



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200 and 216

RIN 0596-AD74

Organization, Functions, and Procedures; Public Notice and Comment for Standards, Criteria, and Guidance Applicable to Forest Service Programs

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (Department) is proposing to amend regulations governing the Directive System for the United States Forest Service (Forest Service or Agency); the scope of notice and comment requirements for the formulation of standards, criteria, and guidelines applicable to Forest Service programs; and associated agency procedures. These amendments enhance Agency employees' discretion to allow innovation in program implementation to account for the unique ecological conditions of affected landscapes and changing social and economic needs.

DATES: Comments must be received in writing by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Comments, identified by RIN 0596-AD74, should be sent via the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments.
- Mail: Send written comments to USDA-Forest Service, Sidney Yates Building, 1400 Independence Avenue SW, 1SE – Mailstop Code:, Attn: Director-Policy Office, Washington, DC 20250.

Comments should be confined to issues pertinent to the proposed rule, should

explain the reasons for any recommended changes, and should reference the specific section and wording being addressed, where possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments may be viewed on the Federal eRulemaking Portal at <https://www.regulations.gov>. In the search box, enter “RIN 0596-AD74,” and click the “Search” button. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that comments containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Forest Service Policy Office, 202-205-1464, sm.po.directivemodernization@usda.gov. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service, then provide the phone number of the named point of contact for further information.

SUPPLEMENTARY INFORMATION:

This proposed rule amends regulations describing the components of the Forest Service Directive System (the Forest Service Manual and Forest Service Handbooks) and the scope of public participation requirements for the “formulation of standards, criteria, and guidelines applicable to Forest Service programs” as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (FRRRPA) (16 U.S.C. 1612(a)). The amendments would clarify the scope of this statutory obligation by excluding changes to Forest Service Directives that are not “formulation” or do not involve “standards, criteria, or guidelines” from notice and comment processes.

The Forest Service Manual would be redefined as the sole source of continuing, mandatory direction for the Agency. Certain Agency officials would be authorized to

depart from mandatory direction in the Manual when alternate actions are in the public interest, consistent with law, and the justification for that departure is promptly documented. This exception would be codified at 36 CFR 200.4(b)(1) and would replace Forest Service Manual 1103(6), which allows Forest Service officials to deviate from mandatory direction in “extreme or highly unusual circumstances.” The Forest Service Handbooks would be redefined as advisory and informational guidance that Agency employees may deviate from without documenting or justifying alternate actions. This rulemaking would also clarify the process for providing public notice when formulating standards, criteria, or guidelines applicable to Forest Service programs.

The Forest Service Directives are intended to contain internal direction and guidance for Agency employees. They do not hold the force of law and are not enforceable against non-Agency parties. *Compare* 36 CFR 200.4(a), “[R]egulations ... governing the protection and administration of National Forest System lands and other programs of the Forest Service are set forth in Chapter 2 of Title 36 of the Code of Federal Regulations,” *with* 200.4(b), “Administrative policy, procedure, and guidance to Forest Service employees for the conduct of Forest Service activities are issued as directives....” Therefore, Forest Service Handbooks cannot contain legislative rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA). If commenters do identify legislative rules in the current Forest Service Handbooks, the Agency would consider conducting a subsequent rulemaking to rescind those provisions or recodify them in the CFR.

The Department invites comments identifying any provisions of the Forest Service Handbooks that the public believe should be retained and moved into the Code of Federal Regulations. Specific comments regarding which provisions are essential to promote safety, ensure compliance with law, or prevent waste or misuse of public funds are requested. Once this rulemaking takes effect all Handbooks will be reviewed to

ensure consistency with the new structure of the Directive System. The Department would provide public notice and opportunities to comment on these initial revisions to all Handbooks pursuant to 16 U.S.C. 1612(a).

