

Forest Service OHV Route Designation Rule – Some serious problems

By Carla Boucher, Attorney

On July 15, 2004, the U.S. Forest Service issued a proposed rule to designate roads, trails, and areas for OHV use. Prior to the official publication of the draft rule, United Four Wheel Drive Associations (UFWDA) joined with BlueRibbon Coalition to develop a unified recommendation for our vision for OHV route designation to sway development of the rule before the draft was completed. After the proposed rule was issued UFWDA provided written comments detailing changes we wished to be incorporated into the final rule.

On November 9, 2005, the Forest Service issued the final OHV route designation rule. The Forest Service incorporated ten of the eleven substantive issues UFWDA requested and compromised very nicely on our 11th recommendation. These 11 recommendations and their incorporation into the final rule are outlined in a separate piece in this issue of the Voice.

Generally speaking the final rule is very similar to the proposed rule. However, there are some shortcomings with the final rule that UFWDA and our partner recreation organizations are working with the Forest Service on.

First, the proposed rule left the expectation that all districts or forests would undergo OHV route designation. The language of the proposed rule indicated that unmanaged recreation nationally would be addressed, system-wide throughout all the forests. Nothing in the proposed rule intimated that the scope of the rule would be limited only to those forests currently open to cross-country travel or those forests limited to designated roads and trails that had not yet gone through proper route designation. Following are excerpts from Forest Service documents:

- “The Forest Service is proposing revisions to [its travel management regulations] to provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands designated for motor vehicle use. **A designated system established with public involvement would enhance public enjoyment of the National Forests, while maintaining other important values and uses on National Forest System lands.**” (Proposed Rule, page 42383)
- “As demand for a greater variety of recreation uses increases, managing an appropriate balance between motor vehicle use and nonmotorized recreational activities has become an important priority”. (Proposed Rule, page 42383)
- “The designated system would be broader in scope than E.O. 11644 and E.O. 11989 and 36 CFR part 295 because the system would apply to motor vehicle use on National Forest System roads, as well as off National Forest Systems roads”. (Proposed Rule, page 42383)
- The proposed rule preamble and narrative speaks of the management of OHV routes over a broad scale and in a comprehensive manner.
- The Forest Service website lists highlights of the proposed rule stating, “The rule requires **each** national forest or ranger district to designate those roads, trails, and areas open to motor vehicles (emphasis added).” <http://www.fs.fed.us/recreation/programs/ohv/>

In contrast, the final rule was amended with the simple addition of a single sentence which states, “Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations. (212.52(a))”

Therefore, rather than each district and/or forest going through a designation process over the next few years to specifically address OHV use, the rule only applies to those forests currently open to cross-country travel, which is only about 50% - 70% of the forests. The remaining 30%-50% of forests, located primarily in the East, will NOT undergo OHV route designation under this rule. Arguably these forests do not need to undergo OHV route designations under the rule because they have already done some type of public project(s) limiting motor vehicle use to designated roads. The problem remains that many of these forests underwent travel management years ago or even several decades ago in the late 1980’s and early 1990’s. Yet the agency itself reports “the number of OHV users has climbed from approximately 5 million in 1972 to 36 million in 2000”. On average, OHV users have increased by over 1 million users each and every year. Relying on travel planning that is 5, 10, or 20 years old does not adequately address OHV demands and therefore does not adequately address the problems of unmanaged recreation in its current state.

The exception of some forests from this rule leads to a second problem. Between 1977 and 1987 the Forest Service issued an interim directive “directing forests to inventory all wheel tracks, regardless of how they were developed, and decide whether to include them on the Forest Development Road System. Many forests chose to add these inventoried “non-system” roads to their system [and some forest chose not to].” (National Forest Road System and Use report, USDA Forest Service, Coghlan, Gerald and Richard Sowa, Draft 1/30/98, page 4) In 1997 there were still approximately 54,600 miles of non-system roads on our national forests and an additional estimated 60,500 miles of non-system roads that were uninventoried. (National Forest Road System and Use report, page 9). As reported above, none of the forests in the East, except for 2, will undergo OHV designation. These forests account for 35% of the non-system roads inventoried in 1997. **Therefore, we will lose 40,315 miles of roads in the Eastern forests alone with the stroke of a pen when these forests announce they have issued the motor vehicle use map in accordance with the rule. Because once they issue the announcement OHV use is limited to the roads and trails appearing on the map, and assuredly none of the 40,000+ non-system roads we used legitimately in 1997 will be on that map.**

It is important to understand how the concept of non-system roads has evolved since 1997 to what the agency now refers to as “unauthorized” roads. In 1997 a non-system road was in many instances a legitimate road and in most instances was legally open to travel. In 2005 115,000 miles of non-system roads have evolved into 115,000 miles of unauthorized roads closed to travel. The only way any of the 115,000 miles might be open to travel is if (a) the forest where they are located is currently open to cross-country travel or otherwise obligated to go through travel planning under the final rule, and (b) the forest determines to designate the road open after environmental study.

2001: Clinton Administration Roadless Area Conservation Final Rule definition:
Unclassified road. A road on National Forest System lands that is **not managed as part of the forest transportation system**, such as unplanned roads, abandoned travelways, and **off-road vehicle tracks that have not been designated and**

managed as a trail; and those roads that were once under permit or other authorization and were not decommissioned upon the termination of the authorization.

2004: Proposed rule for OHV route designation definition:

Unauthorized or unclassified road or trail. A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

2005: Final rule for OHV route designation definition (**note “unclassified” has been eliminated**)

Unauthorized road or trail. A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

Second, is the concern that the agency at the local level views this rule as an implementation of a national “closed unless posted open” policy. I telephoned a sampling of various forests throughout the country and spoke with public affairs officers regarding the new rule and its implementation in their respective forest. I made these calls within days of the release of the final rule. There seems to be a universal thought amongst the field personnel that the only impact this rule will have in their forests will be an internal shift from signing roads closed to signing them open and moving to a closed unless posted open policy. In my conversations with the Forest Service a valid point was made by the agency that my conversations took place very early on in the new process of implementing this rule and that national training of field personnel would occur throughout the months of January and February. So perhaps the misunderstanding by the sampling of employees I spoke with will be corrected after training occurs.

Finally, there is still a serious budget question about implementing the rule, which we will need to respond to from the Congressional side rather than the agency side. Our task will be to contact our Congressman asking that they provide additional funding specifically earmarked for this travel planning. The agency is unable at this point to estimate the amount of money needed to (a) perform NEPA for route designation and (b) perform Section 106 compliance under the National Historic Preservation Act (NHPA) for user-created routes or routes not subjected in prior planning to such requirements. The agency feels confident that classified roads are not considered an “undertaking” under the NHPA and therefore will not trigger Section 106 compliance under the act. However, that still leaves approximately 103,000 miles of unclassified roads subject to survey under Section 106 should any of those routes be considered for OHV designation. The point is, in the coming months UFWDA will be asking our members to write to Congress asking for money for the agency to complete the OHV route designations once we determine an appropriate amount to request.

I have spoken to the Forest Service on numerous occasions since the release of the final rule and they are aware of my concerns surrounding this policy. UFWDA is working with other motorized recreation organizations to develop a comprehensive and unified strategy for dealing with the agency on this issue. Our initial meeting with the Chief is scheduled for the first part of January.