

DEPARTMENT OF AGRICULTURE**Forest Service**

RIN 0596-AC02

National Forest System Land Management Planning Directive for Wilderness Evaluation**AGENCY:** Forest Service, USDA.**ACTION:** Notice of issuance of agency final directive.

SUMMARY: The Forest Service is issuing a final directive to Forest Service Handbook 1909.12, chapter 70. Chapter 70 establishes procedures for wilderness evaluation when carrying out national forest land management planning regulations at 36 CFR part 219, subpart A, published in the **Federal Register** on January 5, 2005 (70 FR 1023). This directive provides consistent overall guidance to Forest Service line officers and employees in identifying and evaluating potential wilderness areas when developing, or revising land management plans for units of the National Forest System.

DATES: This directive is effective January 31, 2007.

ADDRESSES: Copies of the directive are available on the World Wide Web/Internet at http://www.fs.fed.us/im/directives/fsh/1909.12/1909.12_70.doc or on a compact disc (CD). Copies of the directive on a CD can be obtained by contacting Regis Terney by e-mail (rterney@fs.fed.us), by phone at 1-866-235-6652 or 202-205-0895, or by mail at Regis Terney, USDA Forest Service, Mailstop 1104, EMC, 3 Central, 1400 Independence Avenue, SW., Washington, DC 20050-1104.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Planning Specialist, Ecosystem Management Coordination Staff (202) 205-0895.

SUPPLEMENTARY INFORMATION:**Background**

On January 5, 2005, the Department adopted final planning regulations for the National Forest System (NFS) at 36 CFR Part 219, subpart A (70 FR 1023) (also referred to as the 2005 planning rule). The 2005 planning rule provides broad programmatic direction in developing and carrying out land management planning. The rule explicitly directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives system (36 CFR 219.1(c)).

The Forest Service directives consist of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the agency's policies,

practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>.

Generally, the FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities, while the FSH is generally the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

Need for Direction

Procedural and technical details associated with implementing the 2005 planning rule are needed by NFS units to begin consistent plan amendments or revisions across all NFS units to prevent confusion and to improve public involvement and decisionmaking associated with developing, amending, or revising a land management plan.

Public Participation

On March 23, 2005, the Forest Service issued 12 interim directives to FSM 1330, 1900, and 1920 and FSH 1909.12 asking for public comment (70 FR 14637). In addition, on August 8, 2005, the Forest Service issued an interim directive (ID) 1909.12-2005-10 to FSH 1909.12 to revise ID 1909.12-2005-8, issued March 23, 2005 to correct a mistake at section 71.12 (70 FR 45647). On September 7, 2006, the Forest Service issued an interim directive combining, with no change, the direction previously issued in ID 1909.12-2005-8 and ID 1909.12-2005-10.

This notice of issuance involves a final amendment for FSH 1909.12, chapter 70—Wilderness Evaluation. Directives to FSMs 1900 and 1920 and FSH 1909.12, chapters zero code, 10, 20, 30, 40, 50, 60 and 80 were issued on January 31, 2006 (71 FR 5124).

Comments were submitted by mail, facsimile, and electronically. During the 90-day comment period (ending on June 21, 2005), the agency received 69 original responses and 8,727 copies of one form letter that commented on wilderness evaluation. These responses were analyzed by the Content Analysis Group and documented in a Content Analysis Report. Of the 69 original responses, the Forest Service received responses from 59 individuals and 10 organizations.

Response to Comments on Wilderness Evaluation*Potential Wilderness Areas*

Comment: The Forest Service should not substitute the phrase "potential wilderness areas" for the phrase "roadless areas" in the Forest Service directives' terms because the term is confusing and an attempt to limit examination of roadless areas only to evaluation of their potential for wilderness. Roadless areas have their own status as areas that warrant protection and the planning process should not be limited to protecting only those areas recommended for wilderness designation. Roadless areas not recommended for wilderness will be lost to road building and timber harvest that will destroy their roadless character forever.

Response: The term "potential wilderness areas" was substituted for "roadless areas" in the interim directives to stress the reason these areas are identified and evaluated. Many public and internal comments were received on this issue. In the final directive the term "potential wilderness areas" is used to avoid confusion with the term "inventoried roadless area" used in the Roadless Area Conservation Rule (36 CFR 294.11, 66 FR 3244, January 12, 2001). The Roadless Area Conservation Rule defined "inventoried roadless areas" as areas identified in a set of inventoried roadless area maps in the November 2000 Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2 or subsequent update or revision of those maps. The Roadless Area Conservation Rule definition is different from the criteria for "potential wilderness areas" defined at section 71.1 of the final directive. The two areas (inventoried roadless areas and potential wilderness areas) may have common boundaries; however, often the areas are different.

