

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Parts 215, 217, and 219**

RIN 0596-AB20

**National Forest System Land and Resource Management Planning**

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Forest Service requests comment on a proposed rule to guide land and resource management planning for the 191-million acre National Forest System. This proposed rule, which would revise and streamline the existing planning rule, describes the agency's framework for National Forest System resource decisionmaking; incorporates principles of ecosystem management into resource planning; and establishes requirements for implementation, monitoring, evaluation, amendment, and revision of forest plans. The intended effect is to simplify, clarify, and otherwise improve the planning process; reduce burdensome and costly procedural requirements; and strengthen relationships with the public and other government entities.

**DATES:** Comments must be submitted in writing and received by July 12, 1995.

The agency will provide briefings to assist the public in understanding the proposed rule on April 24 at the locations and times listed under

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Send written comments to Director, Ecosystem Management (1920; 3 CEN), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Third Floor, Central Wing, Auditor's Building, 14th and Independence Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (202-205-1034) to facilitate entry into the building.

Briefings will be held at the addresses set out under **SUPPLEMENTARY INFORMATION** of this notice for proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Ann Christensen, Land Management Planning Specialist (202-205-1034).

**SUPPLEMENTARY INFORMATION:**

## Public Briefings and Locations

The Forest Service will hold public briefings on April 24 in the following cities at the addresses and times shown:

1. Washington, DC—April 24, 1995, 9:30 a.m. to 11:30 a.m., Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia, 22202.

2. Missoula, Montana—April 24, 1995, 9 a.m. to 11 a.m., 4B's Inn and Conference Center, 3803 Brooks Street, Missoula, Montana, 59801.

3. Denver, Colorado—April 24, 1995, 6:30 p.m. to 8:30 p.m., USDA Forest Service, Rocky Mountain Regional Auditorium, 740 Simms Street, Golden, Colorado, 80401.

4. Grand Junction, Colorado—April 24, 1995, 6:30 p.m. to 8:30 p.m., Grand Junction Ranger District, 764 Horizon Drive, Grand Junction, Colorado, 81506.

5. Durango, Colorado—April 24, 1995, 6:30 p.m. to 8:30 p.m., San Juan Forest Supervisor's Office, 701 Camino del Camino, Durango, Colorado, 81301.

6. Chadron, Nebraska—April 24, 1995, 6:30 p.m. to 8:30 p.m., Nebraska National Forest Supervisor's Office, 125 N. Main Street, Chadron, Nebraska, 69337.

7. Rapid City, South Dakota—April 24, 1995, 6:30 p.m. to 8:30 p.m., Pactola Ranger District Office, 800 Soo San Drive, Rapid City, South Dakota, 81506.

8. Casper, Wyoming—April 24, 1995, 6:30 p.m. to 8:30 p.m., Holiday Inn, 300 "F" Street, Casper, Wyoming, 82601.

9. Albuquerque, New Mexico—April 24, 1995, 9 a.m. to 11 a.m., Southwestern Regional Office, 517 Gold Avenue, S.W., Albuquerque, New Mexico, 87102.

10. Phoenix, Arizona—April 24, 1995, 9 a.m. to 11 a.m., Tonto National Forest Supervisor's Office, 2234 East McDowell Road, Phoenix, Arizona, 85010.

11. Boise, Idaho—April 24, 1995, 2 p.m. to 4 p.m., National Interagency Fire Center, Training Building Auditorium, 3833 Development Avenue, Boise, Idaho, 83705.

12. Salt Lake City, Utah—April 24, 1995, 2 p.m. to 4 p.m., Federal Building, Room 2404, 125 South State Street, Salt Lake City, Utah, 84138.

13. Sacramento, California—April 24, 1995, 1 p.m. to 3 p.m., Radisson Hotel Sacramento, 500 Leisure Lane, Sacramento, California, 95815.

14. Portland, Oregon—April 24, 1995, 9 a.m. to 11 a.m., USDA Forest Service Pacific Northwest Regional Office, Robert Duncan Plaza, 333 S.W. First Avenue, Portland, Oregon, 97208.

15. Atlanta, Georgia—April 24, 1995, 12:30 p.m. to 2:30 p.m., USDA Forest Service Southern Region Office, 1720 Peachtree Road, N.W., room 199, Atlanta, Georgia, 30367.

16. Brookfield, Wisconsin—April 24, 1995, 7 p.m. to 9 p.m., Brookfield

Marriott Hotel, 375 South Moorland Road, Brookfield, Wisconsin, 53005.

17. Juneau, Alaska—April 24, 1995, 1 p.m. to 3 p.m., Alaska Native Brotherhood Hall, 320 Willoughby Avenue, Juneau, Alaska, 99801.

Public comments will not be taken at these briefings, which will consist of video presentations prepared by the Chief's Office. As of May 1, one copy of this video material will also be available at the Chief's Office, each Regional Office, each Forest Supervisor's Office, each Research or Experiment Station, the Forest Products Laboratory, the Northeastern Area State and Private Forestry Office, and the International Institute of Tropical Forestry. The video may be borrowed by interested parties on a reservation basis by contacting their local Forest Service office or calling the telephone number listed under **FOR FURTHER INFORMATION CONTACT** earlier in this notice.

**Background**

The Forest Service is responsible for managing the land and resources of the National Forest System. It is headed by the Chief of the Forest Service and includes 191 million acres of lands in 42 States, the Virgin Islands, and Puerto Rico. The National Forest System consists of 155 National Forests, 20 National Grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture. Under the Multiple-Use, Sustained-Yield Act of 1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600), these lands are managed for a variety of uses on a sustained basis to ensure a continued supply of goods and services to the American people in perpetuity.

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (90 Stat. 2949 *et seq.*; 16 USC 1601-1614) (hereafter, NFMA), specifies that land and resource management plans shall be developed for units of the National Forest System. Regulations to implement NFMA are set forth at 36 CFR part 219.

A forest plan has been approved for every National Forest except the Klamath, Shasta-Trinity, Mendocino, and Six Rivers National Forests, all located in California. It remains the agency's intent that these National Forests complete their plans under the requirements for forest plan development described by the existing regulation, adopted September 30, 1982 (47 FR 43026), as amended June 24, 1983 (48 FR 29122), and September 7, 1983 (48 FR 40383), and as set out in the

Code of Federal Regulations as of July 1, 1993.

During the 18 years since enactment of NFMA, much has been learned about planning for management of National Forest System lands. The original vision of NFMA raised many varied expectations, some of which remain unfulfilled. Although forest planning efforts to date have produced notable accomplishments in addressing forest management issues and fostering public participation in public land management, many controversies linger. For each National Forest, difficult resource management choices must be made among competing interests, often where there are no universally accepted answers. In such a setting, forest planning cannot be expected to revolve all differences; however, improvements in forest planning requirements and procedures can help better focus the issues and choices and lead to better, more informed decisions.

This proposed rule is the culmination of a systematic and comprehensive review of forest planning rules and processes. The nature of this review and its findings were described in detail in the Advance Notice of Proposed Rulemaking published on February 15, 1991 (56 FR 6508), along with a history of forest planning and an overview of the existing planning rule.

#### Critique of Land Management Planning

Of particular note in development of this proposed rule is the Critique of Land Management Planning. The Forest Service initiated this comprehensive review of its land management planning process in March 1989. Conducted with the help of The Conservation Foundation, the Department of Forestry and Natural Resources at Purdue University, and others, the purpose of the Critique was to document what had been learned since passage of the National Forest Management Act and to determine how best to respond to the planning challenges of the future.

The Critique involved over 3,500 people both within and outside the Forest Service. Workshops and interviews were conducted involving over 2,000 people who had participated in or had responsibilities for forest planning. These participants represented a broad cross-section of all those who were involved in planning, including members of the general public, interest groups, representatives of other agencies, elected officials, representatives of Indian tribal governments, Forest Supervisors, Regional Foresters, resource specialists, and members of interdisciplinary planning teams. Additionally, there

were written comments received from 1,500 interested people. The Critique was completed in May 1990. The results of the Critique are documented in a summary report, "Synthesis of the Critique of Land Management Planning" (Vol. 1) and 10 other more detailed reports. In the interest of economy and brevity, the findings of the Critique and other material are not repeated here but should be considered as the foundation and background for this proposed rule.

#### Advance Notice of Proposed Rulemaking

An Advance Notice of Proposed Rulemaking was published on February 15, 1991 (56 FR 6508). The public comment period closed May 16, 1991. The Advance Notice of Proposed Rulemaking included preliminary regulatory text completely revising the existing regulation, based largely on the findings of the Critique. Four public informational meetings were held to stimulate public interest in and comment on the proposal in the Advance Notice and to assist the public in understanding the ideas presented in the Notice. Meetings were held as follows: Washington, DC, February 26, 1991; Portland, Oregon, April 8, 1991; Denver, Colorado, April 10, 1991; and Atlanta, Georgia, April 12, 1991. Altogether, approximately 50 people attended these meetings.

In addition to publishing the Advance Notice of Proposed Rulemaking in the Federal Register, the Forest Service mailed approximately 20,000 copies to known interested parties and invited comment on the rule. Over 600 groups and individuals provided nearly 4,700 comments. Approximately 10 percent were from business and industry groups; 11 percent from Federal, State, and local government agencies; 11 percent from environmental and conservation groups; 2 percent from recreation and user groups; 1 percent from academia; 1 percent from civic organizations; 9 percent from agency employees; and the remaining 55 percent from individual citizens.

As stated in the Advance Notice of Proposed Rulemaking, the agency received a petition on November 1, 1990, from the National Forest Products Association and 79 other organizations "to engage in a rulemaking to amend the regulations set out at 36 CFR Part 219 to improve the implementation of land and resource management plans ('forest plants'), provide for prompt amendment, establish specific environmental documentation requirements, and for related reasons." This petition for rulemaking included proposed regulatory text and the

rationale for it. It represented an alternative approach to changing the NFMA planning regulation at 36 CFR Part 219. The specific recommendations in the petition, along with supplemental comments received from the National Forest Products Association during the public comment period, were considered as part of the public comment associated with the Advance Notice of Proposed Rulemaking.

#### Basic Conclusions Underlying This Proposal

The proposed rule now being published rests on many of the same basic conclusions as the Advance Notice of Proposed Rulemaking, which are highlighted here.

##### *1. Many Recommendations of the Critique of Land Management Planning can and Should be Adopted by Revising the Planning Rule*

Although a number of specific recommendations have been used in developing this proposed rule, the following major recommendations identified by the Critique are particularly important:

##### *(a) Simplify, Clarify, and Shorten the Planning Process*

The Critique found that the complexity of the forest planning process was so overwhelming that few people really fully understood it. Further, the Critique found that this complexity often inhibited meaningful communication with the public and other governments, reduced agency credibility, and increased the time and cost needed to complete plans.

The Critique also identified the problems associated with trying to resolve socio-political issues through a highly technical and systematic set of planning procedures. The importance of balancing technical information with the values and concerns of the public was highlighted in the Critique reports.

Finally, the planning process is so lengthy and complex that the process of completing forest plans is frustrating for the public and agency employees alike. In addition, the financial expenditure required for such a lengthy and complex process has had a major impact on the agency and diverted funds and personnel from project decisionmaking and other activities.

While endorsing the need to simplify, clarify, and shorten the planning process, the Forest Service also recognizes that forest planning is inherently complex due to the multitude of resources and statutory responsibilities involved. Sound, yet often complex, technical analyses serve

a critical role in evaluating resource trade-offs and ensuring that resource decisions are based on the best possible information. A balance must be found between the simplicity most people desire and the complex reality of forest planning.

(b) Clarify the Decision Framework

The existing regulation does not precisely address the nature of forest plan decisions and the appropriate scope of environmental analysis. During development of the existing forest plans, many people believed that forest plans would make irretrievable resource commitments for all projects necessary to fully implement the goals and objectives of the plan. Confusion over the nature of forest plan decisions has been a principal source of controversy for many plans. Most of the administrative appeals of forest plans challenge whether forest plans and accompanying environmental impact statements satisfy particular requirements of NFMA, NEPA, the Endangered Species Act, the Clean Water Act, and other environmental laws. Forest plan appellants frequently argue that forest plans irretrievably commit the agency to individual projects but fail to provide the analysis and documentation required by these statutes.

In fact, the environmental impact statements accompanying forest plans do not attempt to identify, evaluate, and decide every individual project that may be permissible during the normal 10-year period of a forest plan. It would be practically impossible to satisfy these obligations in one single set of decisions or in a single environmental impact statement. Court decisions as well as administrative appeal decisions by the Chief of the Forest Service and the Assistant Secretary of Agriculture have explained the content of forest plan decisions and the scope of environmental analysis. To avoid confusion, the existing rule should be revised accordingly.

(c) Provide for an Incremental Approach to Revising Forest Plans

The Critique firmly endorsed an incremental approach to forest plan revision. It was considered a key element to achieving the major recommendations of the Critique to "Simplify, clarify, and shorten the planning process." In Volume 2 of the Critique report, the merits of incremental planning are addressed:

Wiping the slate clean and beginning anew allows the entire universe to alternatives to be examined, unprejudiced by directions and choices that have gone before. In fact,

however, change is incremental when the alternatives available are heavily influenced—and circumscribed—by the choices made in the past. Examining the entire universe of alternatives in great detail may be both interesting and informative, but it imposes a tremendous demand for analysis that may go largely unused in the real decision process \* \* \*. Federal regulations should be revised to permit an explicitly incremental approach to the revision of forest plans." (p. 61)

2. *While NFMA Has Some Limitations, It Remains Basically Sound*

Such NFMA principles as integrated resource planning, public participation, and an interdisciplinary approach to planning continue to provide a solid foundation for agency planning efforts. The Act also provides flexibility to make needed improvements through rulemaking or agency directives.

Many of the problems with forest planning are not directly associated with the provisions of NFMA. Public land management is complicated by a long series of laws and regulations enacted over many years. This has resulted in a situation once described by Federal District Court Judge Lawrence K. Karlton as a "crazy quilt of apparently mutually incompatible statutory directives." (*United States v. Brunskill*, Civil S-82-666-LKK (E.D. Cal. Nov. 8, 1984) unpublished opinion, aff'd, 792 F.2d 9938 (9th Cir. 1986)). Thus, the controversy which often has surrounded forest planning must be viewed in light of the many requirements imposed by statutory and regulatory requirements other than the National Forest Management Act (e.g., the National Environmental Policy Act, Endangered Species Act, Clean Water Act, Clean Air Act). It is often the interaction of these other laws and regulations that has increased the controversy surrounding forest planning and land use.

Some of the dissatisfaction with NFMA can be traced to unrealistic expectations. One of the major findings of the Critique of Land Management Planning was the need for adjustments in the public's expectations of forest planning. Volume 2 of the report of the Critique explicitly addressed this as follows:

Expectations for forest planning are high in some cases, unrealistically so. Some workshop participants expected forest planning would lead to establishment of "reasonable and sustainable" production goals. Others thought it would free resource allocation from politics while building a powerful case for budgets and appropriations sufficient to accomplish plan goals. And many apparently thought that forest planning would be a way to influence the political

process and sway management to their purposes. Probing more deeply, we found that it was not so much the process to which people objected, but the results of that process. In retrospect, it was inevitable that this would occur. When the law was enacted, representatives of both the Sierra Club and the National Forest Products Association returned to their constituents and proclaimed victory. Obviously, both had different expectations of outcomes under the law. (p.3)

3. *Many Opportunities Exist to Streamline the Existing Regulatory Text*

In addition to finding numerous opportunities to streamline the substantive procedural requirements for forest planning, one of the findings of the review of the existing regulation was that much could be done to simplify the regulatory text itself and to enhance its readability regardless of major substantive changes. For example, there were numerous opportunities to simplify language, shorten definitions, eliminate similar or duplicative provisions, improve structural organization, and reduce overlap with other laws, regulations, or Executive orders. In addition, language without real substance should be removed. The composite effect of such changes can be a significant reduction in the length of the regulation, an enhancement of its readability, and a positive step forward towards better understanding and simplification of forest planning.

In reviewing the existing regulation, the agency also has considered the relative roles of the planning regulation at 36 CFR part 219 and the Forest Service Directive System. The review indicated that the rule is better suited for defining the purpose and desired results of planning and the minimum standards for planning than for giving detailed procedural guidelines. As a result, some streamlining has been achieved in the proposed rule by shifting detailed procedural direction to agency directives. To implement the revised regulation, the agency plans to reorganize and revise its directives related to forest planning. Subject to procedures in 36 CFR part 216, substantive revisions to planning direction in Forest Service Manual Chapter 1920 will be made available for public review and comment prior to being adopted.

4. *The Solution to Some Problems With the Planning Process Are Not Within the Scope of the Planning Regulation*

Only about one-third of the 232 Critique recommendations concern changes that are appropriate to implement through revision of the planning regulation or issuance of related guidance through the Forest

Service Directive System. The remaining two-thirds of the recommendations must be addressed through other actions or channels, such as increasing accountability for performance or improving training.

In addition, even though some aspects of planning are within the scope of the regulation, the real success or failure of some endeavors will depend on the commitment and understanding of agency personnel and the public. A good example of this is public involvement. No amount of regulatory detail can guarantee effective and open communication. Certain expectations can be defined and minimum procedures established, but ultimately the success or failure of the communication between the agency and public depends upon the people involved. As a result, the agency recognizes that even though modifying the planning regulation is a major and essential step towards improving the effectiveness of forest planning, such improvements must occur in concert with other changes and commitments in order for the full potential of forest planning to be realized.

In addition to the preceding four conclusions which had been addressed in the Advance Notice of Proposed Rulemaking, one additional finding has guided development of this proposed rule which were not reflected in the Advance Notice.

**5. Principles of Ecosystem Management Need to be Reflected in the Planning Regulation**

In the decade following promulgation of the existing planning rule, the concept of ecosystem management has slowly and steadily evolved, and the agency has made clear its intention to move toward an ecosystem management approach to National Forest System management. In recent years, the agency has actively promoted implementation of ecosystem management principles within existing legal requirements. Other Federal agencies are proceeding similarly. Additionally, the spotted owl

controversy in the Pacific Northwest has become a focal point for exploring ways to implement the principles of ecosystem management. The validity of an ecosystem approach was recently upheld when the Record of Decision (ROD) for the Range of the Northern Spotted Owl was sustained from programmatic challenge (*SAS v. Lyons*, No. C92-479WD (W.D. WA, Dec. 21, 1994)). In that decision, Judge Dwyer stated, "Given the current condition of the forests, there is no way the agencies could comply with environmental laws without planning on an ecosystem basis" (slip. Op. @ 32).

In light of the experience in the Pacific Northwest and elsewhere, there is much interest in finding ways for Federal land management agencies to better incorporate the principles of ecosystem management when conducting resource planning and decisionmaking activities. The existing NFMA planning regulation was promulgated in 1982, long before the concept of ecosystem management had begun to be widely recognized. By contrast, the proposed rule has been promulgated with recognition of the role of ecosystem management and represents a significant step toward incorporating ecosystem management into the planning process to the extent permitted by current law.

While basic principles of NFMA remain sound, there are questions as to whether statutory changes may be appropriate if ecosystem management is to become a fully operational concept for the management of National Forest System lands. A related consideration is the interaction of NFMA requirements with numerous other relevant statutes, such as the National Environmental Policy Act (42 U.S.C. 4321), the endangered Species Act of 1973 (16 U.S.C. 1501 *et seq.*), or the Federal Advisory Committee Act (86 Stat. 770). Experience to date has shown that the existing "crazy quilt" framework of statutes creates some limitations and uncertainties regarding implementation

of ecosystem management concepts. Although progress can be made within the existing legal framework, the agency believes that a review of NFMA and other relevant statutes may be appropriate before the concept of ecosystem management can be transformed from an evolving vision into a fully operational reality.

Moreover, it must be recognized that ecosystem management is a continuously evolving concept. There is still much to be learned regarding how best to implement the principles of ecosystem management when fulfilling the agency's responsibilities for management of National Forest System lands. As a result, the proposed rule should not be viewed as the agency's ultimate vision for implementing ecosystem management, but rather as a transitional step for beginning to incorporate the concepts of ecosystem management into land and resource management planning procedures and to do so in a manner consistent with the requirements of NFMA.

In summary, as the first generation of forest plans prepared under NFMA is coming due for revision, the Forest Service proposes a substantially streamlined planning rule that builds on 15 years of planning experience and evolving concepts of resource management. The primary outcomes anticipated from the proposed rule include: forest plans and forest planning procedures that are simpler, more understandable, and less costly; stronger relationships with the public and other government entities; the incorporation of ecosystem management principles into forest planning; and clarification of the nature of forest plan decisions and their relationship to other planning and decisionmaking processes.

**Comparison of Outlines of Proposed Rule to Existing Rule**

The following table allows comparison of the existing table of contents for 36 CFR part 219, subpart A to that in the proposed rule:

Proposed rule	Existing rule
219.1 Purpose and principles .....	219.1 Purpose and principles.
219.2 Definitions .....	219.2 Scope and applicability.
219.3 Relationships with the public and government entities .....	219.3 Definitions and terminology.
219.4 Sustainability of ecosystems .....	219.4 Planning levels.
219.5 Framework for resource decisionmaking .....	219.5 Interdisciplinary approach.
219.6 Forest plan direction .....	219.6 Public participation.
219.7 Ecosystem analysis .....	219.7 Coordination with other public planning efforts.
219.8 Interdisciplinary teams and information needs .....	219.8 Regional planning—general procedure.
219.9 Forest plan amendments .....	219.9 Regional guide content.
219.10 Forest plan revision .....	219.10 Forest planning—general procedure.
219.11 Forest plan implementation .....	219.11 Forest plan content.
219.12 Monitoring and evaluation .....	219.12 Forest plan process.

Proposed rule	Existing rule
219.13 Statutory timber management requirements .....	219.13 Forest planning—resource integration requirements.
219.14 Special designations .....	219.14 Timber resource land suitability.
219.15 Applicability and transition .....	219.15 Vegetative management practices.
	219.16 Timber resource sale schedule.
	219.17 Wilderness designation.
	219.18 Wilderness management.
	219.19 Fish and wildlife resource.
	219.20 Grazing resource.
	219.21 Recreation resource.
	219.22 Mineral resource.
	219.23 Water and soil resource.
	219.24 Cultural and historic resource.
	219.25 Research natural areas.
	219.26 Diversity.
	219.27 Management requirements.
	219.28 Research.
	219.29 Transition period.

**Section-by-Section Description**

The principal features of the proposed rule are summarized here, keyed to the proposed CFR section numbers.

*Section 219.1 Purpose and Principles*

The proposed rule would: (1) Describe the agency's framework for National Forest System resource decisionmaking; (2) incorporate principles of ecosystem management; (3) establish requirements for the implementation, monitoring, evaluation, amendment, and revision of forest plans; and (4) articulate the relationship between resource decisionmaking and compliance with the National Environmental Policy Act (hereafter, NEPA). Unlike the existing rule, the proposed rule would not provide direction for development of initial forest plans, because all but four of those plans are in effect.

Paragraph (b) would identify 10 principles which provide the basis for National Forest System resource decisionmaking and management. The existing rule contains 14 principles. Although the 14 original principles are basically sound in and of themselves, the agency believes the new set of principles better reflects the concepts of ecosystem management and the agency's approach to resource decisionmaking.

The first principle states the agency's commitment to managing for sustainable ecosystems and the multiple benefits which they can yield. The second principle articulates a key aspect of the agency's approach to ecosystem management—that people are part of ecosystems and that meeting people's needs and desires within the capacities of natural systems is a primary role of resource decisionmaking.

The third principle reflects the dynamic nature of ecosystems and that they occur at a variety of spatial scales,

with the resulting need for flexible planning processes that consider ecological changes over time. The fourth principle recognizes that ecosystems often cross many ownerships and jurisdictions, making it important to coordinate planning efforts for National Forest System lands with other landowners, governments, and agencies. This principle also addresses the need to respect private property rights and the jurisdictions of other government entities.

The fifth principle notes the importance of open, ongoing, and equitable public involvement. This embodies the agency's belief that such participation by all interested publics is an important and integral part of National Forest System management.

The sixth principle highlights the vital role of scientists in gathering and analyzing information for resource decisionmaking.

The seventh principle recognizes that a fundamental goal of managing National Forest System lands is the optimization of net public benefits, which includes consideration of both quantitative and qualitative criteria.

The eighth principle emphasizes the importance of being able to efficiently adjust forest plans in response to changing conditions and new information.

The ninth principle makes clear that NEPA procedures define the scope and level of analysis conducted for resource decisionmaking and the need for analysis to be commensurate with the scope and nature of decisions being made.

The last principle acknowledges the uncertainty inherent in resource decisionmaking, and the need for resource decisionmaking to proceed using an adaptive approach to resource management.

The 10 principles highlight the underlying concepts and assumptions upon which the remaining sections of the proposed rule are based and set out many of the principles of ecosystem management which are reflected in the proposed rule.

*Section 219.2 Definitions*

The following words are defined in the existing rule, but would not be included in the definitions provided in the proposed rule, because they are not used or do not vary in meaning from common or well-established use of the term:

- Base sale schedule
- Biological growth potential
- Capability
- Corridor
- Cost efficiency
- Diversity
- Even-aged management
- Goods and services
- Integrated pest management
- Management concern
- Management direction
- Management intensity
- Management practice
- Planning horizon
- Present net value
- Public issue
- Real dollar value
- Receipt shares
- Responsible line officer
- Sale schedule
- Silvicultural system
- Suitability
- Sustained-yield of products and services
- Timber production
- Uneven-aged management

The following terms are not defined in the Definitions section of the existing rule, but would be defined in the proposed rule:

- Catastrophic event
- Category 1 candidate species
- Category 2 candidate species

Chargeable timber volume  
 Conservation agreement  
 Culmination of mean annual increment  
 Decision document  
 Directive  
 Directive System  
 Ecosystem analysis  
 Ecosystem management  
 Environmental assessment  
 Environmental impact statement  
 Even-aged stand  
 Forest Supervisor  
 Guideline  
 Infrastructure  
 NEPA documents  
 NEPA procedures  
 Previous planning rule  
 Project  
 Proposed action  
 Regional Forester  
 RPA Program and Assessment  
 Resource conditions  
 Responsible official  
 Species and natural community rankings  
 Standard  
 Station Director  
 Sustainability of ecosystems  
 Tribal governments

The following definitions appear in the existing rule and would be modified or retained unchanged in the proposed rule:

Allowable sale quantity  
 Forested land (previously listed as "forest land")  
 Goal  
 Long-term sustained-yield timber capacity  
 Management prescription  
 Objective  
 Multiple-use  
 Plan area (previously listed as "planning area")  
 Plan period (previously listed as "planning period")

Readers of this Supplementary Information should refer to the definitions section of the proposed rule (§ 219.2) for definitions of terms used in this preamble.

### *Section 219.3 Relationships With the Public and Government Entities*

This section focuses on building and maintaining relationships with the public and other government entities and, in conjunction with numerous provisions in other sections of the proposed rule, would substantially strengthen the role of public participation and government coordination compared to the existing rule. This emphasis responds to findings of the Land Management Planning Critique, which highlighted the critical role of ongoing and meaningful public involvement and the

need to strengthen coordination with other Federal agencies and State, local and tribal governments. Although the Federal Advisory Committee Act imposes some limitations on how involvement activities can be conducted, a cornerstone of ecosystem management and this proposed rule is the recognition that the public and other agencies and governments must work closely together if resource management issues are to be addressed effectively.

Although this section would specifically address public participation and government coordination, there are numerous other sections of the proposed rule that reflect the agency's recognition of the importance of people in resource management and that reflect the agency's intent to expand opportunities for public involvement in agency planning and for public comment. For example, six of the principles in proposed § 219.1 highlight the role of people in managing the National Forest System (§ 219.1(b)(1), (2), (4)–(7)). There would be two new opportunities for public notice and comment—a 30-day comment period for some minor amendments (§ 219.9(c)(2)(i)) and a 30-day comment period prior to updating a monitoring and evaluation strategy (§ 219.12(c)(2)). In addition, three new provisions designed to provide more information to the public are proposed: (1) the requirement for an annual monitoring and evaluation report (§ 219.12(e)); (2) the requirement to periodically update estimated levels of goods and services and management activities (§ 219.11(d)(2)); and (3) the requirement to conduct and make available the results of a prerevision review when initiating the revision process (§ 219.10(c) and (d)). Involvement in the revision process would also be strengthened by a requirement to provide opportunities for participation in the prerevision review (§ 219.10(c)(2)) and in formulation of a communications strategy for the prerevision review and revision effort (§ 219.10(c)(2)(ii)). Finally, the proposed rule provides opportunities for involvement and coordination in monitoring and evaluation efforts (§ 219.12(a)(1)(x)).

Separate sections in the existing rule for Public Participation (§ 219.6) and Coordination With Other Public Planning Efforts (§ 219.7), would be combined into one section in the proposed rule. Combining the two sections is not intended to diminish the distinctive roles and importance of the public and cooperating agencies and governments; rather, combining these sections allows the agency to avoid repeating the many provisions that are

applicable to both the public and cooperating agencies and governments while still providing the ability to address their specific and unique needs.

Proposed paragraph (a) asserts that building and maintaining relationships with the public and other Federal agencies and State, local, and tribal governments is an essential and ongoing part of National Forest System planning and management. Paragraphs (a) (1)–(5) would expand on this statement by further describing five purposes for establishing and maintaining communication with parties interested in forest planning.

The first purpose is to develop a shared understanding of the variety of needs, concerns, and values held by the public. In the past, public involvement efforts have too often promoted polarization of parties and interests. The agency believes communication and understanding of needs, concerns, and values is essential if polarization is to be replaced with cooperative problem solving and a genuine desire to move towards consensus.

A second purpose is to coordinate planning efforts with other Federal agencies and State, local, and tribal governments. This reflects the agency's desire to strengthen working relationships with other agencies and governments as well as an awareness of the distinct roles and jurisdictions that must be recognized during resource planning efforts. This purpose also is consistent with the emphasis in ecosystem management that all parties interested in an ecosystem work together rather than approaching resource planning efforts in isolation. The provision would encourage coordination of planning efforts between the Forest Service and other government entities. However, the Forest Service recognizes that the Federal Advisory Committee Act is an important consideration that can influence the extent to which such coordinated efforts can occur.

