

Energy Effects

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

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with or that would impede full implementation of this rule.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal governments and on the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism. The Department has made an assessment that this rule conforms with the federalism principles set out in this Executive order; would not impose any significant compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that this rule does not have federalism implications.

Consultation and Coordination with Indian Tribal Governments

This final rule does not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with Tribes is not required.

Controlling Paperwork Burdens on the Public

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

no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Government Paperwork Elimination Act Compliance

The Department is committed to compliance with the Government Paperwork Elimination Act (44 U.S.C. 3504), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 36 CFR 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

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

PART 219—PLANNING

Subpart A—[Removed and Reserved]

■ 1. In part 219, remove and reserve subpart A.

Dated: December 22, 2004.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 05–20 Filed 1–4–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB86

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule describes the National Forest System land management planning framework; establishes requirements for sustainability of social, economic, and ecological systems and developing, amending, revising, and monitoring land management plans; and clarifies that land management plans under this final rule, absent extraordinary circumstances, are strategic in nature

and are one stage in an adaptive cycle of planning for management of National Forest System lands. The intended effects of the final rule are to streamline and improve the planning process by making plans more adaptable to changes in social, economic, and environmental conditions; to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; and to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act and other authorities.

Elsewhere in this part of today's **Federal Register**, the Department of Agriculture is simultaneously publishing another final rule to remove the planning regulations adopted on November 9, 2000.

DATES: Effective Date: This rule is effective January 5, 2005.

ADDRESSES: The following information is posted on the World Wide Web/Internet at <http://www.fs.fed.us/emc/nfma/>: (1) This final rule; (2) supplemental responses to substantive public comments and a description of the changes, if any, made in response to those comments and the reasons for those changes to the 2002 proposed rule; (3) the Civil Rights Impact Analysis for this final rule; (4) the cost-benefit analysis for this final rule; (5) the business model cost study done to estimate predicted costs to implement the 2000 planning rule and the 2002 proposed rule, and (6) the notice of proposed National Environmental Policy Act implementing procedures; request for comment. This information may also be obtained upon written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Acting Assistant Director for Planning; Ecosystem Management Coordination Staff (202) 205–1019, or Regis Terney, Planning Specialist, Ecosystem Management Coordination Staff (202) 205–1552.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. Forest Service Directives
2. Events Since Publication of the 2002 Proposed Rule
3. Overview of the Final 2004 Rule
 - Major themes and areas of public comment in the final rule.
 - The strategic nature of land management plans.
 - Role of science in planning.
 - Public involvement.
 - Sustainability.

- Environmental management systems and adaptive management.
 - National Environmental Policy Act and National Forest Management Act planning.
 - Summary.
4. Department Response to Comments on the 2002 Proposed Rule
- General Issues.
 - Issues in Response to a Specific Section.
- Section 219.1—Purpose and applicability
 Section 219.2—Levels of planning and planning authority
 Section 219.3—Nature of land management planning
 Section 219.4—National Environmental Policy Act compliance
 Section 219.5—Environmental management systems
 Section 219.6—Evaluations and monitoring
 Section 219.7—Developing, amending, or revising a plan
 Section 219.8—Application of a new plan, plan amendment, or plan revision
 Section 219.9—Public participation, collaboration, and notification
 Section 219.10—Sustainability
 Section 219.11—Role of science in planning
 Section 219.12—Suitable uses and provisions required by NFMA
 Section 219.13—Objections to plans, plan amendments, or plan revisions
 Section 219.14—Effective dates and transition
 Section 219.15—Severability
 Section 219.16—Definitions
5. Regulatory Certifications
- Regulatory Impact.
 - Environmental Impacts.
 - Energy Effects.
 - Controlling Paperwork Burdens on the Public.
 - Federalism.
 - Civil Rights Impact Analysis.
 - Consultation with Indian Tribal Governments.
 - No Takings Implications.
 - Civil Justice Reform.-1
 - Unfunded Mandates.

1. Forest Service Directives

The Forest Service is developing planning directives to set forth the legal authorities, objectives, policy, responsibilities, direction, and overall guidance needed by Forest Service line officers, agency employees, and others to use this planning rule. A request for public comment on the Forest Service directives will be published in the **Federal Register** as soon as possible after adoption of this final rule.

2. Events Since Publication of the 2002 Proposed Rule

The 2002 proposed rule was released for public review and comment in Volume 67 of the **Federal Register**, page 72770, December 6, 2002. Between February 18–20, 2003, during the comment period, scientists, experts in public land management issues, resource professionals, Tribal officials,

State officials, local government officials, and the public participated in a diversity options workshop. In addition, the public comment period on the 2002 proposed rule was extended from March 6, 2003 to April 7, 2003 (68 FR 10420, Mar. 5, 2003). The agency received about 195,000 comments, of which approximately 7,000 were original letters. All of the substantive comments on the 2002 proposed rule were carefully considered and led to a number of changes in this final rule.

Also, interim final rules extending the transition from the 1982 planning rule to the 2000 planning rule were published in 2001 (66 FR 27552, May 17, 2001) and 2002 (67 FR 35431, May 20, 2002), the latter rule allowing Forest Service managers to elect to continue preparing plan amendments and revisions under the 1982 planning rule until a new final rule is adopted. Finally, an interim rule was published in 2003 (68 FR 53294, Sept. 10, 2003) extending the date by which site-specific project decisions must conform with provisions of the 2000 planning rule until replaced with a new rule. To date, Forest Service officials have elected to use the 1982 planning rule for all plan development, amendments, and revisions.