Specific Criteria

Comment: The Forest Service should include specific criteria for inventory and evaluation of roadless areas and require a thorough review of all areas of each national forest, grassland, or prairie, including the 58.5 million acres of previously inventoried roadless areas identified in the Roadless Area Conservation Rule or the RARE II inventory. This new inventory is needed to ensure that areas are included that may have been missed in past efforts.

Response: Criteria for identifying lands to evaluate for wilderness potential are specified in the guidance in FSH 1909.12, chapter 70. The intent

is to identify and evaluate all National Forest System (NFS) lands that meet the definition of wilderness in section 2(c) of the 1964 Wilderness Act (16 U.S.C. 1131 *et seq.*) The inventory process outlined in chapter 70 of the handbook requires a thorough review of not only those areas that were identified in previous inventories, but also other areas that may meet the criteria. This "inventory" of areas is updated during land management plan revision, and each area meeting inventory criteria is then evaluated following the policy in FSM 1923 and the procedural guidance in FSH 1909.12, chapter 70. Based on the evaluation, some potential wilderness areas may be administratively recommended for wilderness designation. But, only the Congress can designate an area as wilderness.

Inventory

Comment: The Forest Service should include in the roadless area inventory all unroaded areas greater than 1,000 acres in size.

Response: The criteria for inventory do not include any absolute size limit on what areas can be in the inventory. Areas less than 5,000 acres can be considered if they meet several criteria for wilderness characteristics and manageability. The intent is to identify and evaluate all NFS lands that meet the definition of wilderness in section 2(c) of the Wilderness Act.

Criteria for Wilderness

Comment: The Forest Service should revise the Forest Service directives' criteria for wilderness inventory and evaluation. Some criteria about evidence of past disturbance, such as old mining roads or new routes created illegally by off-road vehicle users or watershed treatments (FSH 1909.12, sec. 71.11) should not be used to eliminate areas from the roadless inventory. The Wilderness Act does not require pristine conditions for designation and that use of criteria such as "sights and sounds" coming from outside the area are erroneous and not in line with the will of Congress. The section on capability should be cut out entirely, including references to solitude, sights and sounds, challenge, and recreation.

Response: The directive has been revised to require that all areas meet the statutory definition of wilderness to be considered for the inventory of potential wilderness (FSH 1909.12, sec. 71). This includes providing opportunities for solitude or a primitive and unconfined type of recreation. All specific references to sights and sounds as "inventory criteria" have been removed.

The capability analysis includes an evaluation of an area's ability to provide outstanding opportunities for solitude or primitive and unconfined recreation, consistent with the definition of wilderness in the Wilderness Act. Evaluating the opportunity for solitude appropriately includes isolation from sights, sounds, the presence of others, development, and evidence of humans when analyzing an potential wilderness area (FSH 1909.12, sec. 72.1).

Definition

Comment: The definition of wilderness in the Wilderness Act of 1964, section 2(c) should be in FSH section 71.

Response: That requirement was in the policy section of the interim directive at FSM 1923 so there is no need to repeat it in chapter 70 of FSH 1909.12. But, because of public and internal comment, and to make it clear that the Forest Service is identifying lands that could potentially be considered as additions to the National Wilderness Preservation System, the requirement for satisfying the definition of wilderness found in section 2(c) of the Wilderness Act has been added back into section 71.

Pending Wilderness

Comment: The Forest Service should allow potential wilderness areas to be managed as wilderness study areas until wilderness designation is achieved or settled by Congress.

Response: The term "wilderness study area" is a specific term used in the Eastern Wilderness Act of 1975 (16 U.S.C. 1132(note)) and other statutes. To clarify, direction has been added at FSH 1909.12, sec. 71. All areas that meet the definition of wilderness (sec. 2(c) of the Wilderness Act) and the criteria in FSM 1923 and FSH 1909.12, chapter 70 are evaluated for wilderness suitability in land management plan revisions. Those areas administratively recommended for wilderness or wilderness studies are not available for any use or activity that may reduce their wilderness potential. Not all areas evaluated will be found suitable for wilderness.

Wilderness Character

Comment: The Forest Service should clarify when and how evaluation for wilderness could take place outside the planning process. FSM 1923 implies that this could happen.

Response: There was policy direction and guidance in the interim directives at FSM 1923.12 and section 73.2 of FSH 1909.12, chapter 70 about the requirements for proposals resulting from wilderness studies not

incorporated in land management plans, including legislatively mandated studies. The direction and guidance remains part of the amended directives in FSM 1923 and FSH 1909.12, chapter 70. Such a study could be directed by Congress.

