

July 10, 2001, advance notice of proposed rulemaking (66 FR 35918).

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review, and designated as significant by the Office of Management and Budget (OMB). OMB has reviewed this proposed rule since it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

A cost-benefit analysis has been conducted on the impact of this proposed rule and incorporates by reference the detailed regulatory impact analysis prepared for the January 12, 2001, roadless rule, which included the Tongass Exempt Alternative. Much of this analysis was discussed and disclosed in the FEIS for the roadless rule. A review of the data and information from the original analysis and the information disclosed in the FEIS found that it is still relevant, pertinent, and sufficient in regards to exempting the Tongass from the application of the roadless rule. The Department has concluded that no new information exists today that would significantly alter the results of the original analysis.

Moreover, this proposed rule has been considered in light 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.*). An initial and final regulatory flexibility analysis was conducted on the proposed and final roadless area conservation rule, which included the effects associated with the Tongass National Forest. An initial small entities flexibility assessment for this proposed rule has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This proposed rule will not impose record keeping requirements; will not affect small entities' competitive position in relation to large entities; and will not affect small entities' cash flow, liquidity, or ability to remain in the market.

Environmental Impact

The Department prepared a Draft EIS (May 2000) and Final EIS (November 2000) in association with promulgation of the roadless area conservation rule. The DEIS and FEIS examined in detail sets of Tongass-specific alternatives. In

the DEIS the Department proposed the Tongass Deferred Alternative, which would not have applied the rule's prohibitions to the Tongass National Forest but would have required that the agency make a determination as part of the five-year plan review whether to prohibit road construction in unroaded portions of inventoried roadless areas, and would have directed that an evaluation of whether and how to protect roadless characteristics, in the context of multiple use management, be conducted during the next Tongass Forest Plan revision. In the FEIS, the Department identified the Tongass "Not Exempt" as the Preferred Alternative, which would have treated the Tongass National Forest the same as all other national forests, but delayed implementation of the rule's prohibitions until April 2004. This delay would have served as a social and economic mitigation measure by providing a transition period for communities most affected by changes in management of inventoried roadless areas in the Tongass. In the final rule published on January 12, 2001, however, the Department selected the Tongass "Not Exempt" alternative which immediately applied the rule's prohibitions to inventoried roadless areas on the Tongass, but allowed road construction, reconstruction, and the cutting, sale, and removal of timber from inventoried roadless areas where a notice of availability for a draft environmental impact statement for such activities was published in the **Federal Register** prior to January 12, 2001.

In February 2003, in compliance with the district court's order in *Sierra Club v. Rey* (D. Alaska), the Forest Service issued a Record of Decision (ROD) and a Supplemental Environmental Impact Statement (SEIS) to the 1997 Revised Tongass Forest Plan that examined the site-specific wilderness and non-wilderness values of the inventoried roadless areas on the Forest as part of the forest planning process. The February 2003 ROD readopted the 1997 Tongass Forest Plan with non-significant amendments as the current forest plan. Congress has prohibited administrative or judicial review of the February 2003 ROD. Section 335 of the 2003 Omnibus Appropriations Act provides that the ROD for the 2003 SEIS for the 1997 Tongass Land Management Plan shall not be reviewed under any Forest Service administrative appeal process, and its adequacy shall not be subject to judicial review by any court in the United States.

Because the 2000 FEIS for the final roadless area conservation rule

considered exempting the Tongass National Forest as a detailed alternative, the decision to issue this proposed amendment is expected to be based on the FEIS, unless the Department finds that there are significant new circumstances or information relevant to environmental concerns and bearing on this alternative or its impacts that would warrant additional environmental impact analysis. A final determination will be made before adoption of the final rule. The FEIS is available in the document archives section of the Roadless Area Conservation internet site at <http://www.roadless.fs.fed.us>.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the proposed rule will not pose the risk of a taking of a Constitutionally-protected private property, as the rule is limited to exempting temporarily the applicability of the roadless area conservation rule to the Tongass National Forest.

Energy Effects

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this action or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict was to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department 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), which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local and tribal governments and the private sector. This proposed rule does not