

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 219**

RIN 0596-AB86

**National Forest System Land and Resource Management Planning; Removal of 2000 Planning Rule****AGENCY:** Forest Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is issuing a final rule to remove the November 9, 2000, National Forest System Land and Resource Management Planning regulations at Title 36, Code of Federal Regulations, part 219, subpart A, in their entirety. Subsequent to the publication of the 2000 planning rule, several amendments were published to revise certain sections of the rule and to provide for transition to the 2000 rule. This action to remove the 2000 rule is being taken before the adoption of the new 2004 planning rule to clarify and avoid any confusion about which planning regulations the Department intends to be used to implement the National Forest Management Act of 1976. Elsewhere in this part of today's **Federal Register**, the Department is simultaneously publishing another final rule to add the new (2004) planning regulations at 36 CFR part 219, subpart A.

**EFFECTIVE DATE:** This rule is effective January 5, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA at (202) 205-1019.

**SUPPLEMENTARY INFORMATION:****Background**

On November 9, 2000 (65 FR 67514), the Department adopted planning regulations for the National Forest System at 36 CFR part 219, subpart A (65 FR 67514). Despite the positive aspects of the 2000 rule, however, the number of very detailed analytical requirements, the lack of clarity regarding many of the requirements, the lack of flexibility, and the lack of recognition of the limits of agency budgets and personnel led to a reconsideration of this rule in the spring of 2001. After careful review of concerns expressed internally and externally about this 2000 planning rule, the Department requested the Forest Service to develop a proposed planning rule to revise the 2000 rule. A proposed

planning rule was published for public notice and comment on December 6, 2002 (67 FR 72770).

Transition language at § 219.35(b) of the 2000 rule was revised on May 17, 2001 (66 FR 27552), and again on May 20, 2002 (67 FR 35431), to allow a responsible official to elect to continue or to initiate new plan amendments or revisions under the planning regulations in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, revised as of July 1, 2000), or to conduct the amendment or revision process in conformance with the provisions of the 2000 rule. To date, no unit of the National Forest System has elected to use the 2000 planning rule for plan amendments or revisions. All plan amendments and revisions have been made under the provisions of the planning regulations in effect prior to November 9, 2000.

Transition language at § 219.35(d) of the 2000 rule was revised by the interim final rule published on September 10, 2003 (68 FR 53294) to extend the date by which site-specific decisions made by the responsible official must conform with provisions of the 2000 planning rule from November 9, 2003, until the Department promulgates the final planning regulations published as proposed on December 6, 2002 (67 FR 72770). The Department is promulgating these final planning regulations in the final rule to 36 CFR part 219, subpart A, published simultaneously elsewhere in this part of today's **Federal Register**.

The final planning rule added today at 36 CFR part 219, subpart A, and published elsewhere in this part of today's **Federal Register**, has new transition language that clearly describes the Department's intent on when the new 2004 planning regulations must be used and when regulations published previously at 36 CFR part 219, subpart A, may be used. Furthermore, in order to avoid any possible confusion within the Forest Service, other agencies, and the public regarding which revision of the planning regulations should be followed, the Department has determined that removing the November 2000 planning regulations in their entirety is necessary.

**Regulatory Certifications***Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This rule would not have an annual effect of \$100 million or more on

the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this rule would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this final 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.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the act.

*Environmental Impact*

This final rule has no direct or indirect effect on the environment and is merely procedural in nature to clarify that the planning rule adopted by the Department on November 9, 2000, and all of its requirements and provisions, is being removed in its entirety from 36 CFR part 219, subpart A, prior to the adoption of the new 2004 final planning rule at 36 CFR part 219, subpart A, which is published simultaneously elsewhere in this part of today's **Federal Register**. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." Based upon the scope of this rulemaking and its procedural nature, the Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

*No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that it would not pose the risk of a taking of private property, as this final rule is limited to the establishment of administrative procedures.

### Energy Effects

This final 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 rule does not constitute a significant energy action as defined in the Executive order.

### Civil Justice Reform

This final 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 or that would impede full implementation of this rule.

### 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 final rule on State, local, and Tribal governments and on the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

### Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism. The Department has made an assessment that this rule conforms with the federalism principles set out in this Executive order; would not impose any significant compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this rule does not have federalism implications.

### Consultation and Coordination with Indian Tribal Governments

This final rule does not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with Tribes is not required.

### Controlling Paperwork Burdens on the Public

This final rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes

no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

### Government Paperwork Elimination Act Compliance

The Department is committed to compliance with the Government Paperwork Elimination Act (44 U.S.C. 3504), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### List of Subjects in 36 CFR 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, amend chapter II of title 36 of the Code of Federal Regulations as follows:

## PART 219—PLANNING

### Subpart A—[Removed and Reserved]

■ 1. In part 219, remove and reserve subpart A.

Dated: December 22, 2004.

Mark Rey,

*Under Secretary, Natural Resources and Environment.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 219

RIN 0596–AB86

### National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule describes the National Forest System land management planning framework; establishes requirements for sustainability of social, economic, and ecological systems and developing, amending, revising, and monitoring land management plans; and clarifies that land management plans under this final rule, absent extraordinary circumstances, are strategic in nature

and are one stage in an adaptive cycle of planning for management of National Forest System lands. The intended effects of the final rule are to streamline and improve the planning process by making plans more adaptable to changes in social, economic, and environmental conditions; to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; and to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act and other authorities.

Elsewhere in this part of today's **Federal Register**, the Department of Agriculture is simultaneously publishing another final rule to remove the planning regulations adopted on November 9, 2000.

**DATES:** *Effective Date:* This rule is effective January 5, 2005.

**ADDRESSES:** The following information is posted on the World Wide Web/Internet at <http://www.fs.fed.us/emc/nfma/>: (1) This final rule; (2) supplemental responses to substantive public comments and a description of the changes, if any, made in response to those comments and the reasons for those changes to the 2002 proposed rule; (3) the Civil Rights Impact Analysis for this final rule; (4) the cost-benefit analysis for this final rule; (5) the business model cost study done to estimate predicted costs to implement the 2000 planning rule and the 2002 proposed rule, and (6) the notice of proposed National Environmental Policy Act implementing procedures; request for comment. This information may also be obtained upon written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104.

### FOR FURTHER INFORMATION CONTACT:

Dave Barone, Acting Assistant Director for Planning; Ecosystem Management Coordination Staff (202) 205–1019, or Regis Terney, Planning Specialist, Ecosystem Management Coordination Staff (202) 205–1552.

### SUPPLEMENTARY INFORMATION:

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