Boundaries for Potential Wilderness Areas

Comment: The Forest Service should draw boundaries for roadless areas or potential wilderness areas to the edge of impact. Boundaries should be on a road, rather than buffered some distance back from the road.

Response: The directive has been revised to specify that boundaries of areas being considered for the inventory of potential wilderness be at prominent natural or semi-permanent human-made features to help ease on-the-ground identification (FSH 1909.12, secs. 71.12 and 72.1). And, the directions state that boundaries of areas administratively recommended for wilderness designation may be adjusted. This includes setting boundary lines with a setback from features such as roads, trails, dams, powerlines, pipelines, and bridges. Such setback areas are frequently needed to provide for the operation, administration, and management of such features.

Definition of Terms

Comment: The Forest Service should clarify the meanings of the terms "road," "unroaded," and "roadless" as used in the Forest Service directives' wilderness review provisions. Old jeep trails and other routes that are no longer maintained should not be considered "improved" roads and their presence should not be used to exclude areas from the roadless inventory.

Response: The term "unroaded" is not used in the final directive. The first step in the evaluation of potential wilderness areas is to identify and inventory all areas within National Forest System (NFS) lands that satisfy the definition of wilderness found in section 2(c) of the Wilderness Act. Areas of potential wilderness identified in this process are called potential wilderness areas. The final amendment to the directive refers to forest roads using the new agency definition at Title 36, Code of Federal Regulations, Part 212—Administration of the Forest Transportation System, section 212.1. A forest road is defined as a road wholly or partly within or adjacent to and serving the NFS that the Forest Service determines is necessary for the protection, administration, and use of the NFS and the use and development of its resources. One of the criteria that must be met to include an

area on the inventory is that it does not contain forest roads (36 CFR 212.1) or other permanently authorized roads, except as permitted in areas east of the 100th meridian.

Areas To Be Evaluated

Concern: The Forest Service directives should require that all areas be evaluated according to the criteria described in section 72.41 of its handbook, including those areas east of the 100th meridian.

Response: The handbook guidance has been corrected at section 72.4 so that it applies to all areas evaluated for their wilderness potential.

Overview of Changes to Content of Chapter 70—Wilderness Evaluation

The final directive recodes the chapter (parent text) from a 1-digit chapter to a 2-digit chapter. Interim directive (ID) 1909.12–2005–8, ID 1909.12–2005–10, and ID 1909.12–2006–1 were issued using the 2-digit coding scheme. The final directive revises and updates the direction previously contained in the parent text. In addition, the final directive incorporates direction with adjustments made from comments on the Interim Directive 1909.12–2005–8 (ID). The digest contained within the final directive conveys the changes effected in agency policy and procedures. The major changes between the ID and the final directive are described below:

Section 71, paragraph 1, of the final directive adds direction on the statutory definition of wilderness, and adds at paragraph 2 direction about the term “potential wilderness area” and explains what the identification and inventory of potential wilderness areas means. In addition paragraph 2, adds a sentence to clarify the difference in terminology between lands east and west of the 100th meridian. Paragraph 3 was added to recognize the uniqueness of each area and the use of local knowledge and judgment in the inventory process.

In section 71.1, the introductory paragraph clarifies that areas qualify for placement on the inventory if they meet either criteria 1 and 3 or 2 and 3. In addition, the areas may have improvements if they meet the criteria in section 71.11, and for areas east of the 100 meridian they must also meet the criteria in 71.12. Clarifies the intent of enumerated paragraph 2, explaining that it is not necessary to meet all three criteria within paragraph 2. At paragraph 2, removes the terms “physiography or vegetation” and adds the term “physical terrain.” Revises enumerated paragraph 3, the third

criterion concerning roads, from “they do not contain improved roads maintained for travel by standard passenger-type vehicles” * * * to “they do not contain forest roads (36 CFR 212.1) or other permanently authorized roads.” The term “forest roads” is defined by the new agency definition at Title 36, Code of Federal Regulations, Part 212—Administration of the Forest Transportation System, § 212.1. That is a “forest road” is a road wholly or partly within or adjacent to and serving the National Forest System (NFS) lands that the Forest Service determines is necessary for the protection, administration, and use of the NFS and the use and development of its resources.

Within section 71.12, changes the caption to “Criteria for Potential Wilderness East of the 100th Meridian.” The amendment incorporates direction on criteria for areas east of the 100th meridian (formerly in ID) with changes to the introductory paragraph, enumerated paragraph 5, and other editorial changes. At paragraph 1, the final directive clarifies that the criteria in section 71.12 are in addition to the criteria in sections 71.7 and 71.11. At enumerated paragraph 5, and revises the wording to be consistent with that at section 71.1 concerning forest roads.

