



**United Four Wheel Drive Associations, Inc.**  
... An International Organization [www.ufwda.org](http://www.ufwda.org)

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Proposed Rule for Designated Routes and Areas for Motor Vehicle Use  
c/o Content Analysis Team  
P.O. Box 221150  
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September 10, 2004

Dear Content Analysis Team,

Below please find comments made on behalf of United Four Wheel Drive Associations (United) in response to the Travel Management; Designated Routes and Areas for Motor Vehicle Use, Proposed Rule.<sup>1</sup> These comments shall not preclude any member of United from making their own comments on the subject. Please adopt these comments into the formal record and utilize them to develop a final rule.

These comments have been organized in no particular order, however each comment has been set apart from the others by a bulleted topic heading to aid the team in transitioning from one comment to the next. Also, the comments are footnoted extensively in an attempt to be clear about which proposed section the comment pertains to.

All attempts have been made to be concise and specific and to avoid producing a document of such length as to preclude the reader's ability to comprehend its contents. However, the breath and importance of the subject matter that the agency has introduced has made any attempt at brevity unrealistic. I trust that the team will devote as much time as is necessary to review these comments so as to enable the agency to implement these suggestions.

- Plan amendments

The proposal states, "If a designation decision would not be consistent with a plan, the plan would have to be amended to make it conform to the designation decision".<sup>2</sup>

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<sup>1</sup> 69 Fed. Reg. 42381.

<sup>2</sup> 69 Fed. Reg. 42386.

Please add to this statement and make clear in the final rule that requests for a plan amendment as part of the designation project will NOT be categorically dismissed by the responsible official as a proposal “outside the scope of the designation project”.

For example, experience has shown that a responsible official will refuse to consider a plan amendment because the amendment is “outside the scope of the project” when road closures are proposed in areas riddled with Forest System roads solely because such roads exist in Recreation Opportunity Spectrum management areas dictated by the plan as “primitive non-motorized”. Such closure proposals are made to make the area conform to the plan and when the public requests that a plan amendment be done to correct the ROS classification to reflect the situation on the ground the responsible official claims that such an amendment is “outside the scope of the project”. Please prevent this from happening in regards to motor vehicle designation projects.

- Trail use inadvertently limited to 50” width

The proposed rule provides for the designation of motor vehicle use on TRAILS (emphasis added).<sup>3</sup> However, there appears to be a bias that permeates the agency that TRAILS are, by definition, limited to non-motorized use, or motorized use limited to ATVs and/or motorcycles and excludes use for street-legal 4-wheel drive vehicles and other SUVs.

For example, Region 3 through their Integrated Business Systems (IBS) program outlines a consistent methodology for management of recreation sites and trails programs.

A portion of the IBS program includes a tutorial of “trail fundamentals”.<sup>4</sup> This document entitled Trail Planning and Management Fundamentals, updated January 2004, “[O]utlines five concepts that are cornerstones of Forest Service trail planning and management: Trail Type, Trail Class, Managed Use, Designed Use, and Trail Design Parameters.”<sup>5</sup> Designed Use, one of the five fundamental trail concepts, is defined as “the intended use that controls the desired geometric design of the trail, and determines the subsequent maintenance parameters for the trail.”<sup>6</sup> The list of “Designed Use/ Management Use Types in its entirety includes all terrain vehicle, snow terrain vehicle, bicycle, dogsled, hiker/pedestrian, motorcycle, pack and saddle, snowmobile, snowshoe, watercraft, motorized watercraft, non-motorized watercraft, and cross country ski.”<sup>7</sup> Noticeably absent from the Designed Use list is mention of 4-wheel drive vehicles, street legal vehicles, Jeeps, SUVs, or any other terminology referencing vehicles over 50” in width.

The point of this lengthy example is to illustrate the fact that there is an inadvertent tendency that lingers within the agency to think of TRAILS as suitable only for vehicles under 50” wide, despite the fact that “the 50” vehicle width limitation was removed in 2002.”<sup>8</sup>

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<sup>3</sup> 69 Fed. Reg. 42393, Sec. 212.55(b).