3. Overview of the Final 2004 Rule

This final rule embodies a paradigm shift in land management planning based, in part, on the Forest Service's 25 years of experience developing plans under the 1982 planning rule. Having assessed the current system's flaws and benefits during this extended period, the Forest Service believes it is time to think differently about National Forest System (NFS) planning and management. Thus, based on the agency's expertise and experience, the Forest Service created this final rule to enable a better way to protect the environment and to facilitate working with the public. The final rule prioritizes agency resources to monitoring and, when necessary, provides a process to change plans to ensure that clean air, clean water, and abundant wildlife are available for future generations. This final rule allows the Forest Service to rapidly respond to changing conditions like hazardous fuels, new science, and many other dynamics that affect NFS management. Protection and management of the NFS should be based on sound science, which is fundamental to this final rule.

This final rule assures the public an effective voice in the entire planning process from beginning to end. Finally, because this final rule provides for more

efficient planning, more resources will be shifted to the public's expressed priorities, that is, improved conservation of the forests and grasslands and better responses to the real threats the forests and grasslands face, such as critical wildfire danger and invasive species which degrade ecological systems.

To achieve these important goals, plans under this final rule will be more strategic and less prescriptive in nature than under the 1982 planning rule. Emphasizing the strategic nature of plans under this rule is the most effective means of guiding NFS management in light of changing conditions, science and technology. Specifically, plans under this final rule will not contain final decisions that approve projects or activities except under extraordinary circumstances. Rather, as described further below, plans under this final rule will contain five components, which set forth broad policies to help guide future decisions on the ground: The plan components are desired conditions, objectives, guidelines, suitability of areas, and special areas.

Major Themes and Areas of Public Comment in the Final Rule

The major themes of the final rule discussed in this preamble reflect the public comments received on the 2002 proposed rule. This final rule sets forth the process for NFS land management planning, including the requirements for complying with the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*) during development, amendment, and revision of land management plans (plans) for NFS units, including the national forests, grasslands, prairie, or other comparable administrative units. The Forest Service has prepared and revised plans more than 150 times since enactment of NFMA and expects to complete more than 100 additional plans and revisions during the next decade. The Forest Service has also been amending plans during the last 25 years. Based on the experience gained and public comments on the 2002 proposed rule, the U.S. Department of Agriculture (Department) has concluded that this final rule should be based on the following principles and practical considerations:

- *Plans should be strategic in nature.*

The purpose of plans should be to establish goals for forests, grasslands, and prairies and set forth the guidance to follow in pursuit of those goals. Such goals can be expressed by describing: desired conditions, objectives, guidelines, suitability of areas, and

special areas. Typically, a plan does not include final decisions approving projects or activities.

- *Plans must be adaptive and based on current information and science.*

During the 15-year life expectancy of a plan, information, science, and unforeseen circumstances evolve. It must be possible to adjust plans and the plan-monitoring program and to react to new information and science swiftly and efficiently. An environmental management system (EMS) approach will enhance adaptive planning and should be part of the land management framework.

- *Land management planning must involve the public.*

Plans are prepared for public lands. Public participation and collaboration needs to be welcomed and encouraged as a part of planning. To the extent possible, Responsible Officials need to work collaboratively with the public to help balance conflicting needs, to evaluate management under the plans, and to consider the need to adjust plans.

- *Plans must guide sustainable management of NFS lands.*

The Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528–531) requires that NFS lands be managed to provide a continuous flow of goods and services to the nation. To meet this requirement, plans must focus on providing a sustainable framework—based on social, economic, and ecological systems—that guides on-the-ground management of projects and activities, which provide these goods and services.

- *Planning must comply with all applicable laws, regulations, and policies.*

Planning must comply with all applicable laws, regulations, and policies, although all these requirements do not need to be restated in a plan. For example, the Clean Water Act includes requirements for nonpoint source management programs, to be administered by the States. The States or the Forest Service then develops Best Management Practices (BMPs) for use in design of projects or activities on NFS lands. BMPs are designed to meet State water quality standards and are intended to result in prevention of adverse consequences. Specific BMPs do not have to be repeated in the plan to be in effect and applicable to National Forest System projects and activities.

The Strategic Nature of Land Management Plans

Land management plans are strategic in nature. A plan establishes a long-term management framework for NFS units. Within that framework, specific projects

and activities will be proposed, approved, and implemented depending on specific conditions and circumstances at the time of implementation. The U.S. Supreme Court described the nature of NFS plans in *Ohio Forestry Ass'n v. Sierra Club*, (523 U.S. 726, 737 (1998)) explaining that plans are “tools for agency planning and management.” The Court recognized that the provisions of such plans “do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations” (523 U.S. 733 (1998)).

The Supreme Court also recently recognized the similar nature of land management plans for public lands under the jurisdiction of the Bureau of Land Management (BLM) in *Norton v. Southern Utah Wilderness Alliance*, 124 S.Ct. 2373 (2004). The Supreme Court again observed that “land use plans are a preliminary step in the overall process of managing public lands—‘designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.’” In addition, “a land use plan is not ordinarily the medium for affirmative decisions that implement the agency’s ‘project[ion]s.’” Like a NFS land management plan, a BLM plan typically “is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.” “The BLM’s * * * land use plans are normally not used to make site-specific implementation decisions.” The Supreme Court acknowledged that plans are “tools by which ‘present and future use is *projected*’ [and] * * * generally a statement of priorities,” 124 S.Ct. 2373 (2004).

