

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is giving notice of its intent to prepare an environmental impact statement to analyze and disclose potential environmental consequences associated with a National Forest System land management planning rule.

DATES: Comments concerning the scope of the analysis must be received by February 16, 2010. The Forest Service (Agency) expects to publish the draft environmental impact statement in December 2010 and the final environmental impact statement in October 2011. The U.S. Department of Agriculture (Department) expects to publish the record of decision in November 2011.

ADDRESSES: Comments may be sent via e-mail to fspr@contentanalysisgroup.com. Written comments concerning this notice should be addressed to Forest Service Planning NOI, C/O Bear West Company, 172 E 500 S, Bountiful, UT 84010; or via facsimile to 801-397-1605. All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments at <http://contentanalysisgroup.com/fsr/>.

FOR FURTHER INFORMATION CONTACT: Larry Hayden, 202-205-0895, lhayden@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

A new Agency planning rule is needed to guide land managers in developing, amending, and revising land management plans for the 155 national forests and 20 grasslands in the National Forest System (NFS). A new planning rule provides the opportunity to help protect, reconnect, and restore national forests and national grasslands for the benefit of human communities and natural resources. Developing a new rule will allow the Agency to integrate forest restoration, watershed protection, climate resilience, wildlife conservation, the need to support vibrant local economies, and collaboration into how the Agency manages national forests and grasslands, with the goals of protecting our water, climate, and wildlife while enhancing ecosystem services and creating economic opportunity. Land management planning is also one way the Agency complies with requirements under the National Forest Management Act of 1976 (NFMA), the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the Endangered Species Act (ESA), the Wilderness Act of 1964, and other legal requirements.

An environmental impact statement (EIS) is being prepared to document the environmental analysis for a new planning rule at Title 36, Code of Federal Regulations, part 219 (36 CFR part 219). In the interim, the Agency will use the 2000 rule provisions to develop, amend, or revise plans until a new planning rule is released. The 2000 rule had been replaced by the 2008 planning rule which was subsequently held invalid by a Federal District Court.

The 2000 planning rule removed and replaced the 1982 planning rule in the Code of Federal Regulations, preventing the Agency from being able to simply reinstate the 1982 rule, but the 2000 rule contains transition provisions which permit the use of the 1982 rule provisions. No national forest or grassland has ever used the 2000 rule to amend or revise a plan because of its complexity. The Department is announcing the reinstatement in the Code of Federal Regulations of the National Forest System Land and Resource Management Planning Rule of November 9, 2000, as amended (2000 rule), elsewhere in the Federal Register.

The Agency's expectation, based upon its experience with the 2000 rule, is that national forests and grasslands will use the 1982 rule provisions, as permitted by the transition provisions of the 2000 rule, to revise and amend plans until a new planning rule is issued.

Scoping Process

This notice of intent 60-day comment period starts the scoping process in compliance with the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR part 1500. As part of the scoping process, the Agency solicits public comment on the scope of the proposed rule; the alternatives to be considered; and the physical, biological, social, and economic effects that should be analyzed in the draft environmental impact statement. Following the review of comments received during this 60-day period, the Agency will continue to collaboratively engage the public in a variety of ways as it develops a new proposed planning rule.

Discussions will focus on key issues raised during the notice of intent public comment period. The Agency is in the process of creating a Web forum for additional dialogue and public interaction. Further information on planned collaborative discussions and other opportunities for public comment are available at <http://www.fs.usda.gov/planningrule>.

Comments Requested

The proposed action lists several principles that could be included in a new planning rule and a number of follow-up questions to help frame the options for a proposed rule. Please comment on what features you believe should be in a planning rule, whether the principles we have identified are the right principles, and whether we have included all of the issues that will need to be considered as a new planning rule is developed. Please also respond to the specific questions posed under the principles outlined below.

The Agency will use the comments and input we receive to identify issues, develop alternatives, and build planning rule content leading to a proposed rule and draft environmental impact statement in the fall of 2010. The Agency will continue to solicit public input through a collaborative process as the proposed rule is developed. Further, we need to hear your thoughts on the best ways the Agency could engage the public during this process.

Purpose and Need for Action

The NFMA requires regulations "under the principles of the Multiple-Use, Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans, and the guidelines and standards" the Act prescribes (16 U.S.C. 1604(g)). In 1979, the Department first issued regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule, which has formed the basis for all existing land management plans.

In 1989, the Agency initiated a comprehensive Critique of Land Management Planning, which identified a number of adjustments that were needed to the 1982 planning rule. The Critique found that the 1982 planning rule process was very complex; had significant costs, was lengthy, and was cumbersome for public input. The recommendations in the Critique and the Agency's experiences

with planning led to the Agency issuing an advance notice of proposed rulemaking for new regulations in 1991, and two proposed rules, in 1995 and 1999.