<sup>4</sup> [www.fs.fed.us/r3/measures/Inventory/Trails.htm](http://www.fs.fed.us/r3/measures/Inventory/Trails.htm)

<sup>5</sup> *Id.*

<sup>6</sup> [http://www.fs.fed.us/r3/measures/Inventory/trails%20files/FS\\_Tr\\_Fundamentals\\_1\\_14\\_2004.doc](http://www.fs.fed.us/r3/measures/Inventory/trails%20files/FS_Tr_Fundamentals_1_14_2004.doc), page 3.

<sup>7</sup> *Id.*

<sup>8</sup> [http://www.fs.fed.us/r3/measures/Inventory/trails%20files/Trail\\_Definition.doc](http://www.fs.fed.us/r3/measures/Inventory/trails%20files/Trail_Definition.doc)

Please be sure that a point is made in the final rule to expressly eliminate the inadvertent tendency that lingers within the agency to think of TRAILS as suitable only for vehicles under 50” wide. Agency personnel should be encouraged to consider the suitability of designating trails for 4-wheel drive vehicle use, not just roads as has been done traditionally.

- Use of the term OHV, SUV, and 4-wheel drive vehicle

The rule is inconsistent in its application and use of the term off-highway vehicle (OHV). Such inconsistency inadvertently causes problems with the implementation of the policy where roads, trails, or areas are designated for OHV use.

Section 212.51 states, “Motor vehicle use on roads, trails, and in areas shall be designated by vehicle class...by the responsible official...”<sup>9</sup>

Section 212.5(a)(2)(ii) states, “Roads, or segments thereof, may be restricted to use by certain classes of vehicles. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, automobiles, 4-wheel drive vehicles, off-highway vehicles and trailers.”<sup>10</sup>

Section 212.1 states, “A motor vehicle is any vehicle which is self-propelled”.

Pursuant to Section 212.51 the responsible official must designate motor vehicle use on roads, trails, and in areas by vehicle class. If such designation is made for a road or segment of road for “off-highway vehicles” for instance, it would be unclear and ambiguous as to which type of motor vehicle(s) would be allowed to use the road and which type of vehicle(s) would be prohibited. Since Section 212.5(a)(2)(ii) draws some distinction between 4-wheel drive vehicles, motorcycles, and off-highway vehicles, an argument could logically and successfully be made that motorcycles and 4-wheel drive vehicles are prohibited from using roads designated for off-highway vehicle use since 212.5(a)(2)(ii) indicates that 4-wheel drive vehicles and motorcycles are not the same thing as off-highway vehicles. A similar argument could be made that the term off-highway vehicle pertains only to all-terrain vehicles (ATVs), also frequently referred to as “quads”.

Therefore, in order to avoid the confusion of which class of vehicle(s) is designated for use on roads, trails, and areas, the term off-highway vehicle should be defined in Section 212.1. Please adopt the following definition for off-highway vehicle (OHV) as stated in Executive Order 11644 as amended by Executive Order 11989<sup>11</sup>:

Off-highway vehicle (OHV). “Any motorized vehicle designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the agency under a permit, lease, license, or contract.”

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<sup>9</sup> 69 Fed. Reg. 42393.

<sup>10</sup> 69 Fed. Reg. 42392.

<sup>11</sup> 37 Fed. Reg. 2877 (Feb. 9, 1972); 42 Fed. Reg. 26959 (May 25, 1977).

To conform to the purposes of this rulemaking a note could be added to this definition that for the purposes of this section only the term also excludes snowmobiles.

In the alternative, if the agency does not adopt a definition of off-highway vehicle (OHV), all references to OHV should be omitted. Such omission would require a change to Section 212.5(a)(2)(ii) as follows:

Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, 4-wheel drive vehicles, all-terrain vehicles, and trailers.

- Inventory

Noticeably absent from the proposed rulemaking is any reference to, authority for, or requirement to perform a road, trail, or area INVENTORY. It is our sincere hope that the agency will strive to conduct a robust inventory as part of the designation process. However, knowing that time and budget may place limitations on the agency in conducting such an inventory, we urge the agency to instruct the responsible official to actively and aggressively seek public input and assistance in establishing such an inventory.