The third purpose is to improve the information base influencing decisions and to promote a shared understanding of the validity of this information. If the public is to have confidence in resource decisions made by the agency, there must be confidence in the information used in making those decisions. The public and other agencies and governments can play an integral part in improving the information base used and in helping to assess its validity. For example, this could mean working together with the public, scientific community, and other agencies to conduct an ecoregion assessment, or development of joint data bases with

other agencies. This could also involve providing more opportunities for the public to review the information being used early in the decision process so that concerns about its validity can be identified and resolved in a cooperative and ongoing manner.

The fourth purpose is to strengthen the scientific basis for resource management decisions through involvement of members of the scientific community. Although the agency has always considered the scientific community as part of the public, the proposed rule would highlight the particular importance of the involvement of scientists in resource planning. This emphasis is appropriate because the concept of ecosystem management recognizes and validates the important role of science and the need to integrate scientific expertise more effectively into resource planning and management.

The fifth and final purpose is to resolve conflicts associated with resource decisionmaking. The first four goals, if achieved, lay the groundwork for conflict resolution. Although the Forest Service recognizes that resource management issues are often highly controversial and consensus may not be achievable, agency involvement and coordination efforts, nevertheless, should strive to promote the kind of communication and understanding that helps diminish differences and encourages parties with varying interests to work through issues together.

Paragraph (b) of proposed § 219.3 would require the Forest Supervisor to maintain and periodically update a mailing list of interested individuals, organizations, scientists, and government agencies and officials. This provision is intended to assure a means by which anyone who so desires can be informed of planning activities.

Proposed paragraph (c) would require the maintenance of planning records that document forest plan amendments, revisions, and monitoring and evaluation and would ensure public access to these records. This is generally comparable to § 219.10(h) of the existing rule.

Proposed paragraph (d) would require copies of forest plans and monitoring and evaluation strategies to be accessible to the public at designated locations and is generally comparable to § 219.6(i)(3) of the existing rule.

Paragraph (e) of this section would direct Regional Foresters to seek to establish a memorandum of understanding or other form of agreement to guide coordination of planning efforts when desired by State

officials or affected tribal governments. Paragraph (1) (i)–(ii) set forth the content requirements for such agreements, and paragraphs (1) (iii)–(iv) indicate when Forest Supervisors may execute such agreements and when a memorandum of understanding can be jointly executed by two Regional Foresters. This new provision is intended to help strengthen communication and cooperation between the Forest Service and State and tribal governments. This provision would supplement Forest Service authority to enter into such agreements with other Federal agencies or local governments.

Proposed paragraph (f) highlights the need for public involvement and government coordination procedures to conform with NEPA requirements and other applicable laws, Executive orders, or regulations. This is included as a reminder that there are numerous requirements already in place with which the agency must comply. Perhaps the two most notable are public involvement requirements associated with NEPA procedures and the Federal Advisory Committee Act. The Federal Advisory Committee Act has been increasingly recognized as having a substantial impact on how public involvement activities are to be conducted.

#### *Section 219.4 Sustainability of Ecosystems*

This section is the central focus of the agency's shift toward an ecosystem approach to resource management. The fundamental premise is that the principal goal of managing the National Forest System is to maintain or restore the sustainability of ecosystems and that this is essential because sustained yield of benefits for present and future generations is more likely to occur when the ecosystems from which those benefits are produced are in a sustainable condition.

This section is also based on the premise that a diversity of plant and animal communities is an inherent feature of sustainable ecosystems. Therefore, this proposed regulation is premised on the assumption that maintaining or restoring the sustainability of ecosystems simultaneously meets the NFMA provision to, "provide for diversity of plant and animal communities" (16 U.S.C. 1604(g)(3)(B)).

Seven key themes are woven throughout this section.

1. *Adoption of Sustainable Ecosystems As a Goal.* This proposed section explicitly establishes the maintenance or restoration of the

sustainability of ecosystems as a goal and recognizes that the agency has the discretion to determine what processes and information will be used to work toward this goal. Under the proposed rule, the agency would retain the discretion to determine for each plan area which conditions are indicative of sustainable ecosystems and how the plan area could be managed to promote achievement of those conditions. There is nothing in the proposed rule that establishes a concrete standard regarding ecosystem sustainability or diversity.

This discretionary, goal-oriented approach to diversity and maintenance of sustainable ecosystems is consistent with the statutory basis for forest planning and the NFMA diversity provision which has been interpreted by court rulings to be a goal within the context of multiple use. "Diversity is not the controlling principle in forest planning, although it is an important goal to be pursued in the context of overall multiple-use objectives." *Sierra Club v. Robertson*, 845 F. Supp. 485, 502 (S.D. Ohio, 1994). The interpretation of the NFMA diversity provision as a goal rather than a concrete standard is supported by the legislative history of the Act and has been upheld to date in a number of court cases. In *Sierra Club v. Espy*, No. 93–5050 (5th Cir. Nov. 15, 1994) the court recognized that the Forest Service has discretion to determine how it provides for diversity. See also, *Sierra Club v. Robertson*, 784 F. Supp. 593, 609 (W.D. Ark. 1991); *ONRC v. Lowe*, 836 F. Supp. 727 (D. Ore. 1993); *Glisson v. USFS* (S.D. Ill. August 26, 1993); *Sierra Club v. Marita*, 843 F. Supp. 1526 (E.D. Wisc. 1994); *Krichbaum v. Kelly*, 844 F. Supp. 1107 (W.D. Va. 1994); *Sierra Club v. Marita (Robertson)*, 845 F. Supp. 1317 (E.D. Wisc. 1994); in which courts have upheld Forest Service decisions based on NFMA diversity grounds.

In addition, the goal statement in paragraph (a) of proposed § 219.4 is consistent with Section 4(a) of the Multiple-Use, Sustained-Yield Act of 1960 (16 U.S.C. 528) which calls for " \* \* \* harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land \* \* \*." Similarly, Section 2(B) of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1501 *et seq.*, hereafter, ESA), states that one of the purposes of the Act is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved \* \* \*."

The premise is that by maintaining or, where needed, restoring the sustainability of ecosystems, the productivity of the land will not be impaired and the ecosystems upon which plant and wildlife species depend will be functioning properly. Thus, the ecological foundation is in place from which multiple benefits can be derived over time. Without those natural systems functioning properly, the ability to provide multiple benefits would be at risk.

The goal in proposed paragraph (a) also is consistent with the multiple-use mission of the National Forest System as mandated by Section 2 of the Multiple-Use, Sustained-Yield Act, which directs the Secretary to “\* \* \* develop and administer the renewable surface resources of the national forests for multiple-use and sustained-yield of the several products and services obtained therefrom.” The Act specifically identifies recreation, range, timber, watershed, wildlife, and fish as values for which national forests are administered. Later, at § 219.6(a), the proposed rule would make clear that forest plans address the full range of multiple-uses in an integrated manner and on a sustained-yield basis.

2. *Recognition of the Relationship between Sustainable Ecosystems and Meeting the Needs of People.* The goal statement of § 219.4(a), which is the foundation for this proposed section, clearly links the sustainability of ecosystems to the ability to provide multiple benefits to present and future generations. As stated at § 219.1(b)(2) of the proposed rule, people are considered part of ecosystems, and meeting people’s needs and desires within the capacities of natural systems is a primary role of resource decisionmaking. The proposed rule is based on the premise that National Forests are managed to provide multiple benefits to people in a manner that is sustainable over time, and that those benefits which people need and desire will only be sustained when the ecosystems from which they are derived are sustained.

Although proposed section § 219.4 is focused on the biological and physical aspects of sustainable ecosystems, the proposed rule would make clear that forest plans address the full range of multiple-uses (§ 219.6(a)). In addition, proposed § 219.8(c) would make clear that the social and economic effects of resource decisions must be considered when amending or revising the forest plan. Thus, the proposed rule provides a holistic approach to National Forest management by assuring that the needs of people and the capacities of natural

systems in both the near and long-term are considered when making resource decisions.

3. *Adoption of “Coarse Filter/Fine Filter” Approach.* This section of the proposed rule incorporates the “coarse filter/fine filter” concept of conservation biology, which holds that a strategy focused on maintaining the function, composition, and structure of an ecosystem as a whole will be adequate to meet the needs of most species. In essence, most species’ needs are “caught” by the mesh of the “coarse filter.” In contrast, some species have additional needs or more narrow habitat requirements that are not adequately met by focusing solely on the ecosystem as a whole. Under these circumstances, additional “fine filter” measures are needed to “catch” and support the special needs of species whose needs otherwise would have gone unmet.

The proposed rule provides the “coarse filter” by requiring that forest plan goals and objectives address the desired composition, function, and structure of ecosystems. These three aspects are generally considered to be integral to understanding and describing sustainable natural systems. Ecosystem structure includes the distribution and pattern of ecosystem elements such as forest openings and riparian corridors at a landscape scale, and the amount and arrangement of special habitat features such as seeps, snags and down woody material at smaller scales. Ecosystem composition includes the plant and animal species which make up an ecosystem. Ecosystem function includes processes and the relationships among processes, such as nutrient cycling in a system. In many cases, these three aspects of ecosystems will be described in the forest plan for ecosystems at fairly large scales, such as for ecosystems encompassing sizable portions of the plan area.

The “coarse filter” can be provided at a variety of spatial scales, however. For example, proposed paragraph (b)(3) would direct that forest plans are to provide for the protection of rare natural communities. In many cases, these areas provide the “coarse filter” even though they may only be a fraction or an acre in size. By protecting rare natural communities, many individual species that are dependent on those habitats and communities are protected, thereby exemplifying the “coarse filter/fine filter” concept.

The “fine filter” safeguard is provided in the proposed rule through the requirements to protect threatened and endangered species. For example, proposed § 219.4(b)(4) would require that forest plans provide for the

conservation of species listed as threatened and endangered, or proposed for listing, under the Endangered Species Act (ESA). It also would make explicit that once a species is listed or proposed for listing, management activities on National Forest System lands which affect the habitat of the species must comply with the requirements of ESA. Additional “fine filter” protection is provided by the requirements of Option I to protect sensitive species, and the requirements of Option II to address viability of species which are addressed later in this section.

4. *Clear Intent to Seek to Prevent Listing of Species Under the Endangered Species Act.* This proposed rule would send a clear signal that forest plan direction should seek to prevent the need for a species being listed under the Endangered Species Act (ESA). The ESA addresses the conservation of species that have been listed as threatened or endangered, but does not address protection of those species for which there is evidence of a trend toward listing but which are not yet listed. Option I of the proposed rule would target and treat as sensitive those species for which there is some evidence of risk but which are not yet imperiled to the point of being listed as threatened or endangered.

5. *Emphasis on Strengthening Cooperation and Sharing of Professional Expertise.* Another theme of the proposed rule is strengthened cooperation and coordination with other resource professionals. For example, Option I of the proposed rule utilizes the expertise of the U.S. Fish and Wildlife Service and the Network of Natural Heritage Programs and Conservation Data Centers in the identification of sensitive species and natural communities. In addition, this section of Option I of the proposed rule parallels both the spirit and application of a Memorandum of Understanding (MOU) recently signed by the Forest Service, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other government agencies (94-SMU-058; January 25, 1994) to guide cooperation and participation in the conservation of species toward listing. Like this Memorandum of Understanding, the proposed rule (Option I) focuses on those species tending toward listing in order to preclude their designation as threatened or endangered, stresses interagency cooperation to address this goal, and recognizes the value of addressing species conservation within an ecosystem approach.

6. *Focus on Habitat Rather Than Populations.* Option I of the proposed rule would emphasize the management of habitat for fish and wildlife species, and not the management of populations as some would interpret the existing rule. As used in this section, habitat capability includes the quantity, quality, and distribution of habitats needed by a species. A focus on habitat capability is more appropriate than a focus on populations because there are many factors affecting populations that are not under the agency's direct control. These may include disease, predation, hunting or fishing pressures, natural cyclical changes and conditions occurring or actions being taken outside the plan area.

The proposed rule would not alter the current cooperative relationship with State fish and wildlife agencies. The Forest Service role has traditionally been to provide habitat rather than manage numbers of species. States generally exercise jurisdiction over hunting and fishing on National Forest System lands.

7. *Use of Best Available Information.* The agency recognizes that there are many uncertainties regarding how to maintain or restore sustainable ecosystems and that scientific knowledge will always be incomplete and evolving. The terms "sustainable," "restoration," "maintenance," or "deteriorated ecosystem" are all subject to varying and evolving interpretations. Furthermore, there is an infinite number of ecosystems, and realistically, planning efforts must be allowed to focus on only those ecosystem considerations of most relevance to decisionmaking. Therefore, in concert with the principle that the agency must retain discretion in its approach to maintaining or restoring sustainable ecosystems, the proposed rule (§ 219.4(e)) also recognizes the inevitable need to use the best available information in making the various decisions associated with approval of a forest plan. The proposed rule makes clear that there is no expectation that there will ever be a precise and universally accepted understanding or measure of what sustainable ecosystems are and the actions appropriate to maintain or restore them; rather, the expectation established by this proposed rule is that the agency will use the best information available and an adaptive management approach in its efforts to maintain or restore sustainable ecosystems and to manage the National Forest System toward that outcome.

Adaptive management is considered one of the cornerstones of ecosystem management. This concept

acknowledges that our understanding of ecosystems is always changing, that we learn by observing how natural systems respond to actual situations, and that we should adapt our actions accordingly. Adaptive resource management recognizes that decisions cannot always be halted until research is complete, especially since, at times, inaction can have far-reaching consequences.

Proposed paragraph § 219.4(e) not only would establish the use of an adaptive management approach for dealing with incomplete and changing information, but also would clearly signal that resource decisionmaking need not be halted if there is uncertainty or incomplete knowledge. In accordance with NEPA procedures (40 CFR 1502.22), decisionmaking is expected to proceed using the best information available commensurate with the decision being made, and monitoring and evaluation is to be used to assess the effects of those decisions and to identify new information which may come available. Since project decisions for the decade of the forest plan are approved incrementally during the plan period, the opportunity exists to adapt those decisions as needed to respond to new information.

#### Options for Providing Diversity

In addition to the provisions of § 219.4(b)(1)–(4), this proposed rule sets out two options for providing diversity. Proposed Option I would provide for diversity by addressing sensitive species. By contrast, Option II which is basically the requirements of the current regulation would provide for diversity by addressing viability of species.

*Option I.* Proposed § 219.4(b)(5) creates a system for protection of habitat capability for sensitive species in order to prevent the need for listing the species as threatened or endangered under ESA and to preclude extirpation of the sensitive species from the plan area.

Paragraph (b)(5)(i) describes how sensitive species would be identified. First, sensitive species can encompass species, subspecies, populations, or stocks of vertebrates, invertebrates, vascular plants, bryophytes, fungi, and lichens. Second, the species must be known to occur or to be likely to occur on National Forest System lands. Third, the species must meet one of the criteria described at (b)(5)(i)(A)–(C). These criteria utilize a combination of information derived from the U.S. Fish and Wildlife Service and the Network of Natural Heritage Programs and Conservation Data Centers.

The U.S. Fish and Wildlife Service is the Federal agency with primary

responsibility for administering ESA. The Network of Natural Heritage Programs and Conservation Data Centers is generally considered to have one of the most comprehensive and accurate compilations of information on species that are imperiled in the United States. The Network consists of approximately 85 data centers, including at least one in each State. Each data center is established within a local institution, most frequently as part of a government agency responsible for natural resource management and protection, and each center functions in support of Natural Heritage Programs. The Nature Conservancy is involved in the establishment and operation of the data centers by providing technical, scientific, and administrative support and training. The Conservancy also makes available the computer technology, data inventory and management methodology, and procedural manuals used.

Natural Heritage Programs and the Conservation Data Centers provide continuously updated, computer-assisted inventories of the biological and ecological features and biodiversity preservation of the region in which they are located. Most data centers use the Biological and Conservation Data System as the basis for operation, a system developed and refined by The Nature Conservancy since 1974.

Proposed paragraphs (b)(5)(ii) (A) and (B) would establish the process for ensuring that forest plan direction is responsive to the needs of sensitive species. The first step is to identify the sensitive species for the plan area using the rankings and listings and to identify their habitat needs. Second, the habitat needs for the sensitive species, or assemblages of sensitive species, are compared against current forest plan direction with consideration of the likely contribution of lands outside the plan area. When the forest plan is being revised, habitat needs are compared to the tentatively proposed revisions to forest plan direction. This provides for consideration of sensitive species habitat needs throughout the forest plan revision process and inclusion of this direction in the draft environmental impact statement and proposed revised forest plan when they are released for public comment.

In accordance with (b)(5)(ii)(B)(1), forest plan direction must be modified if a continuing downward trend in habitat capability is predicted to occur within the plan area and that downward trend is predicted to result in the need for Federal listing of the species or if it is predicted that the sensitive species will be extirpated from the plan area.

Paragraph (b)(5)(ii)(B)(2) would establish that if a conservation agreement has been approved by the Forest Service and either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, and if relevant direction from that agreement has been incorporated by amendment into the forest plan, the requirement to establish direction to protect the habitat capability of the species is met. The forest plan amendment requires full NEPA analysis and disclosure.

Paragraph (b)(5)(ii)(B)(3) would affirm that the needs of a threatened or endangered species take precedence over a sensitive species should a conflict occur relative to protective measures needed. Although it is not anticipated such a conflict would happen often, it is important that the rule provide for such circumstances because the proposed rule's requirements for protection of both sensitive species and threatened and endangered species could theoretically be in conflict. It is reasonable that the rule provide that listed species be given priority in the event of conflict with the needs of a sensitive species since listed species are at greater risk than sensitive species and there is a statutory obligation to provide for the conservation of listed species.

Paragraph (b)(5)(ii)(B)(4) would require management direction for sensitive species to be established using the best information available commensurate with the decision being made. This idea is also echoed in paragraph (e) of this section. In addition, paragraph (b)(5)(ii)(B)(4) would make clear that determinations of whether the habitat needs of sensitive species are adequately met and the degree of protection needed are inherently dependent on professional judgment.

Paragraph (b)(5)(iii) proposes procedures for handling newly identified sensitive species. The categories and rankings of sensitive species would be reviewed annually as part of monitoring and evaluation, and if additions to the listings have occurred, the adequacy of existing forest plan management direction to meet the needs of those species would be assessed. This paragraph also would make clear that even though the rankings and categories are required to be reviewed on an annual basis, this does not relieve the agency of its obligation to consider new information at any time a project is under consideration that affects the habitat capability of a sensitive species.

*Option II.* As an alternative to the regulatory text proposed in Option I of

§ 219.4(b)(5), the agency has set forth alternative regulatory text, which is almost identical to the existing rule at § 219.19; however, a few nonsubstantive edits have been made to assure consistency of terminology and coding with the remainder of the proposed rule.

There are five key differences between the Option I approach to sensitive species and the alternative text of Option II which is based on § 219.19 of the existing rule. These are (1) use of the term "viability"; (2) establishment of clear analytical expectations that are reasonable to implement; (3) scope of species protected; (4) goal of protective measures; and (5) role of management indicator species.

First, in Option I the proposed rule does not use the term "viability". NFMA does not use the term "viability," nor is there anything in the statute or legislative history that indicates the agency was expected to insure viable species or pursue the type of viability analyses described in current scientific literature (for example, M.E. Soule, *Viable Populations for Conservation* (Cambridge, 1989), 189pp.) Rather, the statute requires that the Secretary of Agriculture promulgate regulations to guide the Forest Service development and revision of Forest Plans. One of the statutory requirements is "specifying guidelines for land management plans developed to achieve the goals of the Program which \* \* \* (B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives \* \* \*." 16 USC 1604(g)(3)(B).

Translating the statutory language to provide for diversity of plant and animal communities through regulations, plans and actions has been and continues to be a formidable challenge, as the Committee of Scientists who provided scientific advice to the Forest Service on the crafting of the current regulation accurately predicted at the time of their promulgation. The Committee stated that, "it is impossible to write specific regulations to 'provide for' diversity; and that "there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs" (44 FR 26,600-01 & 26,608).

The Forest Service has found that the term "viability" has been subject to continuously evolving scientific interpretation and no longer meets the agency's expectations at the time the rule was written. When the existing rule was finalized, "viability" was a general

concept not associated with specific scientific interpretations. Since 1982, however, the concept of viability has become the object of intense discussion and varying interpretation within the scientific community. The extensive and expensive amount of scientific expertise, data, and technology needed for conducting species viability assessments as currently described in the scientific literature is far beyond what was originally envisioned by the Committee of Scientists when developing the planning rule.

Even when addressing the overall topic of diversity, the Committee of Scientists clearly had not envisioned the type of highly quantitative analysis which has come to be associated with viability assessments. The Committee stated, "We analyzed the issue in our report and stressed that, in our opinion, Congress used the term diversity to refer to biological variety rather than any of the quantitative expressions now found in the biological literature." (Rules and Regulations, Final Environmental Impact Statement, Appendix E—Supplementary Final Report of the Committee of Scientists (August 17, 1979), 44 FR 53967 (September 17, 1979)).

Furthermore, the current regulatory requirement is "to insure viable populations will be maintained." As a practical matter, there is a growing recognition that a requirement to "insure" viable populations, if interpreted literally, envisions an outcome impossible to be guaranteed by any agency, regardless of the analytical resources marshalled.

Rather than continuing use of a regulatory term which is subject to such varying interpretations and expectations, Option I would define more precisely what is required for species protection. This approach in Option I is consistent not only with the original intent of the regulation, but also with the underlying statute.

Second, the analysis needed to meet the requirements of Option I is better defined, more meaningful, and more capable of accomplishment than the analysis some associate with the existing rule. Species viability analysis has evolved to where it currently involves such information as species habitat needs, trends in habitat capability, trends in other factors affecting population (e.g.—disease, predation, overutilization), relationship of habitat capability to population numbers, population demographics (e.g.—reproductive success, sex ratios, mortality rates), effective population size, genetic measurements, and development of risk assessments. The

technology, data, and scientific expertise to conduct and maintain numerous scientifically sound viability analyses given current scientific interpretations is far beyond what is available to any agency or scientific institution. Although the agency's position has been upheld in court that the requirements of § 219.19 of the existing rule can be met without such complex analyses, the proposed rule offers a timely opportunity to clarify analytical expectations.

In addition, it is expected that for most sensitive species, the requirements of (b)(5)(ii)(B) of Option I of the proposed rule can be met using habitat capability information. Analyses involving population demographics and prediction of population trends, which requires far more extensive and costly data, would likely only be needed when a continuing downward trend in habitat capability is predicted to be leading toward the listing or extirpation of the species. In addition, it is intended that there be no circumstances where Option I of the proposed rule would trigger the need for studies of long-term genetic diversity, in contrast to the case if thorough viability assessments were to be required.

Furthermore, Option I of the proposed rule recognizes that individual sensitive species may often be able to be grouped into assemblages of sensitive species with similar habitat needs. By focusing on assemblages of sensitive species rather than individual species whenever possible, analytical burden and costs are reduced without impairment to species protection.

The third key difference between the proposed approach to sensitive species in Option I and that in Option II is the scope of the species addressed. In contrast to § 219.19 of the existing rule which addresses only native and desired non-native vertebrate species, Option I the proposed rule would include vertebrates, invertebrates, vascular plants, bryophytes, fungi, and lichens. This is appropriate since species other than vertebrates play an important role in ecosystems and merit protection when at risk.

The scope of proposed Option I also varies from the existing rule in that it would include as sensitive species only those species at risk range-wide; that is, those species imperiled throughout their range. For example, a plant species abundant in several States, but very limited in a particular plan area, would not be of range-wide concern and thus would not be identified as a sensitive species under Option I of the proposed rule.

The agency believes the focus on species on range-wide concern is appropriate in order to address the two underlying reasons for protecting sensitive species: (1) To address how the agency will meet the NFMA goal of providing a diversity of plant and animal communities, and (2) to attempt to preclude the listing of species under ESA. Both are achieved by proposed Option I without expanding the scope of sensitive species to include those of only local concern.

Option I of the proposed rule puts considerable emphasis on providing a diversity of plant and animal communities. For example, the provisions of proposed § 219.4 address establishing forest plan direction for sustainable ecosystem conditions, soil and water protection, protection of rare natural communities, protection of threatened and endangered species, and protection of sensitive species in order to attempt to prevent extirpation from the plan area or listing under ESA. These all work together to provide a diversity of plant and animal communities within the plan area.

Under the "coarse filter/fine filter" concept, the ecological conditions which will occur as a result of these various provisions for providing diversity should meet the needs of many species of local, but not range-wide, concern. For example, many species of local concern, but not at risk range-wide, are associated with rare natural communities addressed in the proposed rule at § 219.4(b)(3). The agency believes that adding yet another "fine filter" layer of protection, by including as sensitive species those not at risk range-wide, and the extensive additional analysis this would require, goes beyond what is necessary to meet the two underlying reasons for protecting sensitive species. It should be noted, however, that nothing in the proposed rule precludes the Forest Service from working with State agencies and organizations to determine whether to protect species of local concern even though such protection would be beyond the requirements of Option I of the proposed rule.

The fourth key difference between the approach to sensitive species in Option I and the alternative text in Option II is the goal of protective measures. Under the existing rule, the goal is to ensure that viable populations are maintained. But, as explained previously, the concept of a "viable population" has been subject to evolving interpretations. Option I of the proposed rule would make the goal much more explicit; that is, for sensitive species, to prevent their listing under the ESA and to prevent

their extirpation from the plan area. This second goal is deemed appropriate because, for species of range-wide concern, the agency feels it is undesirable to lose their representation from the plan area due to their contribution to providing a diversity of plant and animal communities. Under some circumstances the first goal, to prevent listing of a sensitive species, may not be adequate to prevent extirpation of a sensitive species from the plan area because a species extirpated from one plan area may not necessarily be more prone to listing as threatened or endangered.

The final key difference is the Option I of the proposed rule would not require the identification of management indicator species. As noted in the 1991 Advance Notice of Proposed Rulemaking, there is diminishing scientific support for focusing solely on individual species as indicators of the welfare of a group of associated species. Instead of requiring management indicator species, the monitoring and evaluation provisions of the proposed rule would allow for establishing whatever measurable indicators are appropriate in order to determine progress towards achieving goals. In some cases, individual species may be an appropriate measure of whether ecosystem goals are being achieved and can be used as indicators.

*Dynamic Nature of Ecosystems.* Paragraph (c) of proposed § 219.4 recognizes the dynamic nature of ecosystems and the importance of evaluating ecosystem disturbances in the context of ecological processes and resilience. Ecosystem disturbances are those events that significantly change the existing pattern of an ecological system. Examples of such disturbances include both natural or human-induced phenomena such as wildfires, floods, or oil spills. Resilience is a term used to describe the ability of an ecological system to maintain its functions despite disturbance.

Paragraph (c) recognizes that disturbances are a natural and sometimes even essential part of many ecosystems. Similarly, other changes may be naturally occurring within an ecosystem, such as the progression of vegetation from one seral stage to another over time. Therefore, sustaining an ecosystem does not imply reaching or maintaining a static condition, but rather managing in such a way that naturally occurring disturbances and changes allow the ecosystem to retain the characteristics which provide resiliency.

Some examples of ecosystems in which disturbance is required for

sustainability are the fire-adapted pine forests. Lodgepole pine and sand pine communities require stand replacement fire (or some surrogate) to sustain those communities through time. Ponderosa pine and longleaf pine communities require recurring, low intensity fires to sustain the structure and functioning of the ecosystem.

Paragraph (c) would assure that forest plan direction intended to maintain or restore sustainable ecosystems was developed with recognition of the dynamic nature of ecosystems and natural role of disturbances. It should be noted that this provision does not specifically require analysis of the "range of natural variability" or require that future conditions stay within historic ranges of variability. The value of the "range of natural variability" in gaining a better understanding of sustainable ecosystem conditions is recognized, but the agency does not intend to mandate that all forest plans must provide for conditions within such a range.

**Multiple Spatial Scales.** Paragraph (d) recognizes that ecosystems exist at multiple scales and are infinite in number. For example, the span of ecosystems can range from the microscopic world of life occurring on the trunk of a fallen tree to the range of a migratory bird that travels annually from the tropics to the arctic. It is impossible and unnecessary to expect a forest plan to address all of the ecosystems which occur within a plan area. Therefore, paragraph (d) would establish that the forest plan should address those ecosystems of most relevance to forest plan decisionmaking, with the intent being to limit efforts to a practical number and scope.

**Role of Lands Outside the Plan Area.** Consideration of conditions outside the plan area is an integral part of the concept that Federal lands should be managed from an ecological perspective rather than one limited by jurisdictional boundaries. This consideration must occur, however, without detriment to the rights of private landowners or the authorities of other government jurisdictions. Paragraph (a) of this section of the proposed rule would, in part, direct consideration of the contribution of lands outside the plan area when establishing forest plan direction. For example, when evaluating the habitat capability of a sensitive species, the quality, quantity, and distribution of habitat within the species' range would be considered in the context of the plan area. However, this consideration does not mean that the forest plan would in any way address how to manage these other

lands. Instead, the responsible official might choose to alter decisions in the forest plan regarding management of National Forest System lands due to conditions on these other lands, if that should be determined to be desirable to help maintain or restore sustainable ecosystems.

**Protection of soil and water resources.** Paragraph (b)(2) would address soil and water resources. This paragraph of the proposed rule would not only provide for forest plans to address the protection of soil and water resources, but also the restoration of existing conditions harmful to soil and water quality.

#### *Section 219.5 Framework for Resource Decisionmaking*

Paragraph (a) explains that the agency uses a staged decisionmaking process, with forest plans being used to allocate the lands and resources of the plan area through management prescriptions, and project decisionmaking being the point at which site-specific activities are authorized. Paragraph (a) also explains that forest plan and project decisions must adhere to legal requirements and that an additional source of direction guiding management of the National Forest System is direction issued through the agency's Directive System.