After working with a committee of scientists, the Department issued the 2000 rule to revise the 1982 regulations. The 2000 revision of the planning rule described a new framework for NFS planning; made sustainability the foundation for NFS planning and management; required the consideration of the best available science during the planning process, and set forth requirements for implementation, monitoring, evaluation, amendment, and revision of land and resource management plans. However, a review in the spring of 2001 found that the 2000 rule was costly, complex, and procedurally burdensome. The results of the review led the Department to issue a new planning rule in 2005, and a revised version again in 2008, but each of those rules was held invalid by a Federal District Court (*Citizens for Better Forestry v. USDA*, 481 F. Supp.2d 1059 (N.D. Cal. 2007) (2005 rule); *Citizens for Better Forestry v. USDA*, 632 F. Supp.2d 968 (N.D. Cal. 2009) (2008 rule)).

The NFMA requires the Agency to revise land management plans “at least every 15 years.” The NFS has 127 land management plans. Currently, 68 plans are past due for plan revision. Most plans were developed between 1983 and 1993 and should have been revised between 1998 and 2008. The Agency now has an urgent need to establish a planning rule that protects, reconnects, and restores national forests and grasslands for the benefit of human communities and natural resources.

A new planning rule must be responsive to the challenges of climate change; the need for forest restoration and conservation, watershed protection, and wildlife conservation; and the sustainable use of public lands to support vibrant communities. It must be clear, efficient, and effective, and must meet requirements under the NFMA, as well as allow the Agency to meet its obligations under the MUSYA, the ESA, and the Wilderness Act, as well as other legal requirements. It also must provide for a transparent, collaborative process that allows for effective public participation.

A new rule should also be within the Agency’s capability to implement on all NFS units. With stability in planning regulations, national land management planning can regain momentum, and units will be able to complete timely revisions that guide sustainable management.

For further information on the history of land management planning and why the Agency is preparing a new EIS see the Web site at <http://www.fs.usda.gov/planningrule>.

Proposed Action

The NFMA at 16 U.S.C. 1604 requires the Agency to have a planning rule. The Forest Service is proposing the development of a new planning rule to be issued at 36 CFR part 219. The new rule will consist of procedures for developing, amending, and revising land management plans. We list below a number of principles based on substance and process that could be used to guide the development of a new planning rule. Through this notice of intent, we are seeking public input on these principles and associated questions. We also ask reviewers to identify and give input on any principles or issues not mentioned.

Additionally, we are seeking input on whether we have included a full list of the issues that must be addressed in a new rule and how best to address existing and future issues and challenges.

Substantive Principles for a New Rule

1. Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats. Climate change; alterations of natural fire regimes; changing water conditions; aggressive insects, disease, and invasive species; increasingly intense floods and drought; increasing air and water pollution; increasing development pressures; and other factors threaten the health of forests and grasslands. When the health and integrity of our lands

deteriorate, so do the environmental, economic, and social benefits they provide, with enormous potential impacts on drinking water, greenhouse gas emissions, climate, wildlife, recreation, community health, and prosperity. Plans could promote restoration and management of national forests and grasslands to make them more resilient to these threats, and to ensure the continued delivery of important ecosystem services and benefits.

They could also promote the active conservation of healthy lands to prevent them from degrading and to strengthen overall resiliency.

Specific questions we would like the public to address include:

- What do you see as the biggest threats to forest and grassland health and ecosystem resiliency?
- How do you define restoration? What is your concept of restoration? How can the planning rule foster restoration of NFS lands?
- What kinds of conservation efforts can enhance ecosystem resiliency and prevent degradation?

2. Plans could proactively address climate change through monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information. Climate change is one of the great challenges facing the United States and the world, and is dramatically reshaping how the Agency will deliver on its mission of sustaining the health and diversity of the nation's forests. Management will need to restore ecosystem resiliency, and also factor adaptation and mitigation strategies into planning and project development.

Plans will need to be innovative, integrate climate change and watershed management, and use climate change as a theme under which to integrate and streamline existing national and regional strategies for ecological restoration, fire and fuels, forest health, biomass utilization, and others. Plans could also include clear monitoring programs and incorporate evolving research in order to develop sciencebased understanding around climate change impacts and adaptation and mitigation efforts.

Plans will need to anticipate climate change-related uncertainty and be adaptive to new science and knowledge about changing conditions on the ground. Responsible officials will also need flexibility to be able to adjust plan objectives and requirements where there are circumstances outside of agency control: For example, where increasing water temperatures resulting from climate change make it impossible to maintain a sensitive fish species in its native habitat. Incorporating this concept of adaptive management into the planning rule will be especially important as we increase our understanding of climate change and how it will impact the landscape, but will also be important to respond to and apply new information regarding water conservation, insect and disease, species conservation, threats from catastrophic wildfire, and impacts from the loss of open space.

