

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE INFORMATION QUALITY STAFF

\_\_\_\_\_)  
Re: Information used in Support of the )  
National Forest System Land and Resource )  
Management Planning; Proposed Rules )  
\_\_\_\_\_)

Docket No. \_\_\_\_\_

REQUEST FOR CORRECTION OF INFORMATION CONTAINED  
IN THE NOTICE FOR PROPOSED RULEMAKING FOR NATIONAL FOREST SYSTEM  
LAND AND RESOURCE MANAGEMENT PLANNING; PROPOSED RULES

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**April 4, 2003**

REQUEST FOR CORRECTION OF INFORMATION CONTAINED  
IN THE NOTICE FOR PROPOSED RULEMAKING FOR NATIONAL FOREST SYSTEM  
LAND AND RESOURCE MANAGEMENT PLANNING; PROPOSED RULES

**1. Request and Petitioners**

The following data correction request is made on behalf of petitioners **Sierra Club, John Muir Project of Earth Island Institute, Gifford Pinchot Task Force, National Forest Protection Alliance** and **Heartwood** and constitutes a request for correction of information submitted under USDA's Information Quality Guidelines.

On April 4, 2003, Bryan Bird, on behalf of petitioners, contacted and spoke with Angela Concepcion of the USDA Forest Service CAT office in Missoula, MT (the listed contact person on the Federal Register Notice for Proposed Rulemaking ["NFPR"], Jody Sutton, was not available) The NFPR, entitled "national forest system land and resource management planning proposed rules," was published December 6, 2002 at pages 72770-72815. Bryan Bird informed Ms. Concepcion that petitioners are requesting the identification and correction of information used to justify the changes in the NFMA planning rules, in particular the information used here for regulatory or influential regulatory information. Petitioners are submitting this data correction request concurrently with our individual comments in response to the Federal Register notice.

**2. Requestor Contact Information.** Petitioners can be reached as follows:

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Andrew George is Campaign Coordinator for the National Forest Protection Alliance and Jim Bensman is Forestwatch Coordinator for Heartwood.

### 3. Description of Information to Correct

This request pertains to certain information used in support of and in justification for the notice for proposed rulemaking (“NFPR”) for national forest system land and resource management planning proposed rules (hereafter “planning rule”) published in the Federal Register on December 6, 2002 at pages 72770-72815, titled “National Forest System Land and Resource Management Planning; Proposed Rules.”

In the NFPR the agency refers in the first two pages to a “review” that was conducted by Forest Service personnel at the direction of the Office of the Secretary and a “workshop with field-level planners.”<sup>1</sup> This information is employed decisively as the justification for the proposed planning rule. For example:

“Although the 2000 rule was intended to simplify and streamline the development and amendment of land and resource management plans, the review concluded that the 2000 rule is neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify the programmatic nature of land and resource management planning.”<sup>2</sup>

Again the Federal Register NPRM:

“[The Department initiated a *review of the 2000 rule* focusing on its “implementability.” The ‘NFMA Planning Rule Review,’ completed in April 2001, concluded that many of the concerns regarding implementability of the rule *were serious and required immediate attention.*”

“In addition, the Forest Service developed a business analysis model of the 2000 rule and *conducted a workshop with field-level planners to determine the implementability of the 2000 rule* based on this business model. The business model reflected business activities directly applied from the 2000 rule and provided the basis for a systematic evaluation of the rule for implementability.”

“The business model identified the following nine major categories of planning activities and associated sections of the 2000 rule:

- (1) Collaboration (primarily Sec. Sec. 219.12 through 219.18);
- (2) Best Science/Science Consistency (primarily Sec. Sec. 219.22 through 219.25 with consideration of relative text in Sec. Sec. 219.11 and 219.20);
- (3) Recommendations (primarily Sec. Sec. 219.3 through 219.9 with consideration of relative text in Sec. Sec. 219.19, 219.20, 219.21, 219.26, and 219.27);

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<sup>1</sup>67 Fed. Reg. 72770-72771

<sup>2</sup>67 Fed. Reg. 72770.

- (4) Sustainability (primarily Sec. Sec. 219.19 through 219.21 with consideration of relative text in Sec. 219.11);
- (5) Developing/Revising Plan Decisions (primarily Sec. Sec. 219.6 through 219.9 and 219.11 with consideration of relative text in Sec. Sec. 219.20, 219.26, 219.28, and 219.29);
- (6) Write Plan Documentation (primarily Sec. Sec. 219.11 and 219.30);
- (7) Maintain the Plan (primarily Sec. 219.31);
- (8) Objections and Appeals (primarily Sec. 219.32); and
- (9) Miscellaneous (public notifications and selected NEPA activities).