The staged decisionmaking process described in the proposed rule is consistent with a series of administrative appeal decisions. These include the Chief's appeal decision on the Idaho Panhandle Land and Resource Management Plan (Appeal No. 2130, August 15, 1988); the Chief's appeal decisions on the Flathead National Forest Land and Resource Management Plan (Appeals No. 1467 and No. 1513, August 31, 1988). For court decisions upholding the staged decisionmaking approach of forest plan and project levels, see *Cronin v. USDA*, 919 F.2d 439, 447-49 (7th Cir. 1990); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 15511-12 (9th Cir. 1992); *Resources Ltd Inc. v. Robertson*, 789 F. Supp. 1529 (D.Mt. 1991) aff'd in part (NEPA, NFMA) and reversed in part (ESA), 8 F.3d 713 (9th Cir. 1993) (amended July 5, 1994); *Swan View Coalition v. Turner*, 824 F.Supp. 923 (D. Mt. 1992); *Sierra Club v. Robertson*, 810 F.Supp. 1021 (W.D. Ark 1992); Eighth Circuit found no standing and alternatively affirmed lower court on the merits, 23 F.3d. 753 (8th Cir. 1994).

There is currently a conflict between the Eighth and Ninth Circuits as to whether the forest plans without a project decision present a justiciable controversy. "We are aware that on several occasions the Ninth Circuit has entertained challenges to forest plans

similar to the Plan here in issue. [citations deleted] \* \* \* we decline to apply them [Ninth Circuit decisions] as a basis for finding that the appellants have standing to attack the Plan outside the context of a proposed site-specific action that causes or threatens to cause injury in fact." *Sierra Club v. Robertson*, 28 F.3d 753, 759-60 (8th Cir. 1994). See also, *Wilderness Society v. Alcock*, F. Supp. (N.D. Ga. September 30, 1994) finding the Eighth Circuit reasoning more persuasive and holding that plaintiffs' claims against approval of the Cherokee forest plan did not present a justiciable controversy.

Even the Ninth Circuit recognizes that forest plan EIS's are "an early stage, where the EIS is 'merely' programmatic." *Idaho Conservation League v. Mumma*, 956 F.2d at 1523. The Ninth Circuit has also held that when a programmatic EIS "is prepared, site-specific impacts need not be fully evaluated until a 'critical decision' has been made to act on site development." *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1357 (9th Cir. 1994).

Paragraph (a)(1) describes the first stage of the agency's staged decisionmaking process—forest plans. Forest plans allocate the land and resources of the plan area through management prescriptions which consist of goals, objectives, standards, and guidelines.

Paragraph (a)(1) would also establish a key point essential to understanding the nature of a forest plan; i.e., that forest plans do not compel the agency to plan for or undertake any specific projects, but do establish limitations on actions that may be authorized later during project decisionmaking. This concept is central to understanding the role of a forest plan and is addressed in more detail under the preamble discussion of § 219.6.

Paragraph (a)(1) also would clarify that forest plans must not conflict with laws or regulations and should not conflict with policy and procedure issued through the Forest Service Directive System. Although it has generally been understood that forest plans must not conflict with laws or regulations, there is not such common understanding of the relationship of directives issued through the Directive System to forest plan direction. The proposed rule seeks to end this misunderstanding. As noted in paragraph (b)(1), any conflict with an agency directive should be identified and the rationale for not complying with such a directive provided at the time of forest plan amendment or revision. The relationship between forest plans and

directives is addressed in further detail under the preamble discussion of § 219.5(b)(2).

Proposed paragraph (a)(1)(i) would limit the area covered by a forest plan to one or more National Forests and/or other units of the National Forest System within the jurisdiction of a single Forest Supervisor. One forest plan can be developed, however, when a single National Forest is administered by several Forest Supervisors. Currently, the Tongass National Forest in Alaska is the only National Forest administered by more than one Forest Supervisor. These provisions are not substantively different from the requirements of the existing rule at § 219.4(b)(3).

Establishing a plan area based on administrative boundaries may appear to conflict with the principles of ecosystem management. Some may argue that resource planning should occur based on areas with shared ecological conditions rather than on boundaries established for administrative purposes. The agency recognizes the benefits that can be gained from taking a more ecological approach to establishing the area to be encompassed by a forest plan. In the long run, a realignment of plan boundaries should be considered. In the short-run, however, there are practical considerations for continuing the current approach.

First, NFMA does not clearly articulate the area to be covered by a forest plan. Although Section 6(f)(1) of NFMA directs "one integrated plan for each unit of the National Forest System," a unit is not specifically defined. The determination of the unit for planning is complicated by provisions of Section 13 of NFMA, which require certain limitations on timber removal to be determined on a National Forest basis. Provided such timber-related requirements could be met, the agency believes it does have discretion under the statute to redefine, through a new rule, the geographic area to be covered by a forest plan.

However, realigning the entire National Forest System into a new set of plan areas for forest planning introduces significant new and immediate challenges. For example, where should new boundaries be drawn? Ecosystems exist at a variety of scales, and ecological units can be defined variously. Determining the best boundaries for planning purposes is not a simple process. How can the public be involved in delineating the new plan area? How might a change in boundaries of the plan area affect the public's interest and ability to participate in the planning process? Might the change be

perceived to be more advantageous to some segments of the public than others? How would such a change affect National Forests where revision efforts are already underway or scheduled to begin in the near future? How should such a realignment be coordinated with the planning efforts of other agencies and governments? These are questions which the agency is currently not prepared to answer, but which merits careful examination before changes in plan area boundaries should occur.

This agency also recognizes that roughly two-thirds of all forest plans are or will be undergoing either significant amendment or revision in the next 1-2 years. Redefining plan areas would delay revision, which would be detrimental to the public interest and to resource management, as well as increase the risk of exceeding the 15-year period between revisions. Rather than introducing a complex and time-consuming new decision to be made before initiating the planning process, the agency expects to take various administrative actions to mitigate the disadvantages of planning based on administrative boundaries.

For example, planning efforts can be synchronized among those National Forests that share ecological characteristics through the use of joint planning teams and development of parallel schedules. Similarly, the mechanism for simultaneous plan amendment or revision, as addressed at proposed § 219.5(a)(1)(ii), is intended to facilitate achieving such coordination across plan area boundaries.

Proposed paragraph (a)(1)(ii) would permit forest plan direction to be established for more than one plan area by simultaneously amending or revising the appropriate forest plans. Since this occurs through the amendment or revision of forest plans, NEPA procedures would still apply. For example, if the Regional Forester wanted to establish a forest plan standard for all lands within the range of a particular wildlife species, and the range encompassed three plan areas, the Regional Forester could establish a new standard by simultaneously amending those three forest plans, with associated NEPA disclosure of effects.

The concept of simultaneous amendment or revision is an essential part of integrating ecosystem management into the agency's resource decisionmaking framework. Ecosystem management necessitates a flexible approach to the spatial scale for planning and decisionmaking; the proposed approach allows resource decisions to be made at whatever scale is appropriate. Even though a forest plan

document itself is limited to administrative boundaries, the forest plan direction it contains can be derived from analysis and decisions at any appropriate scale or land area regardless of administrative boundaries.

The proposed rule would discontinue regional guides as required by the existing rule. As noted in the Advance Notice of Proposed Rulemaking, agency experience has shown that regional guides may no longer be the most effective and efficient means for providing regional direction. In reality, most regional guides did not fully achieve the role of being the meaningful or effective documents originally envisioned. Moreover, the rigorous requirements of §§ 219.8 and 219.9 in the existing rule siphoned a significant investment of staffing and funds from forest or project planning efforts. The provision for simultaneous amendment or revision would provide a means to establish resource direction at a regional scale, or any other appropriate scale, and, therefore, is believed to be a more effective approach to providing multi-forest direction than a regional guide.

Proposed paragraph (a)(2) would identify project decisions as the second stage of the agency's decisionmaking process. The proposed rule would make clear that it is at the project level that the authorization is made to conduct resource activities, not at the forest plan level. Paragraph (a)(2) would also make clear that NEPA procedures must be followed when approving a project, and projects must be consistent with the forest plan.

As discussed previously, various court decisions have upheld the staged decision approach of forest plans and project decisionmaking. One important basis for this staged approach and the relationship between forest plans and projects rests largely upon the requirements for compliance with NEPA. In a landmark court case (*State of California v. Block*, 690 F.2d 753 (9th Cir. 1982)), the Ninth Circuit stated that "the critical inquiry in considering the adequacy of an EIS prepared for a large scale, multi-step project is not whether the project's site-specific impact should be evaluated in detail, but when such detailed evaluation should occur." The court determined that "[t]his threshold is reached when, as a practical matter, the agency proposes to make an irreversible and irretrievable commitment of the availability of resources to a project at a particular site."

As a practical matter, it is impossible for a forest plan to identify all of the projects to be implemented for a 10-year period, adequately disclose their site-

specific environmental effects in an accompanying environmental impact statement, and comply with the multitude of statutes and regulations applicable to project activities.

Furthermore, new information regarding the relationship among proposed projects and effects of proposed actions within a forest is constantly being developed. No matter how sophisticated forest models become, it is doubtful that the order and relationship of possible activities can ever be forecast with enough precision at the forest plan approval stage to meet the requirements of environmental laws or correspond to the realities of a changing world. In addition, many activities occurring on a forest are initiated by forest users and not the Forest Service. The relationship of projects initiated by others and projects planned by the Forest Service is continuously changing. Thus, the forest plan is best viewed as a dynamic management system that provides the framework for further decisionmaking at the project level.

Under the existing rule, project decisions can be made in a forest plan provided they are identified in the Record of Decision and adequately disclosed in associated NEPA documents. The proposed rule would eliminate this Option in order to clarify the distinction between the two stages of decisionmaking and because this option has not been commonly used in the past.

The two-stage decisionmaking process described in the proposed rule does not preclude multiple steps at the project level. Examples include some multi-stage recreational development decisions such as for ski areas (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 322, 336-37 (1989)), or the multiple decision points in oil and gas leasing, exploration, and development where a series of decisions is made over time (see 36 CFR 228, 228.102 (55 FR 10423, March 21, 1990)). In most cases, however, project decisions are not of this complexity, and the project decision occurs in a single step.

Paragraph (b) of proposed § 219.5 would explain how forest plans are to be reconciled with changing legal requirements, new agency directives, or new information from other planning efforts. In accordance with proposed paragraph (b)(1), if a change in law or regulation conflicts with forest plan direction, the Regional Forester must direct that the plan be brought into compliance following the procedures of § 219.9 or § 219.10 and specify the timing for doing so. The proposed provision to permit nondiscretionary

changes at § 219.9(e) provides a mechanism for quickly changing forest plan direction to respond to changes in legal requirements for which there is no discretion in the manner of compliance.

Proposed § 219.5(b)(2) (i) and (ii) address responsibilities regarding reconciliation of forest plans with changes in agency direction issued through the Directive System. As described at paragraph (b)(2)(i), an official issuing a directive must determine if forest plans are to be made consistent with a newly issued directive when it appears that the directive would conflict with forest plan direction. If so, the official must specify that plans be changed following the procedures of § 219.9 or § 219.10 and the timing for doing so. In the event of conflict between an agency resource directive and direction in a forest plan, the forest plan takes precedence. Accordingly, the agency maintains discretion to determine when a forest plan should be amended to be consistent with agency directives. As stated at § 219.5(a) of the proposed rule, agency directives are subject to NEPA procedures, as is the process for forest plan amendment.

Reconciliation of forest plans and agency directives as described at paragraph (b)(2)(ii) addresses those situations where a directive has been issued, but it was not readily apparent at the time that it might conflict with forest plans. To address such situations, the Forest Supervisor is responsible for periodically reviewing resource management amendments or supplements to the Directive System as part of the monitoring and evaluation process. If a conflict occurs between forest plan direction and a newly issued directive, the Forest Supervisor must either amend the forest plan so that it no longer conflicts with the directive, or notify the Regional Forester why such an amendment is not deemed appropriate. Consistent with agency policy at FSM 1103, if the directive had been issued at the National level, the Regional Forester would be expected to notify the Chief of the concerns with the newly issued directive.

The provisions of (b)(2)(i)-(ii) are closely related to the provision of paragraph (a)(1) of this section which directs that where there is substantial conflict between a resource management directive and a forest plan amendment or revision, the responsible official is expected to identify the conflict and include the rationale for the departure in the decision document. In order to enhance understanding of these provisions, a brief explanation of the Directive System is provided as follows.

The Forest Service Directive System consists of the Forest Service Manual and Handbooks in which the agency's policy, practice, and procedure are codified. The system serves as the primary basis for the internal management and control of all programs and as the primary source of administrative direction to Forest Service employees. The Forest Service Manual contains legal authorities, management objectives, policies, responsibilities, delegations, general instructions, and guidance needed on a continuous basis by Forest Service line officers and staff at more than one unit to plan and execute programs. New or revised direction is issued by amendment or interim directive, whereas direction which expands on directives issued by a higher level is issued by supplement. For example, a Regional Forester may issue a regional supplement in order to expand on the national direction issued by the Chief.

Directives issued through the Directive System are subject to NEPA procedures. In addition, issuance of some Manual direction may be subject to public notice and comment procedures in accordance with 16 USC 1612 and 36 CFR 216.6(a), which requires public notice and comment for standards, criteria, and guidelines, when substantial public interest in or controversy over a proposed Manual directive can be expected. Reviewers are encouraged to study 16 USC 1612 and 36 CFR part 216 if further information is desired on public review and comment related to changes in Manual direction.

As previously noted, there are two main reasons why it is important to consider agency directives when amending or revising forest plans. First, it would be unreasonable and illogical for forest plans to substantially conflict with officially established agency objectives, policy, and procedure. Although direction in an approved forest plan would take precedence in case of a conflict, such conflicts should be avoided when establishing forest plan direction to prevent conflicts in performance expectations and potential loss of national or regional consistency.

A second reason for identifying any substantial conflicts between forest plans and agency directives at the time of amendment or revision relates to the nature of agency directives. Some directives have been established through extensive agency effort and adopted following public review and comment procedures under 36 CFR part 216; for example, the agency's policy and procedures for reauthorizing recreation residences (FSM 2300 and

2700). Other policies are required to be published for comment under other statutes; for example, the regulations implementing NEPA at 40 CFR parts 1500–1508 require the agency's NEPA policy and procedures, as issued in FSM Chapter 1950 and FSH 1909.15, to be published. On the other hand, not all agency directives are fully up-to-date, and some inconsistencies may and often do exist within the Directive System. Allowing the responsible official the flexibility to depart from agency directives, provided a rationale is given, will prevent forest plans from having to adhere to inappropriate or outdated agency directives and also will help the agency identify where directive changes are needed. The flexibility to be provided in the planning rule is consistent with current policy in FSM 1103 which requires employees to notify higher authorities when departure from direction is deemed necessary or when directives need to be revised.

It is not anticipated, however, that there will often be substantial conflict between forest plans and agency directives. First, the proposed rule provides for greatly reducing the amount of repetition between forest plans and directives (§ 219.6(b)(2)). Second, the provision for simultaneous plan amendment or revision, as addressed at § 219.5(a)(1)(ii), provides a mechanism for establishing direction known to affect more than one plan, thus eliminating the need to establish such direction through the Directive System. Third, directives are generally very broad and programmatic in nature, thus leaving considerable discretion for forest plans and project decisionmaking to establish more precise and site-specific direction. As a result, there are generally ample opportunity to establish more detailed direction at the forest plan or project stage without substantially conflicting with directives. Fourth, paragraph (a)(1) applies to resource management directives that would conflict with forest plan direction. Directives which provide procedural guidance on the process for amending or revising forest plans is not encompassed by the requirement.

Paragraph (b)(3) would address the link between the RPA Program and forest plans. Following adoption of a new RPA Program, the Chief would determine those elements of the RPA Program that should be considered in forest plan implementation, monitoring, and evaluation as well as establish any necessary agency-wide procedures to achieve this. In addition, § 219.12(a)(1)(vii)(A) of the proposed rule would require the monitoring and

evaluation process to consider a newly issued RPA Program. As a result, there would be a link established whereby each new RPA Program would be reviewed to determine whether there is new information which makes it appropriate to initiate forest plan amendment procedures.

Paragraph (b)(4) would direct Forest Supervisors, as part of monitoring and evaluation, to periodically review results of any applicable ecosystem analyses that have been completed subsequent to plan approval to determine if there is new information which would indicate the need to consider changing the forest plan. Although ecosystem analysis is not a decision process, it may generate information that indicates a need to consider changing a resource decision.

#### *Section 219.6 Forest Plan Direction*

Paragraph (a) of this section of the proposed rule would direct that forest plans provide for integration and coordination of all resources on a multiple-use and sustained-yield basis. This paragraph lists the numerous resources to be addressed in a forest plan when such resources occur within the plan area. It also would assure that forest plans address infrastructure needs and land ownership and access patterns to the extent appropriate. None of this would represent a change from the scope of most current forest plans.

Although forest plans address the full range of resources found within the plan area, this regulation does not attempt to provide direction for management of individual resources except where necessary to respond to specific requirements of NFMA. In contrast to the existing rule which contained 13 sections on individual resources, the proposed rule does not include such detailed direction. For example, the proposed rule does not define goals and objectives for specific resources nor prescribe requirements for how each resource will be evaluated during amendment or revision of forest plans. It is the agency's intent to provide through directive issuances any additional direction necessary to specify how individual resources are addressed in forest plans.

The agency believes this planning regulation should stay focused on the specific requirements of NFMA, the authorizing statute. It would be beyond the reasonable scope of any one regulation to address all of the laws, regulations, and Executive orders under which National Forest System resources are managed. In addition, the shift to an ecosystem management orientation diminishes the relevance of focusing on

individual resources, and supports the need for the more holistic approach taken in the proposed rule.

Proposed paragraph (b) provides that a forest plan allocates the land and resources of the plan area through management prescriptions which consist of goals, objectives, standards, and guidelines. These four types of direction, and the maps or similar information delineating where they are applicable, constitute forest plan direction. It is important that the proposed rule clearly define what constitutes forest plan direction, since plan direction can only be changed by amendment. Other information within the forest plan document is not forest plan direction and can be updated without going through amendment procedures.

The existing rule is not explicit regarding the nature of forest plan decisions, resulting in some confusion by both the public and employees over the years. As noted in the preceding discussion of proposed § 219.5, the nature of a forest plan under the existing rule has been articulated through a series of administrative appeal decisions and court decisions. The proposed rule reflects many of these decisions and explicitly defines forest plan direction and the contents of the forest plan document.

In *Citizens for Environmental Quality v. Lyng*, 731 F. Supp. 970, 977–78 (D. Colo. 1989), the court upheld the agency's position under the existing rule regarding the decisions made in forest plans. That court decision confirmed that approval of a forest plan results in: (1) Establishment of forest multiple-use goals and objectives; (2) Establishment of forest-wide management requirements (standards and guidelines) applying to future activities; (3) Establishment of management areas and management area direction (management area prescriptions) applying to future activities in that management area; (4) Designation of suitable timber land and establishment of allowable timber sale quantity; (5) Nonwilderness allocations or wilderness recommendations; and (6) Establishment of monitoring and evaluation requirements.

Forest plan direction, as defined at proposed paragraph (b), in concert with other provisions of the proposed rule, overlap most, but not all, of the six items identified as forest plan decisions in *Citizens for Environmental Quality v. Lyng*. For example, goals, objectives, standards, and guidelines—both on a forest-wide basis and for specific portions of the plan area—are terms common to both the existing rule and

the proposed rule. The definition of "objectives" has been modified in the proposed rule, however, as explained in the preamble discussion of § 219.6(b)(1) and (d). Also, under both the existing and proposed rule, management prescriptions are the means by which direction is allocated to specific portions of the plan area. Similarly, although designation of suitable timber land, nonwilderness allocations, and wilderness recommendations are not individually identified in proposed § 219.6, they are encompassed by the management prescriptions described at § 219.6(b) and are addressed specifically at § 219.13(b)(2) and § 219.14.

Although the term "management area" has not been used in the proposed rule, nothing in the rule prohibits continuation of the traditional use of the term, and some mechanism for delineating where direction applies is required regardless of the terminology used. It is anticipated that the term "management area" will continue to be used in many forest plans. The proposed rule has not required the use of this term in order to allow the flexibility to develop other terms, if beneficial, to describe the areas to which specific management prescriptions apply. This flexibility is desirable since ecosystem management has heightened the likelihood of direction being established at a variety of scales, and more effective ways may be possible to delineate where a management prescription applies than the traditional management area concept.

Although there is considerable overlap between the six decisions resulting from forest plan approval under the existing rule and forest plan decisions under the proposed rule, two points of notable difference relate to forest plan objectives and monitoring and evaluation requirements. These differences are addressed in this preamble discussion of §§ 219.6(b)(1), 219.6(d), and 219.12.

Under paragraph (b)(1) of proposed § 219.6, projected levels of goods and services or projected levels of management activities would not constitute forest plan direction. In addition, the proposed rule makes explicit that any projections of the rate of achieving desired resource conditions would not be forest plan direction.

Based on the definition of "objectives" provided in the existing rule, "objectives" as used in the existing rule would encompass the types of projections addressed in proposed paragraph (b)(1). The proposed rule would make clear that such predictions addressing the rate of implementation

are not forest plan direction. For example, under the proposed rule the forest plan would define resource conditions desirable to achieve, but would not address the rate at which achievement should occur. Instead, any such projections of the rate of achievement would be provided in an appendix in accordance with § 219.11(d).

These changes are proposed for two reasons. First, experience has shown that the rate at which forest plans will be implemented cannot be established for a 10-year period. As explained earlier, the agency's decision framework provides for staged decisionmaking, with project decisions, rather than the forest plan, being the point at which site-specific activities are authorized. Decisions to approve and implement individual projects are subject to many variables, such as the results of project-level NEPA analysis, availability of funding, agency priorities, administrative appeals, and litigation. Since the rate at which forest plans can be implemented is based on decisions which occur during the plan period rather than decisions that can be made at the time of approving or revising a forest plan, it is important to make clear that the rate of implementation is not a decision that can be made in the forest plan.

Second, if rate-specific direction were to be included in a forest plan, it increases the likelihood of creating a false expectation that specific implementation rates, particularly levels of goods and services, can be assured during the 10-year plan period. As already noted, the agency cannot provide such guarantees. Elimination of rate-specific projections from forest plan direction, in concert with the provisions of § 219.11(d), should enhance understanding of the agency's staged decisionmaking process and produce more realistic expectations of what may occur during the plan period.

While excluding any rate-specific objectives from forest plan direction may appear to some to be a major change from the existing rule, this approach is consistent with a variety of court decisions which have affirmed the agency's staged decisionmaking process and verified that the agency has no obligation to produce the goods and services or to undertake the management activities identified in forest plans. The most notable actual difference resulting from the proposed rule would be that projections of implementation rates can be updated during the plan period without amendment procedures.

The approach that would be taken under proposed paragraph (b)(1) also represents an evolution in understanding of the relationship between forest plans and the agency's process for formulating budgets. In the past, there have been expectations that the objectives in forest plans would drive the budget process; that is, that funds would be requested at whatever level was necessary to achieve the objectives of the forest plan over the course of a decade, and any lower funding level was interpreted as less than full implementation of the forest plan by many people. In addition, most forest plans were developed without imposing budget constraints, so there was no attempt to establish objectives at levels that reflected probable budget levels. Over time, the agency has recognized the shortcomings of these earlier expectations and approaches, and has been re-evaluating and clarifying the link between forest plans and the budget process.

The proposed rule is consistent with the recommendations of a national team of Forest Service personnel chartered to study the linkage between budgets and forest plans. Rather than expecting the forest plan to define a desired rate of implementation to guide the budget process, the proposed rule would result in a process where budgets are formulated by considering forest plan direction, the results of monitoring and evaluation, and continuously updated information regarding national and agency priorities. This approach recognizes that annual program development and budgeting, rather than the forest plan, is the most timely and effective mechanism for responding to the continuously changing information which influences the rate at which plan goals can be achieved.

Proposed § 219.6(b)(2) would direct that forest plans focus on management of the resources specific to the plan area. It would further explain that forest plans should generally not provide direction on procedural aspects of how future project decisions will be made nor repeat other direction established through the Directive System, regulation, Executive order, or law. The existing rule does not have a comparable requirement, and this does represent a change from the way most current forest plans have been developed.

A sample of forest plans has been reviewed to determine the amount of overlap between direction in forest plans and direction already established through the Directive System, regulation, Executive order, or law. In one case, almost all of the forest-wide

goals and about half of the standards and guidelines overlapped direction that was already established and applicable to almost any National Forest in the country. Although the percentage of overlap varies with each plan, this sample does not appear to be exceptional. It seems there is a high degree of repetition in forest plans of direction that has already been established and applicable to most plan areas.

This repetition results, in part, from the desire to provide in one document all the direction applicable to the plan area. The reality, however, is that given the volume and breadth of laws, Executive orders, regulations, and agency directives that apply to National Forest lands, it is infeasible to consolidate all of that direction into one document. While some forest plans may currently appear to encompass all relevant direction, it is inevitable that one must still refer to other sources to fully grasp all of the direction applicable to the plan area.

There are four main sources of overlap which would be eliminated under the proposed rule. First, forest plans would not restate goals or policies that are already established by law, regulation, Executive order, or agency directive. Secondly, forest plans would not repeat procedural direction on how to conduct project analysis and decisionmaking. This type of administrative procedure is appropriate to issuance in the Directive System and not in forest plans. Under the proposed rule, forest plans will be clearly focused on desired resource conditions for the plan area, focusing on management of resources rather than on management of the administrative processes used to make decisions. For example, the Directive System is the definitive source of agency guidance and information on how to conduct NEPA analysis and should be the source of any guidance for conducting specific evaluations or analyses required to make a resource decision.

Third, forest plans would not repeat instructions related to public involvement and coordination with other government entities. Considerable direction on these topics is already established by law, regulation, Executive order, agency directive, and any additional direction needed is appropriately issued through the Directive System.

Finally, procedural guidance on how to conduct routine professional tasks would not be repeated in forest plans. For example, agency directives describe how to locate hiking trails and factors to consider when designing recreation

sites. Such direction is applicable anywhere in the country and, as a result, should not be repeated in a forest plan. In contrast, if there are special circumstances in the plan area that require establishment of specific standards or guidelines to address local resource conditions, then such local direction would be appropriate for the forest plan.

The agency anticipates several benefits from reducing the overlap between forest plans and direction already established by law, regulation, Executive order, or agency directives. First, forest plan direction should be substantially shorter, making forest plans more readable and easier to understand. Second, forest plans should be much more focused on local conditions and management needs. Third, the public should have a clearer understanding of the decisions that are actually being made in the forest plan.

Paragraph (b)(3) of this proposed section would limit the main body of the forest plan document to forest plan direction. Other information would appear in a brief preface or appendices. One benefit is to make it easier for the reader to distinguish between forest plan decisions and other information that may be found within the document. Currently, it is often difficult for readers to quickly locate the decisions made in the forest plan, and sometimes direction appears to be repeated or intermingled in multiple locations. Another benefit of this approach is that forest plans should be substantially shorter and easier to understand.

Proposed paragraph (c) would describe the role and function of forest plan goals. Goals would be concise statements that describe a desired end result; they would normally be expressed in broad general terms rather than quantitatively; and there would be no time period specified for achievement. Forest plan goals would serve as the link between broad agency goals already established through legal requirements, agency directives, or the RPA Program and specific, measurable desired resource conditions as defined by objectives in the forest plan. As a result, they will help to translate national goals into end results of more local relevance to the plan area. Pursuant to paragraph (b)(2) of this proposed section, forest plan goals would not repeat national goals, but would rather translate them into end results more specific to the local conditions of the plan area.

Because forest plan goals are not quantitative in nature, progress towards achieving goals is determined by monitoring achievement of the

measurable desired conditions established by forest plan objectives and, if necessary, additional measurable indicators can be established through the monitoring and evaluation process (§ 219.12(a)(1)(ii)).

Paragraph (d) describes the role of forest plan objectives. Objectives would describe measurable desired resource conditions, or ranges of conditions, intended to achieve forest plan goals. In many cases, a range of conditions is likely to be a more desirable target than a specific condition, because natural systems usually have ranges within which some variation is typical and acceptable. In addition, defining a desired range of conditions is appropriate when there is not enough information to make a more precise statement, or when such precision is not necessary, given the decision being made.

Paragraph (d) would make clear that objectives must be defined in a manner that permits measurement of whether the objective is being achieved. The ability to directly measure the achievement of an objective, its greater degree of specificity, and its scope being limited to resource conditions are the three features which help to distinguish an objective from a goal. The proposed rule would explain that objectives can be defined to encompass natural resource conditions, conditions resulting from human influences, or the manner in which resources are perceived. As further explained at the preamble discussion of § 219.6(b)(1), this use of the term "objectives" in the proposed rule is not the same as use of the term in the existing rule.

Paragraphs (e)(1)–(2) describe the role of forest plan standards. These paragraphs would make explicit that standards are limitations on management activities and that adherence to standards is mandatory. They are the basis for determining if a project is consistent with the forest plan (§ 219.11(a)).

One particularly important feature of standards is that they must be defined in such a manner that they are clearly within the authority or ability of the agency to enforce; that is, compliance must be within the agency's control. This characteristic is essential, because under the proposed rule standards it would be used for assessing project consistency with the forest plan (§ 219.11). When undertaking a project, the two things that the agency has the authority to control are the specific activities authorized and how they are conducted. The agency cannot control the actual results, however, since there are usually various factors beyond the

agency's influence that can affect results. For example, usual weather events or wildfires can affect actual on-the-ground results in unpredictable and uncontrollable ways.

Proposed paragraph (f) describes the role forest plan guidelines would play under the proposed rule. Guidelines would be used to describe a preferred or advisable course of action. Unlike standards, variation from a guideline does not trigger a forest plan amendment. Guidelines would play two key roles.