Under the Final Rule, plans will continue to be strategic in nature, as described by the Supreme Court in *Ohio Forestry and SUWA*. As described below, the five components of a plan under the Final Rule do not authorize project and activity decisions, but rather characterize general future conditions and guidance for such decisions. Only in extraordinary circumstances will project and activity decisions be implemented at the time of a plan development, revision, or amendment.

- *Planning documentation.*

The final rule requires a Plan Document or Set of Documents to contain all information relevant to the planning and EMS processes. A Plan

Document or Set of Documents includes: (1) Evaluation reports that, among other things, document the public involvement process in planning; (2) the plan, including applicable maps; (3) the plan approval document; (4) National Environmental Policy Act of 1969 (NEPA) documents; (5) the monitoring program for the plan area; (6) documents relating to the environmental management system (EMS) established for the unit; and (7) documentation of how science was taken into account in the planning process.

- *Plan components.*

The 2002 proposed rule used the term “management direction” to describe the parts of a plan. This final rule uses the term “plan components” to describe the elements of the plan pursuant to the final rule. How plans are characterized and plan components operate has evolved over the years. This evolution has occurred through an ongoing evaluation of the role plans play, how plans guide projects, how plans by themselves do or do not have impacts on the ground, how current plans enable or restrict decisions to respond to changing circumstances and science, and how more active and structured monitoring provides better information to amend or revise plans as needed. Proposals for action to accomplish plan goals and desired conditions, with effects that can be meaningfully evaluated and which may be significant, generally are made at the project and activity stage.

Through this evaluation, the agency has concluded that plans are more effective if they include more detailed descriptions of desired conditions, rather than long lists of prohibitive standards or guidelines or absolute suitability determinations developed in an attempt to anticipate and address every possible future project or activity and the potential effects they could cause. Under this final rule, plans have five principal components (§ 219.7(a)(2)): desired conditions, objectives, guidelines, suitability of areas, and special areas.

- *Desired Conditions.*

Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources of the plan area is to be directed. Desired conditions are long-term in nature and aspirational, but are neither commitments nor final decisions approving projects and activities. Desired conditions may be achievable only over a period longer than the 15 years covered by the plan.

The increased attention to fire regimes provides an example of the role of

“desired conditions.” The Forest Service is challenged with unnatural fuel levels throughout the NFS. Much of the western United States is currently in a severe drought cycle, and fuel reduction is needed. To facilitate moving toward a healthier and more natural condition on the land, a plan could contain, for example, desired conditions that include a description of desired fuel loading, along with a description of desired tree species, structure, distribution, and density closer to what would have occurred under natural fire regimes.

The agency, working with the public, also may seek to achieve or maintain desired conditions for attributes, such as quietness, or a sense of remoteness, or attributes of our cultural heritage. Desired conditions also have a key role to play for wildlife habitat management. During plan development, it is difficult to envision all the site-specific factors that can influence wildlife. For example, in the past plans might have included standards precluding vegetation treatment during certain months or for a buffer for activities near the nest sites of birds sensitive to disturbance during nesting. However, topography, vegetation density, or other factors may render such prohibitions inadequate or unduly restrictive in specific situations. A thorough desired condition description of what a species needs is often more useful than a long list of prohibitions. Thorough desired condition descriptions are more useful because they provide a better starting point for project or activity design, when the site-specific conditions are better understood and when species conservation measures can be most meaningfully evaluated and effectively applied. Again, a description of what the agency, working with the public, wants to achieve is key.

- *Objectives.*

Objectives are concise projections of intended outcomes of projects and activities to contribute to maintenance or achievement of desired conditions. Objectives are measurable and time-specific and, like desired conditions, are aspirational, but are neither commitments nor final decisions approving projects and activities. Application of objectives is the same as applied under the 1982 planning rule.

- *Guidelines.*

Guidelines provide information and guidance for the design of projects and activities to help achieve objectives and desired conditions. Guidelines are not commitments or final decisions approving projects and activities. Guidelines should provide the recommended technical and scientific

specifications to be used in the design of projects and activities to contribute to the achievement of desired conditions and objectives. They are the guidance that a project or activity would normally apply unless there is a reason for deviation. If deviation from plan guidelines is appropriate in specific circumstances, the rationale for deviation should be based on project or activity analysis and explained fully in the project decision document. However, deviation does not require an amendment to the plan.

In the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*), the terms “standards” and “guidelines” are both used, with no apparent distinction between them with respect to their force and effect. In the 1982 planning rule and the first round of plans, the two terms were usually written together as “standards and guidelines.” Some plan revisions have designed mandatory provisions as “standards” and general direction with latitude for implementation as “guidelines.” The 2000 planning rule did not use the term “guidelines.” In the 2000 planning rule, a provision that is labeled as a standard could be either mandatory or discretionary depending upon its wording and the scope of its requirements.

