow vehicle use shall be reflected on an over-snow vehicle use map. Over-snow vehicle use maps shall be made available to the public at headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the website of the corresponding administrative units and Ranger Districts. Over-snow vehicle use maps shall specify the classes of vehicles and the time of year for which use is designated, if applicable.

(d) *Decision-making process.* Except as modified in paragraph (b) of this section, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52 (public involvement), 212.53 (coordination), 212.54 (revision), 212.55 (designation criteria (including minimization)), and 212.57 (monitoring), shall apply to decisions made under this subpart. In making decisions under this subpart, the Responsible Official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the

Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

PART 261–PROHIBITIONS

7. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

Subpart A–General Prohibitions

8. Revise the definition for “area” in §261.2 to read as follows:

§261.2 Definitions.

* * * * *

Area. A discrete, specifically delineated space that is smaller, and, except for over-snow vehicle use, in most cases much smaller, than a Ranger District.

* * * * *

9. Revise §261.14 to read as follows:

§ 261.14 Over-snow vehicle use.

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated for over-snow vehicle use pursuant to 36 CFR 212.81 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on an over-snow vehicle use map, it is prohibited to possess or operate an over-snow vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

- (a) Limited administrative use by the Forest Service;

- (b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (c) Authorized use of any combat or combat support vehicle for national defense purposes;
- (d) Law enforcement response to violations of law, including pursuit;
- (e) Over-snow vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and
- (f) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

Dated: January 20, 2015.

Robert Bonnie,
Under Secretary, NRE.

[FR Doc. 2015-01573 Filed 01/27/2015 at 8:45 am; Publication Date: 01/28/2015]