First, guidelines would be used to describe a preferred or advisable method of conducting resource activities. For example, a guideline might recommend that shelters on hiking trails be located at least one mile from trailheads. If terrain or other circumstances related to a specific project made compliance infeasible, the flexibility would exist to locate the shelter closer to a trailhead. However, the guideline would have served to advise the responsible official that construction of a shelter less than one mile to the trailhead should not occur unless special circumstances exist.

Second, guidelines would be used to describe a preferred or advisable sequence or priority for implementing various types of projects when such guidance is useful in facilitating achievement of a forest plan goal. For example, the forest plan might have a goal which addresses the restoration of hydrologic processes in a particular watershed. Various objectives could be defined describing resource conditions associated with restoration of the hydrologic processes, such as desired vegetative conditions within the watershed, the presence of down woody material in the stream channel, stream temperatures, or turbidity levels. Guidelines could be used if there is a preferred sequence for implementing the types of projects that would achieve these objectives and the ultimate goal. For example, if revegetating exposed soils within the riparian area are needed more urgently than soil restoration projects elsewhere in the watershed, a guideline can indicate that priority. Such guidelines would not be used to identify specific projects, but rather to specify if certain types of projects should be implemented before others in order to achieve a goal in the most timely manner.

Paragraph (g) would establish requirements for coordinating forest plan direction across plan areas. The intent is to improve consistency between forest plans. In many cases currently, it is difficult to compare forest plan decisions for adjacent forests

covered by different forest plans, and direction often changes at an administrative boundary even though the management situation appears to be identical. Paragraph (g) recognizes that there may often be legitimate reason for differences, but that, unless such reasons exist, forest plan decisions within a Forest Service administrative Region and for plan areas adjacent to the Region should be consistent in at least four ways.

First, management prescriptions for adjacent lands should be the same. The direction for managing a specific area of land should not change at the boundary between forest plan areas unless a good reason exists for such change. In addition, maps used in the forest plans should be consistent to facilitate review and comparison. For example, this would mean using maps of the same scale and with the same legends and formats.

Second, management prescriptions for specially designated areas should be the same when they cross plan area boundaries, unless good reason exists for change. For example, direction for managing a wilderness area, scenic trail, or similar specially designated area (§ 219.14) should not change simply because of a change in administrative boundary.

Third, forest plan direction should be the same for adjacent areas when findings of an ecosystem analysis or research used as a basis for the direction are applicable to more than one plan area, unless local circumstances justify variation. For example, if the research used as a basis for establishing a habitat protection standard for a threatened or endangered species applies to a broad area covered by several forest plans, that standard should be the same in each of those plans, unless valid reason existed to alter it.

Finally, consistency would be required in the use of terminology and classification systems. The intent is to have the same terms and classification systems used wherever feasible.

In summary, the provisions proposed in § 219.6 would incorporate the results of landmark administrative appeal decisions and court cases which have clarified the nature and scope of decisions made in forest plans. In addition, this section would establish a uniform approach to what appears in the main body of the forest plan and what can be presented in the preface and appendices. These changes to the contents of a forest plan will result in shorter, simpler forest plans that are easier to use and understand, as well as forest plans that are more highly focused on direction specifically

tailored for management of the resources of the plan area.

#### *Section 219.7 Ecosystem Analysis*

This section would introduce the concept of ecosystem analysis to the planning process, a topic not addressed in the existing rule. Paragraph (a) would define ecosystem analysis as a broad term used to denote various interdisciplinary studies conducted to provide information on and enhance understanding of the physical, biological, social, or economic aspects and interactions of an ecosystem. Because the agency considers humans to be an integral part of ecosystems, studies of social and economic aspects of ecosystems are within the scope of these analyses. Ecoregion assessments and landscape-level analyses are only two examples of the different types of studies that are conducted at various scales which fall under the general umbrella of ecosystem analysis.

Paragraph (a) would also address the geographic scope of ecosystem analysis. It acknowledges that such analyses can be conducted at any scale deemed appropriate, and emphasizes that areas subject to ecosystem analyses should generally be delineated based on ecological considerations rather than administrative or jurisdictional boundaries.

Reviewers are cautioned not to confuse the concept of ecosystem analysis with the analysis and evaluation of environmental effects which occurs as part of the NEPA process. The requirements associated with NEPA procedures would be unchanged by the provisions of this proposed section. The two documents used to disclose environmental assessment, are distinct in nature and purpose from an ecosystem analysis.

Proposed § 219.7 would not require an ecosystem analysis to be conducted as a precursor to resource decisionmaking. In fact, ecosystem analyses are not mandatory, and it is left to agency discretion to conduct them as appropriate. While the area covered by an ecosystem analyses is defined by the ecosystem and not by jurisdictional or administrative boundaries, the proposed rule would in no way impose resource decisions of the Forest Service on private lands. However, in order to make decisions for National Forest System lands, the agency believes it is important to be knowledgeable of the conditions on non-Forest Service lands within an ecosystem being studied. This is considered an essential part of taking an ecological approach to management of National Forest System lands.

Proposed paragraph (b) would make an important distinction between an ecosystem analysis and resource decisionmaking. As noted earlier, ecosystem analysis is not a decisionmaking effort and does not result in a resource decision. Therefore, it does not trigger NEPA analysis nor does the result of ecosystem analysis substitute for a NEPA disclosure document. Rather, an ecosystem analysis is a process by which information is gathered and synthesized in order to enhance and understanding of ecosystems. This information is usually intended as one—but not the only—source of information to be used later when making resource decisions.

One key provision of paragraph (b) intended to help draw the distinction between ecosystem analysis and resource decisionmaking is the requirement that the findings of ecosystem analysis not be used as a substitute for forest plan goals, objectives, standards, or guidelines. The proposed rule would make clear that the findings of an ecosystem analysis may indicate the need to change forest plan direction, but that such changes must occur through amendment or revision procedures. The agency does not intend ecosystem analysis to be used to identify any preferred or desired alternatives or outcomes. Identification of such preferences would reflect value judgments on the part of those conducting the ecosystem analysis without the benefit of utilizing NEPA procedures. The agency also hopes such a requirement will reduce any confusion regarding the expected results of ecosystem analysis and diminish the risk that such analyses might be mistaken for decisionmaking processes.

The proposed rule would make clear that ecosystem analysis may be used to identify opportunities for achieving goals and objectives that have already been established by law, Executive order, regulation, agency directive, or the forest plan. For example, this could include identifying various management options or scenarios that might meet established goals and assessing the results if such options were chosen or scenarios were to occur. This kind of assessment can be helpful in determining the potential to resolve issues given existing forest plan direction, or in evaluating the probable effects if current direction were to remain unchanged. In addition, paragraph (b) would make clear that an ecosystem analysis may be used to provide information that indicates a need to initiate forest plan amendment procedures. It will be incumbent upon the agency official responsible for the

ecosystem analysis to ensure that such findings are properly utilized and that any consideration of options or strategies is conducted in a manner complementary to using the information for subsequent compliance with NEPA procedures associated with resource decisionmaking.

Paragraph (c) would list various possible results of ecosystem analysis, depending upon the scope and specific purpose of each analysis. Eleven examples are provided of the type of information which might result from an ecosystem analysis. This is not intended to be an all-inclusive list, but rather to represent the type of results that might be expected. All eleven items are informational in nature and do not represent resource decisions or a narrowing of options to be considered in future decisionmaking efforts.

#### *Section 219.8 Interdisciplinary Teams and Information Needs*

Paragraph (a) would require the use of an interdisciplinary team when preparing amendments, revisions, and monitoring and evaluation strategies and reports and when conducting ecosystem analysis. Although the proposed rule would clearly identify when interdisciplinary teams must be used, it would be less specific than §219.5 of the existing rule, which addresses in more detail the functioning and selection of interdisciplinary teams. Such detail is in excess of what is appropriate to this regulation, especially since NEPA procedures already provide guidance on the use of interdisciplinary teams. The proposed rule would limit interdisciplinary team membership to Forest Service and other Federal personnel. This limitation is primarily due to the Federal Advisory Committee Act, which imposes extensive requirements on the creation and use of committees that include non-Federal personnel for the purpose of advising Federal agencies.

Paragraph (b) would direct that the responsible official must strive to obtain and keep updated inventory data needed for decisionmaking. This is intended to emphasize the importance of maintaining data on a continuous basis rather than allowing inventories to become outdated. This is of particular importance in implementing an adaptive approach to resource management. The ability to know if and how management should be adjusted depends on ongoing analysis of information throughout the plan period.

Maintaining inventory data is also critical to avoiding delays in the revision process. Some forests took as much as two years or more to gather the

inventory data needed to develop their initial forest plans. As envisioned under the proposed rule, such information would be maintained throughout the plan period, with little delay needed at the time of revision to obtain new data. Realistically, many forests do not have fully updated inventories at this time, so, regrettably, such delays must still be expected in some cases when forest plans are revised. The updating process would occur prior to or during the pre-revision review, however.

In addition, paragraph (b) would clarify that the information compiled should be commensurate with the decisions being made. It is wasteful to try to obtain highly precise estimates if the decision being made does not require such precision. The proposed rule would make clear that the precision of the data should be commensurate with the precision needed to make the decision (see also §219.4(e)). Paragraph (b) also emphasizes the need for carefully focused analysis efforts, a noteworthy change from the existing rule. The proposed rule intends that analytical efforts will be focused on the critical questions relevant to specific decisionmaking needs rather than dispersed across a wide range of standardized analytical requirements that may not be relevant to local conditions, issues, and concerns.

Although paragraph (b) would provide enhanced flexibility to tailor analysis to meet local needs, this should not be interpreted as deemphasizing the importance of sound analyses. While the proposed rule is certainly intended to better focus the analysis, there may or may not be a reduction in the overall quantity of analysis conducted on any given forest. For example, the extensive benchmark analyses required by the existing rule at §219.12(e) would no longer be required in the proposed rule. In many cases, the effort invested in these benchmark analyses has often diverted too much time and energy from more critical analyses needed for decisionmaking. However, in other cases, the data derived from some of the benchmark analyses proved very helpful. The proposed rule would not require that standardized benchmark analyses be conducted for all resources on all forests, but it would also signal the expectation that such analyses should occur if and when needed for informed decisionmaking.

This focused approach to analysis is also intended to enhance understanding of and confidence in the agency's analytical procedures. Findings of the Critique of Land Management Planning clearly indicated that many people distrust analytical procedures and view

computer models as mysterious "black boxes" that produce incomprehensible and unverifiable answers. The approach in paragraph (b) would keep analytical procedures highly focused and relevant to local decisionmaking needs and thus should help increase public and employee confidence in methodologies and results. Although computer models will still be used, analytical efforts should be better tailored to local needs. Under this provision, forest analysts could devote more time and effort to understanding the data relevant to the specific decisions to be made and to improving ways of communicating that information to the public and decisionmakers.

Paragraph (c) would assure that social and economic effects are considered when amending or revising the forest plan. As stated at § 219.1(b)(2), meeting people's needs and desires within the capacities of natural systems is a primary role of resource decisionmaking. The forest plan addresses management of land and resources, but decisions as to how those lands and resources should be managed is inherently dependent on considering the effects on people as well as on the resources themselves. Paragraph (c) would assure that commensurate with the decision being made, appropriate indicators of social and economic change, such as changes in community stability or employment, are evaluated during amendment and revision.

Paragraph (d) would require Forest Supervisors to identify the research needed for decisionmaking, including, but not limited to, the research needed to help resource managers ensure that management practices do not produce substantial impairment of the productivity of the land. This latter requirement responds to Section 6(g)(3)(C) of NFMA. Comparable provisions of § 219.28 of the existing rule are more detailed. By contrast, the proposed rule focuses more directly on making sure that research needs are identified, but would leave to normal agency administrative processes the task of directing formulation of budgets and reporting procedures.

#### *Section 219.9 Forest Plan Amendment*

Paragraph (a) would provide for three types of amendments to forest plans—major, minor, and interim. It also would make explicit that: (1) only those elements defined as forest plan direction are subject to amendment, and (2) that amendment is the only method by which forest plan direction can be changed between revisions, unless the changes are nondiscretionary as described at § 219.9(e).

The term "major amendment" in the proposed rule would replace the term "significant amendment" as used in the existing rule. This change in terminology should help avoid confusion with the term "significance" as it is used in the context of NEPA compliance. Criteria for determining significance for NEPA compliance differ from the criteria for distinguishing the significance of amendments under NFMA. These differences have caused considerable confusion both within and outside the agency with regard to "significant" plan amendments. Under the proposed rule, the term "minor amendment" would be used to refer to amendments which do not meet the criteria for a "major" or "interim" amendment.

Proposed paragraph (b) addresses major amendments. Paragraph (b)(1) would define the only three circumstances which trigger a major amendment. The existing rule does not define specific criteria for triggering a significant amendment, stating simply that "if the change resulting from the proposed amendment is determined to be significant, the Forest Supervisor shall follow the same procedure as that required for development and approval of a forest plan" (§ 219.10(f)).

In the absence of criteria in the existing rule, the agency has issued, at FSM 1922.52, two examples indicative of circumstances that may cause a significant change to the forest plan. In addition, FSH 1909.12 describes four factors to be used in helping to determine significance. The two circumstances described at FSM 1922.52 are: (1) Changes that would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected, and (2) changes that may have an important effect on the entire forest plan or affect land and resources throughout a large portion of the planning area during the plan period. Both of these examples are subject to varying interpretation.

In reassessing the circumstances that should trigger a major amendment, the agency has focused on two key provisions of Section 6(f)(4) of NFMA. First, this section recognizes that some amendments may result in a significant change in the plan. Second, it establishes special requirements for those amendments that would result in a significant change to the forest plan—a three-month comment period and associated requirements for public involvement.

With these provisions of NFMA in mind, the agency proposes establishing in the proposed rule at § 219.9(b)(1),

rather than in the Forest Service Manual, three criteria for triggering a major amendment. The first trigger would be a change to a forest plan standard. The second would be when the chargeable timber volume that can be sold for a decade is amended in such a manner that it exceeds the long-term sustained-yield timber capacity of a proclaimed National Forest within the plan area. The third circumstance would be if the forest plan is changed to permit harvest of even-aged stands that have not reached culmination of mean annual increment of growth.

The first criterion, changing a forest plan standard, reflects the heightened importance of forest plan standards under the proposed rule. As explained earlier in this preamble, adherence to forest plan standards would be mandatory, and standards would be used to assure compliance with legal requirements and to provide environmental safeguards. As a result, standards would have a distinctly stronger role in the forest plan than goals, objectives, or guidelines. Subsequently, the proposed rule would consider a change to a standard or where a standard is applied as a significant change to the forest plan, which thus would trigger a major amendment unless the exceptions identified at § 219.9(c) (4) and (5) apply. The exceptions are when a standard is changed to accommodate a particular site-specific project, or the allocation of a management prescription, which typically includes some standards, to newly acquired lands and the prescription is consistent with the purposes for which the land was acquired.

The other two circumstances that would trigger a major amendment derive directly from NFMA. In the case of the decadal chargeable volume that can be sold from a proclaimed National Forest exceeding the long-term sustained yield timber capacity of that Forest, Section 13 of NFMA requires that such a variation be made following the same public involvement requirements as those for a major amendment or revision; i.e., a 90-day comment period. Similarly, Section 6(m)(2) of NFMA requires a 90-day comment period if stands are to be harvested before reaching culmination of mean annual increment of growth. As a result, the proposed rule would require that such changes be considered major amendments.

Proposed paragraph (b)(2) would provide that the Regional Forester is the responsible official for major amendments. This delegation of

authority is the same as that under the existing rule.

Proposed paragraph (b)(3) would describe the procedural requirements associated with major amendment. These differ from those of the existing rule in two main ways. First, there is no automatic requirement to develop an EIS for a major amendment. The intent is to allow NEPA procedures to guide the determination of whether an EIS or an environmental assessment is appropriate for the decision being made. Second, the proposed rule would drop the requirement to use the same process for a major amendment as for development of initial forest plans and revisions (§ 219.12(a) of the existing regulation). Instead, the proposed rule would rely on established NEPA procedures to guide the process for major amendment.

Both changes are expected to help focus and streamline analyses. As described at proposed § 219.8(b), one intent of the proposed rule is to focus analyses on the information needed for decisionmaking and thus to ensure that the nature, scope, and complexity of analyses are commensurate with the nature, scope and impact of the decisions to be made. Relying on NEPA procedures to determine the type of disclosure that is appropriate is a sound means of assuring that analysis and documentation match the nature of the decision.

Similarly, the requirement in the existing rule to repeat the same steps for a significant amendment as for a revision has proven excessively burdensome. This existing requirement has often resulted in a variety of analysis efforts, such as developing benchmarks or reevaluating the suitability of lands for timber production, which proved to be of little benefit or utility and which diverted energy and focus from more critical factors related to the decision.

Paragraph (b)(3) of the proposed rule also would state the requirement to provide a 90-day period for public review and comment on a major amendment. This paragraph also specifies the minimum actions the Regional Forester would be required to take to provide for public participation in the major amendment process.

Paragraph (b)(4) would require publication of legal notice of adoption of a major amendment. Paragraph (b)(5) provides that the effective date of an approved major amendment is the eighth calendar day following publication of legal notice of the decision in accordance with administrative appeal rules at 36 CFR 217.10.

Proposed paragraph (c) would establish requirements for a minor amendment, which is triggered whenever a change is being made to the forest plan which does not meet the circumstances for triggering a revision, major amendment, or interim amendment.

Paragraph (c)(1) would designate the Forest Supervisor as the responsible official for minor amendments, unless that authority is retained by the Regional Forester.

Paragraph (c)(2) addresses public comment periods for minor amendments. As is the case with major amendments, the proposed rule does not specify what type of NEPA documentation must accompany a minor amendment. Instead, NEPA procedures would provide this guidance. Although NEPA procedures require a 45-day comment period for review of a draft EIS, there is no requirement under NEPA procedures for public comment on a draft environmental assessment. Nevertheless, the agency believes that the public should have an opportunity to comment on a minor amendment to a forest plan when an environmental assessment is prepared. Therefore, the proposed rule requires at least a 30-day comment period when an environmental assessment is prepared and at least a 45-day comment period when an EIS is prepared.

Paragraph (c)(3) indicates that 36 CFR part 217 provides for administrative appeal of forest plan amendments and revisions and guides public notice of decisions to adopt a minor amendment, as well as their effective date. This is further clarified in a conforming amendment to 36 CFR 217.3(a).

Proposed paragraphs (c)(4) and (c)(5) describe two circumstances where a minor amendment, not a major amendment, is the appropriate mechanism for changing a forest plan even though such an amendment involves changing a standard or changing where a standard applies. Under paragraph (c)(4), a minor amendment would be appropriate when a management prescription is extended to apply to newly acquired land and the prescription is compatible with the purposes for which it was acquired. Without this provision, such a change would trigger a major amendment since management prescriptions include standards, and allocating lands to a management prescription changes where those standards are applied.

Paragraph (c)(5) provides instructions for handling a proposed site-specific project that would conflict with a forest plan standard. As required at § 219.11(a)

of the proposed rule, a project cannot be approved if it conflicts with a forest plan standard. If the responsible official has determined that the project merits an exception to a forest plan standard, but wishes the exception to apply only to the site-specific project rather than changing the standard for all future projects, the proposed rule would specify that the change be made by minor amendment. This is appropriate because of the limited, site-specific scope of the change in the standard(s). However, a minor amendment cannot be used when the circumstances described at (b)(1)(ii)–(iii) apply, since NFMA requires a 90-day comment period on changes of that nature.

Under the proposed rule, the public could review and comment on a proposed site-specific amendment as part of the project decisionmaking process rather than as disjointed decisions. The disclosure of effects associated with changing the standard would be addressed as part of the NEPA documentation associated with the site-specific project decision. One intent of this integrated approach is to avoid duplicating analysis and documentation. It would be burdensome and confusing for both the public and the agency if a project decision had to be made separately from the forest plan amendment needed to authorize the site-specific exception from the standard.

The length of the comment period under these circumstances would vary, depending on the nature of the decision being made. If the project decision or amendment required an EIS, then at least a 45-day comment period would be provided in accordance with NEPA procedures. If an environmental assessment would be adequate, then at least a 30-day comment period would be provided in accordance with 36 CFR 215.5.

A minor amendment associated with a site-specific project would not be subject to administrative appeal under the provisions of 36 CFR part 217, but instead would be appealable under 36 CFR part 215 which already governs appeal procedures when a project decision includes a plan amendment. Similarly, the time period between the decision and project implementation is also governed by 36 CFR part 215.

Paragraph (d)(1) of this proposed section introduces the concept of "interim amendment." The agency believes there is a clear need to provide streamlined procedures for updating forest plan direction when there is new information that indicates a compelling need to promptly change the forest plan in order to provide resource protection,

or when a catastrophic event has occurred, and the process for major amendment, minor amendment, or revision would result in an unacceptable delay.

Due to the length of time it often takes to fully analyze new information and to complete appropriate amendment procedures, there can be quite a gap between the time the agency is aware that it needs to address a problem and the time normal procedures can be completed. In the meantime, environmental damage may be occurring as a result of these procedural delays. The interim amendment would be a means of addressing those situations where such delay is unacceptable, but would still assure that a thorough analysis of the new information is conducted and possible alternative responses are considered while such interim measures are in place.

Proposed paragraph (d)(2) would designate the Regional Forester as the responsible official for interim amendments, unless such authority is reserved by the Chief. Placing approval authority at the Regional Forester level should help to ensure that interim amendments are used and developed in a consistent manner and that they are not used when the needed changes can be made within the normal amendment process.

Paragraph (d)(3) describes the requirements for public notice of an interim amendment and the information that must be disclosed at the time an interim amendment is issued.

Paragraph (d)(4) establishes an explicit finding that an environmental impact statement is not required for interim amendment. Any change to a forest plan made by interim amendment will be limited in scope and duration and made only to respond to catastrophic events or to ensure resource protection. Given the limited circumstances where it could be used, an interim amendment would never meet the criteria for preparing an EIS as required by NEPA procedures. Nothing in paragraph (d)(4) would limit the preparation of an environmental assessment for an interim amendment.

As specified in paragraph (d)(5), the effective date for interim amendments is the eighth calendar day after legal notice of the decision is published in a newspaper of general circulation or, if the Chief is the responsible official, in the Federal Register.

Paragraph (d)(6) provides for a 45-day comment period starting upon issuance of legal notice of the interim amendment. Unlike most comment periods which occur prior to making a

decision, this 45-day comment period would occur after the interim amendment is in effect. Based on the comments received, the responsible official may decide to modify the interim amendment or have it remain in effect unchanged. Under either circumstance, the public must be notified and rationale provided. Since an interim amendment is designed to respond to those circumstances where a quick change is necessary, it is not reasonable to delay issuance of the interim amendment until a comment period can occur. However, the provision of paragraph (d)(6) assures the opportunity to public review and comment as soon as possible, provides the responsible official an opportunity to change the interim amendment in a timely manner based on those comments, and ensures that the public is notified of whether the interim amendment is retained without change or is modified and why.

The duration of an interim amendment would be limited by paragraph (d)(7) to two years. If an interim amendment has not been superseded by an approved amendment or revision within two years, the responsible official would have the option of reissuing the interim amendment or issuing a modified interim amendment. Under such circumstances, all of the limitations and notice and comment requirements for use of interim amendments would still apply. This limit on the duration of an interim amendment is intended to assure that direction established using these procedures is indeed interim in nature.

Paragraph (d)(8) would expressly prohibit including an interim amendment in a decision document for a specific project. As discussed, the provisions of § 219.9(c)(5) address those circumstances where a forest plan needs to be amended to permit one specific project.

Paragraph (d)(9) would make clear that under 36 CFR part 217 an interim amendment is not subject to administrative appeal. Since neither the existing planning rule nor the appeals rule address interim amendments, a conforming amendment to 36 CFR part 217 is proposed to exclude interim amendments from the administrative appeals process. Such an exclusion is appropriate due to the short duration of an interim amendment and the circumstances for its use. The 45-day public comment period should provide an effective way for the public and other government entities to communicate with the responsible official about any potential concerns.

Paragraph (e) would permit nondiscretionary changes to forest plan direction under specified circumstances. There is no similar provision in the existing rule. This provision would allow forest plan direction to be changed without completion of the more rigorous amendment and public comment procedures when the change is needed to comply with a law or regulation and the agency has no discretion in the manner in which it complies. Under such a circumstance, NEPA procedures would not need to be completed and there would be no public comment period. However, the public would be given notice through the annual monitoring and evaluation report that such changes had been made. Examples of such nondiscretionary changes include designating an area as wilderness after passage of wilderness legislation. Paragraph (f) would make clear that the Forest Supervisor may, at any time, make certain changes to a forest plan without amendment procedures. Such changes would be identified in the monitoring and evaluation report. Circumstances allowing such an approach include when changes do not alter forest plan management direction or when the changes are non-substantive in nature, such as correcting typographical errors.

In addition, corrections to maps which delineate where a management prescription is applied can be made without amendment, provided such changes are due to improved on-the-ground information about the condition to which the management prescription was described to apply. For example, if a management prescription were to apply to all areas visible from a scenic highway but the visible area had not been precisely mapped, the mapped boundaries of where the prescription would apply could be adjusted after a detailed field survey is completed. It is essential that the forest plan state that the prescription is intended to apply to the visible area, however, so that it is clear what attributes the land must have if the map is to be changed in this manner. If, for example, the prescription were to be extended to apply to lands other than those visible from the scenic highway, amendment procedures would have to be followed.

#### *Section 219.10 Forest Plan Revision*

This section would significantly revise the procedures for forest plan revision. The existing rule (§ 219.12) requires the agency to use the same process for forest plan revision as for developing initial forest plans. The

proposed rule offers a new process specifically tailored to revision.

Proposed paragraph (a) retains the provision of the existing rule that revision of a forest plan should occur about every 10 years, and no later than 15 years, after approval of the original plan or latest plan revision.

Additionally, revisions must occur whenever conditions over most or all of the plan area have changed significantly, for example, to address catastrophic events that have substantially altered resource conditions over most or all of the plan area. These criteria for initiating revisions are based on requirements of Section 6(f)(5) of the National Forest Management Act.

Proposed paragraph (b) would designate the Regional Forester as the responsible official for revision, as is the case in the existing rule.

Proposed paragraph (c)(1)(i) would establish an important new element—the prerevision review of a forest plan, which would be conducted prior to initiating scoping. The purpose of the prerevision review is to identify changed conditions and/or other new information which appear to indicate a need to change direction in the current plan using the results of monitoring and evaluation.

This requirement for a prerevision review is somewhat comparable to the requirement in the existing rule for completing an Analysis of the Management Situation (hereafter, AMS) (§ 219.12(e)), but there are some important differences. The main similarity is that both the AMS and the proposed prerevision review culminate in a determination of the need to change direction in the forest plan. However, a key difference between the AMS and prerevision review is the source of the information and type of analysis required for making such determinations. The existing rule imposes extensive analytical requirements to be met when developing the AMS. As explained earlier in the preamble discussion for proposed § 219.8, these analyses have not always proven relevant to the local situation or helpful to decisionmakers. In fact, the existing requirements have often diverted time and energy from more critical analyses needed for decisionmaking.

In contrast, the proposed rule focuses on using the results of monitoring and evaluation of making such determinations. As part of the prerevision review, the Regional Forester would be responsible for reviewing the cumulative results of monitoring and evaluation, as well as conducting whatever associated analysis

is needed in order to propose the scope of the revision process. In some cases, the type of analysis now required as part of the AMS may be appropriate. However, the proposed rule does not impose such specific analytical requirements; instead, the provisions of § 219.8 (Interdisciplinary teams and information needs) and § 219.12 (Monitoring and evaluation) provide sufficient guidance for obtaining appropriate information for the prerevision review.

Proposed paragraph (c)(2) would require the Forest Supervisor to formulate a communications strategy that describes how the public and other government entities may participate on an ongoing basis in both the prerevision review and revision process. As noted earlier in regard to proposed § 219.3, the agency is stressing the importance of building and maintaining strong relationships based on open and ongoing communication. One purpose of these communications efforts is to improve the information base on which decisions are based and to promote a shared understanding of the validity of this information (see § 219.3(a)(3)). Proposed § 219.10(c)(2) is specifically designed to help achieve these aims by encouraging the public to be involved while these initial prerevision analyses are occurring and data is being gathered in addition to involvement during the revision process itself.

By participating in the prerevision review, the public and other government entities will have an opportunity to see the data and analytical methods being developed for the revision and to provide improved information or suggest better approaches. This should enhance public confidence in the data and analysis upon which decisions about revising the forest plan will be made. The results of the prerevision review provide the basis for the Notice of Intent to revise the forest plan and to prepare an environmental impact statement for the revision. The prerevision review also provides the public with a thorough analysis of monitoring and evaluation results, and identifies the direction in the forest plan that the Regional Forester believes may need to be changed.

Paragraph (c)(2)(i) would require a meeting with interested representatives of other Federal agencies and State, local, and tribal governments in order to establish procedures for coordination and ongoing communication. These provisions reflect the importance which the Forest Service places on establishing a strong working relationship with other agencies and governments as well as on

coordinating with them during the prerevision review and revision process.

Paragraph (c)(2)(ii) would provide the public and representatives of other government entities the opportunity to express their ideas and suggestions on the communications strategy as it is being formulated. There is no comparable requirement in the existing rule, and this approach is not commonly practiced within the agency now. This new requirement is intended to greatly improve the effectiveness of public involvement efforts during revision. By providing the public an opportunity to comment on how to develop the communications strategy, involvement efforts should be more responsive to public needs and desires, better timed to assure that the public is involved at those points in the process of most interest, and better suited to facilitating the type of interaction, mutual understanding, and commitment necessary for success.

Paragraph (c)(2)(iii) would assure that those who are on the mailing list described at § 219.3(b) are notified of the prerevision review and formulation of the communications strategy.

Paragraph (d) addresses scoping, which is required by NEPA procedures and is undertaken to identify important issues and determine the extent of analysis necessary for an informed decision on a proposed action. Scoping is used not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, thus narrowing the scope of the environmental impact statement accordingly (40 CFR 1500.4(g)). A Notice of Intent to revise a forest plan would be issued in the Federal Register, with a 60-day comment period. The Notice would serve to notify the public of the start of the revision process and would provide information on the anticipated scope of the effort. The Notice would also identify opportunities for public involvement in the revision process.

