



May 14, 2007

## Notice of Intent to Prepare an Environmental Impact Statement.

The Forest Service 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. This environmental impact statement is being prepared in partial response to an order dated March 30, 2007, in which the United States District Court in *Citizens for Better Forestry et al. v. USDA* (N.D. Calif.) enjoined the USDA from implementation and utilization of the National Forest land management planning rule published in 2005 until the agency complies with the court's order.

**DATES:** Comments concerning the scope of the analysis must be received by June 11, 2007.

**ADDRESSES:** Comments may be sent via e-mail to [planningrulenoifsccomments.org](mailto:planningrulenoifsccomments.org).

Written comments concerning this notice should be addressed to Planning Rule NOI Comments, P.O. Box 162969, Sacramento, CA 95816-2969, or via facsimile to (916) 456-6724.

All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Dave Sire, (202) 205-1006, [dsire@fs.fed.us](mailto:dsire@fs.fed.us) or Regis Terney, (202) 205-1552, [rterney@fs.fed.us](mailto:rterney@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 Time, Monday through Friday.

### Background

This action responds in part to an order dated March 30, 2007, by the United States District Court in *Citizens for Better Forestry et al. v. USDA* (N.D. Calif.). The court enjoined the USDA from implementing and utilizing the 2005 rule until it complies with the court's opinion regarding the Administrative Procedure Act, the Endangered Species Act, and the National Environmental Policy Act.

While the Agency is not in agreement with the Court's decision, it has decided, in the interest of moving forward with land management planning, to prepare an environmental impact statement to comply with the court order.



## **Estimated Dates**

The draft environmental impact statement is expected June 2007, and the final environmental impact statement is expected November 2007.

## **Purpose and Need for Action**

The 2005 rule at 36 CFR part 219 resulted from a review of the National Forest System Land Management Planning Rule issued on November 9, 2000 (2000 rule), by Forest Service personnel at the direction of the Office of the Secretary. The review affirmed much of the 2000 rule and the underlying concepts of sustainability, monitoring, evaluation, collaboration, and use of science. Although the 2000 rule was intended to simplify and streamline the development and amendment of land and resource management plans, the review concluded that the 2000 rule was neither straightforward nor easy to implement. The review found the following:

- (1) The 2000 rule has both definitions and analytical requirements that are very complex, unclear, and, therefore, subject to inconsistent implementation across the Agency;
- (2) Compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible, to accomplish; and
- (3) The complexity of the 2000 rule makes it difficult and expensive to implement.

Based on the review and over two decades of experience with land management plans, the Agency promulgated a new planning rule that improved upon the 2000 rule by providing a planning process that was more readily understood and that was within the Agency's capability to implement. The 2005 rule also responded to additional needs identified through public comments received during the rulemaking. Under the 2005 rule land management plans:

- (1) are strategic in nature;
- (2) are adaptive and based on current information and science;
- (3) guide sustainable management of National Forest System lands;
- (4) involve the public in planning; and
- (5) must comply with all applicable laws, regulations, and policies.

## **Proposed Action**

The Agency proposes to complete a land management planning rule to be published at 36 CFR part 219. The Agency expects to publish a rule for comment in late June.

## **Possible Alternatives**

Other than the Proposed Action and a No Action alternative, additional alternatives to this proposed action have not yet been identified. Issues with and alternatives to the proposed action will be framed during the internal and external scoping and public comment periods in the NEPA process.

## **Responsible Official**

The responsible official is Mark Rey, Under Secretary for Natural Resources and Environment, USDA, 1400 Independence Ave., S.W. Washington, D.C. 20250.

## **Nature of Decision to be Made**

The responsible official will promulgate a land management planning rule based on an alternative that meets the stated purpose and need.

## **Scoping Process**

The Notice of Intent published in the Federal Register on May 11 (72 FR 26775) initiates the scoping process in compliance with the National Environmental Policy Act and its implementing regulations (40 CFR part 1500). As part of the scoping process, the Forest Service solicits public comment on the nature and scope of environmental, social, and economic issues related to the rulemaking that should be analyzed in the draft environmental impact statement. Scoping will include review of comments previously collected during promulgation of the 2005 planning rule (70 FR 1022), Agency planning directives (72 FR 4478, 71 FR 10956, 71 FR 5124), and the Agency categorical exclusion for land management planning (71 FR 75481). The nature and scope of the analysis for the draft environmental impact statement will focus on the proposed process for development, revision, and amendment of land management plans, and alternatives to it. Because of the extensive amount of public comment that has already been received on the 2005 planning rule, planning directives, and the Agency categorical exclusion for land management planning, no public meetings are planned for this scoping effort.

## **Comment Requested**

Reviewers should provide their comments during the comment period. Timely comments will enable the Agency to analyze and respond to them at one time and to use them in the preparation of the environmental impact statement, thus avoiding undue delay in the decisionmaking process. Furthermore, specific and substantive comments will facilitate meaningful review and consideration. Reviewers have an obligation to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the Agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). *Dept. of Transportation v. Public Citizen*, 541 U.S. 752, 764 (2004).

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