- Road Management Objectives

The proposed rule provides for the designation of motor vehicle use on ROADS, and requires the responsible official to render designations that are “consistent with road management objectives”.<sup>12</sup> Please ensure that such considerations take into account both the intended RMO at the time the road was created and the current RMO as exists in practice on the ground at the time of the designation project. For instance, many roads were originally created for a purpose which has evolved over time to serve other needs, such as timber roads that no longer provide access for timber but rather provide for recreation needs. The current RMO should receive prime consideration over the originally created RMO.

Where the agency relies upon RMOs to support a finding that designated use is appropriate for non-street legal vehicles, it should resist suggestions to establish a blanket policy of no-net gain whereby for each mile of **road** open to non-street legal vehicle it must close a mile of **trail**. An increase in access, and thus use, does not equate to a failure to control use. Increasing access opportunities is an integral part to consideration of provision of recreational opportunities and a consideration of access needs.

- Effectuating the requirement of Executive Order 11644 as amended by Executive Order 11989.

United supports the agency’s conclusion that mitigation is in practice equivalent to elimination of considerable adverse effects. The orders only require the closures to be in effect until the **considerable** adverse impacts have been eliminated (emphasis added).<sup>13</sup> If the

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<sup>12</sup> 69 Fed. Reg. 42393, Sec. 212.55(c)(2).

<sup>13</sup> 37 Fed. Reg. 2877 (Feb. 9, 1972); 42 Fed. Reg. 26959 (May 25, 1977), Sec.9(a).

considerable adverse impacts are mitigated, yet some lesser impact remains, the requirement to eliminate considerable adverse impacts has been achieved. The requirement of the orders is properly understood when Sec. 9(a) is taken in its entirety and not erroneously parsed out as some members of the public may have a tendency to do.

- Conflict of uses v. Conflict of users

The proposed rule provides for the designation of motor vehicle use on roads, trails, and areas, and requires the responsible official to consider “minimization of conflicts among uses of National Forest System lands”.<sup>14</sup> Conflicts among uses of National Forest System lands should be defined to be consistent with Executive Order 11644 as amended by Executive Order 11989<sup>15</sup>:

Conflicts among uses. Physical incompatibility between different activities caused by considerable adverse impacts of one activity upon physical resources required by a different activity.

Executive Order 11644 as amended by Executive Order 11989 states, “It is the purpose of this order to establish policies and provide for procedures...to minimize conflicts among the various uses of those lands”.<sup>16</sup> Over time, various segments of the public have erroneously substituted the word “uses” with the word “users” in order to bolster a claim that the purpose of the orders was to minimize conflicts between different types of users, i.e. motorized and non-motorized users. However, such substitution is without basis and has never been supported by the orders themselves or the legislative history behind their creation.

Furthermore, the concept of social conflict, or conflict of users is provided for by the proposed rule at Sec. 212.55(b)(3) in accordance with Section 3(a)(3) of the Executive Orders.

Please retain the integrity of the distinction between the concepts of “conflict of uses” and “conflict of users” by adopting the proposed definition for “conflict of uses” provided above.

- Revision of existing Section 261.13

The proposed rule states, “Sections 261.13 through 261.21 will be redesignated as Sections 261.15 through 261.23.”<sup>17</sup>

Section 261.13 pertains to “use of vehicle off roads”.<sup>18</sup> In light of the changes to policy proposed by the rule, this section should be changed to the following:

Section 261.13. Use of motor vehicles in designated Areas.

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<sup>14</sup> 69 Fed. Reg. 42393, Sec. 212.55(a).

<sup>15</sup> *Supra* at 11.

<sup>16</sup> *Supra* at 11, Sec. 1.

<sup>17</sup> 69 Fed. Reg. 42394.

<sup>18</sup> 36 C.F.R. §261.13.