“Within the context of the nine categories defined, *the facilitated workshop* centered on answering two questions: (1) Are the business requirements clearly understood? (2) What is the agency’s perceived ability to execute the requirements?”<sup>3</sup> (Emphasis ours).

Despite the agency’s heavy reliance on the information referred to in the NFPR, the information has not been made available to the public to our knowledge nor is it included with the NFPR document. No specific information that would allow the public to determine whether the drastic changes in the NFMA planning regulations are in fact warranted has been provided. Until the Forest Service can justify the change in the proposed regulations, the proposed rule is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A).

#### **4. Explanation of Noncompliance with OMB and/or USDA Information Quality Guidelines**

The Forest Service bases its entire justification for the revision of the 1982 and suspended 2000 planning regulations on the information that was supposedly gleaned from this review that was called for by the Office of the Secretary and published in April 2001 as well as the “workshop” that is ambiguously referred to in the NFPR. The Forest Service states that the results of the review and workshop clearly mandate the proposed changes in the regulations and yet it has not provided any information that demonstrates that there is unclear guidance regarding how to implement the 2000 regulations.<sup>4</sup>

Moreover, the agency points to its inability to revise LRMPs within the 15 year timeframe required by NFMA as a reason to revise the planning regulations.<sup>5</sup> The connection between the planning regulations (either the 1982, 2000, or 2002) and the inability of the Forest Service to comply with a statutorily mandated timeline is spurious at best. There is no support offered for the contention that the planning regulations have contributed to the lack of forest plan revisions

The Forest Service maintains that benchmarks such as those required by the 1982 regulations, are “no longer considered helpful.”<sup>6</sup> Again, the agency provides no supporting evidence that benchmarks have been demonstrated unhelpful.

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<sup>3</sup>67Fed.Reg. 72771.

<sup>4</sup>67 Fed. Reg. 72772.

<sup>5</sup>67 Fed. Reg. 72774.

<sup>6</sup>67 Fed. Reg. 72771.

Later, the Forest Service claims that data collection may prove too expensive or otherwise burdensome for all national forests to implement.<sup>7</sup> However, the agency has failed to demonstrate that this is in fact the case, and would preclude the Forest Service from meeting its statutory and regulatory obligations.

Yet again, the Forest Service offers no support for the contention that “it is not practical to require each project decision to be in strict compliance with all aspects of a plan’s desired conditions,” or to require that each project be consistent with other applicable laws.<sup>8</sup> No evidence or information otherwise has been presented to the public to support this contention.

The Forest Service claims that the agency does not have the time, money, or personnel to adequately involve Forest Service scientists in the planning process.<sup>9</sup> Such a contention is spurious at best and unsupported by any information provided in the NFPR or the rulemaking web site. Additionally, the Forest Service maintains that scientific monitoring is currently “too detailed,” and proposes to scale back this requirement.<sup>10</sup> Again, no information is presented to support such a critical assertion.

The Forest Service has failed to provide the public with any evidence to support these serious and crucial claims. Without this information being available to the public, its very nature is questionable let alone its objectivity. The federal government simply cannot go about changing the fundamental interpretations of key environmental laws passed by Congress to suit its whims with no factual or sound support. The potential for this very misuse of administrative authority was the impetus for adoption of the USDA’s Information Quality Guidelines.

The USDA’s Information Quality Guidelines, under “Regulatory Information Disseminated” require that “Environmental assessments, environmental impact statements, and associated documents prepared under the National Environmental Policy Act (NEPA)” are subject to the guidelines.

Regulatory and Influential Regulatory Information must be objective:

### **“Objectivity of Regulatory Information**

To ensure the objectivity of information disseminated by USDA agencies and offices in conjunction with their rulemaking activities, the agencies and offices will:

- Use sound analytical methods in carrying out scientific and economic analyses and in preparing risk assessments.
- Use reasonably reliable and reasonably timely data and information (e.g., collected data such as from surveys, compiled information, and/or expert opinion).

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<sup>7</sup>67 Fed. Reg. 72777.

<sup>8</sup>67 Fed. Reg. 72781.

<sup>9</sup>67 Fed. Reg. 72772.

<sup>10</sup>67 Fed. Reg. 72772.