The 2002 proposed rule, consistent with the approach in the 2000 planning rule, continued to use only the term “standards” and did not use the term “guidelines.” However, in line with and to clarify the strategic nature of plans, this final rule instead adopts the term “guidelines” and has removed the term “standards” as a plan component. The Department decided to employ the term “guideline” to reflect a more flexible menu of choices consistent with the nature of plans set forth in this rule.

In this final rule, guidelines are described as “information and guidance for project and activity decisionmaking.” Guidelines will not contain final decisions approving activities and uses. A Responsible Official has the discretion to act within the range of guidelines, as well as the latitude to depart from guidelines when circumstances warrant it. In the latter case, the Responsible Official should document the rationale for taking such exception to guidelines.

- *Suitability of areas.*

Suitability of areas is the identification of the general suitability of an area in an NFS unit for a variety of uses. Areas may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. The identification of an area as generally

suitable for a use or uses is neither a commitment nor a decision approving activities and uses. The suitability of an area for a specific use or activity is authorized through project and activity decisionmaking.

Suitable use identification has evolved over time. Suitable use identification has often been characterized in plans prepared under the 1982 planning rule as permanent restrictions on uses or permanent determinations that certain uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 planning rule, these identifications were never truly permanent, unless they were statutory designations by Congress. It became apparent early in implementation of the 1982 planning rule that plan suitability identifications, like environmental analysis itself, always necessitated site-specific reviews when projects or activities were proposed.

For example, on lands identified as generally suitable for timber production, site-specific analysis of a proposal could identify a portion of that area as having poor soil or unstable slopes. The project design would then exclude such portions of the project area from timber harvest. Thus, the final determination of suitability was never made until the project or activity analysis and decision process was completed. This final rule better characterizes the nature and purpose of suitability identification.

An illustration of the effect of suitability identifications in the final rule may be helpful. Under this final rule, a plan may identify certain portions of an NFS unit as suitable for some uses. For example, some areas of an NFS unit may be suitable for transportation development or motorized use. Identification of an area in a plan as suitable for transportation development or motorized use does not mean that construction of a road is immediately approved or is even inevitable. Rather, the identification merely provides guidance for where road construction may be considered suitable. Proposed projects for construction of a road or roads would be approved after appropriate project-specific National Environmental Policy Act (NEPA) analysis and public involvement.

This final rule, as discussed next in this preamble, also includes specific provisions for identification of lands generally suitable for timber harvest and identification of lands not suitable for timber production as required by NFMA. However, under this final rule, other generally suitable uses may be identified in a variety of ways. A land

management plan may identify all uses that are generally suitable for a particular area, may identify the major or most prominent generally suitable uses, and/or may identify criteria to be used to determine whether a use is compatible with the desired condition of the area.

- *Special areas.*

Special areas are areas within the NFS designated for their unique or special characteristics. These areas include wilderness, wild and scenic river corridors, and research natural areas. Some of these areas are statutorily designated. Other areas may be designated through plan development, amendment, revision, or through a separate administrative process with an appropriate NEPA process.

- *Monitoring.*

The monitoring program is a central element of adaptive management planning in this final rule because monitoring is the key to discovering how to make project specific decisions consistent with objectives and to discovering what ultimately may need to be changed in a plan. Experience has shown that while some monitoring programs and specific monitoring techniques have been adequate to assess need for changes in plans of national forests, grasslands, prairie, or other comparable administrative units over time, some have not. New uses, such as mountain biking, were not contemplated 25 years ago. Noxious weeds can infest a previously pristine landscape. New methods of measuring water quality or wildlife habitat can be developed. Therefore, a unit's monitoring program must be readily adaptable too. Most plans revised under the 1982 planning rule, in fact, have removed most monitoring operational details from the plans themselves to allow for quicker changes to monitoring when needed.

The final rule allows the plan's monitoring program to be changed with administrative corrections, instead of amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. Changes in monitoring programs will be reported annually, and the Responsible Official has flexibility to involve the public in a variety of ways to develop program changes.

- *Streamlining the planning rule and use of the Forest Service Directive System.*

Part of the strategic and adaptive nature of planning is to make the planning rule itself more strategic and adaptive. Therefore, procedural and technical details are being moved to the Forest Service Directive System (Forest

Service directives). Forest Service directives are the primary basis for the Forest Service's internal management of all its programs and the primary source of administrative direction to Forest Service employees. The Forest Service Manual (FSM) contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities. The Forest Service Handbook (FSH) is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

The public will have an opportunity to comment on both the FSM and FSH provisions to implement this final rule. The FSH and FSM provisions will be issued as soon as possible after release of this final rule. Thereafter, the agency will provide the public an opportunity to comment on future changes to the adopted provisions where there is substantial public interest or controversy concerning the future changes.

Role of Science in Planning

The 2002 proposed rule would have required that Forest Service decisions be consistent with the best available science. The final rule requires that the Responsible Official take into account the best available science (§ 219.11). The actual process for taking into account science in planning has not changed from the 2002 proposed rule. Under the final rule, science, while only one aspect of decisionmaking, is a significant source of information for the Responsible Official. When making decisions, the Responsible Official also considers public input, competing use demands, budget projections, and many other factors as well as science.

The final rule, like the 2002 proposed rule, states that the Responsible Official may use independent peer reviews, science advisory boards, or other appropriate review methods to evaluate the application of science used in the planning process. Specific procedures for conducting science reviews will be provided in the Forest Service directives.