It is prohibited to operate any motor vehicle in an area designated for such use:

- (a) Without a valid license as required by state law
- Etc.

The agency should also consider whether Section 261.13 should also pertain to motor vehicles use on TRAILS and ROADS.

- Confusion about the timing of designation relating to use maps, travel atlas, and transportation atlas.

The proposed rule states, “Designated road, trail or area. A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to Sec. 212.51 **in a use map** contained in a travel management atlas (emphasis added)”.<sup>19</sup>

United supports the intent of this policy to rely on a map as the authority for the legitimate use of vehicles on designated roads, trails, and areas. However, as written there is some confusion as to whether use is authorized on a designated road, trail, or area prior to the production of a use map and/or travel management atlas. One would assume that a use map will be produced as part of the decision document for the designation project. However, it is unclear whether any or all forests have yet developed a forest transportation atlas as required by the current Section 212.2. If there is a delay between the development of the use map and the development of the transportation atlas (if not yet completed) it would seem that the road, trail, or area is not formally “designated”, and therefore unavailable for use, until such time as the transportation atlas is developed.

The problem is further compounded by the proposed changes to Section 212.2(b).<sup>20</sup> Section 212.2(b) states, “Forest transportation atlas. A forest transportation atlas **may** be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit.”<sup>21</sup> If discretion lies with the agency to update the forest transportation atlas and the agency fails to update the transportation atlas an argument could be made that the road, trail, or area is not “designated” because by definition designation is triggered by the production of the use map and the transportation atlas. If either is missing then the road, trail, or area is not technically by definition “designated”.

One solution to correct this confusion would be to eliminate the words “contained in a travel management atlas” in the definition of Designated road, trail, or area. The definition for use map already includes reference to a travel management atlas. The definition for travel management atlas refers to a transportation atlas. All that would remain would be to add language to proposed Sec. 212.2(b) that requires a transportation atlas to be created, if not already done, as part of the designation project.

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<sup>19</sup> 69 Fed. Reg. 42391, Sec. 212.1.

<sup>20</sup> 69 Fed. Reg. 42392.

<sup>21</sup> *Id.*

United would welcome any other solution the agency may have that would address this problem.

- Limitation to temporary emergency closures

The proposed rule grants authority to the agency to issue temporary, emergency closures based on a determination of considerable adverse effects. However, the rule fails to provide the exact nature of temporary.

To correct this deficiency, the agency should add the following section to the final rule:

Sec. 212.51(b)(3). Closures based on a determination of considerable adverse effects pursuant to Sec. 212.51(b)(2) shall only be effective up to one year in length.

- Designation of roads, trails, and areas.

The proposed rule states, “Motor vehicle use...shall be designated by vehicle class and, if appropriate, by time of year by the responsible official...”.<sup>22</sup>

It is important that the agency preserve this section as proposed and not commit itself and/or its agency personnel to any predefined time frame for carrying out this section. While our members are anxious to embrace this new policy and get on with the business of conducting such designations, restricting the agency to a particular time frame for completion without acknowledgment of resource constraints dooms the agency to failure.

Work undertaken outside the availability of resources to complete the job fairly and completely would only result in a failed process both in creation of the designation and in its enforcement. We do however encourage the agency to make the necessary budget requests to fund this policy and to keep motor vehicle use and travel management a high priority.

- Utilization of volunteers and cooperative agreements in consideration of availability of maintenance resources

The proposed rule provides for the designation of motor vehicle use on roads, trails, and areas, and requires the responsible official to consider “the availability of resources for [the] maintenance and administration [of roads, trails, and areas designated]”.<sup>23</sup>

Please ensure that the responsible official actively and aggressively factors into his consideration of this matter volunteers and cooperative work agreements. If consideration is limited solely to the forest or district annual budget one could argue that the availability of resources for road maintenance will be scarce so long as there exists the estimated \$8.5 billion road maintenance backlog.

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<sup>22</sup> 69 Fed. Reg. 42393, Sec. 212.51.

<sup>23</sup> 69 Fed. Reg. 42393, Sec. 212.52(a).