- When using the best available data obtained from or provided by third parties, ensure transparency in its dissemination by identifying known sources of error and limitations in the data.
- Evaluate data quality and, where practicable, validate the data against other information when using or combining data from different sources.
- Ensure transparency of the analysis, to the extent possible, consistent with confidentiality protections, by:
  - Presenting a clear explanation of the analysis to the intended audience.
  - Providing transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints.
  - Explaining the rationale for using certain data over other data in the analysis.
  - Presenting the model or analysis logically so that the conclusions and recommendations are well supported.
- Clearly identify sources of uncertainty affecting data quality.
- For quantitative assessments, clearly state the uncertainty of final estimates to the extent practicable. Data and data collection systems should, as far as possible, be of sufficient quality and precision that uncertainty in the final estimates is appropriately characterized.
- For qualitative assessments, provide an explanation of the nature of the uncertainty in the analysis.
- Where appropriate, subject the analysis to formal, independent, external peer review to ensure its objectivity. If analytic results have been subjected to such a review, the information may generally be presumed to be of acceptable objectivity. However, in accordance with the OMB standard, this presumption is rebuttable based on a persuasive showing by a petitioner in a particular instance, although the burden of proof is on the complainant.
- If agency-sponsored peer review of the analysis is employed to help satisfy the objectivity standard, the review process should, where appropriate, meet the general criteria for competent and credible peer review recommended by OMB. OMB recommends that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.

### **Objectivity of *Influential* Regulatory Information**

With respect to *influential* scientific information disseminated by USDA regarding analysis of risks to human health, safety, and the environment, USDA agencies and offices will ensure, to the extent practicable, the objectivity of this information by adapting the quality principles found in the Safe Drinking Water Act Amendments of 1996. The agencies and offices will:

- Use the best science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed science and studies where available.
- Use data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies the use of the data).
- In the dissemination of *influential* scientific information about risks, ensure that the presentation of information is comprehensive, informative, and understandable. In a document made available to the public, specify, to the extent practicable:
  - Each population addressed by any estimate of applicable effects.
  - The expected risk or central estimate of risk for the specific populations affected
  - Each appropriate upper bound or lower-bound estimate of risk.
  - Each significant uncertainty identified in the process of the risk assessment and studies that would assist in reducing the uncertainty.
  - Any additional studies, including peer-reviewed studies, known to the agency that support, are directly relevant to, or fail to support the findings of the assessment and the methodology used to reconcile inconsistencies in the scientific data.”

Petitioners allege that the Forest Service’s information used to justify this rule-making violates many of the “Regulatory” or “Influential Regulatory” standards. Specifically, the failure to ensure transparency. subject the analysis to formal, independent, external peer review to ensure its objectivity, and ensure that the presentation of information is comprehensive, informative, and understandable.

For Regulatory Information:

- The USFS does not “use sound analytical methods in carrying out scientific and economic analyses” since the method of “review” is not disclosed and thus verifiable by the public;
- The USFS does not “use reasonably reliable ... data and information (e.g., collected data such as from surveys, compiled information, and/or expert opinion) since the methods of in-house “review” and a “workshop” are inherently unreliable;
- The technique of “review” and “workshop” do not “ensure transparency of the analysis, to the extent possible by ... Providing transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints” and “Explaining the rationale for using certain data over other data in the analysis,” as well as “Presenting the model or analysis logically so that the conclusions and recommendations are well supported.”
- The analysis does not “clearly identify sources of uncertainty affecting data quality.

Because the information is being used to justify entirely new rules for National Forest planning, the information used to determine significance must be considered “influential.” As such, the

rulemaking, the information, and the reliance on “reviews” and “workshops” violates the standards of “Influential Regulatory Information”:

- It does not “use the best science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed science and studies where available;”
- It does not “use data collected by accepted methods or best available methods.”

## 5. Explanation of the Effect of the Alleged Error

The effects of the alleged errors are that petitioners:

- Cannot adequately assess the Forest Service’s justification or rationale for proposing the rule changes;
- Cannot provide accurate comments in the rulemaking;
- Cannot provide advice to our members or constituents as to how they should comment on the proposed rulemaking;
- As a result, petitioners cannot fulfill their roles as stewards of the environment and of good government;
- Petitioners will be harmed by the rule changes if they are promulgated using biased or faulty information and reasoning that will abridge our ability to petition our government effectively;
- We will be harmed directly by the destruction of the environment if the proposed rule changes are promulgated, which reduces our ability to study, recreate and enjoy our national forests.

## 6. Recommendation and Justification for how the Information Should **Be Corrected**

Petitioners request that the Forest Service make the information referred to in the Federal Register document number 67 pages 72770-72815 available to the public in a format readily accessible and understandable. In particular the review conducted by forest service personnel at the direction of the Office of the Secretary and completed in April 2001 as well as the proceedings of the workshop with field level planners as referred to in the Federal Register notice as the justification for the changes to the National Forest System Land and Resource Management Planning Rule adopted November 9, 2000. We request that the Forest Service present the specific information used as part of the rule-making on the Forest Service’s web site. Subsequently, the Forest Service should reopen the rulemaking comment period to accommodate the information being made available to the public.

Respectfully submitted for Petitioners by: /S/ Bryan Bird