The Responsible Official must take into account the best available science, and document in the plan that science was considered, correctly interpreted, appropriately applied, and evaluate and disclose incomplete or unavailable information, scientific uncertainty, and risk. This evaluation and disclosure of uncertainty and risk provide a crosscheck for appropriate

interpretation of science and helps clarify the limitations of the information base for the plan.

Public Involvement

The final rule is similar to the 2002 proposed rule regarding public involvement requirements, but the final rule more clearly expresses the Department's emphasis on public involvement and collaboration. The final rule clarifies requirements regarding public involvement in the 2002 proposed rule by consolidating these requirements contained in several sections of the 2002 proposed rule into § 219.9, which requires consultation with interested individuals and organizations, State and local governments, Federal agencies, and federally recognized Indian Tribes.

The Department expects that, compared with prior planning rules, this final rule will allow more members of the public to be more effectively engaged because development of a plan, plan amendment, or plan revision will be simpler, more transparent, and faster. The public will have the opportunity to be engaged collaboratively in the development, amendment, or revision of a plan, in monitoring and in the unit's environmental management system (EMS). In addition, the public will have an opportunity to comment on a plan, plan amendment, or plan revision, and to object prior to approval if concerns remain.

The final rule requires opportunities for public involvement in the unit's land management planning process (§ 219.9) and in monitoring (§ 219.6(b)(3)). In response to public comments on the 2002 proposed rule, the final rule eliminates the prohibition on the use of duplicative materials, such as form letters, when filing an objection to a plan, thus removing a perceived barrier to wider public participation (§ 219.13).

One of the more important changes in public involvement is how the Forest Service will work with the public to collaboratively develop, amend, or revise a plan. The Forest Service has found that the traditional way of developing plan alternatives under the 1982 planning rule was not very useful. The traditional approach of developing and choosing among discrete alternatives that were carried throughout the entire planning process often proved divisive, because it often maintained adversarial positions, rather than helping people seek common ground.

To overcome this tendency, the final rule allows an iterative approach to planning. The Department recognizes

that people have many different ideas about how NFS lands should be managed. Furthermore, a plan could potentially include a variety of different desired conditions, objectives, identification of potential suitable uses, guidelines, and special area designations. The Department also recognizes that the public should be involved in determining what plan components should be. Therefore, the final rule provides for participation and collaboration with the public at all stages of plan development, plan amendment, or plan revision.

The Responsible Official and the public will review the various options to respond to the need to change the plan, and together they will successively narrow potential options until a proposed plan is developed. However, the final rule also recognizes that it is not always possible or desirable to present only one proposed plan for public comment and, therefore, options to the proposed plan can be provided for public comment when appropriate.

The process for plan development will be transparent to the public. Key steps in development of the proposed plan will be documented in the Plan Document or Set of Documents, which will be available to the public. While the final rule requires the Responsible Official to collaborate with the public and that a record of that collaboration be kept, it does not require in-depth social, economic, or ecological analysis of every potential option for a plan. In-depth analysis, documented in an evaluation report, is required only for the proposed plan and the options that remain after public collaboration.

The plan approved by the Responsible Official will be a result of public participation and collaboration that will have included consideration of a variety of different ways to manage a national forest, grassland, prairie, or other comparable administrative unit. Although the Responsible Official will continue to have the responsibility and the authority to make the final decision, the proposed plans that the Forest Service will present for public comment will be plans jointly and collaboratively developed with the public. The Department hopes this approach to plan development will serve to encourage people to work together to understand each other and find common solutions to the important and critical planning issues the agency faces. In summary, the final rule emphasizes collaboration and provides for effective public involvement.

Sustainability

This final rule retains the concept of the interdependent social, economic, and ecological elements of sustainability (§ 219.10) in the 2002 proposed rule. However, the final rule does not include many of the specific analytical processes and requirements set out in the 2002 proposed rule. Appropriate processes will be included in the Forest Service directives. The Department believes it is more appropriate to put specific procedural analytical requirements in the Forest Service directives rather than in the rule itself so that the analytical procedures can be changed more rapidly if new and better techniques emerge. As for other portions of the Forest Service directives, public notice and comment is required where there is substantial public interest or controversy.

As did the 2000 planning rule and the 2002 proposed rule, the final rule makes sustainability the overall goal for NFS planning. Managing NFS lands for sustainability of their renewable resources meets the MUSYA mandate that the Secretary develop and administer the renewable surface resources of the National Forests for multiple use and sustained yield (16 U.S.C. 529). Managing for sustainability will provide for management of the various renewable resources without impairment of the productivity of the land, as required by the MUSYA. Sustaining the productivity of the land and its renewable resources means meeting present needs without compromising the ability of those lands and resources to meet the needs of future generations. The final rule is similar to the 2002 proposed rule for social and economic sustainability requirements. However, as stated, there are changes from the 2002 proposed rule for ecological sustainability.

NFMA requires guidelines for land management plans which provide for diversity of plant and animal communities (16 U.S.C. 1604 (g)(3)(B)) based on the suitability and capability of the land area to meet overall multiple-use objectives. Almost 30 years after passage of the NFMA, the concepts of biological diversity at different spatial and temporal scales, including genetic diversity, species diversity, structural diversity, and functional diversity have been substantially refined and developed. Today, the agency has a vast array of methods available to provide for diversity. The complexity of biological diversity often results in a corresponding complicated array of concepts, measures, and values from several scientific disciplines.