Within section 72.1 revises the principal wilderness characteristics from those described in the ID (environment, challenge, outdoor recreation opportunities, special features, manageability) to those described in the 1964 Wilderness Act: (1) Natural; (2) undeveloped; (3) outstanding opportunities for solitude or primitive and unconfined recreation; (4) special features and values; and (5) manageability. At enumerated paragraph 5, incorporates wording from section 7.21 of parent text pertaining to how boundaries affect the manageability of an area (wording had been removed by the ID). However, at enumerated paragraph 5, did not incorporate the previously coded paragraph d (formerly in section 7.21 of parent text) about “boundaries acting as a shield.”

Within section 73.3 removes the following unnecessary explanatory information on public hearings previously contained in the ID (formerly in section 7.33 of parent text): “Congress, in legislation subsequent to the Wilderness Act, has considered it necessary to expressly provide for public involvement by reference to section 3(d) of the original act. This section applied to those areas that, on the effective date of the Wilderness Act, were described as primitive. Therefore, there is no statutory requirement that

review of selected areas that may have likelihood for wilderness designation comply with the public participation provisions of section 3(d) of the Act. However, the fact that Congress, in designating wilderness study areas, has required hearings does imply a desire for public participation in a hearing or some comparable proceeding, such as a public meeting, in order to obtain comment about wilderness recommendations while developing or revising a land management plan.” Other changes were made throughout the document for clarity.

Regulatory Certifications

Environmental Impact

This final directive provides the detailed direction to agency employees necessary to carry out the provisions of the final 2005 planning rule adopted at 36 CFR part 219 governing land management planning. Section 31.12 of FSH 1909.15 (57 FR 43208; Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The agency’s conclusion is that this final directive falls within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

Regulatory Impact

This directive has been reviewed under USDA procedures. The final directive 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. The directive would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, the directive 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, the directive 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 directive will not have a significant

economic impact on a substantial number of small entities as defined by the act.

No Takings Implications

This final directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that it would not pose the risk of a taking of private property as they are limited to the establishment of administrative procedures.

Energy Effects

This final directive has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that it does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This final directive has been reviewed under Executive Order 12988, Civil Justice Reform. This final directive will direct the work of Forest Service employees and is not intended to preempt any state and local laws and regulations that might be in conflict or that would impede full implementation of this directive. The directive would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of 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), which the President signed into law on March 22, 1995, the effects of this final directive on state, local, and tribal governments, and on the private sector have been assessed and do 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 agency has considered this final directive under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the final directive 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. Moreover, this final directive addresses the land management planning process on national forests, grasslands, or other units of the National Forest System, which do not directly affect the states.

Consultation and Coordination With Indian Tribal Governments

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

Conclusion

This final directive provides consistent interpretation of the 2005 planning rule for line and staff officers, and interdisciplinary teams. Therefore, the agency can fulfill its commitment to improve public involvement and decisionmaking associated with developing, amending, or revising a land management plan.

The full text of this handbook is available on the World Wide Web at <http://www.fs.fed.us/im/directives>. Single paper copies are available upon request from the address and telephone numbers listed earlier in this notice as well as from the nearest regional office, the location of which are also available on the Washington Office headquarters homepage on the World Wide Web at <http://www.fs.fed.us>.

Dated: December 21, 2006.

Dale N. Bosworth,

Chief, Forest Service.

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DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108-447)

AGENCY: Chugach National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Chugach National Forest will begin charging a fee for the overnight use and occupancy of new campsites and a fee for rental of the new group use pavilion at the Childs Glacier Recreation Area. Projected fees will range from \$10 to \$30 per night for existing walk in and new campsites and \$75 and \$150 per day for the new group use pavilion. No Campgrounds currently exist on the Cordova Ranger District. The Childs Glacier Recreation Area redevelopment project, 2005–2006, will provide this new facility for public use. Funds from the rental will be used for the continued operation and maintenance of Childs Glacier Recreation Area.

DATES: Childs Glacier Campground will become available for use August, 2007.

ADDRESSES: Forest Supervisor, Chugach National Forest, 3301 “C” Street, Suite 300, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Robert Behrends, Public Services Staff Officer, Cordova Ranger District, 907–424–4729.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Childs Glacier Recreation Area is located on the 700,000 acre Copper River Delta and is the most visited site on the Cordova Ranger District. The site is situated in a unique setting beside a large glacier where ice chunks frequently calve into the world renowned Copper River. Currently campground rental on the Chugach National Forest ranges from \$10–\$22 per night and \$130 per day for pavilion rental. A projected range of fees from \$10 to \$30 per night for camping and \$75 to \$150 per day for the pavilion is both reasonable and acceptable for a new campground and group use facility providing a unique recreation experience in a dynamic setting in Alaska.