To help reviewers provide well-informed comments, this Notice includes a “description of the subjects and issues” (5 U.S.C. 553(b)(3)) addressed in Forest Service Handbooks and encourages commenters to review provisions that include minimum timeframes for the submission of comments or the filing of objections or appeals; fee structures for the filing of applications or the receipt or renewal of permits; specific criteria for the issuance, renewal, denial, or termination of permits or licenses; methodologies or standards for environmental review and analysis; procedures for administrative appeals or dispute resolution; penalties or other sanctions on non-Forest Service parties for non-compliance with a statute, regulation, or other legal authority; definitions of key terms that affect the scope of a statute or regulation; requirements for external parties to collect, monitor, or report data; requirements to publish specific data or documents; training, certification, or qualification standards for non-Forest Service personnel; operational constraints such as restricted seasons of use or equipment bans; strict geographic exclusions, setbacks, or spatial buffers; or requirements to provide non-Forest Service parties with notice and opportunities to comment on Agency actions. Provisions of these sorts are most likely to be found in certain Handbook titles including 1109.12—Directive System; 1509.11—Grants, Cooperative Agreements, and Other Agreements; 1709.11—Civil Rights; 1909.12—Land Management Planning; 2109.14—Pesticide-Use Management and Coordination; 2209.13—Grazing Permit Administration; 2709.11—Special Uses; 2709.12—Road Rights-of-Way Grants; 5509.11—Title Claims, Sales, and Grants; and 6709.11—Health and Safety Code. These lists are intended to be illustrative and may not be comprehensive.

This rulemaking also amends the Department’s interpretation of the statutory phrase “standards, criteria, and guidelines” under 16 U.S.C. 1612(a) as including only binding direction that employees are generally expected to follow. Therefore, subsequent changes to Handbooks (those occurring after the initial Handbook revisions described in the prior paragraph are complete) would not be subject to notice and comment requirements since advisory and informational guidance is not “standards, criteria, or guidelines” under 16 U.S.C. 1612(a). Additionally, the Department proposes amending 36 CFR 216.1(b) to state that the removal or rescission of Forest Service Directives is not “formulation” of standards, criteria, or guidelines and therefore is not subject to notice and comment.

This rulemaking would also clarify that statutorily required notices associated with the formulation of standards, criteria, or guidelines applicable to Forest Service programs can be made via any broadly accessible public forum, including but not limited to an Agency website. Use of additional notices, such as notices in the Federal Register or newspaper(s) of record, are permitted but not required by 36 CFR 216.3. Similarly, this rulemaking would remove the requirement in 36 CFR 216.3 for the Agency to provide a physical mailing address for submission of comments. Electronic submission would become the default means for the Agency to solicit comments. Use of a physical mailing address for this purpose would be at the Agency’s discretion.

Background and Explanation of the Proposed Rule

This rulemaking is proposed pursuant to the Secretary of Agriculture’s authority to “prescribe regulations for the government of h[er] department, the conduct of its employees, the distribution and performance of its business” (5 U.S.C. 301). It is also proposed pursuant to section 14(a) of the FRRRPA (16 U.S.C. 1612(a)), which provides that “the Secretary, in exercising h[er] authority [under the Act] and other laws applicable to the Forest Service, by regulation, shall establish procedures, including public hearings

where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.” This provision of law has been effectuated through 36 CFR part 216, published on April 23, 1984.

Currently, 36 CFR part 216 applies to both the Forest Service Manual and the Forest Service Handbooks. The Forest Service Manual outlines legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Agency line officers and primary staff in more than one administrative unit to plan and execute assigned programs and activities. The Forest Service Handbooks contain specialized and technical guidance that are intended to help employees effectively implement Agency programs. The requirements under part 216 do not apply to directives in the Forest Service Manual or Handbooks that pertain to law enforcement and investigations; personnel matters; procurement; administrative support activities such as budget and finance; business operations; and activities undertaken by the Forest Service on behalf of other Federal agencies.

This rulemaking preserves the public’s opportunity to participate in the formulation of standards, criteria, and guidelines pursuant to 36 CFR 216.1(a) while increasing the flexibility and utility of the Agency’s formal, codified Directive System. These changes advance the policies set forth in Executive Order 14219, *Unleashing Prosperity Through Deregulation* (Feb. 19, 2025), the Presidential Memorandum on *Directing the Repeal of Unlawful Regulations* (April 9, 2025), and Office of Management and Budget memoranda M-25-28 (May 7, 2025) and M-25-36 (Oct. 21, 2025), and are consistent with the authority provided to the Forest Service in the FRRRPA.

Regulatory Certifications

Regulatory Planning and Review

Executive Order (E.O.) 12866 provides that the Office of Information and

Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this proposed rule is not significant as defined by E.O. 12866. 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 the proposed rule consistent with E.O. 13563.