The Department developed the final rule based on the following concepts related to diversity. First, maintenance of the diversity of plant and animal communities starts with an ecosystem approach. In an ecosystem approach, the plan will provide a framework for maintaining and restoring ecosystem conditions necessary to conserve most species.

Second, where the Responsible Official determines that the ecosystem approach does not provide an adequate framework for maintaining and restoring conditions to support specific federally listed threatened or endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species. This final rule defines species-of-concern as those species for which the Responsible Official determine that continued existence is a concern and listing under the Endangered Species Act (ESA) may become necessary. This final rule defines species-of-interest as those species for which the Responsible Official determines that management actions may be necessary or desirable to achieve ecological or other multiple-use objectives. Forest Service directives will identify lists of species developed by an objective and scientifically credible third party, such as the U.S. Fish and Wildlife Service or NatureServe (<http://www.natureserve.org/>).

Third, agency managers should concentrate their efforts on contributing to the persistence of species where Forest Service management activities may affect species rather than on species management where the cause of species decline is outside the limits of agency authority or the capability of the plan area.

Fourth, the presence of all native and desired non-native species in a plan area is important. However, the Responsible Official should have the flexibility to determine the degree of conservation to be provided for the species that are not in danger of ESA listing, to better balance the various multiple uses, including the often-competing needs of different species themselves.

Fifth, the planning framework should provide measures for accounting for progress toward ecosystem and species diversity goals. The final rule and the Forest Service directives provide a framework within which efforts to maintain and restore species will be monitored. Progress toward desired conditions and objectives will be monitored and the results made available to the public. The adaptive monitoring and feedback process will help maintain and improve diversity.

The 2002 proposed rule included two different approaches to the NFMA diversity requirement labeled "Option 1" and "Option 2" and asked for comments on both options. The agency also hosted a workshop to provide an opportunity for public discussion of these options and for identification of other ideas on how to best meet the statutory diversity requirement. An extremely wide range of opinions was expressed, both in public comments and during the workshop. The Department found these comments useful in developing a scientifically credible and realistic approach for this final rule and the Forest Service directives to meet legal requirements and the agency's stewardship responsibilities.

The final rule incorporates features of both Options 1 and 2. In common with both options, the final rule approaches diversity at two levels of ecological organization: the ecosystem level and the species level. This concept has considerable support among scientists, has already been tested by a number of NFS administrative units developing or revising plans under the 1982 planning rule, and was included in the planning rule adopted in 2000.

The final rule is less detailed than either Options 1 or 2 with respect to specific ecosystem analysis requirements. After reviewing public comments, and after consideration of the Forest Service's experience with planning over the past 25 years, the Department concluded that such detail regarding analysis is more properly included in the Forest Service directives. These directives can be more extensive and can be more easily changed as the agency learns how to improve its analytic processes and as new scientific concepts and new technological capabilities become available.

In common with Options 1 and 2, the final rule focuses on ecosystem diversity as the primary means of providing for the diversity of plant and animal communities. The final rule differs from Option 2 in not explicitly requiring analysis of ecosystem diversity at multiple temporal and spatial scales, analysis of disturbance regimes, or analysis of the landscape context. Guidance on appropriate analysis will be included in the Forest Service directives. The agency will seek public comment on this guidance.

Another point in common between this final rule and Options 1 and 2 is the concept that the more effective the ecosystem management guidance is in sustaining species habitat, the less need there is for analysis and planning at the species level of ecological organization.

Option 1, Option 2, and this final rule all recognize that some additional analysis and additional plan provisions may be needed for some species. However, the final rule differs from Option 1 in that it does not include a requirement to provide for viable populations of plant and animal species. Such a requirement had previously been included in both the 1982 planning rule and the 2000 planning rule.

The species viability requirement was not adopted for several reasons. First, the experience of the Forest Service under the 1982 planning rule has been that ensuring species viability is not always possible. For example, viability of some species on NFS lands may not be achievable because of species-specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), or when the reasons for species decline are due to factors outside the control of the agency (such as habitat alteration in South America causing decline of some Neotropical birds), or when the land lacks the capability to support species (such as a drought affecting fish habitat).

Second, the number of recognized species present on the units of the NFS is very large. It is clearly impractical to analyze all species, and previous attempts to analyze the full suite of species via groups, surrogates, and representatives have had mixed success in practice.

Third, focus on the viability requirement has often diverted attention and resources away from an ecosystem approach to land management that, in the Department's view, is the most efficient and effective way to manage for the broadest range of species with the limited resources available for the task.

Requirements for species population monitoring are not included in this final rule. Population data are difficult to obtain and evaluate because there are so many factors outside the control of the Forest Service that affect populations. The Department believes that it is best to focus the agency's monitoring program on habitat on NFS land where the agency can adjust management to meet the needs of certain species. Desired conditions are often a focus of the monitoring program. The agency will identify species-of-concern and species-of-interest (§ 219.16). Where ecological conditions for these species are identified as desired conditions, the habitat could be monitored to assist in avoiding future listing of these species. However, the final rule does not preclude population monitoring. Plans may include population monitoring as appropriate.