This process for initiating forest plan revision is a substantial improvement over the existing rule, providing more and better information to the public for use in commenting on the scope of the revision process. In the existing rule, the process for forest plan revision starts from ground zero, repeating the same steps used for developing initial forest plans. Under this current approach, the revision process assumes that the "slate has been wiped clean;" that is, that no forest plan currently exists and that there is little information available from which to launch the revision effort.

In contrast, the proposed rule recognizes that substantial information

regarding the adequacy of the forest plan already exists as a result of monitoring and evaluation. Just as importantly, the proposed rule provides for making this information available to the public during the scoping process so that the public has the best possible information upon which to base its comments regarding the scope of the revision effort.

Proposed paragraphs (d)(2)(i)–(iii) identify three actions that the Forest Supervisor would be required to take at the time of issuing the Notice of Intent:

- (1) giving notice to those on the mailing list required at § 219.3(b);
- (2) giving more general notice through a press release; and
- (3) promoting activities to foster ongoing participation in the revision process pursuant to the communications strategy.

Proposed paragraph (e) specifies four required elements of the revision process:

- (1) Review of the identification of lands suited and not suited for timber production;
- (2) Evaluation of roadless areas for wilderness designation;
- (3) Evaluation of rivers for eligibility as wild, scenic, or recreation rivers under specified circumstances; and
- (4) Update of the appendix information displaying projected levels of goods and services and management activities for the next decade, as required by § 219.11(d)(1). These four requirements, along with the requirements of § 219.10(c), are the main factors which distinguish forest plan revision from major amendment.

Paragraph (f) would require that a draft EIS be prepared for a proposed forest plan revision. Unlike the existing rule, the proposed rule would not provide additional guidance on how to develop or evaluate alternatives. Rather, the range of alternatives would be developed in accordance with NEPA procedures. Although it is possible that the agency may decide to supplement NEPA procedures to address the unique needs of draft EIS's associated with forest plan revisions, such detailed instructions would be appropriately issued through the Directive System, rather than in a regulation.

Paragraph (g) describes procedural requirements for public notice and comment on the proposed revised forest plan, draft EIS, and draft monitoring and evaluation strategy. These provisions are designed to comply with the requirements of Section 6(d) of NFMA.

Paragraph (h) defines the role of the Regional Forester in overseeing preparation of the final EIS and revised

forest plan and also directs that preparation of the final EIS and record of decision be prepared and made public in accordance with NEPA procedures.

Approval of the final plan and determination of the effective date is addressed in proposed § 219.10(i). The final revised forest plan would become effective 30 days after public notice, as required by Section 6(j) of NFMA. Notice of a decision to revise a forest plan must be provided in accordance with 36 CFR part 217, the regulation that guides the process for administrative appeals of forest plans.

#### *Section 219.11 Forest Plan Implementation*

Section 6(i) of NFMA requires resource plans, permits, contracts, and other instruments for use and occupancy of National Forest System lands to be consistent with forest plans. This section describes how a determination of consistency is made at the time of project approval, prior to issuing permits or contracts to implement a project decision, as well as how consistency is maintained after forest plan amendments or revisions. This section also provides other direction relevant to forest plan implementation.

Proposed § 219.11(a) describes how the agency would determine project consistency. A determination of consistency with the forest plan would be based on whether a project adheres to forest plan standards, and this determination must be documented at the time of project approval.

Paragraphs (a)(1)–(3) list the options available to a responsible official when faced with a project proposal inconsistent with the forest plan. The options are to: modify the proposal to make it consistent with the plan; reject the proposal, or amend the forest plan to permit the proposal.

Paragraphs (a)(1)–(3) reflect the key role that forest plan standards would play under the proposed rule. As noted earlier in the discussion of proposed § 219.6, standards would be the one component of forest plan direction to which adherence would be mandatory. Unlike goals, objectives, or guidelines, standards define the limitations within which project activities must occur and are limited to those constraints within the agency's authority or ability to enforce. As a result, individual projects can be readily assessed for their compliance with standards.

By contrast, achievement of forest plan goals and objectives would typically be dependent on the cumulative results of individually

authorized projects and, in some cases, naturally occurring changes over time. The impact of any specific project on achievement of a goal or objective could be difficult to measure. Monitoring and evaluation is a more meaningful way to account for progress towards goals and objectives than using forest plan goals or objectives in project consistency determinations.

Likewise, project consistency determinations would not be based on guidelines. Guidelines describe a preferred or advisable course of action. Therefore, it would be counter to their intended role if they were used in determining project consistency. In addition, it would be difficult to assess on a project-by-project basis whether a project was consistent with those guidelines that describe specific resource conditions desirable to achieve, just as was the case with forest plan goals.

Paragraph (b) would require that permits, contracts, and other instruments issued or approved for use and occupancy of National Forest System lands be consistent with standards in the forest plan in effect at the time of their issuance. Also, subject to valid existing rights, they must be revised as soon as practicable after a forest plan is amended or revised, if necessary, to be made consistent with the forest plan. Both of these provisions are based on requirements of NFMA (Section 6(i)) and are similar to provisions of the existing rule (§ 219.10(e)), with the exception that the proposed rule would expand this requirement to include amendment as well as revision.

Paragraph (c) would fill an omission existing in the current rule by making clear that an approved forest plan remains in effect until approval of an amendment or revision. The question of the status of forest plans undergoing amendment or revision has arisen often and would be answered definitively by this paragraph.

Paragraph (d) would address possible actions during the plan period. Paragraph (d)(1) would require that a display be included in a forest plan appendix predicting the major goods and services which may be produced, as well as the management activities which may occur during the plan period. Rather than displaying this information as precise figures, paragraph (d)(1)(i) would provide for this information to be expressed in terms of ranges reflecting, when practicable and meaningful, some of the variables most likely to affect actual accomplishment.

Paragraph (d)(1)(ii) would allow a display of the rate of achieving desired

resource conditions identified by forest plan objectives. Once again, this prediction would reflect, to the extent practicable and meaningful, some of the variables most likely to affect achievement. This would not be a required display, but it may be a useful tool for showing how long it would take to achieve the resource conditions envisioned in the forest plan.

Paragraph (d)(1)(iii) would clarify that the information in the displays described at paragraph (d)(1)(i)-(ii) is not forest plan direction and does not compel the agency to take any action.

Paragraph (d)(2) would require periodic updates of the estimated levels of goods and services and management activities, but provides for the intervals and timeframes to be determined as appropriate. It is the agency's intent to utilize information from other ongoing agency efforts rather than requiring the preparation of new or additional information exclusively for the purposes of these updates. Therefore, the agency believes it is important to retain the flexibility to adjust the intervals and timeframes for which these estimates are provided in order to keep synchronized with whatever agency procedures can be most efficiently utilized. Development of these estimates does not require NEPA analysis.

#### *Section 219.12 Monitoring and Evaluation*

This section is designed to greatly strengthen the role of monitoring and evaluation and contains several changes from the approach taken in the existing rule. The agency believes an expanded and strengthened role for monitoring and evaluation is a cornerstone for implementing the proposed rule and making adaptive resource management a reality for National Forest System lands.

Paragraph (a) would establish the Forest Supervisor's responsibility to conduct monitoring and evaluation and would require development of a monitoring and evaluation strategy. This strategy would be prepared by the Forest Supervisor simultaneously with revision of a forest plan. In contrast to the existing rule, which provides for monitoring and evaluation to be addressed in the forest plan, the proposed rule would address monitoring and evaluation in a companion strategy document, and it would not be part of the forest plan. Paragraph (a) would also clarify that the strategy does not require NEPA analysis. However, monitoring and evaluation activities are subject to NEPA procedures at the time of implementation.

There are several reasons the agency is proposing to address monitoring and evaluation in a companion document. First, the requirement to develop a companion document should give considerably more emphasis to monitoring and evaluation than at present and should promote greater recognition of monitoring and evaluation as a critical and integrated aspect of National Forest System management. As the first generation of forest plans is facing revision and with the agency shifting to an ecosystem management approach, monitoring and evaluation is receiving greatly increased emphasis within the agency, and considerably more effort is being invested in developing well-designed and coordinated monitoring and evaluation procedures.

The agency also anticipates much more emphasis on joint monitoring with other agencies, coordination of monitoring efforts across plan area boundaries, and a shift from a forest-by-forest approach to a corporate approach to monitoring and evaluation activities. All of this will likely require a document that more easily allows for an expanded length and different formats from what is typically found in most forest plans now. Establishing a separate document for addressing monitoring and evaluation activities allows more flexibility in how all of this information can be aggregated and organized. Given the rapidly expanding technologies and knowledge associated with monitoring and evaluation, it is especially desirable so that the most effective means can be found for structuring and displaying relevant information.

Finally, separating the monitoring and evaluation strategy from decisions in the forest plan should help to streamline the forest plan. The Critique of Land Management Planning revealed that the public wants shorter forest plans, and the agency agrees this is desirable. Yet, circumstances could occur where the length of the monitoring and evaluation strategy could approach the length of the forest plan itself, depending on the monitoring and evaluation format used and the amount of information incorporated from other sources. Therefore, rather than adding to the size of forest plans or creating a disincentive to include all relevant or useful information for monitoring and evaluation in order to keep the forest plan at a manageable size, the agency believes it is appropriate to treat monitoring and evaluation information in a companion document.

In addition to addressing monitoring and evaluation in a companion

document, the proposed rule would make clear that the monitoring and evaluation strategy is not considered forest plan direction. There are distinct differences between forest plan direction and the information in a monitoring and evaluation strategy. Unlike the forest plan direction described at § 219.6 (goals, objectives, standards, and guidelines), monitoring and evaluation strategies do not address how to manage resources. Rather than guiding how to manage resources, these strategies guide how to determine if resource management activities are resulting in the outcomes expected. In essence, they are part of the quality control process for implementing the forest plan.

The exclusion of monitoring and evaluation from forest plan direction creates two particularly notable changes. First, updates to the monitoring and evaluation strategy would not be subject to procedures for forest plan amendment. This exclusion is logical because, as provided at proposed § 219.12(a), the strategy does not require NEPA analysis, yet the amendment process is focused on evaluating alternatives following NEPA procedures. However, a second important aspect of amendment procedures is the requirement for a public comment period. In order to assure that the public has an opportunity to comment on updates to the monitoring and evaluation strategy, the proposed rule would require a 30-day comment period.

The second notable change is that the strategy would not be subject to administrative appeal. The monitoring and evaluation strategy does not make decisions about how resources will be managed, but rather establishes procedures for assessing the effects of the forest plan. Although the agency has received hundreds of appeals on forest plans, very few of them involve monitoring and evaluation. Considering the nature of a monitoring and evaluation strategy and the emphasis in the rule on assuring on-going communication and accountability for monitoring and evaluation, the appeals process does not appear to be the most appropriate or effective means for addressing monitoring and evaluation issues.

The proposed rule has established numerous safeguards to assure the agency's accountability for monitoring and evaluation. Some of these include: public review and comment on the strategy at the time of revision (§ 219.12(b)(1)); public comment on proposed updates to the strategy (§ 219.12(c)(2)); public notification of

updates to the strategy in the annual monitoring and evaluation report (§ 219.12(e)(5)); involvement of the applicable Station Director in the development and implementation of monitoring and evaluation strategies (§ 219.12(d)(3)); and the availability of an annual monitoring and evaluation report for public review (§ 219.12(e)). In addition, § 219.12(d)(1) and § 219.3 promote ongoing involvement and communication with the public and other agencies and governments throughout all phases of resource planning and management, including monitoring and evaluation.

Beyond establishing the monitoring and evaluation strategy as a companion document not subject to administrative appeal, paragraph (a) of proposed § 219.12 also would address NEPA responsibilities related to monitoring and evaluation. The monitoring and evaluation strategy does not require NEPA analysis because it does not contain any resource decisions. It is an operational guide that identifies techniques and procedures for gathering relevant information; it does not compel any specific action or prohibit any action. Therefore, due to the nature of the information it contains, the criteria for undertaking NEPA analysis and disclosure are not met and no NEPA documentation is required.

In contrast to the monitoring and evaluation strategy, actual monitoring and evaluation activities are subject to NEPA procedures at the time of implementation. For example, if water quality monitoring activities involve placing instrumentation in a stream or require helicopter access into a remote mountain lake to collect water samples, the environmental effects of such activities would have to be considered. In most cases, monitoring and evaluation activities are categorical exclusions under 7 CFR 1.b(3), which clearly excludes "inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in scope and intensity." Such an exclusion does not apply, however, if extraordinary circumstances exist. Extraordinary circumstances might encompass monitoring and evaluation activities affecting such features as inventoried roadless areas, wetlands, Native American religious sites, and Congressionally designated areas (FSH 1909.15, Sec. 30.3, para. 2).

Proposed paragraph (a)(1) lists the types of instructions provided in a monitoring and evaluation strategy and expands the role of monitoring and evaluation from that in the existing rule. Under paragraphs (a)(1) (i) and (ii), the

monitoring and evaluation strategy would provide guidance to make sure that projects are being implemented in accordance with the project decision document, and that progress is being made toward achieving plan goals. Since forest plan goals normally are not expressed in quantitative terms, the rule would require that measurable indicators be used to assess achievement. In many cases, those measurable indicators will be desired resource conditions defined by objectives.

Proposed paragraph (a)(1)(iii) links the monitoring and evaluation strategy for the plan area to monitoring and evaluation efforts needed at scales larger than the plan area. This is a key new concept and reflects how much of the coordination required of the Regional Forester at paragraph (d)(2) of this section will be integrated into forest activities. Proposed paragraph (a)(1)(iv) recognizes that an important role of the monitoring and evaluation strategy is to provide for validating the assumptions upon which plan decisions were based and verifying the accuracy of the predicted effects.

Proposed paragraphs (a)(1) (v)–(x) substantially expand the role of monitoring and evaluation beyond what is required by the existing rule. Under proposed paragraph (a)(1)(v), the monitoring and evaluation strategy would include setting priorities for monitoring and evaluation efforts, and it specifies that the highest priority for monitoring and evaluation is those activities believed to have the greatest potential risk to the environment.

Proposed provision (a)(1)(vi) would require the monitoring and evaluation strategy to address compilation of information to serve as reference points for future evaluations. Similarly, paragraph (a)(1)(vii) would direct that monitoring and evaluation be used to determine if new information exists which substantially affects the validity of the forest plan, such as changes in legal requirements, shifting social or economic trends, new scientific information, or findings resulting from ecosystem analyses. This deliberate outreach for new information is not generally recognized as part of monitoring and evaluation under the existing rule.

Paragraph (a)(1)(viii) would expand the role of monitoring to include the storage and dissemination of information for use in the budget formulation process. A major source of this type of information is expected to be various ecosystem analyses, as well as information being gathered from various other sources. Although storing

and disseminating such information is a vital function, its importance is not always recognized.

Tracking goods and services provided and management activities conducted, as would be required at paragraph (a)(1)(ix), is traditionally associated with monitoring and evaluation. The final item, identifying problems and opportunities for resolution, is not traditionally considered part of monitoring and evaluation. Under the proposed rule, however, such efforts would be considered as part of monitoring and evaluation and are considered an integral and critical step whereby the monitoring and evaluation results are synthesized into a clear problem statement and evaluation of opportunities for solution.

The decision as to whether a forest plan needs to be amended or revised is a separate step and not included within the role of monitoring and evaluation. Monitoring and evaluation only goes as far as providing the information which defines the problem and which describes opportunities for solution. The subsequent determination as to whether an amendment or revision is triggered is based on the information provided through monitoring and evaluation. This determination is made available to the public in the annual monitoring and evaluation report that would be required by paragraph (e) of this proposed section.

Paragraph (a)(2) provides additional instructions for developing monitoring and evaluation strategies. The proposed rule would make clear that strategies should be realistic and practicable to implement and should recognize possible fluctuations in funding. This paragraph also would assure that monitoring and evaluation efforts are designed at appropriate spatial scales and for appropriate timeframes.

The agency recognizes that there will always be limitations on the funds and staff available to conduct monitoring and evaluation. One approach for enhancing efficiency is to assure that efforts are designed at the appropriate scales for appropriate timeframes. This will require close coordination of effort and careful planning, but such coordination is essential to prevent redundant efforts and to maximize the results obtained with limited funding.

The provision of paragraph (a)(2) to recognize funding limitations is one of three provisions in this section which work together to address the issue of funding. The first provision is (a)(1)(v), which would require that priorities be set for monitoring and evaluation efforts in the strategy in order to identify monitoring and evaluation efforts

associated with the management activities having the greatest potential risk to the environment. The second is paragraph (a)(2), which would direct monitoring and evaluation strategies to be designed recognizing that the type and intensity of efforts may need to vary depending on the availability of funds. The third related provision is paragraph (a)(3), which would require that, when funds are limited, the highest priority monitoring and evaluation activities be implemented first.

Proposed paragraph (b) would require that the monitoring and evaluation strategy be available for public review and comment along with the proposed revised forest plan. This assures the public an opportunity to review the strategy at the time of revision just as would have been the case if it were contained in the forest plan. An important safeguard for ensuring that a timely monitoring and evaluation strategy is developed is the prohibition against approving a revised forest plan prior to approval of the monitoring and evaluation strategy. This provision would assure that there is no delay between finalizing a revised forest plan and having an approved monitoring and evaluation strategy. Finally, Station Director concurrence would be required when approving the strategy. This provision would help ensure that the monitoring and evaluation strategy is scientifically sound and would promote the involvement of the scientific community in development of these strategies.

Proposed paragraph (c)(1) provides that updates may occur as needed and lists circumstances which might trigger an update. Proposed § 219.12(c)(2) would make the Forest Supervisor responsible for updating monitoring and evaluation strategies as needed and would make clear that such updates do not require NEPA analysis. As previously noted, paragraph (c)(2) would require a 30-day period for public review and comment on proposed updates to a monitoring and evaluation strategy.

Proposed paragraph (d)(1) would promote coordination of monitoring and evaluation efforts, to the extent feasible, with other Federal agencies, State, local, and tribal governments, interested private landowners, the scientific community, and other interested parties. Such coordination offers opportunities to enhance open and ongoing communication, improve the information base for decisionmaking, reduce costs through shared efforts, and promote an ecological approach to resource management across jurisdictional boundaries.

Paragraph (d)(2) would require the Regional Forester to be responsible for assuring that monitoring and evaluation needs which extend beyond a plan area are addressed and coordinated. This expands the role of the Regional Forester from that in the existing rule and clearly establishes the agency's intent to address monitoring and evaluation efforts at whatever scale is appropriate, rather than focusing on efforts within a plan area simply because monitoring and evaluation procedures have historically been forest plan decisions. The proposed rule intentionally would not provide detailed instructions on how this coordination is to be accomplished since the agency has not had extensive experience addressing monitoring and evaluation procedures at this scale and flexibility is needed in order to determine the best way to approach this task.

Paragraph (d)(3) would create an integral and ongoing role for Forest Service research personnel in all phases of monitoring and evaluation. The intent is to provide a sound scientific basis for all monitoring and evaluation activities and to help promote interaction between researchers and land managers. Because the paragraph directs that research personnel should be involved in monitoring and evaluation to the extent practicable, there is recognition that there will be limits to the extent research staff are available for such efforts.

Paragraph (e) of proposed § 219.12 requires the Forest Supervisor to prepare an annual monitoring and evaluation report to be made available to the public, as well as transmitted to the Regional Forester and Station Director. This provision is intended to increase the accountability of the agency for conducting monitoring and evaluation and to enhance communication and involvement of the public. The seven items which would be included in the report assure that the public, Regional Forester, and Station Director are aware of the results of monitoring and evaluation efforts, the implications such results have for needing to change the plan or how it is being implemented, and any changes which have occurred during the year to the plan or monitoring and evaluation strategy.

Paragraph (f) would limit implementation of projects if funds for associated monitoring and evaluation activities are not reasonably expected to be available. There is no comparable requirement in the existing rule. This represents another means by which the agency intends to increase its

commitment to accomplishing monitoring and evaluation efforts. This limitation applies to those monitoring and evaluation activities specifically identified in a decision document associated with authorizing a site-specific project. In addition to assuring that monitoring and evaluation needs are considered at the time of project implementation, this provision should be an incentive to improve the manner in which monitoring and evaluation costs are integrated into project planning.

The final paragraph of this section would make clear that none of the requirements for conducting and reporting on monitoring and evaluation preclude initiating an amendment or revision at any time.

#### *Section 219.13 Statutory Timber Management Requirements*

This section describes those statutory planning requirements that affect the management and harvest of timber on National Forest System lands. Although most of the provisions of this section are directly responsive to specific requirements of NFMA, a few are discretionary. Those of a discretionary nature are identified in this preamble.

With the agency's emphasis on integrating consideration of resources as part of ecosystem management, devoting an entire section of the proposed rule to the timber resource may seem inconsistent to many reviewers. The attention given to timber in this section, while possibly appearing to be out-of-balance with other resources, is generally the minimum needed to respond to the highly prescriptive requirements for timber management in NFMA. Enacted largely in response to timber-related issues in the mid-1970's, NFMA contains extensive specific direction regarding management of timber resources, much more so than for any other resource.

Proposed § 219.13(a) addresses reviews of timber suitability determinations. Section 6(k) of NFMA requires that lands not suited for timber production be identified in forest plans. Paragraphs (a) through (c) of this section address compliance with Section 6(k) of NFMA.

Proposed paragraph (a)(1) would address the NFMA requirement for the 10-year suitability review, and states that the 10-year review should normally occur as part of the revision process. When done as part of the revision process, the entire land base would be considered. In some case, however, it is possible that revision will not have occurred by the time the 10-year period has elapsed. In these cases, proposed

paragraph (a)(1) would require the 10-year review to consider only the unsuitable lands, with all lands reviewed later at the time of revision.

Although the statute does not require a review of the timber suitability determination for all lands at the time of revision, the agency believes it is appropriate to do so. This comprehensive review will assure that suitable lands are considered for possible reallocation to the unsuited land base rather than focusing only on whether unsuited lands should remain so designated. Proposed paragraph (a)(3) would clarify that the determination of timber suitability may be changed at any time through forest plan amendment.

Proposed § 219.13(b)(1) would direct that unsuited lands have a fixed location and that they should be identifiable on maps or by other readily recognizable means. This provision aims to assure that these lands can be located during project planning and is also intended to facilitate the 10-year review of unsuited lands. One of the problems with the current approach is that unsuited lands are sometimes designated on a forest-wide basis rather than identified with a specific location. For example, 20,000 acres out of a total of 55,000 acres of a particular forest type may have been determined to be unsuited lands, but there is no delineation of which lands within the total are to be treated as unsuited. The location of the unsuited land will be clear if this proposed provision is adopted.

Paragraph (b)(2) would require that management prescriptions be established to ensure that unsuited lands are managed in accordance with the three provisions of the proposed rule which are applicable to them. These include the requirement to limit timber harvesting except for salvage sales or other sales necessitated to protect other multiple-use values (§ 219.13(b)(4)), the provision to continue to reforest unsuited lands (§ 219.13(b)(5)), and the provision to allow exceptions to the five-year reforestation requirement when long-term openings are needed (§ 219.13(b)(3)(v)(B)). All three of these provisions are in response to requirements of NFMA.

Paragraph (b)(3) describes the five types of lands that are not suited for timber production. The first type is lands which have been withdrawn from harvest by an Act of Congress, the Secretary of Agriculture, or the Chief of the Forest Service. This is comparable to the requirement at § 219.14(1)(a)(4) of the existing rule.

The second exclusion is lands on which timber harvesting would violate statute, Executive order, or regulation. The third requirement would continue the exclusion of non-forested land, as is currently provided in § 219.14(a)(1) of the existing rule.

The fourth exclusion would be those lands where technology is not available for conducting timber harvesting without irreversible damage to soil and watershed conditions. This parallels a requirement at Section 6(g)(2)(E)(i) of NFMA and § 219.14(a)(2) in the existing rule.

The final exclusion would be those lands where there is not a reasonable assurance of adequate reforestation within five years after timber harvest. This parallels the requirement at Section 6(g)(2)(e)(ii) of NFMA and § 219.14(a)(3) of the existing rule. The proposed rule defines the five year period after final timber harvest to mean five years after clearcutting, after the last overstory removal of a shelterwood or seed tree cutting, or after selection cutting. In shelterwood or seed tree cuts, the entire existing overstory may never be removed, as trees may be left to provide for other considerations. Therefore, the time period begins when the last planned overstory removal is conducted. In selection cutting, the stand is left stocked with trees of varying age and size classes.

There are two supplemental provisions associated with the five-year reforestation criterion. First, the rule specifies that research and experience are the basis for determining a reasonable assurance of restocking. Secondly, the five-year reforestation requirement would not prohibit creating openings for long-term purposes, such as wildlife habitat improvements, scenic vistas, recreation sites, or other similar uses.

Proposed paragraph (b)(4) would permit harvest from unsuitable lands only for salvage sales or sales necessitated to protect other multiple-use values. This requirement is based on the provisions of Section 6(k) of NFMA.

Proposed paragraph (b)(5) would affirm that lands not suited for timber production will continue to receive reforestation treatments to protect other multiple-use values as required by Section 6(k) of NFMA.

Proposed paragraph (b)(6) would explicitly provide that the unsuited land base should not vary among the alternatives at the time of forest plan revision. This requirement is a major change from the existing regulation, and provides a good focal point for comparing differences in the

determination of suitability under the proposed rule and the existing rule.

The existing rule essentially has a three-step process. The first step in the existing rule is closely paralleled in the proposed rule, but the other two are not.

The first step, described at § 219.14(a) of the existing rule, defines four screening criteria fairly comparable to the six criteria described in the proposed rule. Thus, under the proposed rule, the unsuited land base would be quite similar to the land base identified as unsuited under the first screening step of the existing rule. This screening step does not differ substantially between alternatives, because the criteria are based on conditions or attributes which remain constant even if management objectives vary.

The second step of the existing rule (§ 219.14(b)) requires an analysis which stratifies those lands not identified as unsuited in the first step. The stratification identifies lands with similar management costs and returns. Consistent with the intent of § 219.8(b) to reduce standardized analysis requirements, there is no comparable requirement in the proposed rule.

The third step in the existing rule (§ 219.14 (c) and (d)) screens lands out of the suitable land base based on the objectives of each alternative. More specifically, lands would be considered not suited for timber production if the multiple-use objectives for the alternative precluded timber production, if other management objectives imposed such limitations on timber harvest that requirements of § 219.27 could not be met, or if the lands were not cost-efficient over the planning horizon in meeting forest objectives.

This third step in the existing rule is also not paralleled in the process for identifying unsuited lands under the proposed rule. The proposed rule would address considerations comparable to the third step in the existing rule at paragraph (c), which would make clear that forest plan standards may be imposed on suited lands to prohibit or limit timber harvesting. Economic considerations or an allocation of land to uses incompatible with timber harvesting would be examples of reasons for imposing such standards on suited lands. In essence, paragraph (c) is fairly comparable to the third step of the process under the existing rule, except that paragraph (c) would limit harvesting by imposing standards on the suited land base rather than declaring those lands to be unsuited for timber production.

In association with the change in determining unsuitable lands, the proposed rule would alter the land base for calculating the allowable sale quantity (ASQ) from that used in the existing rule. In the existing rule, the entire suitable land base is used in calculating the ASQ. Under the proposed rule, as described at § 219.13(d)(1)(i), only those suited lands on which planned periodic entry for timber is allowed over time would be included in ASQ calculations; i.e., if standards have been imposed which are incompatible with timber harvesting over the long-term, then those lands are excluded from the land base used to calculate the ASQ. For example, if a corridor along a scenic hiking trail is allocated to a prescription that does not allow timber harvesting in order to protect scenic values, then the lands would be in the suited land base but would not be included in ASQ calculations.

It is noteworthy that the proposed rule would limit the land base for ASQ calculations to those lands available for planned periodic entries. Lands would not be included in the ASQ calculations if only a one-time harvest were planned but not planned periodic entries. For example, if a salvage harvest was planned to occur during the plan period in an area where harvest would not otherwise occur nor be planned for future decades, then those lands would be excluded from ASQ calculations.

Another notable change between the existing rule and proposed rule as related to timber suitability is the rule of economics. In contrast to the existing rule which addresses the economics of harvesting as part of the timber suitability determination, the proposed rule would address the economics of harvesting in the forest plan through establishment of forest plan standards or guidelines.

Section 6(k) of NFMA states that unsuitable lands are to be identified “\* \* \* considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary \* \* \*” Although the agency agrees that economics is an important consideration in determining whether lands should be harvested, experience has proven that it is not feasible to effectively factor in economics as part of the 10-year timber suitability determination. Therefore, in light of the latitude provided by NFMA, the agency is proposing to address economic considerations by means other than the timber suitability process.

There are various reasons for this change. First, economic conditions fluctuate greatly during the course of a

plan period. One year a certain area of land or species may be uneconomic to harvest, and another year market conditions may have changed to where the same area or species would be greatly in demand. This makes it difficult to meaningfully assess the economics of harvesting a particular site over a 10-year period.

Also, it is generally accepted that the net value of the timber sale program must be considered as a whole rather than by only evaluating individual timber sales in isolation, since some sales of low value are offset by other higher value sales. The timber program also must be viewed with consideration of non-market contributions, such as enhanced hunting use, and not strictly timber sale costs and receipts. These considerations further add to the difficulty of using the process for identifying unsuited lands in forest plans as an effective and timely means by which economic considerations are addressed.

In contrast to using timber suitability determinations to address economic considerations, the agency believes they can be adequately addressed through other means. For example, forest plan standards can be established to limit harvesting due to economic reasons. Therefore, if harvest limitations are deemed appropriate due to economics, the option exists to use them. In addition, economic considerations can be considered as part of the program development and budget process. This would allow timely adjustment of annual harvest programs, within the limitations imposed by forest plan standards, based on such factors as fluctuating economic conditions. Also, the economics of harvesting any particular site can be considered as part of the project decision to approve harvest of the area.