Specific questions we would like the public to address include:

- How can the planning rule be proactive and innovative in addressing the need for climate change adaptation and mitigation?
- What kinds of data, research, and monitoring could assist land management planners to incorporate climate change adaptation considerations into plans?
- How should the planning rule address uncertainty? How do other public and private entities recognize and incorporate uncertainty in their planning efforts?
- How can a new planning rule appropriately build in the flexibility land managers will need to adapt to changing science, information or conditions? What mechanisms should be used to incorporate new data? Do you know of any successful adaptive management regimes that can inform our process?
- How should plans anticipate and address changing conditions or impacts outside of agency control? How can external factors be incorporated or recognized in plan guidance and requirements?

3. Land management plans could emphasize maintenance and restoration of watershed health, and could protect and enhance America's water resources. Responding to the challenges of climate change in providing water and waterrelated ecosystem services is one of the most urgent tasks facing the Agency.

The NFS alone is the source of fresh water for more than 60 million people from coast to coast. In coming decades, climate change; impacts from catastrophic fire and tree mortality; the increasing intensity of weather patterns; events including droughts and storms; increasing pollution; and increasing development pressures will combine to impact the quantity, availability, and quality of America's water resources and the health of its watersheds. Plans could promote the restoration and maintenance of watersheds to ensure abundant clean water, the protection of soils, and the health of aquatic and terrestrial ecosystems.

Specific questions we would like the public to address include:

- Should a new planning rule include standards to address watershed health? If so, what might those look like? Should the Agency be held accountable only for actions and problems on its NFS lands or take into account water availability and quality factors that are outside of the Agency's control?
- What planning or management guidance could the Agency incorporate in the rule to protect and enhance water resources?
- One way to approach planning for an NFS unit is to think about the future of the planning area through the context of its watersheds. Do you see benefits and/or drawbacks to a rule requiring land management planning on a watershed basis?
- Do you see benefits or drawbacks to a rule requiring adherence to regionally specific Best Management Practices?

4. Plans could provide for the diversity of species and wildlife habitat. The NFS is a refuge for numerous species, including 425 threatened and endangered species. The NFMA directs the Agency to provide "for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives * * *" (16 U.S.C. 1604(g)(3)(B)).

Over time, the Agency's planning rules have sought to meet this statutory requirement to provide for diversity in a number of ways.

The 1982 planning rule required management prescriptions to provide for diversity as well as additional prescriptions to provide for the viability of native vertebrates and desired nonnative vertebrate species. The 2000 planning rule required (with qualifications) ecological conditions that provide a "high likelihood" that conditions are capable of supporting viability of native and desired nonnative species over time. In addition, the 2000 planning rule included detailed and complex analytical requirements regarding ecological sustainability in terms of ecosystem and species diversity (ecological sustainability), including identification of "focal species" and "species at risk."

The 2005 and 2008 planning rules required plans to provide a framework for contributing to ecological sustainability, in terms of ecosystem diversity and (where necessary) species diversity, in terms of "species of interest," and "species of concern." These two rules had much less detail than the 2000 rule with additional detail set forth in the Forest Service Directive System.

The Agency faced a number of challenges in implementing the species viability requirements of the 1982 rule. These challenges will be exacerbated as climate change affects the range and viability of species, both flora and fauna. In anticipation of coming changes, the Agency must look at new ways to meet diversity requirements.

The new rule needs to provide planning procedures that meet the intent of NFMA to provide for diversity in a way that achieves protection for species, habitats, and ecosystems while taking into account environmental and management factors and impacts that are outside of the Agency's control.

Specific questions we would like the public to address include:

- How should the new rule provide for diversity?
- How should the planning rule guide protection of at-risk species of animals and plants and their habitat?
- How can the new planning rule account for variables outside of Agency control, including those impacts that are the result of climate change?
- Should species diversity provisions in planning look beyond the individual unit to a watershed or landscape scale, and if so, what is a practical and workable way to incorporate a broader perspective?
- How could wildlife habitat monitoring be addressed in a planning rule?

5. Plans could foster sustainable NFS lands and their contribution to vibrant rural economies. Forests and grasslands offer enormous environmental benefits, including clean air, clean and abundant water, wildlife habitat, carbon sequestration, erosion control, and other ecosystem services. They generate economic value by attracting tourism and recreation visitors; sustaining green jobs; and producing timber, other forest products, minerals, food, and energy, both renewable and non-renewable.

They are also of immense social importance; they enhance rural quality of life, sustain scenic and culturally important landscapes, oftentimes define the essence of a community, and provide opportunities to engage in outdoor recreation and reconnection with the land. The Agency recognizes the interdependence of these ecological, economic, and social values and the need for land management planning to take all three into account.