In summary, in compliance with NFMA, the ecological sustainability provisions in the final rule provide the foundation for the plan to provide for diversity of plant and animal communities. The final rule provides a complementary ecosystem and species diversity approach for ecological sustainability. The final rule at § 219.7(a)(2) establishes requirements for developing plan components to guide projects and activities. All parts of the land management framework, including plan components, monitoring, and plan adjustment, are designed to work together to contribute to sustainability.

Environmental Management Systems and Adaptive Management

- *Adaptive management and land management planning.*

Plans must adapt to ever-changing conditions. Agency policy may change, new laws may be enacted, or court decisions can change interpretation of existing laws. Fires, invasive species, or outbreaks of insects or disease can substantially change environmental conditions. Changes in market conditions or public values may shift the demand for specific goods and services. Scientific findings can change our understanding of the environment and of the effects of specific management activities. Better monitoring techniques or ways to achieve objectives may be found. Land management plans must reflect the fact that change and uncertainty are inevitable. Consequently, plans must allow for quick response to these ever-changing conditions.

The National Association of Professional Forestry Schools and Colleges and others commented on the 2002 proposed rule regarding the importance, from the scientific perspective, of using adaptive management when dealing with complex ecosystems. In 1999, the Committee of Scientists developed recommendations that strongly encouraged the use of adaptive management. The Committee of Scientists recommended setting a high priority on developing ongoing analyses that are based on monitoring to continually adjust or change land management planning decisions. In response to these comments and recommendations for a greater emphasis on and commitment to adaptive management, the Department has chosen to include environmental management systems (EMS) in the land management framework.

The adaptive management approach includes land management plans along

with comprehensive evaluations, an environmental management system, monitoring, evaluation, and research. Adaptive management requires careful coordination of the work performed through these programs. It does not require equal emphases among these various programs, but rather requires organizational learning, an active pursuit of best available scientific information, evaluation and disclosure of uncertainties and risks about scientific information, and a response to change.

A land management plan starts the adaptive management cycle. Managers then pursue ways to achieve desired conditions and objectives described in the plan. The comprehensive evaluation may describe the risks and uncertainties associated with implementing the plan. Managers prioritize risks and develop strategies to control them.

Monitoring and evaluations check for status and change across the administrative unit. Monitoring results may show that the desired conditions are not being achieved through projects. This may trigger future project changes to reach desired conditions. Alternatively, monitoring results may lead to conclusions that the land management plan should be changed through a plan amendment.

Research is an important part of adaptive management. Through experimentation, researchers investigate cause and effect relationships of management practices on the environment. Experiments test hypotheses and researchers develop reliable knowledge about effects of management practices. The new information may be used to amend plans, change project level work, or update an environmental management system.

- *Land management plans, adaptive management, and environmental management systems.*

This final rule requires each national forest, grassland, prairie, or other comparable administrative unit to develop and implement an EMS based on the international consensus standard published by the International Organization for Standardization as "ISO 14001: Environmental Management Systems—Specification With Guidance For Use" (ISO 14001). Each unit's EMS should be designed and implemented to more efficiently meet legal obligations, including supporting the creation of effective land management plans, ensuring public participation in the process, and providing a framework for adaptive management.

The administrative units' EMS will be a systematic approach to identify and manage environmental conditions and obligations to achieve improved performance and environmental protection. Each unit's EMS will identify and prioritize environmental conditions; set objectives in light of Congressional, agency, and public goals; document procedures and practices to achieve those objectives; and monitor and measure environmental conditions to track performance and verify that objectives are being met. Agency management personnel will regularly review performance, and information about environmental conditions will be regularly updated to continually improve land management and environmental performance.

By systematically collecting and updating information about environmental conditions and practices (for example, through monitoring, measurement, research, and public input), the units' EMS will provide a foundation for effective adaptive management, plan amendments, or even changing specific project or work practices. The agency expects that, whenever possible, EMS and land management plan documentation will be coordinated and integrated to avoid unnecessary duplication.

The units' EMS will more efficiently meet legal obligations, will improve public participation in the land management planning process, and enhance the agency's ability to identify and respond to public input. Creating a transparent and consistent framework that describes how units are managed will improve the public's ability to effectively participate in land management. The units' EMS will not replace any legal obligations that the agency has under NFMA, MUSYA, NEPA, or any other statute, nor will the EMS diminish the public's ability to participate in the land management process or its rights under any law. To the contrary, EMS will significantly improve the public's ability to effectively participate in the process.

The agency chose ISO 14001 as the EMS model for several reasons. First, it is the most commonly used EMS model in the United States and around the world. This will make it easier to implement and understand (internally and externally) because there is a significant knowledge base about ISO 14001. Second, the National Technology and Advancement Act of 1995 (NTAA) (Pub. L. 104-113) requires that Federal agencies use or adopt applicable national or international consensus standards wherever possible, in lieu of creating proprietary or unique

standards. The NTAA's policy of encouraging Federal agencies to adopt tested and well-accepted standards, rather than reinventing-the-wheel, clearly applies to this situation where there is a ready-made international and national EMS consensus standard (through the American National Standards Institute) that has already been successfully implemented in the field for almost a decade. Third, it has been a long-standing policy that Federal agencies implement EMS to improve environmental performance (Executive Order 13148 issued April 21, 2000 (E.O. 13148), titled "Greening the Government Through Leadership in Environmental Management" and an April 1, 2002, Memorandum from the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget to the heads of all Federal agencies). Federal agencies that have been implementing EMS in response to the E.O. 13148 have typically been using ISO 14001 as their model.