National Environmental Policy Act

The proposed rule would create a clearer distinction between the force and effect of the Forest Service Manual and the Forest Service Handbooks to improve the utility of the Forest Service Directive System and apply the single best reading of section 14(a) of the FRRRPA. Departmental regulations at 7 CFR 1b.4(c)(20) exclude "rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions" from documentation in an environmental assessment or environmental impact statement. The Department's preliminary assessment is that this proposed 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. A final determination will be made upon adoption of the final rule.

Regulatory Flexibility Act

The Department has considered this proposed rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et. seq.*). This proposed rule would not have any direct effect on small entities as defined by the Regulatory Flexibility Act. This proposed rule would not impose recordkeeping requirements on small entities; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this proposed rule would 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 proposed rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the proposed rule conforms with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would 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 this proposed rule would not have federalism implications.

Consultation and Coordination with Indian Tribal Governments

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule would redefine the Forest Service Handbooks as advisory and informational guidance

that employees may deviate from without documenting a justification. The proposed rule would also state that advisory and informational guidance is not “standards, criteria, or guidelines” under 16 U.S.C. 1612(a) and, therefore, changes to Forest Service Handbooks are not subject to statutory notice and comment processes. Lastly, the proposed rule would clarify that removal or rescission of Forest Service Directives is not an act of “formulation” under 16 U.S.C. 1612(a) and is therefore outside the scope of statutory notice and comment requirements. The Department has reviewed this proposed rule in accordance with the requirements of E.O. 13175 and has determined that this proposed rule would have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is required for this proposed rule.

Family Policymaking Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment for the proposed rule.

Takings Implications

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

Energy Effects

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

Civil Justice Reform

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon publication of the proposed rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would 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), the Department has assessed the effects of the proposed rule on State, local, and Tribal governments and the private sector. The proposed rule would not compel the expenditure of \$100 million or more, adjusted annually for inflation, in any 1 year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

Paperwork Reduction Act

The proposed rule does not contain any recordkeeping or reporting requirements or other 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

36 CFR Part 200

Organization, functions (Government agencies).

36 CFR Part 216

Administrative procedure.

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

Part 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

1. The authority citation for part 200 continues to read:

Authority: 5 U.S.C. 552; 7 U.S.C. 6706; 16 U.S.C. 472, 521, 1603, and 2101 et seq.

2. Revise § 200.4(b)(1) to read as follows:

§ 200.4 Administrative issuances.

(b) * * *

(1) Directives are issued through the Forest Service Directive System, which is comprised of the Forest Service Manual and related Forest Service Handbooks.

(i) The Forest Service Manual is the primary source of administrative direction to Forest Service employees. All standards, criteria, and guidelines for the internal management and control of Forest Service programs are codified in the Forest Service Manual. Forest Service employees are generally expected to comply with all direction in the Forest Service Manual. Responsible officials may deviate from Forest Service Manual direction when it is in the public interest, allowable by law, and the reasons are promptly documented.

(ii) The Forest Service Handbooks contain advisory and informational guidance for employees and outline suggested methods for fulfilling their responsibilities. Employees may deviate from guidance in the Forest Service Handbooks.

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**PART 216—PUBLIC NOTICE AND COMMENT FOR STANDARDS,
CRITERIA, AND GUIDELINES APPLICABLE TO FOREST SERVICE
PROGRAMS**

3. The authority citation for part 216 continues to read:

Authority: 16 U.S.C. 1612(a).

4. Revise the part heading as set forth above.

5. Revise § 216.1(b) to read as follows:

§ 216.1 Purpose and scope.

* * * * *

(b) This part applies to the formulation of standards, criteria, and guidelines applicable to Forest Service programs through the issuance or revision of Forest Service directives. This part does not apply to the rescission or removal of directives. This part does not apply to Forest Service directives pertaining to law enforcement and investigations; personnel matters; procurement; administrative support activities such as budget and finance; business operations; and activities undertaken by the Forest Service on behalf of other Federal agencies. In addition, it does not apply to advisory and informational guidance for Forest Service employees that does not mandate a specific course of action. To the extent that any other part in this chapter of the Code of Federal Regulations requires greater opportunities for the public to participate with respect to policymaking or the issuance of directives than are required by this part, the other part shall be controlling.

6. Revise § 216.3(b)(1) and (2) to read as follows:

§ 216.3 Notice and an opportunity for public comment.

* * * * *

(b) * * *

(1) Be published in a broadly accessible public forum, such as a webpage.

(2) Include instructions for submitting comments.

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Natural Resources and Environment.

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