In pursuit of sustainable management in the new planning rule, the Agency proposes to include provisions for the protection and enhancement of ecosystem services, such as clean water, clean air, and wildlife habitat. It also proposes that plans could provide a sustainable set of opportunities for goods and services that will support vibrant rural and national economies in a way that is compatible with natural resource conservation and restoration goals.

Specific questions we would like the public to address include:

- How can the planning rule reflect the interdependency of social, economic, and ecological systems in a way that supports sustainable management of national forests and grasslands?
- How can the Agency recognize and incorporate provisions in the planning rule for managing lands for the sustainable delivery of ecosystem services?
- How can plans guide units of the NFS in achieving natural resource conservation and restoration goals in a way that is compatible with providing a set of opportunities for goods and services to support vibrant rural and national economies?

Process Principles for a New Rule

1. Land management planning could involve effective and pro-active collaboration with the public. NFS lands are the public's lands that the Agency manages in trust for current and future generations. The Agency welcomes and encourages public collaboration throughout the planning process, and will seek to structure a new planning rule to ensure that processes for developing, revising and amending plans are efficient, transparent, and effectively engage the public. After plans are approved, responsible officials will continue to work with the public to resolve issues, to evaluate management under the plan, and to consider whether there is a need to adjust the plan. One challenge the Agency has faced with regard to public participation is that plans can at times take 8–10 years to revise, a

timeframe that is too long to sustain a true collaborative effort and use the most up-to-date science and management thinking.

Specific questions we would like the public to address include:

- How could the Agency foster collaborative efforts? What kinds of participation, forums for collaboration, and methods of providing input have you found most engaging?
- What should the rule require to ensure a planning process that is both efficient and transparent while allowing for full public collaboration and participation within a reasonable timeframe?
- What kinds of information, methods, and analyses should the Agency provide to the public during the planning process to aid understanding of the possible consequences of a proposed rule and alternatives?
- What kind of administrative review process should be offered to the public in the planning rule? Should there be a pre-decisional objection or a postdecisional appeal process?

2. Plans could incorporate an “alllands” approach by considering the relationship between NFS lands and neighboring lands. The threats and opportunities facing our lands and natural resources do not stop at ownership boundaries. Healthy forests and grasslands are elements of integrated landscapes that need to be restored, conserved and managed across geographical and organizational boundaries in ways that respect private rights and multiple ownerships. The land management planning process provides direction for NFS lands only.

However, the planning process provides an opportunity for the Agency to engage other Federal land management agencies; Tribes, State, and local land managers; private landowners; and nongovernmental partners to collaborate on strategies to restore and sustain healthy forests and grasslands across landscapes. Incorporating an all-lands approach in the planning process is also important as land management plans anticipate the effects of broad challenges such as climate change which can cause impacts on a regional scale.

Specific questions we would like the public to address include:

- How should the planning rule account for the relationship of NFS lands to surrounding landscapes?
- What other planning and assessment efforts or processes at the national, state or local level should the Agency look at that could inform an “all-lands” approach?

3. Plans could be based on the latest planning science and principles to achieve the best decisions possible. The new planning rule could encourage the creation of a shared vision of the planning area. Developing this through a strong collaborative public process could create a common understanding of the goals and direction for each plan, and will frame management actions and projects on the ground as a plan is implemented. Creating a plan that reflects a clear description of the shared vision and the desired conditions of a planning area, a strategy for moving toward the vision; and design criteria, including standards and guidelines that would apply to project and activity decisions, might be one way to move toward achieving the vision.

Specific questions we would like the public to address include:

- How can the planning rule support the creation of a shared vision for each planning area through the planning process?
- Local and regional differences will have an impact on desired conditions and on the successful creation and implementation of a shared vision for any given planning area. Given that different areas will have different needs, should the planning rule allow a choice of planning processes? How could the planning rule create different process choices, and how could they be presented in the rule? What kinds of provisions would need to be included to guide and evaluate a process choice?

- Much discussion has been centered on how land management plans should be viewed; are they strategic documents that lay the foundation for specific future actions to help meet unit goals? Or, should land management plans also make project or activity decisions?
- Based on your response to the question above, what is the range of options for fully complying with NEPA during land management plan development, amendment, or revision?
- Should the new planning rule require standards and guidelines that are required for all plans?
- How can the agency analyze and describe the environmental effects of a planning rule in the environmental impact statement?

Possible Alternatives

The Agency will identify a proposed action and a no-action alternative as it develops an EIS. Additional alternatives have not been identified, but will be developed based on the comments that are received. The Agency will frame issues and alternatives during the scoping and public comment periods in the NEPA process.

Responsible Official

The responsible official is the Under Secretary for Natural Resources and Environment, USDA, 1400 Independence Ave., SW., Washington, DC 20250.

Nature of Decision To Be Made

The responsible official will issue a land management planning rule.

Dated: December 14, 2009.

Harris D. Sherman,
Under Secretary, NRE.

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