

Questions & Answers

Publication in the Federal Register of a notice of intent to prepare an environmental impact statement.

What is the purpose of this notice of intent (NOI)?

This NOI announces the Department's intent to develop a new planning rule and to initiate the preparation of an environmental impact statement for the new rule. It begins the scoping process to involve the public in the NEPA process for the new planning rule. A 60-day public comment period begins upon publication of the NOI in the Federal Register on Friday, December 18, 2009.

The NOI provides background and describes the need for this action, outlines the action being proposed, and asks for public comment and feedback. It also tells the public how to submit comments and get more information as the process moves forward.

Through the NOI, the Forest Service is signaling the development of a new direction for management of the National Forest System to meet modern and future needs, and a renewed commitment to a planning rule development process that is collaborative, transparent, and participatory.

What does a planning rule do?

A national Forest Service planning rule provides the overarching framework for individual forests and grasslands in the National Forest System to use in developing, amending and revising land management plans. The Forest Service needs a stable planning rule that will enable our national forests and grasslands to respond the challenges of today and tomorrow.

The Forest Service is required by statute to have a national planning rule: the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, requires the Secretary of Agriculture to issue regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 for the development and revision of land management plans.

Why are we taking this action now?

National Forests and Grasslands are a vital part of the solution to a number of environmental and social challenges facing the nation, including addressing climate change, restoring forests, protecting watersheds and habitat, sustaining local economies, improving collaboration, and working across landscapes. 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.

The national planning rule has had a complicated legal history: see questions below for further discussion. At this time, the Forest Service has an urgent need for a stable planning rule. Working with the public to develop a new rule will help the Forest Service to be more responsive to modern challenges and better able to adapt to address future needs.

Has the Department made any decisions as to the content of a new rule?

The Department has **not** made any decisions as to the content of a new rule. We intend this process to be collaborative, transparent, and participatory. Issuing an NOI ensures that the public is involved at the ground level.

To begin the conversation, the Forest Service has included in the NOI a set of potential principles that *could* guide development of a new planning rule. We are seeking public input on the potential principles and on specific associated questions. We are also asking for input on possible principles or issues not mentioned in the NOI.

The potential principles identified in the NOI are:

- *Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats.*
- *Plans could proactively address climate change monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information.*
- *Land management plans could emphasize maintenance and restoration of watershed health, and could protect and enhance America's water resources.*
- *Plans could provide for the diversity of species and wildlife habitat.*
- *Plans could foster sustainable NFS lands and their contribution to vibrant rural economies.*
- *Land management planning could involve effective and pro-active collaboration with the public.*
- *Plans could incorporate an "all-lands" approach by considering the relationship between NFS lands and neighboring lands.*
- *Plans could be based on the latest planning science and principles to achieve the best decisions possible.*

We invite and encourage the public to provide comments on the NOI. Comments will help shape our collaborative efforts and the creation of the draft rule.

How were the potential principles listed in the NOI developed?

The principles suggested in the NOI reflect modern challenges that we know land managers will face, including addressing climate change, restoring forests, protecting watersheds, supporting local economies, improving collaboration, and working across landscapes. They were developed from a variety of sources, including: new understanding about emerging challenges such as climate change; agency planning

experience over the last 27 years; public comments on past planning rules; the 1990 Critique of Land Management Planning; the 1999 *Committee of Scientists*' report; and updated suggestions regarding contemporary planning practices from professional planning associations.

Will the public have the opportunity to help develop a new rule?

The Forest Service intends to develop the rule through a fully collaborative, transparent and participatory process. The NOI is the start of this process. We invite and encourage the public to provide comments on the NOI. Comments will help shape our collaborative efforts and the creation of the proposed rule. The 60-day comment period on the notice of intent begins with its publication in the Federal Register on Friday, December 18, 2009.

We will provide the public more opportunities than ever to provide input during the development of this rule. The Forest Service is looking for feedback on how best to collaborate on the development of the new planning rule. We want to hear from the public how best to facilitate participation, and have asked in the NOI for feedback and suggestions for collaboration during the development of the rule.