The agency believes there are four major advantages to the entire set of changes being proposed to the process for determining timber suitability. First, under the proposed rule, suitability determinations are much simpler and more efficient to conduct, and yet there is no compromise of the ability to exclude lands from timber harvest or from calculation of the ASQ. Secondly, the 10-year review will be completed more quickly, reducing the diversion of time and energy from revision efforts which are generally expected to be occurring at the same time. Third, it allows unsuited lands to be readily identifiable, making it easier for both the public and agency personnel to locate those lands when designing projects. Finally, it allows economic factors to be considered in a more

effective and timely manner while reducing an analysis step that has not proven highly beneficial.

In order to assure that the availability of lands for timber harvest is readily evident despite the proposed change in process for determining suitability, proposed paragraph (c) would require an appendix to display the number of acres of suitable lands where standards have been imposed prohibiting or limiting timber harvest as well as the number of acres where such limitations do not apply. This is not part of the suitability determination, but does provide information comparable to what is currently available in forest plans as part of the timber suitability information.

Proposed paragraph (d) addresses the allowable sale quantity and makes clear that the ASQ is neither a projection of future sale levels nor a target to be achieved. Although this position is well supported in case law, there has been widespread misunderstanding that the ASQ is a target level for timber production from a National Forest. The proposed rule would make clear this is not the case.

Proposed § 219.13(d)(1) sets out procedures for calculating the allowable sale quantity (ASQ). As stated at (d)(1)(i) of the proposed rule, the land base for ASQ calculations would be limited to suitable lands on which planned periodic timber harvest is allowed over time.

Paragraph (d)(1)(ii) explains the role of the long-term sustained yield timber capacity (LTSYTC) when calculating the ASQ. The LTSYTC is defined at § 219.2 and represents the highest uniform wood yield that may be sustained in perpetuity consistent with the forest plan.

Consistent with Section 13 of NFMA, the chargeable timber volume which can be sold for a decade cannot exceed the LTSYTC except where necessary to meet overall multiple-use objectives. An example of such a departure may be in the case of a forest having severe forest health problems, where accelerated silvicultural manipulations and accelerated timber harvest are critical to its ecological restoration.

Under the proposed rule, the land base for calculating the LTSYTC would be calculated using the same lands and forest plan standards used to determine the ASQ. Where two or more proclaimed National Forests are included in the forest plan, the proportionate contribution of each National Forest to the total ASQ for the plan area cannot exceed the LTSYTC for each corresponding proclaimed National Forest. In order to assure this

would not happen, a non-interchangeable component could be defined in accordance with (d)(3) of this section. This limitation on the chargeable volume that can be sold for a decade from a proclaimed National Forest does not apply where the proclaimed National Forest has fewer than 200,000 acres of land suited for timber production. These provisions are based on the requirements of Section 13 of NFMA, and do not vary from the existing situation, although the existing rule does not address this to the same degree of detail.

Paragraph (d)(1)(iii) would continue a non-declining flow requirement. When a new ASQ is determined, it may be higher, lower, or the same as the current ASQ. Such fluctuations might be caused by such factors as changes in the suitable land base, new standards, or revised timber growth and yield projections. However, whatever level is established for the decade of the plan must be capable of being sustained or increased during subsequent decades, with exceptions only to meet overall multiple-use goals. This limitation is intended to help assure that harvesting will not occur at so high a rate in the short-term that decline is inevitable in the future, unless such a decline is recognized as being necessary to meet multiple-use goals. An example of when such an exception might be appropriate would, once again, be in the case of a forest having severe health problems, where higher levels may be beneficial in the short-term in order to correct imbalances of the forest structure and promote ecological restoration, but with lower harvest levels planned once the restoration phase was complete.

Paragraph (d)(1)(iv) is a requirement of Section 6(g)(3)(D) of NFMA and would require that, when the ASQ is being recalculated, any predicted yields based on intensive management must be reduced if such practices have not been successfully implemented or adequate funds have not been received to continue substantially as planned. This statutory limitation is intended to help safeguard against over-estimating the ASQ due to faulty yield projections.

Paragraph (d)(2) would clarify that only the timber volume included in the growth and yield projections to determine the ASQ is chargeable to the ASQ. Excluded would be the volume from timber classes not included in the projections, such as merchantable dead timber.

Paragraph (d)(3) would allow for the establishment of non-interchangeable components (NIC's). NIC's allow for separating discrete quantities of the ASQ into individually accountable

categories. The proposed rule would stipulate that chargeable timber volume from one NIC cannot be substituted for the achievement of the volume limit of another NIC. In addition, such components would be required where management prescriptions for roadless areas allow planned periodic entries over time for timber harvest. Establishment of NIC's is not limited to roadless areas, however. On forests where the product or species mix is deemed important, the use of NIC's provides a means to maintain the intended balance.

The provision for roadless area NIC's is intended to help reduce the pressure to over-harvest areas outside of roadless areas if anticipated timber production from roadless areas does not materialize. Although the proposed rule would make clear at paragraph (d) of this section that the ASQ is not a target or projection of future harvest levels, this requirement to establish NIC's for roadless areas is intended to further reinforce this idea and to help to reduce erroneous expectations regarding the role of the ASQ. In addition, other forest plan standards serve to prevent over-harvesting anywhere in the plan area.

Paragraph (d)(4) addresses a provision of Section 13(b) of NFMA and clarifies that the ASQ may not be used to limit the harvesting of timber for salvage or sanitation purposes or for harvesting timber stands substantially damaged by fire, wind or other catastrophe, or which are in imminent danger from insect or disease attack. If such timber volume were included in the calculation of the ASQ, it may be substituted for timber volume that would otherwise have been sold under the plan. If the sanitation/salvage timber volume had not been included in the calculation of ASQ, or if it had and it is infeasible to substitute it for other volume, it can be sold over and above the ASQ.

Paragraph (e) responds to the requirements of Section 6(m) of NFMA and would require that all even-aged stands scheduled for harvest during the planning period will generally have reached the culmination of mean annual increment (CMAI) of growth unless certain listed exceptions apply. This paragraph is similar to the existing rule, except that any change to a forest plan to permit exceptions must be made through a major amendment or done at the time of plan revision (see § 219.9(b)(1)(iii)).

Proposed paragraph (f) would address the selection of cutting methods. It would make clear that the determination of the appropriate harvest method is to be made at the project level. This has been a source of

considerable confusion in the past, with many administrative appeals received by the agency questioning the adequacy of the analysis associated with a forest plan to support the selection of cutting methods. The proposed rule is consistent with numerous court decisions that confirm such decisions are made at the project level rather than in the forest plan. (For example, *Sierra Club v. Robertson*, 810 F. Supp. 1021, 1026 (W.D. Ark 1992) aff'd 28 F 3d 753, 760 (8th Cir. 1994)).

Paragraph (f) also responds to the requirement of NFMA at Section 6(g)(3)(F)(i) which limits the use of clearcutting to those cases where it is determined to be the optimum method. The existing rule does not address what was meant by optimum. Paragraph (f) would establish seven purposes for which clearcutting can be used, provided it is the optimum method and the only practical method for meeting one or more of the purposes. These provisions reflect the agency's intent to continue to reduce the amount of clearcutting from levels which have historically occurred, tailoring its use to those situations which meet the purposes listed. Over the past several years, the agency has already substantially reduced its use of clearcutting.

Paragraph (g) would require that the forest plan establish the maximum size of areas that can be clearcut in one harvest operation. This is in response to Section 6(g)(3)(F)(iv) of NFMA. Exceptions are allowed for natural catastrophes, or limits established by the Regional Forester on a project basis after public notice. Currently, harvest size limitations are found in the existing rule and regional guides, but regional guides would no longer be maintained under the proposed rule. In light of the fact that research findings on the effects of harvest size have changed and are likely to continue to change over time, it is not appropriate to include such prescriptive direction in this proposed rule. By addressing such limitations in the forest plan, even though they are not applied until the project level, the constraints are integrated with other resource decisions for the plan area and the public is assured the opportunity to review and comment when they are adopted or changed.

Paragraph (h) would direct the shaping and blending of even-aged harvest methods with the natural terrain to the extent possible in order to ameliorate the visual impacts of such practices. It addresses NFMA Section 6(g)(3)(F)(iii) and is less detailed than the requirements of 219.27(d)(1) of the existing rule.

Paragraph (i) would assure that timber is only harvested where soil and water can be adequately protected. This provision is based on Section 6(g)(E)(iii) of NFMA.

Paragraph (j) would require certain displays of timber-related information that must be included in forest plan appendices. This information is expected to be of interest to the public and provides a concise summary of various timber-related analyses or decisions. Items (i)(1) and (i)(2) are intended to help summarize the availability of lands for timber harvest, while (i)(3) and (i)(4) provide information to assure NFMA requirements have been met. The proportion of probable timber harvest methods forest-wide is required to be included by Section 6(f)(2) of NFMA.

#### *Section 219.14 Special Designations*

The purpose of this section is to ensure that forest plans include all of the relevant direction (goals, objectives, standards, and guidelines as described at proposed § 219.6) for lands within the plan area, including those with special designations which may have been evaluated through other planning processes as required by statute. The existing rule addresses only two special designations, research natural areas and wilderness. The proposed rule seeks to integrate direction for all specially designated areas into forest plans to the extent possible.

Paragraph (a) would explain that forest plan amendment or revision is the mechanism to allocate specific areas to prescriptions for special designations, or to recommend special designation by higher authorities. Various examples of special designations are also provided.

Paragraph (b) would require that roadless, undeveloped areas be evaluated for wilderness designation during forest plan revision unless Federal legislation directs otherwise. Roadless, undeveloped areas are defined to be at least 5,000 acres in size unless contiguous to existing or Administration-endorsed units of the National Wilderness Preservation System. Due to the differing conditions in the eastern part of the country, a provision is added so that the size limitation would not apply east of the 100th meridian.

These provisions of the proposed rule differ somewhat from the existing rule. Most notably, the proposed rule is more specific by defining roadless areas in terms of a 5,000-acre minimum for areas in the western part of the country. This size criterion has been agency policy as described in FSH 1909.12, Chapter 7.11, but is not in the existing rule. In

contrast, the existing rule provides criteria for evaluating roadless areas, whereas the proposed rule does not, because the agency believes such detailed procedural instructions are better suited for the Directive System.

It should be noted that nothing in paragraph (b) precludes consideration of roadless areas for the full range of management options. Although wilderness designation must be one of the options considered, roadless areas are also subject to consideration for various other uses or degrees of protection, not unlike the case for most portions of the plan area.

Paragraph (c) of this section would provide for evaluation of a river's eligibility for wild, scenic, or recreation river designation during revision if legislation requires such an evaluation or if the river was not evaluated under criteria set forth in July of 1987 in Forest Service Handbook 1909.12. Although many forests have evaluated their rivers under these criteria, many have not. This provision is designed to assure that all potential wild, scenic, or recreation rivers are evaluated under the same set of criteria. Although wild, scenic, and recreation rivers were not addressed in the existing rule, the proposed rule includes them since recommendations for river designation, as is the case for wilderness, are made in forest plans with the final decision made by the Congress.

Paragraph (d) would reinforce the central role of forest plans by requiring that any requirements for additional planning for special areas must be met through forest plans, unless certain identified exceptions exist. This is comparable to § 219.2(a) of the existing rule and is intended to assure that special area planning is integrated with forest plans.

The proposed rule would specifically require that goals, objectives, standards, or guidelines from special area plans be incorporated into forest plans to maintain the role of the forest plan as the central source of local direction as well as to provide a basis for determining project consistency.

#### *Section 219.15 Applicability and Transition*

This section provides for an orderly transition from the existing rule adopted in 1982 to the proposed rule. Paragraph (a) would establish that the proposed rule would apply to the entire National Forest System. Although terms such as "National Forest," "forest" or "forest plan" have been used within the proposed rule and preamble, this does not limit applicability of the rule to only the National Forest components of the

National Forest System. For example, the National Forest System includes National Forests, National Grasslands, Purchase Units, Land Utilization Projects, Experimental Forests, Experimental Range, Experimental Areas, and other areas. The applicability of the proposed rule to the National Forest System does not differ from the existing rule.

Paragraph (b) would address those situations where an initial forest plan has not been approved at the time the new rule becomes effective. At this time, there are four National Forests where a forest plan has not yet been approved; these are the Klamath, Mendocino, Shasta-Trinity, and Six Rivers National Forests, all in the Pacific Southwest Region (R-5) (California). The new rule would not apply to development of initial forest plans. Therefore, paragraph (b) provides for unfinished forest plans to be completed under the previous planning rule as adopted in 1982. As a result, there would be consistent regulatory guidance for development of all initial forest plans and no disruption of the planning process for any unfinished plans. Upon approval of those forest plans, the provisions of the proposed rule would then apply to future amendments and revisions.

Paragraph (c) would make clear that forest plans that are already approved remain in effect until amended or revised. This provision is intended to prevent any uncertainty as to the status of existing forest plans.

Paragraph (d) would make clear that forest plans need not be amended in order to comply with requirements of the new rule prior to the forest plan being revised in accordance with the new rule. This provision is included because the agency does not intend for the new rule to immediately trigger either the amendment or revision of forest plans. It would be disruptive, expensive, and impractical to immediately undertake changes to every forest plan in order to adjust to the newly effective rule.

Paragraph (e) allows development of the displays required at § 219.11(d)(1)-(2) and § 219.13(j) to be delayed until the forest plan is revised in accordance with the rules of this subpart.

Paragraph (f) makes clear that the first annual monitoring and evaluation report would be required one fiscal year following adoption of the final rule. This time period allows forests time to plan for and organize work needed to produce the first annual monitoring and evaluation report. Such reports would be developed using the results of monitoring and evaluation activities

described in existing forest plans, since most Forests will not have the newly required monitoring and evaluation strategies developed until the forest plan is revised.

Paragraph (g) addresses how the transition process would occur regarding usage of "standards" and "guidelines" as defined in the proposed rule. Many existing forest plans do not distinguish between "standards" and "guidelines" in the same manner as described in the proposed rule at § 219.6 (e) and (f). In addition, it would not be mandatory for each forest plan to be changed to distinguish between "standards" and "guidelines" until the time of revision. As a result, it would be appropriate to implement the provision of proposed § 219.11(a), which would require project consistency determinations to be based on adherence to "standards," or the provision of § 219.9(b)(1)(i), which would require major amendment when modifying forest plan standards, without recognizing and providing for the impact of this proposed change in terminology.

Under the provisions of paragraph (g), until such time as a forest plan were amended or revised to distinguish between "standards" and "guidelines" in accordance with the terminology defined in the proposed rule, the words used in each existing "standard" or "guideline" in the current plan would be used to determine whether it is mandatory. More specifically, many current forest plans contain a mix of "standards" and "guidelines," of which only some are mandatory. For example, statements using "must" or "shall" are mandatory in nature and would generally be comparable to a "standard" in the proposed rule. In contrast, statements using "may," "should," or "ought" provide the flexibility comparable to a "guideline" in the proposed rule.

Proposed paragraph (g)(1) continues existing agency policy that project consistency determinations are based on whether project decisions adhere to mandatory standards or guidelines. This should provide a smooth transition to the new rule.

Paragraph (g)(2) describes instructions for determining if a future amendment is considered "major" during the transitional period before a forest plan has been revised. The triggers for a major amendment that apply during the transition period differ somewhat from both the existing rule and the provisions at § 219.9(b)(1) of the proposed rule. The provisions of proposed (219.9(b)(1) would apply only after forest plans have been amended or revised to fully

comply with the new terminology. During the transition period before the plan has been changed to be in full compliance with the new terminology, the provisions of § 219.15(g)(2) would apply.

In accordance with § 219.15(g), two circumstances must exist simultaneously for a major amendment to be triggered during the transition period; i.e., prior to a forest plan being amended or revised to be in full compliance with the new usage of standards. First, the amendment must change standards or guidelines in the current forest plan which are mandatory. Since many current forest plans do not distinguish between standards and guidelines, there may be mandatory requirements labelled as guidelines in current plans. Thus, the determination during the transition period focuses on whether the change is to a mandatory provision rather than whether it is labelled as a standard or guideline. In accordance with § 219.6(f), this won't be necessary once a forest plan has been revised because there would be no mandatory requirements labelled as guidelines. If, during the transition period a new mandatory requirement was established, such a change to the forest plan would trigger a major amendment.

The second circumstance which must also occur is that the proposed change to a mandatory standard or guideline would result in a significant change to the forest plan and those changes are predicted to affect resources over a large portion of the plan area during the remainder of the plan period. This is comparable to one of the circumstances currently defined in FMS 1922.52 for significant amendment.

If both of these circumstances occur, a major amendment would be triggered during the transition period. This amendment would be conducted in accordance with the procedures for major amendment in the new rule, however. It should be noted that many changes to current forest plan standards may not affect resources over a large portion of the plan area during the remainder of the plan period. For example, if the forest plan was scheduled to undergo revision soon, there might be few, if any, changes that could affect resources over a large portion of the plan area within a short period of time. Even though the new or modified standard might apply over the entire plan area, resources on-the-ground might not actually be affected if the standard was not going to be in place very long before revision would be initiated. Thus, some changes to standards might not meet the threshold

of triggering a major amendment during this transition period.

The intent of this transition procedure is to begin shifting the emphasis away from changes in output levels and towards recognizing the important role of forest plan standards when determining if a change triggers a major amendment. At the same time, it is designed to recognize that the change in terminology between the existing rule and proposed rule makes it unrealistic to implement the new approach defined at § 219(b)(1)(i) immediately.

In addition to the requirements related to changing a standard, a major amendment would be triggered during the transition period if the chargeable timber volume which can be sold for a decade from a proclaimed National Forest were established that exceeded the long-term sustained yield capacity of the Forest, or if harvest of even-aged stands were permitted before culmination of mean annual increment. Both of these provisions are identical to the provisions of § 219.9(b)(1) (ii) and (iii). They are applicable during the transition period to ensure that the public involvement requirements of NFMA are met as required by the statute for changes of this nature.

Proposed paragraph (h) would address how the new rule would be applied when a significant amendment or revision is already in progress as indicated by issuance of a Notice of Intent. At the time of adoption of a final rule, one of two scenarios could occur. If a draft environmental impact statement (DEIS) has not yet been published, the new rule must be adopted. If a DEIS has been published, it is the Regional Forester's option to decide whether to continue under the previous planning rule or to apply the new rule. In those case where the new rule is adopted, paragraph (h) also provides direction so that the Regional Forester can avoid delaying ongoing processes.

Paragraph (h) is intended to promote prompt application of the new rule. However, it would be unnecessarily disruptive and expensive to impose a new regulation on ongoing significant amendment or revision efforts nearing completion. Similarly, paragraph (h) is intended to allow ongoing efforts which are subject to the new rule to proceed as smoothly as possible. It would be largely redundant, time-consuming, and confusing to the public to require various procedural steps in the processes for amendment or revision to be repeated or accomplished in accordance with the new rule when the effort has already proceeded past the

point where those steps are in a logical sequence.

Paragraph (i) of the proposed rule would provide for the withdrawal of regional guides within three years of adoption of the final rule. The reasons for eliminating regional guides were explained earlier in the discussion of proposed § 219.5. Paragraph (i) also would require that the Regional Guide for the Pacific Southwest Region (R-5) be maintained in accordance with the requirements of the existing rule until the remaining unfinished plans in that Region are approved. In all other Regions, regional guides would be withdrawn within 3 years from adoption of the final rule. The Pacific Southwest Region would need to maintain its regional guide in order to direct development of unfinished forest plans. The Pacific Southwest Regional Guide would be withdrawn within 3 years from approval of the last forest plan in Region 5. In addition, paragraph (i) would authorize the Chief of the Forest Service to extend any regional guide beyond the 3-year period in extenuating circumstances.

Paragraph (j) assures that forest plans address limitations on the size of openings (§ 219.13(g)) prior to withdrawal of the regional guide. The establishment of size limitations is a requirement of NFMA and is currently addressed in regional guides and the existing rule. This provision will assure that there is no gap in having such direction in place during the transition to the new rule.

The transition procedures of this proposed rule reflect current circumstances regarding the status of forest planning efforts nationwide and the nature of proposed changes to the existing rule. To the extent that these or other circumstances are different at the time the final rule is adopted, the agency may have to adopt different transitional procedures in order to assure the most practical, efficient, and timely transition possible.

#### Conforming Amendments

The administrative appeal process for forest plans is set out in a separate rule at 36 CFR part 217, and the administrative appeal process for project decisions is set out at 36 CFR part 215. Due to the nature of changes being proposed to 36 CFR part 219, amendments would need to be made to these appeal rules in order for them to conform to the changes proposed to part 219. First, the terms "nonsignificant amendment" and "significant amendment" would be replaced by the terms "minor amendment" and "major amendment" wherever they occur in

parts 215 and 217. Second, § 217.3(b) would be removed to exclude regional guides from being subject to administrative appeal since these documents would not be retained under proposed revisions to part 219. Third, the heading of part 217 would be amended to remove reference to regional guides and read: Appeal of National Forest Land and Resource Management Plans. Finally, § 217.3(a)(1) and § 217.4 would be amended to exclude interim amendments from being subject to administrative appeal.

#### Conclusion

The Forest Service invites individuals, organizations, and public agencies and governments to comment on this proposed rule. To aid the analysis of comments, it would be helpful if reviewers would key their comments to specific proposed sections or topics. Respondents also should know that in analyzing and considering comments, the Forest Service will give more weight to substantive comments than to simple "yes," "no," or "check off" responses to form letter/questionnaire-type submissions.

#### Regulatory Impact

This proposed rule has been reviewed under Executive Order 12866 on Regulatory Planning and Review. The agency has determined that this proposed rule is a significant regulatory action subject to Office of Management and Budget review. However, this proposed rule does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*)

#### Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

#### Environmental Impact

This proposed rule would establish procedures for land and resource management planning for National Forest System lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 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 preliminary assessment is that this 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.

#### Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would 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 suite in court challenging its provisions.

#### List of Subjects

##### 36 CFR Part 215

Administrative practice and procedure, and National forests.

##### 36 CFR Part 217

Administrative practice and procedure, and National forests.

##### 36 CFR Part 219

Environmental impact statements, Land and resource management planning, and National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend parts 215, 217, and 219 of Title 36 of the Code of Federal Regulations as follows:

#### **PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES**

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102-381, 106 Stat. 1419 (16 U.S.C. 1612 note).

2. Amend §§ 215.1(a) and 215.3(c) by removing the term "nonsignificant amendments" and substituting in lieu thereof the term "minor amendments".

2a. Amend §§ 215.4(e) and 215.7(a) by removing the term "nonsignificant amendment" and adding the term "minor amendment".

3. Amend § 215.8(a)(1) by removing the term "significant amendment" and substituting in lieu thereof the term "major amendment".

## PART 217—APPEAL OF NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLANS

4. Revise the heading for part 217 to read as set out above.

5. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 551, 472.

6. Revise § 217.3(a) to read as follows:

### § 217.3 Decisions subject to appeal.

(a) The decisions subject to appeal under this part are decisions to approve, amend through major amendment or minor amendment, or revise a National Forest Land and Resource Management plan, except when a decision to authorize a specific project or activity includes a minor amendment to the forest plan as described in 36 CFR 219.9(c)(5).

\* \* \* \* \*

7. Amend § 217.4(a) by removing the term “non-significant amendment” and substituting in lieu thereof the term “minor amendment”.

### §§ 217.8 and 217.15 [Amended]

7a. Amend §§ 217.8(a)(2) and 217.15(a) by removing the term “non-significant amendments” and adding the term “minor amendments”.

### § 217.10 [Amended]

8. Amend § 217.10(i) by removing the term “significant amendment” and substituting in lieu thereof the term “major amendment”.

### § 217.15 [Amended]

8a. Amend § 217.15(a) by removing “significant amendments” and adding “major amendments”.

9. Add paragraph (d) to § 217.4 to read as follows:

### § 217.4 Decisions not subject to appeal.

\* \* \* \* \*

(d) Decisions to amend a forest plan by interim amendment.

10. Revise part 219 to read as follows:

## PART 219—PLANNING

### Subpart A—National Forest System Land and Resource Management Planning

Sec.

219.1 Purpose and principles.

219.2 Definitions.

219.3 Relationships with the public and government entities.

219.4 Sustainability of ecosystems.

219.5 Framework for resource decisionmaking.

219.6 Forest plan direction.

219.7 Ecosystem analysis.

219.8 Interdisciplinary teams and information needs.

219.9 Forest plan amendments.

219.10 Forest plan revision.

219.11 Forest plan implementation.

219.12 Monitoring and evaluation.

219.13 Statutory timber management requirements.

219.14 Special designations.

219.15 Applicability and transition.

### Subpart B—[Reserved]

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

### Subpart A—National Forest System Land and Resource Management Planning

#### § 219.1 Purpose and principles.

(a) This subpart describes the procedures for fulfilling the requirements for land and resource management planning as set forth in the Forest and Rangeland Renewable Resources Planning Act of 1974 (hereafter, “RPA”) as amended by the National Forest Management Act of 1976 (hereafter, “NFMA”) (16 U.S.C. 1604 et seq.) Specifically, the rules in this subpart are intended to:

(1) Describe the agency’s framework for National Forest System resource decisionmaking;

(2) Incorporate principles of ecosystem management;

(3) Establish requirements for implementation, monitoring, evaluation, amendment, and revision of forest plans; and

(4) Articulate the relationship between resource decisionmaking and compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (hereafter “NEPA”) and implementing NEPA procedures (see definition at § 219.2).

(b) The following principles guide National Forest System resource decisionmaking and management:

(1) The National Forest System is managed to provide sustainable ecosystems which yield multiple benefits to present and future generations.

(2) People are a part of ecosystems; meeting people’s needs and desires within the capacities of natural systems is a primary role of resource decisionmaking.

(3) Ecosystems occur at many spatial scales and are dynamic in nature, creating a need for planning processes that are flexible in geographic scope and that consider the ecological changes that occur over time.

(4) Ecosystems cross land ownerships, jurisdictions, and administrative boundaries. Therefore, planning efforts for National Forest System lands should be coordinated with other landowners, other Federal agencies, and State, local, and tribal governments in a manner that

respects private property rights and the jurisdictions of other government entities.

(5) Involving the public in National Forest System planning and decisionmaking on an ongoing, open, and equitable basis is essential.

(6) The scientific community, including Forest Service researchers, should play a vital role in gathering and analyzing information for resource decisionmaking.

(7) The National Forest System should be managed in a manner that optimizes net public benefits, considering both qualitative and quantitative criteria.

(8) The forest planning process should provide for efficient adjustment of forest plans in response to changing conditions and new information.

(9) NEPA procedures define the analysis process used for resource decisionmaking; such analysis should be commensurate with the scope and nature of the decisions being made.

(10) Knowledge of ecosystems will never be complete; therefore, uncertainty is inherent in resource decisionmaking. Nevertheless, decisionmaking must proceed using an adaptive management approach, which incorporates applicable science and the best available information.

#### § 219.2 Definitions.

For purposes of this subpart, the following terms mean:

*Allowable sale quantity.* The maximum quantity of chargeable timber volume that may be sold within a decade from the plan area.

*Catastrophic event.* A sudden event causing widespread or intense destruction or devastation of resources, ecological conditions, or man-made features. Catastrophic events include natural phenomena such as wildfire, hurricanes, tornados, floods, or earthquakes as well as events caused by human actions such as large chemical or oil spills.

*Category 1 candidate species.* Taxa:

(1) For which the U.S. Fish and Wildlife Service (USFWS) has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species;

(2) Which appear in a notice of review containing the names of the species considered to be candidates for listing under the Endangered Species Act, which is published in the Federal Register by the USFWS, in accordance with 50 CFR 424.15, and is available at the office of the Forest Supervisor or the Regional Forester (36 CFR 200.2); and

(3) For which the USFWS has not yet published proposed rules to list as

endangered or threatened species because such action is precluded at present by other listing activity.

*Category 2 candidate species. Taxa:*

(1) For which information in the possession of the U.S. Fish and Wildlife Service (USFWS) indicates that proposing to list them as endangered or threatened is possibly appropriate, but for which persuasive data on biological vulnerability and threat are not currently available to support publication of proposed rules; and

(2) Which appear in a notice of review containing the names of the species considered to be candidates for listing under the Endangered Species Act, which is published in the Federal Register by the USFWS, in accordance with 50 CFR 424.15, and is available at the office of the Forest Supervisor or the Regional Forester (36 CFR 200.2).

*Chargeable timber volume.* All volume included in the growth and yield projections used to calculate the allowable sale quantity.

*Conservation agreement.* A formal written document agreed to by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service and another Federal agency, State, local, tribal government, or the private sector to achieve the conservation of a species through voluntary cooperation.

*Culmination of mean annual increment.* The age at which the average annual growth is greatest for a stand of trees, with growth usually expressed in terms of cubic foot measure and calculated to include regeneration harvest yields and removals from intermediate stand treatments.

*Decision document.* A Record of Decision, Decision Notice, or Decision Memo which is signed by the responsible official and which, in compliance with NEPA procedures, identifies the decision being made and the rationale for the decision.

*Directive.* Policy, practice, and procedure issued through the Forest Service Directive System to guide the work of agency employees.

*Directive System.* The administrative system composed of the Forest Service Manual and Handbooks by which internal agency policy, practice, and procedure are established, issued, and stored.

*Ecosystem analysis.* A broad term used to denote various interdisciplinary studies conducted to provide information on and enhance an understanding of the physical, biological, social, and/or economic aspects and interactions of an ecosystem.

*Ecosystem management.* A concept of natural resources management wherein

National Forest activities are considered within the context of economic, ecological, and social interactions within a defined area or region over both short- and long-term.

*Environmental assessment.* A concise document prepared in compliance with NEPA procedures that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or for making a finding of no significant impact (40 CFR 1508.9).

*Environmental impact statement.* A detailed document prepared in compliance with NEPA procedures when a Federal action will have a significant impact on the human environment (40 CFR 1508.11).