- Issues related to snowmobiles

The proposed rule states, “Snowmobile. A motor vehicle that is designed exclusively for use over snow and that runs on a track or tracks and/or a ski or skis”.<sup>24</sup> This definition is overly restrictive in that there are over-the-snow vehicles such as ATVs and other vehicles converted to travel over snow that do not meet this definition yet yield the same impacts, or lack of them, as the snowmobile defined in the proposed rule.

The proposed rule also states, “In contrast to wheeled motor vehicles, it may be appropriate for snowmobiles to travel off route”.<sup>25</sup> It is unclear what is meant by “off route”. Travel off-route could mean travel away from the underlying road surface, travel away from a groomed trail, or travel cross-country. The use of the term “off-route” should be avoided just as the term “off-road” is being made obsolete by this rule. Cross-country travel is a better term to use if in fact that is the intended meaning of “off-route”.

- Grammatical error

The proposed rule states, “Specific criteria for designation of roads. In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall be consistent with: (2) Consistency with road management objectives.”<sup>26</sup>

This section should be change to correct a grammatical error. The words “Consistency with” should be removed so that the section states, “...the responsible official shall be consistent with: (2) Road management objectives.

- Forest Service Handbook and Manual changes associated with implementation of final rule

Logically, the agency is preparing to create new Handbook (HB) and Manual sections, or improve existing sections, in implementation of the final rule. United would like to be a part of the agency process in formulating new sections and improving existing sections. Please provide us with an opportunity to work with the implementation team prior to final issuance of any HB or Manual additions or changes.

In fact, some of the suggestions contained in these comments might properly be reflected in such HB and Manual developments as well as in the final rule.

Several issues of importance to United are:

The proposed rule “gives responsible officials the flexibility to designate roads, trails, and areas for motor vehicle use in one step or several stages.”<sup>27</sup> United is extremely

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<sup>24</sup> 69 Fed. Reg. 42392, Sec. 212.1.

<sup>25</sup> 69 Fed. Reg. 42386.

<sup>26</sup> 69 Fed. Reg. 42393, Sec. 212.55(c)(2).

<sup>27</sup> 69 Fed. Reg. 42386.

interested in participating in the development of this direction in the HB and Manual, particularly since many public comments made thus far regarding the proposed rule find this section of the preamble particularly confusing.

Guidance in designating trails for use by 4-wheel drive vehicles and/or converting roads to trails, particularly when 4-wheel drive use is a consideration.

Guidance of use of Road Management Objectives and Trail Management Objectives in the consideration of specific criteria for designation of roads, trails, and areas.

Guidance of the consideration of the suitability of some **areas** for motor vehicle use to alleviate our concerns that a tendency may exist within the agency to eliminate every opportunity for cross-country travel, even in areas geographically and environmentally suitable for such use.

Volunteer and cooperative agreements to meet resource needs for maintenance and administration of designated roads, trails, and areas.

The proposed rule states, “The agency believes that marking of designated roads, trails, and areas may vary depending on the circumstances and that consequently some discretion is needed in the context of marking these routes and areas. Therefore, the agency believes that marking of designated roads, trails, and areas is best addressed in agency policy, rather than regulations.”<sup>28</sup> United agrees that discretion is needed in the context of marking routes and areas. However, guidance should be given to avoid marking routes as “closed” or as “open” but rather encourage marking to be informative in nature in the form of “confidence” markers that encourage users they are on the right trail or road where confusion may be causing illegal use of portions of roads or trails not designated for motor vehicle use. It is paramount to avoid marking routes as “closed” or as “open” because to do so would be to reignite the debate between “closed unless posted open” and “open unless posted closed”. Both schemes have proven unworkable on the ground and should be avoided. Direction for marking of roads, trails, and areas could be appropriately handled in the HB and Manual.

Please give serious consideration to these comments and adopt our suggested changes. It is an honor to be able to partner with the agency in such an important and long-term policy.

Very truly yours,

**Carla Boucher**

Carla Boucher, Esq.

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<sup>28</sup> 69 Fed. Reg. 42388.