The Forest Service will also for the first time utilize “new media” tools to develop a new planning rule. The public can visit <http://www.fs.usda.gov/planningrule> to participate in our web-based planning rule blog, and to learn more.

What is the history of the Forest Service planning rule?

The National Forest Management Act (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 USC 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 participation. 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 replace 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. The 2000 rule included transition provisions that allowed the Forest Service to continue to develop, revise, and amend forest plans using the provisions of the 1982 planning rule.

Reviews in the spring of 2001 found that the 2000 rule would be unworkable. 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 2000 rule legally came back into effect when the 2008 rule was set aside.

The Agency now has an urgent need to establish a stable, modern planning rule that protects, reconnects, and restores national forests and grasslands for the benefit of human communities and natural resources.

Why did the 2005 and 2008 planning rules get overturned by the court?

In the 2005 planning case, the United States District Court for the Northern District of California found the rule was issued in violation of the Administrative Procedure Act (APA), the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA).

To respond to the district court's ruling on the 2005 rule, the Department prepared an environmental impact statement and engaged in ESA consultation with the US Fish and Wildlife Service and the National Marine Fisheries Service in the development of the 2008 Rule.

On June 30, 2009, the United States District Court for the Northern District of California invalidated the 2008 rule, holding that it was developed in violation of NEPA and ESA.

Because the 2000 Rule was the last valid rule, it came back into effect when the 2008 rule was set aside. The Department has determined that a new planning rule is the best way forward.

What steps are being taken by the Forest Service to proactively address in a new planning rule the concerns expressed by the courts in litigation over prior rulemaking efforts?

The Forest Service is planning to develop an environmental impact statement and to fully evaluate the environmental impacts of the new planning rule. The Forest Service will also consult with the ESA regulatory agencies (US Fish and Wildlife Service and NOAA National Marine Fisheries Service) on the rule's effect on threatened and endangered species.

We are looking for public input to help us determine and describe these potential environmental effects, to ensure that we have fully considered and addressed all environmental impacts in final rule, and that we have complied with all legal requirements. The collaborative process will extend to other federal agencies, Tribal

governments, non-governmental agencies and interested individuals. The agency will also engage the scientific community to assist in the creation of the draft EIS.

What is the current state of land management plans?

The 155 National Forests and 20 Grasslands operate under a total of 127 land management plans. NFMA requires plans to be revised at least every 15 years (16 USC 1604 (f)(5)). Fifty-five of these plans have been revised, 37 plans are currently being revised, and the remaining plans are in need of revision.

How has the Forest Service been revising land management plans since the 2008 rule was overturned?

On June 30, 2009, the United States District Court for the Northern District of California issued a decision ordering the Forest Service to cease use of the 2008 rule. The 2000 rule legally came back into effect when the 2008 rule was set aside.

The 2000 rule allows the Forest Service to develop, revise, and amend forest plans using the provisions of the 1982 planning rule (1982 rule). Given our experience with the 1982 rule, it is anticipated that until a new rule is issued, the Forest Service will continue to use the 1982 rule provisions to develop, revise and amend plans.

Why doesn't the Forest Service simply reinstate the 1982 rule?

The 1982 rule ceased to exist in the Code of Federal Regulations when the 2000 rule was issued. The 1982 rule would have to be re-issued through notice and comment rulemaking process, which includes issuing a proposed rule for comment before issuing a final rule. This process would compete with and impede the creation of the new, and much needed planning rule.

Questions & Answers

Publication in the Federal Register of the 2000 planning rule as amended

Why is the 2000 planning rule, as amended (2000 rule) being published?

The 2000 planning rule, which allows the Forest Service to use provisions of the 1982 planning rule, is currently the rule that is legally in effect. As an interim measure, the Department is republishing in the Federal Register the 2000 planning rule as amended in order to make it available to the public in the Code of Federal Regulations. This action will facilitate its use by forests and grasslands in the National Forest System to revise and amend plans while a new rule is being developed.

Under established legal principles, the 2000 rule immediately went back into effect when the 2008 rule was set aside. The republication of the 2000 rule in the Code of Federal Regulations is simply a housekeeping matter, to make the rule readily available to the public.