*Even-aged stand.* A distinguishable group of trees of essentially the same age. The difference in age among trees forming the main canopy level of the stand usually does not exceed 20 percent of the age of the stand at harvest rotation age.

*Forest Supervisor.* An individual responsible to the Regional Forester for management of one or more National Forests, National Grasslands, or other components of the National Forest System.

*Forested land.* Land not currently identified for non-forest use and of which at least 10 percent is occupied by forest trees or which formerly had such tree cover. Forest trees are those woody plants having a well developed stem and which are usually more than 12 feet in height at maturity.

*Goal.* A concise statement describing a desired end result and normally expressed in broad general terms.

*Guideline.* A description of a preferred or advisable course of action.

*Infrastructure.* The facilities, utilities, and transportation systems needed to meet public and administrative needs.

*Long-term sustained-yield timber capacity.* A projection of the maximum potential long-term average sale quantity representing the highest uniform wood yield that may be sustained in perpetuity consistent with the forest plan.

*Management prescription.* The set of forest plan goals, objectives, standards, and guidelines that are applicable to a particular part of the plan area, including both forest-wide direction as well as direction applicable only to that specific part of the plan area.

*Multiple-use.* As defined by the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528), multiple-use is the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet

the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

*NEPA documents.* The terms used to refer to draft and final environmental impact statements, environmental assessments, findings of no significant impact, and notices of intent to publish an environmental impact statement (40 CFR 1508.10).

*NEPA procedures.* The term used to refer to the requirements of 40 CFR parts 1500 through 1508, as supplemented by Forest Service NEPA directives issued in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15, which implement the National Environmental Policy Act of 1969.

*Objective.* A statement describing measurable desired resource conditions, or ranges of conditions, intended to achieve forest plan goals.

*Plan area.* The geographically defined area of the National Forest System covered by a forest plan, consisting of only those lands and resources under National Forest System jurisdiction.

*Plan period.* The period of time between regularly scheduled revisions of a forest plan, normally 10 years but no longer than 15 years.

*Previous planning rule.* The land and resource management planning regulation, 36 CFR Part 219, adopted September 30, 1982 and amended on June 24, 1983, and September 7, 1983 (see 36 CFR Part 200-End edition, Revised July 1, 1994).

*Project.* A site-specific resources management activity or combination of activities designed to accomplish a distinct on-the-ground purpose or result.

*Proposed action.* A proposal made by the Forest Service to authorize, recommend, or implement an action to meet a specific purpose and need.

*Regional Forester.* The individual responsible to the Chief of the Forest Service for management of an administrative region of the National Forest System (36 CFR 200.2).

*Resource conditions.* The state of the physical and biological components of

the environment, including both natural features and human influences.

*Responsible official.* The Forest Service employee who has the delegated authority to make a specific decision.

*RPA Assessment and Program.* Documents required by Sections 3 and 4 of the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 (16 U.S.C. 1631 *et seq.*). The RPA Assessment is prepared every 10 years and describes the potential of the nation's forests and rangelands to provide a sustained flow of goods and services. The RPA Program is prepared every five years to chart the long-term course of Forest Service management of the National Forest System, assistance to State and private forest landowners, and forest and range research.

*Species or natural community ranking.* A rating established and maintained by the Network of Natural Heritage Programs and Conservation Data Centers which reflects the biological imperilment status of a species or natural community. Rankings as used in this subpart are defined as follows:

(1) G1—Species or community critically imperiled globally because of extreme rarity or because of some factor(s) making it especially vulnerable to extinction; five or fewer occurrences, or less than 1,000 individuals, or very few acres remaining.

(2) G2—Species or community imperiled globally because of rarity or because of some factor(s) making it very vulnerable to extinction; six to twenty occurrences, or less than 3,000 individuals, or few acres remaining.

(3) G3—Species or community vulnerable throughout range globally and typically having 21 to 100 occurrences, or fewer than 10,000 individuals. May be very rare and local throughout its range or found locally (even abundantly at some of its locations) in a restricted range (e.g., a single western State, a physiographic region of the East).

(4) N1, N2, and N3—Same as G1, G2, and G3 respectively, except these listings refer to a national situation rather than global one.

(5) S1 and S2— Same as G1 and G2 respectively, except these listings refer to a State situation rather than global one.

(6) T1, T2, and T3—Same as G1, G2, and G3 respectively, except these refer to subspecies or recognized varieties that are listable entities under the Endangered Species Act.

*Standard.* A limitation on management activities that is within the authority and ability to the agency to meet or enforce.

*Station Director.* An individual who is responsible to the Chief of the Forest Service for administering research activities at an assigned Research Station (36 CFR 200.2).

*Sustainability of ecosystems.* A concept which reflects the capacity of a dynamic ecosystem to maintain its composition, function, and structure over time, thus maintaining the productivity of the land and a diversity of plant and animal communities.

*Tribal governments.* Federally recognized American Indian/Alaska Native tribal governments.

### §219.3 Relationships with the public and government entities.

(a) Building and maintaining relationships with the public and other Federal agencies and State, local, and tribal governments is an essential and ongoing part of National Forest System planning and management. The responsible official shall strive to establish and maintain communication with interested parties in order to:

(1) Develop a shared understanding of the variety of needs, concerns, and values held by the public;

(2) Coordinate planning efforts with other Federal agencies and State, local, and tribal governments, with recognition of the distinct roles and jurisdictions of each;

(3) Improve the information base influencing decisions and to promote a shared understanding of the validity of this information;

(4) Strengthen the scientific basis for resource management decisions by involving members of the scientific community; and

(5) Resolve conflicts associated with resource decisionmaking.

(b) The Forest Supervisor shall maintain a list of individuals, organizations, scientists, and government agencies and officials who have indicated a desire to be informed about forest planning or project activities on the Forest. The Forest Supervisor shall periodically verify the continuing interest of parties on the list and provide notice to the general public of the opportunity to be included on the listing. The list should include the following:

(1) Representatives of other affected Federal agencies;

(2) The official or agency designated as a point of contact for the affected State(s) agencies, including, if applicable, the Commonwealth of Puerto Rico;

(3) Representatives of tribal governments;

(4) Representatives of county or municipal governments;

(5) Holders of permits, contracts, or other instruments providing for the occupancy and use of the plan area; and

(6) Any citizen or organization expressing a desire to be included.

(c) The Forest Supervisor shall ensure that records documenting the planning process and information used to amend, revise, or monitor and evaluate implementation of the forest plan are maintained and are available for public inspection at the Forest Supervisor's office during normal working hours. Information in the planning records is subject to the provisions of the Freedom of Information Act.

(d) Copies of the current forest plan and monitoring and evaluation strategy must be available for public inspection at each Forest Service office on the Forest, in the respective Regional Office, and at least one additional location, as determined by the Forest Supervisor, that offers convenient access to the public.

(e) When desired by the State or affected tribal governments, Regional Foresters should seek to establish a Memorandum of Understanding or other form of agreement with the Governor of each State in which National Forest System lands are located or with affected tribal governments to guide coordination of planning efforts.

(1) The following apply to any such Memorandum of Understanding or agreement;

(i) The document should describe how the State's or tribe's positions on topics related to planning will be established, communicated, and considered;

(ii) The document should address cooperation in forest plan implementation, monitoring, evaluation, ecosystem analysis, amendment, and revision;

(iii) The document may be executed by the Forest Supervisor rather than the Regional Forester when all National Forest System lands within the State are managed by one Forest Supervisor; and

(iv) The document may be jointly executed by the appropriate Regional Foresters when one State encompasses two or more Forest Service Regions.

(2) Nothing in this section precludes development of a Memorandum of Understanding with other Federal agencies or local governments.

(f) Procedures for public participation and government coordination must conform with NEPA requirements, the Federal Advisory Committee Act (5 U.S.C. appendix), and any other applicable laws, Executive orders, or regulations.

**§ 219.4 Sustainability of ecosystems.**

(a) *Goal.* The principal goal of managing the National Forest System is to maintain or restore the sustainability of ecosystems, thereby providing multiple benefits to present and future generations. The level and flow of benefits from National Forest System lands should be compatible with the restoration of deteriorated ecosystems and the maintenance of ecosystem sustainability over the long-term. The forest plan addresses this goal by:

(1) Providing for diversity of plant and animal communities and other conditions indicative of sustainable ecosystems. This is accomplished by establishing forest plan direction as specified in paragraphs (b) through (e) of this section. In establishing such forest plan direction, the likely contribution or role of lands outside the plan area should be considered.

(2) Providing for resource conditions which result in a flow of benefits to present and future generations. This is accomplished as specified at § 219.6(a), and through the establishment of forest plan goals, objectives, standards, and guidelines.

(b) *Role of forest plan.* The forest plan establishes goals and objectives describing desired conditions, indicative of sustainable ecosystems within the plan area and establishes standards and guidelines that direct how to achieve those conditions.

(1) *Scope.* Forest plan goals and/or objectives should describe the desired composition, function, and structure of ecosystems within the plan area at appropriate spatial scales.

(2) *Soil and water resources.* The forest plan must provide for the restoration, protection, and conservation of soil and water resources including, but not limited to, streams, streambanks, shorelines, lakes, wetlands, riparian areas, and floodplains. Where there are existing conditions harmful to soil and water quality, the forest plan should include standards and/or guidelines that provide for the restoration of soil and water resources to achieve desired resource conditions. Forest plans should also address the protection of current and future consumptive and nonconsumptive water uses, including instream flow needs.

(3) *Rare natural communities.* The forest plan should provide for maintaining or restoring the sustainability of those natural communities known to occur within the plan area that are identified by the Network of Natural Heritage Programs and Conservation Data Centers with rankings of G1, G2, G3, N1, N2, N3, S1, or S2 (§ 219.2).

(4) *Threatened and endangered species.* The forest plan must provide for the conservation of species listed as threatened and endangered, or proposed for listing, under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1501 *et seq.*). Once species are listed or proposed for listing as threatened or endangered under the Endangered Species Act, management activities on National Forest System lands affecting the habitat of the listed species must be in compliance with the requirements of the Endangered Species Act.

## Option I for Paragraph (b)(5)

(b)(5) *Sensitive species.* The forest plan must provide for the protection of habitat capability for sensitive species in order to preclude the need for listing these species as threatened or endangered under the Endangered Species Act or their extirpation from the plan area. For the purposes of this section, habitat capability refers to the quantity, quality, and distribution of habitat.

(i) *Identification.* Sensitive species are those plant and animal species, subspecies, populations, or stocks, including vertebrates, invertebrates, vascular plants, bryophytes, fungi, and lichens, which are known to occur or likely to occur on National Forest System lands and which are included in one of the following:

(A) The species is identified by the U.S. Fish and Wildlife Service as a Category 1 Candidate Species;

(B) The species is identified by the Network of Natural Heritage Programs and Conservation Data Centers with global species rankings of G1 (T1) or G2 (T2);

(C) The species is identified both by the U.S. Fish and Wildlife Service as a Category 2 Candidate Species and by the Network of Natural Heritage Programs and Conservation Data Centers with species rankings of G3 (T3), N1, N2, or N3.

(ii) *Process.* In considering whether or not new or modified forest plan direction is needed for sensitive species, the following must be documented:

(A) Sensitive species for the plan area and their habitat needs must be identified.

(B) The habitat needs of sensitive species and/or assemblages of sensitive species shall be compared to existing forest plan direction or, in the case of revision of a forest plan, the habitat needs shall be compared against the tentatively proposed revisions to forest plan direction.

(1) If a continuing downward trend in habitat capability is predicted to occur

and predicted to result in the need for Federal listing of the species or if it is predicted that the sensitive species will be extirpated from the plan area, forest plan direction shall be modified to protect the habitat capability of the sensitive species in an attempt to preclude the need for Federal listing or extirpation from the plan area.

(2) Where the Forest Service and the U.S. Fish and Wildlife Service or National Marine Fisheries Service have approved a conservation agreement for a sensitive species and relevant direction from that agreement is incorporated into the forest plan, the requirement to establish direction to protect the habitat capability of the sensitive species is met.

(3) To the extent that protective measures for one sensitive species conflict with the recovery of a threatened or endangered species, the needs of the threatened or endangered species shall take precedence.

(4) Management direction for sensitive species shall be established using the best information available, commensurate with the decision being made. Determinations of whether habitat needs of sensitive species are adequately met as well as determinations of the degree of protection needed are decisions that are inherently dependent on professional judgment.

(iii) *Responding to newly identified sensitive species.* The categories and rankings described at paragraphs (b)(5)(i) (A) through (C) of this section shall be reviewed annually as part of monitoring and evaluation to determine if there have been new additions subsequent to the last review. If a new addition has occurred, the habitat needs of the species shall be compared against forest plan direction to determine if a change in that direction is needed. The annual review of sensitive species categories and rankings does not remove the obligation to consider new information relevant to a project decision or, where appropriate, to analyze the effects of a proposed action on habitat capability needs of a sensitive species within the project area.

## Option II for Paragraph (b)(5)

(5) *Species viability.* Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to ensure its continued existence is well distributed in the planning area. In order to ensure

that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area. The forest plan shall establish guidelines for the maintenance and improvement of habitat for management indicator species to the degree consistent with overall multiple-use goals of the forest plan. In order to do this, management planning for the fish and wildlife resource shall meet the requirements set forth in paragraphs (b)(5) (i) through (vi) of this section.

(i) In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species and the reasons for their selection will be stated. These species shall be selected because their population changes are believed to indicate the effects of management activities. In the selection of management indicator species, the following categories shall be represented where appropriate: Endangered and threatened plant and animal species identified on State and Federal lists for the plan area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and additional plant or animal species selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality. On the basis of available scientific information, the interdisciplinary team shall estimate the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species. Where appropriate, measures to mitigate adverse effects shall be prescribed.

(ii) Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species.

(iii) Biologists from State fish and wildlife agencies and other Federal agencies shall be consulted in order to coordinate planning for fish and wildlife, including opportunities for the reintroduction of extirpated species.

(iv) Access and dispersal problems, of hunting, fishing, and other visitor uses shall be considered.

(v) The effects of pest and fire management on fish and wildlife populations shall be considered.

(vi) Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in cooperation with State fish and wildlife agencies, to the extent practicable.

(c) *Dynamic nature of ecosystems.* Ecosystems are dynamic. Therefore, sustaining an ecosystem does not imply maintaining static conditions. Disturbances to an ecosystem should be evaluated in the context of ecological processes and resilience.

(d) *Multiple spatial scales of ecosystems.* Numerous ecosystems exist at multiple spatial scales. In order to limit efforts to a practicable number and scope, the forest plan should address the ecosystems of most relevance to forest plan decisionmaking.

(e) *Uncertainty and adaptive management.* Understanding of the attributes of sustainable ecosystems and of the environmental effects of various management activities is subject to change as new information becomes available. Resource decisionmaking need not be halted because there is uncertainty or incomplete knowledge; rather, resource decisions should be made in a timely manner using the best information available commensurate with the decisions being made (40 CFR 1502.22). Monitoring and evaluation shall be used to assess the effects of resource decisions and to determine if there is a need to adapt resource management in light of new information. Project decisionmaking provides an incremental means for accomplishing the goals and objectives of the forest plan, thereby providing the opportunity to evaluate the effects of on-the-ground activities at the appropriate spatial scale as well as providing the opportunity to adapt project proposals as new information becomes available during the plan period.

#### **§ 219.5 Framework for resource decisionmaking.**

(a) *Staged resource decisionmaking.* National Forest System resource allocation and management decisions are made in two stages. The first stage is adoption of a forest plan, which allocates lands and resources to various uses or conditions by establishing management prescriptions for the land and resources within the plan area. The second stage is approval of project decisions. Both forest plan and project decisions are subject to the requirements of laws and regulations applicable to National Forest System

lands and resources. In addition, direction to guide the management of lands and resources of the National Forest System is issued as needed through the Directive System (36 CFR 200.4). Pursuant to 40 CFR parts 1500–1508, agency directives are subject to NEPA procedures, and, depending on their nature and scope, directives also may be subject to the public notice and comment requirements of 36 CFR part 216.

(1) *Forest plans.* Forest plans do not compel the agency to plan for or undertake any projects; rather, they establish limitations on what actions may be authorized during project decisionmaking. Forest plan direction must not conflict with applicable laws or regulations. Additionally, forest plans should not conflict with applicable agency directives issued through the Directive System. Where there is a substantial conflict between a resource management directive and direction in a forest plan revision or amendment prepared pursuant to this subpart, the responsible official should identify the conflict and include in the decision document the rationale for the plan's departure from agency directives.

(i) *Plan area.* Each Regional Forester shall determine the area to be covered by each forest plan. Options include a separate plan for each National Forest or National Grassland, a plan that covers any combination of National Forests or other National Forest System lands within the responsibility of one Forest Supervisor, or a single plan encompassing one National Forest but which is administered by several Forest Supervisors.

(ii) *Simultaneous amendment or revision.* Forest plan goals, objectives, standards, and guidelines that are applicable to more than one plan area may be established through one decision document which simultaneously amends or revises multiple forest plans.

(2) *Project decisions.* Authorization of site-specific activities within a plan area occurs through project decisionmaking. Project decisionmaking must comply with NEPA procedures and must include a determination that the project is consistent with the forest plan (§ 219.11(a)). Project decisionmaking includes decisions on proposals received from outside the agency as well as those initiated by the agency.

(b) *Reconciling direction in forest plans with other resource direction or planning efforts—(1) Laws and regulations.* If, following issuance of new laws or regulations affecting National Forest System resource management, it is determined that the

direction in forest plans within the Region is in conflict with the new direction, the Regional Forester shall direct that affected plans be changed in accordance with the procedures of § 219.9 or § 219.10 of this subpart and shall specify the timing for doing so.

(2) *Agency directive.* (i) If resource management direction in a new agency directive appears to conflict with direction in forest plans, the directive issuing official shall indicate as part of the directive issuance whether affected forest plans are to be made consistent with the new directive and, if so, shall direct that affected plans be changed in accordance with the procedures of § 219.9 or § 219.10 of this subpart and shall specify the timing for doing so.

(ii) In addition to adjusting forest plans as required by paragraph (b)(2)(i) of this section, the Forest Supervisor, as part of monitoring and evaluation, should periodically review recent resource management directives to determine if the forest plan is in conflict with newly issued resource directives. If so, the Forest Supervisor shall either initiate a forest plan amendment to eliminate the conflict or give the Regional Forester written notice of why the forest plan should not be changed.

(3) *RPA Program.* Following adoption and issuance of each RPA Program, the Chief determines those elements of the Program that should be considered in forest plan implementation, monitoring, and evaluation and establishes such agency-wide processes or procedures as may be necessary to ensure consideration of these Program elements in forest plans.

(4) *Ecosystem analysis.* As part of monitoring and evaluation, the Forest Supervisor shall periodically review the results of any applicable ecosystem analyses that have been completed or updated after plan approval and determine if there is new information which would indicate a need to initiate forest plan amendment procedures.

#### § 219.6 Forest plan direction.

(a) *Integrated resource management.* Forest plans provide for integration and coordination of all resources within the plan area on a multiple-use and sustained-yield basis. To this end, forest plan direction shall be established, as appropriate, to address management of soil, water, fish and wildlife habitat, grazing, timber, oil, gas, minerals, recreation, wilderness, cultural, historic, geologic, vegetative, air, visual, and other relevant resources. In addition, forest plans address management of infrastructure and land ownership and access patterns relative to the plan area to the extent appropriate.

(b) *Scope.* Forest plans allocate the land and resources of the plan area to various uses or conditions by establishing management prescriptions consisting of goals, objectives, standards, and guidelines. Goals, objectives, standards, and guidelines may be established to apply throughout a plan area (forest-wide direction) and/or they may be established for only a part of the plan area. The forest plan management prescription for any given site within the plan area is the aggregate of all forest-wide direction and any other direction that is applicable to only that specific part of the plan area. The forest plan must identify where goals, objectives, standards, and guidelines are applicable. Maps or similar information that delineate where goals, objectives, standards, and guidelines are applicable constitute forest plan direction.

(1) Projected levels of goods and services or projected levels of management activities do not constitute forest plan direction. Moreover, any projections of the rate at which objectives identified in the forest plan might be achieved are not forest plan direction (§ 219.11(d)).

(2) Forest plan direction should focus on resource management and resource conditions specific to the plan area, not on the procedural aspects of making future project decisions. Also, as a general rule, forest plans should not repeat other applicable direction established through the Directive System, regulation, Executive order, or law.

(3) The main body of the forest plan document is limited to forest plan direction. Background information or other accompanying material are not appropriate to the main body of the document but may be presented as part of a brief forest plan preface or in the appendices.

(c) *Goals.* Goals are concise statements describing a desired end result and are normally expressed in broad general terms. Forest plan goals serve as the link between broad agency goals set forth in law, Executive order, regulation, agency directives, and the RPA Program and specific desired resource conditions relevant to the plan area as defined by objectives. The forest plan does not specify a time period for achievement of goals. Additionally, forest plan goals are generally not expressed in quantitative terms; rather, evaluation of associated measurable objectives or monitoring indicators assesses whether goals are being achieved (§ 219.12(a)(1)(ii)).

(d) *Objectives.* Objectives are statements describing desired resource conditions, or ranges of conditions,

intended to achieve forest plan goals. Objectives may describe the desired state of natural resource conditions, such as soils and vegetation; the desired state of resources resulting from human influences, such as infrastructure or historic sites; or how resources are to be perceived, such as visual quality or the nature of the wilderness visitor experience. An objective must be defined in a manner that permits measurement of whether the objective is being achieved. The forest plan does not specify a time period for achievement of objectives.

(e) *Standards.* Standards are limitations to be placed on management activities within the plan area to ensure compliance with applicable laws and regulations or to limit the discretion to be permitted during project decisionmaking. Standards are limited to those actions that are within the authority and ability of the agency to meet or enforce.

(1) Standards are the basis for determining whether a project is consistent with the forest plan as required by § 219.11(a).

(2) Project compliance with relevant standards is mandatory. A project that would vary from a relevant standard may not be authorized, unless the forest plan is amended to modify, remove, or waive application of the standard.

(f) *Guidelines.* Guidelines describe a preferred or advisable course of action. Variation of a project from a guideline does not trigger a forest plan amendment. Guidelines may be used for the following purposes:

(1) To describe a preferred or advisable method for conducting resource activities specific to the plan area; and

(2) To describe a preferred or advisable sequence or priority for implementing various types of projects, when such guidance is deemed useful in facilitating achievement of a forest plan goal.

(g) *Coordination of forest plan direction across plan areas.* The Regional Forester is responsible for coordinating direction in forest plans within the Region as well as with adjacent Regions to promote consistent approaches to resource management. In many cases, variation in direction is appropriate due to varying local circumstances; for example, differing resource conditions, public preferences, or socio-economic considerations. However, unless there is reasonable basis for such variations, the Regional Forester shall provide for consistency among forest plans within the Region, as well as consistency with those forest plans in other Regions whose plan areas

are physically adjacent to plan areas within the Region. At a minimum, the Regional Forester shall ensure that forest plans within the Region include the following:

- (1) Consistent management prescriptions for adjacent National Forest System lands, including the use of consistent mapping scales, symbols, and other elements to facilitate review and comparison of the management prescriptions;
- (2) Consistent management prescriptions for a specially designated area (§ 219.14) that crosses plan area boundaries, such as a national scenic trail extending through several National Forests;
- (3) Consistent direction when findings of an ecosystem analysis or research used as a basis for that direction are applicable to more than one plan area, such as the establishment of a forest plan standard to meet the habitat needs of a threatened or endangered species that occurs on more than one plan area; and
- (4) Consistent terminology and classification systems among or between forest plans.

#### § 219.7 Ecosystem analysis.

(a) *Purpose and scope.* Ecosystem analysis is a broad term used to denote various interdisciplinary studies conducted to provide information on and enhance an understanding of the physical, biological, social, or economic aspects and interactions of an ecosystem. For example, an ecosystem assessment and landscape-level analysis are both forms of ecosystem analysis. Ecosystem analysis may be conducted at whatever scale is appropriate in order to provide the information desired. To the extent practicable, the area covered by an ecosystem analysis should generally be delineated based on ecological considerations, including social and economic factors, rather than on administrative or jurisdictional boundaries. Ecosystem analyses are conducted whenever deemed appropriate by the agency.

(b) *Relationship to resource decisionmaking.* An ecosystem analysis is distinct from resource decisionmaking and does not trigger NEPA analysis and disclosure. Findings resulting from ecosystem analysis are not resource decisions and cannot be used as a substitute for forest plan goals, objectives, standards, or guidelines. Ecosystem analysis may provide information that indicates a need to change forest plan direction; however, such changes would be evaluated and established through forest plan amendment or revision procedures.

Ecosystem analysis also may be used to display various opportunities for achieving the goals and objectives already established by law, Executive order, regulation, agency directive, or the forest plan.

(c) *Results.* Results of ecosystem analysis vary depending on their scope and specific purpose. Results of ecosystem analysis may include, but are not limited to, the following:

- (1) Identification of trends and historic conditions;
- (2) Identification of anticipated effects if current management continues;
- (3) Identification of resource conditions that would satisfy legal requirements;
- (4) Identification of opportunities to improve monitoring and evaluation strategies;
- (5) Identification of research needs and recommended priorities;
- (6) Identification of opportunities and recommended priorities for project implementation in order to meet forest plan goals;
- (7) Determination of resource capabilities;
- (8) Compilation of a socio-economic overview or assessment; for example, assessments of pertinent social, demographic, and economic data, socioeconomic and cultural trends, or important relationships among physical, biological, economic, and social aspects of resource management;
- (9) Compilation of information for use in monitoring and evaluation;
- (10) Compilation of information for use in NEPA documents; and
- (11) Compilation of updated inventory data.

#### § 219.8 Interdisciplinary teams and information needs.

(a) *Interdisciplinary team.* An interdisciplinary team must be used to prepare amendments, revisions, and monitoring and evaluation strategies and reports and to conduct ecosystem analysis. The team may consist of whatever combination of Forest Service and other Federal government personnel is necessary to achieve an interdisciplinary approach.

(b) *Analysis and inventory.* Analytical efforts should be focused on obtaining and using the information needed for decisionmaking commensurate with the decisions being made. Each responsible official shall strive to obtain and keep updated inventory data appropriate to meet analytical needs for resource decisionmaking. In assessing the environmental, social, and economic factors relevant to decisionmaking, the responsible official shall consider the conclusions resulting from applicable

quantitative analytical methods as well as nonquantifiable considerations.

(c) *Social and economic effects.* When amending or revising the forest plan, the responsible official shall consider the effects of each alternative on community stability, employment, or other indicators of social and economic change commensurate with the decision being made.

(d) *Research needs.* Each Forest Supervisor shall identify and inform the Regional Forester of research needed for decisionmaking including, but not limited to, the research needed to help resource managers ensure that management practices do not produce substantial or permanent impairment of the productivity of the land.

#### § 219.9 Forest plan amendments.

(a) *Purpose and type.* Except as provided at § 219.9(e), amendment is the only method by which forest plan direction is changed between revisions. Only forest plan direction as described at § 219.6 is subject to amendment. Amendments are categorized as major, minor, or interim.

(b) *Major amendment.* (1) A major amendment is appropriate only under one of the following circumstances:

- (i) The proposed change would modify, remove, or add a standard, or modify the geographic area to which a standard applies, except as provided at paragraphs (c)(4) and (c)(5) of this section or except when such a change is made by interim amendment;
- (ii) The proposed change would allow the amount of chargeable timber volume which can be sold for a decade from a proclaimed National Forest within the plan area to exceed the long-term sustained-yield timber capacity of that proclaimed National Forest (§ 219.13(d)(1)(ii)); or
- (iii) The proposed change would permit harvest of even-aged stands that have not reached culmination of mean annual increment of growth (§ 219.13(e)).

(2) The Regional Forester is the responsible official for major amendments.

(3) The public review and comment period on a proposed major amendment and associated NEPA documents is 90 calendar days. During this period, the Regional Forester shall take the following actions:

- (i) Make the proposed amendment and associated NEPA documents available for public inspection at convenient locations in the vicinity of the lands covered by the plan;
- (ii) Notify those on the list described at § 219.3(b) of the opportunity for public review and comment; and

(iii) Provide opportunities for open communication with the public and other government entities during the review of the proposed major amendment.

(4) Legal notice of adoption of a major amendment shall be provided in accordance with 36 CFR 217.5.

(5) A major amendment is not effective until the eighth calendar day following date of publication of the legal notice of the decision (36 CFR 217.10).

(c) *Minor amendment.* (1) Unless the authority is reserved by the Regional Forester, the Forest Supervisor is the responsible official for minor amendments.

(2)(i) For a proposed minor amendment for which an environmental assessment has been prepared, the Forest Supervisor shall publish notice of the proposed amendment and provide at least 30 calendar days for public review of and comment on the proposed amendment and environmental assessment. Such notice shall be published in newspapers of general circulation within or near the Forest.

(ii) In the event that a draft environmental impact statement has been prepared for a proposed minor amendment, public notice shall be provided in accordance with NEPA procedures. At least 45 calendar days must be provided for public review of and comment on the proposed amendment and draft environmental impact statement.

(3) Legal notice of decisions to adopt a minor amendment must be provided in accordance with 36 CFR 217.5. The effective date of minor amendments is governed by 36 CFR 217.10.

(4) A minor amendment shall be used to allocate newly acquired land to a management prescription, provided the prescription is consistent with the purposes for which the land was acquired.

(5) If the responsible official concludes that a proposed project should be implemented, but that the project would conflict with a forest plan standard, the project may be approved only if the forest plan standard is amended. If such an amendment is limited to apply to only the specific project and the circumstances described at paragraphs (b)(1) (ii) and (iii) of this section do not apply, then the change is a minor amendment. By contrast, a change to a forest plan standard that would apply to the specific project and to future projects or that applies to one project but meets the circumstances described at paragraphs (b)(1) (ii) and (iii) of this section would be a major amendment.

(i) The environmental effects of modifying or waiving application of the forest plan standard for a specific project must be disclosed in the NEPA documentation associated with the project decision.

(ii) A proposed minor amendment that applies only to a specific project and that is accompanied by an environmental assessment is subject to the notice and comment procedures of 36 CFR 215.5.

