



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596-AD60

Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (Department), Forest Service is making technical revisions to clarify regulations governing National Forest System Land Management Planning (planning). These purely technical changes to the names and definitions of terms used to describe information accrued by Tribes and Indigenous people align with guidance from the Executive Office of the President and are more consistent with language used in regulations of other Federal agencies.

DATES: This rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Information on this final rule may be obtained via written request addressed to the Director, Policy Office, at USDA Forest Service, 201 14th Street SW, Washington, DC 20250-1124 or by email to nicholas.diprofio@usda.gov.

FOR FURTHER INFORMATION CONTACT: Nick DiProfio, Senior Land Management Planner, Ecosystem Management Coordination, at (202) 253-0640 or nicholas.diprofio@usda.gov. Individuals who use telecommunication devices for the hearing impaired may call the Federal Relay Service at (800) 877-8339 between 8:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This final rule makes purely technical, clarifying revisions to the Forest Service’s existing planning regulations at 36 CFR 219.4(a)(3) and at 36 CFR 219.19. These purely technical, clarifying revisions do not formulate standards, criteria, or guidelines applicable to Forest Service programs and therefore do not require public notice and opportunity to comment under section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1612(a)).

36 CFR Part 219, Subpart A

The Department is revising text in § 219.4(a)(3) and § 219.19 to adhere to guidance set forth by the Office of Science and Technology Policy and the Council on Environmental Quality within the Executive Office of the President on November 30, 2022, titled *Guidance for Federal Departments and Agencies on Indigenous Knowledge* (<https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>). The Department is changing the term Native Knowledge to Indigenous Knowledge and updating the associated definition to conform precisely with this guidance. The revised definition is substantially similar in substance to the existing definition and will have no discernable impact on how this concept is applied in Forest Service operations.

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Consistent with Executive Order (E.O.) 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether proposed, interim, and final rules that impose, eliminate, or modify requirements on non-Forest Service parties are significant and will review any proposed, interim, or final rules that OIRA has designated as significant. This final rule does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not require a significance determination by OIRA. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best,

most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed this final rule consistent with E.O. 13563.

Congressional Review Act

Because this final rule does not impose, eliminate, or modify requirements on non-Forest Service parties, it is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act, 5 U.S.C. 804(2)).

National Environmental Policy Act

This final rule will make only technical, clarifying revisions to existing Forest Service regulations at 36 CFR part 219, subpart A. Forest Service regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.” The Department has concluded 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 environmental impact statement.

Regulatory Flexibility Act Analysis

The Department has considered this final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the final rule conforms with the federalism

principles set out in this E.O.; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that the final rule does not have federalism implications.

Consultation with Tribal Governments

The Department has reviewed this final rule in accordance with the requirements of E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. The Department has determined that national Tribal consultation is not necessary for the final rule. The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 219, subpart A, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not have any direct effects on Tribes.

Environmental Justice

The Department has considered the final rule under the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 219, subpart A, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore will not result in disproportionately high and adverse impacts on minority or low-income populations or the exclusion of minority and low-income populations from meaningful involvement in decision making.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Department has determined that the final rule will not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211, and OIRA has not otherwise designated the final rule as a significant energy action.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon issuance of the final rule, (1) all state and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted, (2) no retroactive effect will be given to this final rule, and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Department has assessed the effects of the final rule on state, local, and Tribal governments, and the private sector. The final rule will 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.

Controlling Paperwork Burdens on the Public

The final rule does not contain information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Department is amending chapter

II of title 36 of the Code of Federal Regulations as follows:

PART 219—PLANNING

1. The authority citation for part 219 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

2. Amend § 219.4 by revising paragraph (a)(3) to read as follows:

§ 219.4 Requirements for public participation.

(a) * * *

(3) *Indigenous knowledge and land ethics.* As part of tribal participation and consultation as set forth in paragraphs (a)(1)(v) and (a)(2) of this section, the responsible official shall request information about Indigenous Knowledge, land ethics, cultural issues, and sacred and culturally significant sites.

* * * * *

3. Amend § 219.19 by removing the definition “Native knowledge” and adding the definition “Indigenous knowledge” in alphabetical order to read as follows:

§ 219.19 Definitions.

* * * * *

Indigenous knowledge. A body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed by Indigenous Peoples including, but not limited to, Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each Tribe or Indigenous community has its own place-based body of knowledge that may overlap with that of other Tribes. Indigenous Knowledge is based in

ethical foundations often grounded in social, spiritual, cultural, and natural systems that are frequently intertwined and inseparable, offering a holistic perspective. Indigenous Knowledge is inherently heterogeneous due to the cultural, geographic, and socioeconomic differences from which it is derived, and is shaped by the Indigenous Peoples' understanding of their history and the surrounding environment. Indigenous Knowledge is unique to each group of Indigenous Peoples and each may elect to utilize different terminology or express it in different ways. Indigenous Knowledge is deeply connected to the Indigenous Peoples holding that knowledge.

* * * * *

Homer Wilkes,
Under Secretary,
Natural Resources and Environment.

[FR Doc. 2024-09624 Filed: 5/3/2024 8:45 am; Publication Date: 5/6/2024]