The transition provisions of the 2000 rule allow the Forest Service to use provisions of the 1982 rule in revising and amending plans until a new rule is issued. We anticipate that all forests and grasslands that engage in planning between now and the issuance of the new rule will use the 1982 rule provisions.

The Forest Service is working to create a new planning rule: why not just continue work under the 2000 rule instead of doing a new rule?

The Forest Service needs a stable planning rule to meet current and future needs of the National Forest System. Developing a new planning rule provides the opportunity to help protect, reconnect, and restore national forests and grasslands for the benefit of human communities and natural resources. Through a collaborative process, the development of new rule will provide new direction for management of the National Forest System to help the Forest Service respond to modern challenges, including restoring and conserving forests, protecting watersheds, addressing climate change, sustaining local economies, improving collaboration, and working across landscapes.

The Department has determined that a new planning rule is the best way forward. In response to lawsuits and concerns raised in comments to the Secretary, the Department of Agriculture initiated a review of the 2000 rule focusing on how it would be implemented. The National Forest Management Act (NFMA) Planning Rule Review, completed in April 2001, concluded that many of the concerns about carrying out the rule were serious and required immediate attention (USDA Forest Service 2001¹). In addition, the Forest Service developed a business analysis model of the 2000 rule. This analysis was used to hold a workshop with field-level planners to determine how to implement the 2000 rule. The analysis determined that carrying out the 2000 rule would require significantly more time and budget than the Agency had previously committed to updating and maintaining unit plans (USDA Forest Service 2002²). Both reviews are available at http://www.fs.fed.us/emc/nfma/2007_pr_eis_references.html.

Why is there no public comment on the publication of the 2000 rule?

¹ U.S. Department of Agriculture, Forest Service. 2001. NFMA Planning Rule Review. Washington, DC: U.S. Department of Agriculture, Forest Service. 28 p. [Online]:

http://www.fs.fed.us/emc/nfma/includes/2007_rule/2001_04_10_NFMA_Planning_Review_Report.pdf

² U.S. Department of Agriculture, Forest Service. 2002. A business evaluation of the 2000 and proposed NFMA planning rules. Washington, DC: U.S. Department of Agriculture, Forest Service. 66 p. [Online]: www.fs.fed.us/emc/nfma/2007_planning_rule.html.

The 2000 Rule is in effect: placing it in the CFR is simply a housekeeping matter, to make the rule readily available to the public. There are no substantive changes to the 2000 rule procedures or requirements. The technical changes to the wording of the rule simply update the transition time frames to reflect the Department's long-held intent to allow planning to continue using the provisions of the 1982 rule.

Will publishing the 2000 rule as amended in the Federal Register change the way forests and grasslands in the National Forest System are managed?

No, this will not change how the National Forest System is managing lands. All forests are currently operating under land management plans developed using the 1982 planning regulations.

What amendments is the Agency making to the 2000 rule in this publication? What impacts will the amendments have?

These are technical amendments that simply update the wording of the rule to reflect the Department's long held intent to continue using the 1982 rule planning provisions until a new rule takes the place of the 2000 rule. Another technical amendment corrects the rule to cite the Forest Service appeal procedures correctly. The technical amendments do not change how responsible officials revise or amend plans – there are no substantive amendments.

Does republication of the 2000 rule impact national forests that are currently working on forest plans?

Once the Federal District Court struck down the 2008 rule, all planning units stopped using that rule. The 2008 rule may not be used to complete any ongoing revision or amendment. The 2000 rule, which allows the Forest Service to use provisions of the 1982 planning rule, came back into effect when the 2008 rule was set aside. Units may reinitiate or begin revisions or amendments under the 2000 Rule. The publication of the 2000 rule in the CFR will make it possible for responsible officials to cite the rule easily, and also for the public to have easy access to it.

The 2000 rule allows the Forest Service to develop, revise, and amend forest plans using the provisions of the 1982 planning rule (1982 rule). Given our experience with the 1982 rule, it is anticipated that until a new rule is issued, the Forest Service will continue to use the 1982 rule provisions to develop, revise and amend plans.