(iii) A proposed minor amendment that applies only to a specific project and is accompanied by an environmental impact statement is subject to notice and comment in accordance with NEPA procedures.

(iv) A decision to amend a forest plan for a specific project is subject to the notice and appeal procedures of 36 CFR part 215, and the time period between the decision and implementation is also governed by 36 CFR part 215.

(d) *Interim amendment.* (1) An interim amendment may be used only when a catastrophic event has occurred or when new information indicates there is a need to promptly change the forest plan in order to provide resource protection and it is unacceptable to delay the changes needed until procedures for major or minor amendment can be completed.

(2) Unless the authority is subsequently reserved by the Chief, the Regional Forester is the responsible official for interim amendments.

(3) The Regional Forester shall give notice of an interim amendment to those on the list described at § 219.3(b) and shall provide legal notice of the decision in a newspaper of general circulation. In addition, if the Chief is the responsible official, notice shall be published in the Federal Register. The notice must concisely summarize the following:

(i) The circumstances which warrant use of the interim amendment procedure;

(ii) The changes being made in the forest plan;

(iii) The anticipated consequences associated with the interim amendment;

(iv) The anticipated duration of the interim amendment, not to exceed two years;

(v) The changes being made to the monitoring and evaluation strategy in association with the interim amendment; and

(vi) The opportunity for public comment.

(4) An environmental impact statement is not required for an interim amendment.

(5) The effective date of an interim amendment is the eighth calendar day after legal notice of the decision is

published in a newspaper of general circulation pursuant to § 219.9(d)(3) or, in the case where the Chief is the responsible official, in the Federal Register.

(6) A period of 45 calendar days must be provided for public comment beginning on the date of publication of legal notice of an interim amendment decision. On the basis of public comment, the responsible official may decide to modify the interim amendment through issuance of a new interim amendment or may decide that the interim amendment remains in effect without change. In either circumstance, the responsible official shall publish a notice of the decision and a brief summary of the rationale, and also provide it to those on the list described at § 219.3(b).

(7) The duration of an interim amendment may not exceed two years. If an approved amendment or revision has not superseded the interim direction within two years of the effective date of the interim amendment, then the responsible official may reissue the interim amendment or issue a modified interim amendment, subject to the notice and comment requirements of this section.

(8) An interim amendment may not be made through a decision document for a specific project.

(9) Pursuant to 36 CFR part 217, an interim amendment is not subject to administrative appeal.

(e) *Nondiscretionary changes.* If a change in applicable law or regulation occurs which conflicts with forest plan direction and the agency has no choice but to comply and no discretion in the manner in which to comply, the forest plan may be modified to reflect such changes without conducting amendment procedures. The Forest Supervisor shall give public notice of such changes through the annual monitoring and evaluation report (§ 219.12). Such nondiscretionary changes are not subject to NEPA procedures.

(f) *Other changes.* The following changes to the content of a forest plan may be made at any time, do not require amendment, and are not subject to NEPA procedures. However, such changes are to be identified and briefly described in the next annual monitoring and evaluation report.

(1) Changes to information that is not forest plan direction (§ 219.6), such as the information in forest plan appendices;

(2) Corrections to forest plan maps which delineate where a management prescription is applicable, provided such changes are the result of improved

information about the location of the on-the-ground conditions to which the prescription was described in the forest plan to apply;

(3) Corrections of typographical errors or other non-substantive changes.

#### § 219.10 Forest plan revision.

(a) *Initiation.* Revision of a forest plan should occur about every 10 years, but no later than 15 years, from the date of approval of the original plan or the latest plan revision. Revision also must occur when the Regional Forester determines that conditions over most or all of the plan area have significantly changed from those in place when the forest plan was originally approved or last revised; for example, if a catastrophic event has substantially altered resource conditions over most or all of the planning area.

(b) *Responsible official.* The Regional Forester is the responsible official for forest plan revision.

(c) *Prerevision actions.*—(1) *Prerevision review of the forest plan.* Prior to initiating scoping pursuant to NEPA procedures, the entire forest plan must be reviewed, using the cumulative results of monitoring and evaluation. The purpose of the review is to identify changed conditions and/or other new information which appear to indicate a need to change direction in the current plan.

(2) *Communications strategy.* The Forest Supervisor shall formulate a communications strategy that describes how the public and government entities may participate in the prerevision review and revision of the forest plan on an ongoing basis.

(i) The Forest Supervisor shall meet, or designate a representative to meet, with interested representatives of other Federal agencies and State, local, and tribal governments to establish procedures for ongoing coordination and communication throughout the prerevision review and the revision processes. These procedures should be documented in the communications strategy.

(ii) The Forest Supervisor shall publish notice of the prerevision review process and the formulation of a communications strategy in both the Federal Register and newspapers of general circulation within or near the plan area. The notice must include an invitation to the public and representatives of government entities to express their ideas and suggestions on formulation of a communications strategy.

(iii) The Forest Supervisor shall also give notice of the prerevision review and formulation of the communications

strategy to those on the list described at § 219.3(b).

(d) *Scoping.* Upon completion of the prerevision review, the Regional Forester shall initiate the forest plan revision process by publishing in the Federal Register a Notice of Intent to revise the forest plan and to prepare the associated draft environmental impact statement. The Regional Forester shall allow 60 calendar days for public comment. The purposes of the Notice of Intent are to notify the public of the forest plan revision process, the anticipated scope of the revision effort, and opportunities for the public to be involved in the revision process, and also to begin the scoping process required by NEPA procedures.

(1) In addition to the content requirements established by NEPA procedures, the following apply to a Notice of Intent to revise a forest plan:

(i) The statement of purpose and need for the proposed action identifies specific opportunities to better achieve agency goals, as set forth in law, Executive order, regulation, agency directives, and the RPA Program, through changes in forest plan direction;

(ii) The proposed action identifies the direction in the current forest plan which will be evaluated for change; and

(iii) Significant revision issues describe the topics of concern related to changing forest plan direction and are used to help focus revision analysis efforts on those concerns.

(2) At the time of publication of the Notice of Intent, the Forest Supervisor shall take the following additional actions to notify the public of the revision process:

(i) Notify those on the list described at § 219.3(b) of the revision effort and opportunities for involvement;

(ii) Distribute a press release on the revision effort to newspapers of general circulation within or near the Forest;

(iii) Publicize and conduct activities designed to foster ongoing participation by the public and government representatives in the revision process pursuant to the communications strategy formulated pursuant to paragraph (c)(2) of this section.

(3) The Regional Forester shall consider comments received in response to the Notice of Intent and determine if there is a need to adjust the scope of the revision effort.

(e) *Required elements.* The forest plan revision process requires the following evaluations or updates:

(1) A review of the identification of lands suited and not suited for timber production (§ 219.13(a));

(2) An evaluation of roadless areas for wilderness designation; (§ 219.14(b));

(3) In accordance with § 219.14(c), an evaluation of rivers for eligibility as wild, scenic, and recreation rivers; and

(4) An update of the information in the appendix to the forest plan which displays projected levels of goods and services and management activities for the next decade (§ 219.11(d)(1)).

(f) *Draft environmental impact statement.* A draft environmental impact statement must accompany a proposed revision of a forest plan.

(g) *Public notice and comment.* The Regional Forester shall give the public notice and opportunity to comment as follows:

(1) The draft environmental impact statement, proposed revised forest plan, and draft monitoring and evaluation strategy must be available for public comment for at least 90 calendar days. Copies will be made available for inspection at convenient locations in the vicinity of the lands covered by the plan, beginning on the date of publication of the notice of availability of the draft environmental impact statement in the Federal Register;

(2) The Forest Supervisor shall give notice to those on the list described at § 219.3(b) of the opportunity for public review and comment; and

(3) The Regional Forester shall either hold public meetings or, alternatively, conduct other activities to foster public participation in the review of the draft environmental impact statement, proposed revised forest plan, and draft monitoring and evaluation strategy.

(h) *Final environmental impact statement and revised forest plan.*

Following public comment, the Regional Forester shall oversee preparation of a final environmental impact statement and revised forest plan. The final environmental impact statement and record of decision documenting the selected alternative and adoption of the revision shall be prepared and made public in accordance with NEPA procedures.

(i) *Approval.* In addition to the Federal Register publication of the notice of availability of the final environmental impact statement and record of decision pursuant to 40 CFR 1506.10, legal notice of the adoption of a revised forest plan shall be provided as required by 36 CFR 217.5. A revision becomes effective 30 calendar days after the date of the notice published in the Federal Register.

#### § 219.11 Forest plan implementation.

(a) *Project consistency.* Project decisions must be consistent with the standards in a forest plan. Deviation of a project from compliance with a guideline is not inconsistent with the

forest plan. A determination of consistency of a project with the forest plan must be documented when the project is approved. If a proposed project is not consistent with a standard in the forest plan, the responsible official may, subject to valid existing rights, take only one of the following actions:

- (1) Modify the proposal to make it consistent with the forest plan;
- (2) Reject the proposal; or
- (3) Amend the forest plan to permit the proposal.

(b) *Application of forest plan amendment or revision to existing authorizations or previously approved projects.* Permits, contracts, and other instruments issued or approved for the use and occupancy of National Forest System lands must be consistent with the forest plan in effect at the time of their issuance. Subject to valid existing rights, contracts, permits, and other instruments for occupancy and use that are inconsistent with a new forest plan amendment or revision must be revised as soon as practicable to be made consistent with the forest plan.

(c) *Implementation during amendment or revision process.* An approved forest plan, including all amendments as may be adopted, remains effective until a new amendment or a revision is approved.

(d) *Possible actions during the plan period.* (1) At the time of revision, an appendix to the forest plan shall be prepared displaying a prediction of the major goods and services which may be produced during the plan period, as well as a display of the management activities which may occur during the plan period.

(i) The display should predict a realistic range of goods and services and management activity levels reflecting, to the extent practicable and meaningful, some of the variables which are most likely to affect production or accomplishment of predicted levels.

(ii) The display may include a prediction of the rate of achieving forest plan objectives reflecting, to the extent practicable and meaningful, some of the variables most likely to affect achievement.

(iii) Such a display does not limit nor compel any action by the agency and does not constitute forest plan direction.

(2) At periodic intervals following adoption of a revised forest plan and for such time periods as is determined appropriate, the Forest Supervisor shall make available to the public an updated estimate of major goods and services and management activity levels that may be produced or occur. Development

of these estimates does not require NEPA analysis.

#### **§ 219.12 Monitoring and evaluation.**

(a) *Monitoring and evaluation strategy.* The Forest Supervisor must conduct monitoring and evaluation efforts and, simultaneously with any revision of the forest plan, shall prepare a comprehensive monitoring and evaluation strategy to guide such efforts. This strategy is not forest plan direction, is not included in the forest plan, and does not require NEPA analysis. However, monitoring and evaluation activities are subject to NEPA procedures at the time of implementation.

(1) The monitoring and evaluation strategy provides instructions for the following:

(i) Assessing if projects are being implemented in accordance with the decision documents authorizing the projects;

(ii) Assessing, through the use of measurable indicators, if the activities being implemented are effective in achieving forest plan goals;

(iii) Conducting appropriate monitoring and evaluation efforts to occur within the plan area to help meet monitoring and evaluation needs at scales larger than the plan area;

(iv) Validating the assumptions upon which forest plan direction was established and verifying the accuracy of predicted effects;

(v) Prioritizing monitoring and evaluation efforts by identifying those monitoring and evaluation efforts that are of highest priority to conduct because they assess the effects of those management activities believed to have the greatest potential risk to the environment;

(vi) Collecting and compiling appropriate information to serve as reference points for future evaluations;

(vii) Determining if there is new information or a change in conditions which substantially affects the validity of the forest plan including, but not limited to:

(A) Laws, Executive orders, regulations, RPA Program updates, or agency directives issued subsequent to approval of the forest plan;

(B) Changes in biological, physical, social, or economic factors influencing the plan area;

(C) Findings resulting from applicable scientific research or experience;

(D) Findings resulting from ecosystem analysis;

(viii) Storing and disseminating information of use in the program development and budget formulation process, such as updated information on

resource capabilities, project opportunities, activity costs, or economic trends;

(ix) Tracking the goods and services produced and management activities accomplished;

(x) Involving the public in monitoring and evaluation by identifying opportunities for the public to participate, when appropriate, in monitoring and evaluation efforts;

(xi) Identifying problems, and opportunities to resolve those problems, for use in determining whether there is a need to amend or revise the forest plan.

(2) The monitoring and evaluation strategy document should describe procedures and identify planned intervals for implementing and reporting monitoring and evaluation efforts. Because the type and intensity of monitoring and evaluation efforts can vary depending on the availability of funds, the monitoring and evaluation strategy should be realistic and practicable. Monitoring and evaluation efforts should be designed at the appropriate spatial scale and for appropriate timeframes.

(3) The Forest Supervisor shall give priority to implementing those monitoring and evaluation efforts that assess the effects of management activities having the greatest potential risk to the environment.

(b) *Notice and approval of monitoring and evaluation strategies.* (1) A monitoring and evaluation strategy must be made available for public review and comment at the same time as a proposed revised forest plan and in accordance with § 219.10(g).

(2) The Regional Forester is responsible for approving the monitoring and evaluation strategy in conjunction with approving the revised forest plan. The Regional Forester shall obtain concurrence of the applicable Station Director before approving a monitoring and evaluation strategy. A final revised forest plan cannot be approved before the associated monitoring and evaluation strategy is approved.

(c) *Updating monitoring and evaluation strategies.* (1) Updates may occur whenever deemed necessary. Circumstances which might trigger an update to the strategy include, but are not limited to, amendment of the forest plan; consideration of comment from the public or government entities in response to the annual monitoring and evaluation report; availability of new information; emergence of new opportunities to coordinate monitoring and evaluation with others; or

interdisciplinary team recommendations.

(2) The Forest Supervisor is responsible for updating the monitoring and evaluation strategy as needed. The Forest Supervisor shall obtain concurrences of the applicable Station Director before approving an update to a monitoring and evaluation strategy. Updating the monitoring and evaluation strategy does not trigger a forest plan amendment or NEPA analysis. A proposed update to a monitoring and evaluation strategy must be made available for public review and comment for 30 calendar days. Those on the list described at § 219.3(b) shall be notified of the opportunity for public review and comment.

(d) *Coordination of monitoring and evaluation efforts.* (1) Monitoring and evaluation efforts should be coordinated, to the extent feasible, with other Federal agencies, State, local, and tribal governments, interested private landowners, the scientific community, and other interested parties. The monitoring and evaluation strategy should include identification of information to be gathered by other entities.

(2) Monitoring and evaluation efforts should be coordinated across Forest Service administrative boundaries. The Regional Forester shall assure that monitoring and evaluation needs which extend beyond a plan area are addressed and coordinated.

(3) To the extent practicable, the applicable Station Director should provide for the involvement of Forest Service research personnel in the development and updating of monitoring and evaluation strategies, the implementation and evaluation of monitoring and evaluation tasks, and preparation of the annual monitoring and evaluation report.

(e) *Monitoring and evaluation report.* The Forest Supervisor shall prepare a concise monitoring and evaluation report annually. This report shall be transmitted to the Regional Forester and Station Director and be made available to interested individuals, organizations, government agencies, and public officials. The report should include, but is not limited to, the following:

(1) A summary of the results of monitoring and evaluation efforts;

(2) Identification of any changes needed in how the forest plan is being implemented;

(3) Identification of whether amendment or revision of the forest plan is needed;

(4) A brief description of any amendments which have been initiated

or become effective since the previous report;

(5) A brief description of any updates made to the monitoring and evaluation strategy;

(6) A brief description of any nondiscretionary changes made to the forest plan pursuant to § 219.9(e);

(7) A brief description of changes made to information in the forest plan that does not constitute direction, such as changes to appendices (§ 219.9(f)).

(f) *Project implementation.* When monitoring and evaluation activities are essential to ensuring mitigation of possible environmental effects of a project, such activities must be identified in the project decision document. Moreover, in such case, that project may not be initiated unless there is a reasonable expectation that adequate funding will be available to conduct the monitoring and evaluation activities.

(g) *Initiating amendment or revision.* Nothing in this section shall be construed to preclude initiating a forest plan amendment or revision at any time the Forest Supervisor or Regional Forester deems necessary.

#### § 219.13 Statutory timber management requirements.

(a) *Review of suitability determination.* (1) Lands identified as not suited for timber production must be reviewed at least every 10 years. Normally, this should occur as part of forest plan revision; however, if a 10-year period elapses prior to forest plan revision, then the review of unsuitable lands shall occur at the 10-year interval as well as later during forest plan revision. The time period for the 10-year review begins upon the effective date of the original forest plan, the effective date of any forest plan revision, or the effective date of any amendment which included a review of all unsuitable lands.

(2) Notwithstanding the 10-year review, all lands must be reviewed for their suitability for timber production at the time of forest plan revision.

(3) The identification of lands as suited or not suited for timber production may be changed at any time for forest plan amendment.

(b) *Lands not suited for timber production.* (1) Lands not suited for timber production must have a fixed location and should be identified on maps, either in the forest plan or the planning records, or otherwise described in a manner in which they can be readily recognized.

(2) Forest plan management prescriptions must be established to ensure the management of unsuited

lands is consistent with the provisions of paragraphs (b)(3)(v)(B) and (b)(4) and (5) of this section.

(3) Lands are identified as not suited for timber production if any of the following conditions apply:

(i) The land has been withdrawn from timber harvest by an Act of Congress, the Secretary of Agriculture or the Chief of the Forest Service;

(ii) Timber harvest on these lands would violate statute, Executive order, or regulation;

(iii) The land does not meet the definition of forested land as set forth in § 219.2 of this subpart;

(iv) Technology is not available for conducting timber harvesting without irreversible damage to soil productivity or watershed conditions;

(v) There is no reasonable assurance that such lands can be adequately reforested within five years of final timber harvest. Adequate reforestation means that the cut area contains the minimum number, size, distribution, and species composition of regeneration as identified in the forest plan. Five years after final harvest means five years after clearcutting, after last overstory removal entry in shelterwood or seed tree cutting, or after selection cutting.

(A) Research and experience are the basis for determining whether the harvest and regeneration practices planned can be expected to result in adequate reforestation.

(B) The reforestation requirement of paragraph (b)(3)(v) of this section does not prohibit the harvesting of timber when openings are created for wildlife habitat improvement, vistas, recreation uses, or similar long-term purposes.

(4) Timber harvesting may occur on unsuitable lands only for salvage sales or sales necessitated to protect other multiple-use values.

(5) Lands not suited for timber production are to continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values.

(6) Identification of unsuitable lands should not vary among alternatives at the time of forest plan revision.

(c) *Lands suited for timber production.* Lands that are not identified as unsuitable for timber production shall be considered suited for timber production. However, forest plan standards may be established which prohibit or limit timber harvesting on suited lands. For example, such standards could be imposed on lands otherwise suited for timber production due to economic considerations or due to allocation of the land to uses not compatible with timber harvesting. Each forest plan must

include in the appendix a tabular summary displaying a listing of the number of acres of suitable lands where standards have been imposed which prohibit or limit timber harvesting and the number of acres where such prohibitions or limitations do not apply. This summary is provided as a convenient reference only and is not part of the suitability determination.

(d) *Allowable sale quantity.* The amount of chargeable timber volume which can be sold from a plan area for a decade cannot exceed the allowable sale quantity standard established for the plan area. Each forest plan which provides for a timber sale program must establish a standard setting the allowable sale quantity. The allowable sale quantity is a ceiling; it is not a future sale level projection or target and does not reflect all of the factors that may influence future sale levels.

(1) *Calculation procedures.* The allowable sale quantity is calculated as follows:

(i) *Land base.* The only lands on which the allowable sale quantity is based are those lands in the plan area suited for timber production and on which planned periodic entries for timber harvest are allowed over time. Only one allowable sale quantity can be established per plan area.

(ii) *Long-term sustained-yield timber capacity.* The amount of chargeable timber volume which can be sold for a decade from any proclaimed National Forest within the plan area may not exceed the long-term sustained-yield timber capacity of that proclaimed National Forest except as provided by paragraph (d)(1)(ii)(B) of this section or as necessary to meet overall multiple-use goals as established in the forest plan. Any change to the forest plan to permit a departure to meet overall multiple-use goals must be made by a major amendment or revision.

(A) The long-term sustained-yield timber capacity of a proclaimed National Forest is calculated using the same suited land base and forest plan standards as used for calculating the allowable sale quantity.

(B) In those cases where a proclaimed National Forest has less than two hundred thousand acres of lands suited for timber production, two or more proclaimed National Forests may be used for purposes of determining the long-term sustained-yield timber capacity.

(iii) *Non-declining flow.* When calculating a new allowable sale quantity, the new allowable sale quantity may either decline, remain constant, or increase relative to the current allowable sale quantity. The

new allowable sale quantity must be established at a level that is predicted to be sustainable or capable of increasing during subsequent decades, with exceptions permitted only to meet overall multiple-use goals.

(iv) *Intensified management practices.* Whenever the allowable sale quantity is changed through amendment or revision, predicted yields that were dependent on implementation of intensified management practices must be decreased if such intensified practices have not been successfully implemented or funds have not been received to permit such practices to continue substantially as previously planned.

(2) *Chargeable timber volume.* Only the timber volume that has been included in the growth and yield projections used for the calculation of the allowable sale quantity is attributable to the allowable sale quantity when sold.

(3) *Noninterchangeable components.* The allowable sale quantity may be divided into noninterchangeable components. Limits on the sale of chargeable timber volume associated with each noninterchangeable component cannot be exceeded, and chargeable timber volume from one noninterchangeable component cannot be attributed to the volume limit associated with another noninterchangeable component. Where management prescriptions allow planned periodic entries for timber harvest over time into roadless areas, the portion of the allowable sale quantity derived from those roadless areas must be identified as a noninterchangeable component.

(4) *Exception to harvest limit.* Nothing in this section prohibits the salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. If the volume from such harvests was included in the calculation of the allowable sale quantity, it may either be substituted for timber that would otherwise be sold under the plan or, if not feasible, sold over and above the allowable sale quantity.

(e) *Culmination of mean annual increment.* All even-aged stands scheduled to be harvested during the plan period must generally have reached culmination of mean annual increment of growth. This requirement does not apply to silvicultural practices such as thinning or other stand improvement measures; to salvage or sanitation harvesting of stands which are substantially damaged by fire,

windthrow, or other catastrophes, or which are in imminent danger from insect or disease attacks; when uneven-aged methods are used; or to cutting for experimental and research purposes. In addition, exceptions to this requirement are permitted in the forest plan for the harvest of particular species of trees if overall multiple-use goals would be better attained. Any change to a forest plan to permit such exceptions must be made through a major amendment or at the time of revision. Cubic foot measure is used as the basis for calculating culmination of mean annual increment of growth unless the Chief directs otherwise.

(f) *Selection of cutting methods.* The determination of the appropriate cutting method is made at the project level. Clearcutting may be permitted only when it is determined to be the optimum method of timber cutting and the only practical method to accomplish one or more of the following purposes:

(1) Establishment, maintenance, or enhancement of habitat for threatened or endangered species;

(2) Enhancement of wildlife habitat or water yield values or to provide for recreation, scenic vistas, utility lines, road corridors, facility sites, reservoirs, fuel breaks, or similar developments;

(3) Rehabilitation of lands adversely impacted by events such as fires, windstorms, or insect or disease infestations;

(4) Preclusion or minimization of the occurrence of potentially adverse impacts of insect or disease infestations, windthrow, logging damage, or other factors affecting forest health;

(5) Establishment and growth of desired tree or other vegetative species that are shade intolerant;

(6) Rehabilitation of poorly stocked stands due to past management practices or natural events; and

(7) Research needs.

(g) *Maximum size of clearcuts.* To provide for those cases where clearcutting may be approved for a specific project, the forest plan must establish the maximum size of areas that could be clearcut in one harvest operation. These sizes do not apply to areas harvested by clearcutting as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm. Exceptions to the established limits also may be exceeded on a project basis after public notice and approval by the Regional Forester.

(h) *Blending of even-aged stands.* Blocks, patches, or strips for clearcutting, shelterwood cutting, seed tree cutting, and other methods designed to regenerate an even-aged stand of timber shall be shaped and

blended to the extent practicable with the natural terrain.

(i) *Protection of soil and water.* Forest plans must not permit timber harvesting where harvests are likely to seriously and adversely affect water conditions or fish habitat unless protection is provided from detrimental changes in water temperature, blockages of water courses, and deposits of sediment.

(j) *Displays of Timber Information.* The following information shall be displayed in one or more appendices to the forest plan:

(1) Acreage designated as lands unsuitable and suitable for timber production.

(2) Acreage of suitable lands subject to standards which prohibit or limit timber harvesting and the acreage where such prohibitions or limitations do not apply.

(3) the long-term sustained-yield timber capacity of each proclaimed National Forest either fully or partially within the plan area.

(4) The proportion of possible timber harvest methods forest-wide.

#### § 219.14 Special designations.

(a) *Special designations.* Forest plan amendment or revision is the mechanism for the agency to allocate specific areas to prescriptions for special designations, or to recommend special designation by higher authorities. Special designations may include, but are not limited to, wilderness, research natural areas, geological areas, botanical areas, scenic by-ways, national scenic areas, national recreation areas, national natural landmarks, and wild, scenic, and recreation rivers.

(b) *Wilderness areas.* Unless Federal statute directs otherwise, all roadless, undeveloped areas shall be evaluated for wilderness designation during forest plan revision subject to the following limitations:

(1) West of the 100th meridian, areas must be at least 5,000 acres in size unless contiguous to existing units of the National Wilderness Preservation System or contiguous to areas endorsed by the Administration for wilderness designation.

(2) East of the 100th meridian, areas must be of sufficient size as to make practicable their preservation and use in an unimpaired condition.

(c) *Wild, scenic, and recreation rivers.* The eligibility of rivers for designation as wild, scenic, and recreation rivers shall be evaluated during forest plan revision if any of the following apply:

(1) Federal legislation requires evaluation; or

(2) A river eligibility evaluation has not been conducted using the criteria published in FSH 1909.12 in July, 1987.

(d) *Role of forest plans.* Where Acts designating special areas within the National Forest System require planning beyond that required for forest plans, the goals, objectives, standards, or guidelines in special area plans shall be incorporated into the forest plan as forest plan direction.

#### § 219.15 Applicability and transition.

(a) The provisions of this subpart are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 including, but not limited to, the National Grasslands.

(b) In those circumstances where a forest plan has not been approved as of [effective date of the final rule], development and approval of the forest plan continue to be subject to the previous planning rule. After plan approval, the rules of this subpart apply.

(c) Forest plans adopted prior to [effective date of the final rule] remain in effect until amended or revised pursuant to this subpart.

(d) Prior to adoption of a revised forest plan prepared in accordance with the rules of this subpart, forest plans need not be amended in order to comply with the rules of this subpart.

(e) The displays required by § 219.11(d)(1) and (2) and § 219.13(j) need not be prepared prior to development of a revised forest plan prepared in accordance with the rules of this subpart.

(f) The requirement of § 219.12(e) applies starting the first full fiscal year after [effective date of the final rule].

(g) Until such time as forest plans are amended or revised to fully conform to the definitions and usage of "standards" and "guidelines" as described at § 219.6(e) and (f), the following apply:

(1) Consistency determinations (§ 219.11) shall be based on whether project decisions adhere to mandatory standards or guidelines in current plans; and

(2) An amendment shall be considered major when one of the following circumstances exist:

(i) One or more mandatory standards or guidelines in the current forest plan would be amended in such a manner that the amendment would result in significant change to the forest plan and that change is predicted to affect resources over a large portion of the plan area during the remainder of the plan period;

(ii) The forest plan would be amended in such a manner that the amount of chargeable timber volume which can be sold for a decade from a proclaimed National Forest in the plan area exceeds the long-term sustained-yield timber capacity of that proclaimed National

Forest, except as provided at (§ 219.13(d)(1)(ii)(B)); or

(iii) Forest plan direction would be changed to permit harvest of even-aged stands that have not reached culmination of mean annual increment of growth (§ 219.13(e)), including when such a change is made to accommodate a project.

(h) If a Notice of Intent to prepare an environmental impact statement has been published for a significant amendment or revision of a forest plan prior to [effective date of the final rule], the following apply:

(1) If a draft environmental impact statement accompanying a proposed significant amendment has not been issued, the Regional Forester shall implement the rules of this subpart. In such case, a new Notice of Intent need not be issued; rather, the Regional Forester shall notify those on the list described at § 219.3(b) of any changes in the amendment process resulting from compliance with the rules of this subpart.

(2) If a draft environmental impact statement accompanying the proposed significant amendment has been issued, the Regional Forester may continue under the previous planning rule.

(3) If a draft environmental impact statement accompanying a proposed revision has not been issued, the Regional Forester shall implement the rules of this subpart. If a draft environmental impact statement accompanying the proposed revision has been issued, the Regional Forester may continue under the previous planning rule. If the Regional Forester continues under the rules of this subpart, a new Notice of Intent need not be issued, the scoping process need not be repeated, and the prerevision actions required at § 219.10(c) need not specifically occur. However, the Regional Forester must document other analyses or evaluations conducted as part of the revision process which served to review the entire forest plan and to determine that need to change forest plan direction. The Regional Forester shall notify those on the list described at § 219.3(b) of any changes in the process for revision resulting from compliance with the rules of this subpart.

(i) Except for the Pacific Southwest Region (36 CFR 200.2), regional guides prepared in accordance with the previous planning rule shall be withdrawn no later than three years from [effective date of the final rule], unless the Chief of the Forest Service determines that delay is warranted. The Regional Guide for the Pacific Southwest Region shall be maintained

until such time as all forest plans in the Region are approved. It shall then be withdrawn no later than three years from the date of approval of the last forest plan, unless the Chief of the Forest Service determines that delay is warranted.

(j) A forest plan must meet the requirement of § 219.13(g) prior to withdrawal of the regional guide for that plan area.

**Subpart B—[Reserved]**

Dated: April 4, 1995.

Jack Ward Thomas,

*Chief.*

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