The implementation of ISO 14001 in NFS administrative units will have to reflect the legal and public obligations of the agency, as well as the environmental conditions and issues relevant to land management, such as sustainability and long-term issues, including cumulative effects. For example, while ISO 14001 requires implementing organizations to identify their "environmental aspects," administrative units implementing their EMS under this rule will include the concept of environmental conditions in land management planning in this step. Another example reflecting the legal and public obligations of the agency is that the units' EMS must include the public participation requirements of this rule, which are much stronger than the public communication provisions of ISO 14001. Therefore, the agency will interpret and implement ISO 14001 in a manner consistent with the agency's legal obligations, its duty to the public, and the unique circumstances of land management.

National Environmental Policy Act and National Forest Management Act Planning

The application of NEPA to the planning process as identified in this final rule is the next iterative step in an evolution that began with the promulgation of the 1979 planning rule, revised in 1982. In developing the NEPA provisions of this final rule, the Department took into account the nature of the five plan components under this final rule, experience the agency has gained over the past 25 years from

developing, amending, and revising land management plans; the requirements of NEPA and NFMA, the Council on Environmental Quality (CEQ) regulations, and the comments by the Supreme Court in *Ohio Forestry Ass'n v. Sierra Club* and *Norton v. Southern Utah Wilderness Alliance* regarding the nature of plans themselves.

The 1979 planning rule required an environmental impact statement (EIS) for development of plans, significant amendments, and revisions. This requirement continued in the revised rule adopted in 1982. At the time, the Forest Service believed that the NEPA document prepared for a plan would suffice for making most project-level decisions. However, the agency came to understand that this approach to complying with NEPA was impractical, inefficient, and sometimes inaccurate. Over the course of implementing NFMA during the past 25 years, the agency has learned that environmental effects of projects and activities cannot be meaningfully evaluated without knowledge of the specific timing and location of the projects and activities.

At the time of plan approval, the Forest Service does not have detailed information about what projects and activities will be proposed over the 15-year life of a plan, how many projects will be approved, where they will be located, or how they will be designed. At the point of plan approval, the Forest Service can only speculate about the projects that may be proposed and budgeted and the natural events, such as fire, flood, insects, and disease that may occur that will make unanticipated projects necessary or force changes in the projects and the effects of projects that were contemplated. Indeed, the Forest Service has learned that over the 15-year life of a plan it can only expect the unexpected.

In the course of completing NEPA analysis on the first generation of NFMA plans, the Forest Service also became more aware of the difficulties of scale created by the size of the national forests and grasslands. The National Forest System includes 192 million acres, and individual planning units, such as the Tongass National Forest, may be as large as 17 million acres. These vast landscapes contain an enormous variety of different ecosystems, which will respond differently to the same management practices. As the Committee of Scientists said on page 26 of the Committee of Scientists Report:

Because of the wide variation in site-specific practices and local environmental

conditions (e.g., vegetation type, topography, geology, and soils) across a given national forest or rangeland, the direct and indirect effects of management practices may not always be well understood or easily predicted. (Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 p.)

The result is that it is usually infeasible to do environmental analysis for a national forest as a whole that is sufficiently site-specific to allow projects to be carried out without further detailed NEPA analysis after the plan has been approved.

The agency has found itself preparing much more extensive NEPA documentation for projects than it had anticipated when it adopted the 1979 and 1982 planning rules. Moreover, the extensive changes to conditions in the plan area that occurred during the 15-year life of each plan made it increasingly impractical to tier project-level NEPA documentation to the plan EIS. The requirements of the 1979 and 1982 planning rules created an inefficient and ineffective system for complying with NEPA.

The 2000 planning rule furthered the existing presumption of requiring an EIS for plan development or revision, notwithstanding concerns raised by the Committee of Scientists. Secretary Glickman named the Committee of Scientists (COS) on December 11, 1997. The charter for the COS stated that the Committee's purpose was to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made in the National Forest System Land and Resource Management Planning Process.

The Committee of Scientists said, on page 117 of the Committee of Scientists Report:

Perhaps the most difficult problem is that the current EA/EIS process assumes a one-time decision. The very essence of small-landscape planning is an adaptive management approach, based upon monitoring and learning. Although small-landscape planning can more readily do real-time cumulative effects analysis * * *, this kind of analysis is difficult to integrate with a one-time decision approach. Developing a decision disclosure and review process that is ongoing and uses monitoring information to adjust or change treatments and activities will need to be a high priority * * *. (Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 p.)

In addition to concern about timely and accurate disclosure of environmental effects, the agency's experience with planning has demonstrated the need to clarify what plans, in fact, actually do. Neither the

1982 nor the 2000 planning rule clearly described or contrasted the differences between the effects of plans and the effects of projects and activities. This has been confusing to the public and agency employees. As discussed previously in the guidelines and the suitability discussions, plan components have not been applied or interpreted consistently throughout the agency and often have been characterized as the functional equivalent of final project-level decisions or actions, rather than guidance for projects and activities over time.

This final rule clarifies that plans will be strategic rather than prescriptive in nature absent extraordinary circumstances. Plans will describe the desired social, economic, and ecological conditions for a national forest, grassland, prairie, or other comparable administrative unit. Plan objectives, guidelines, suitable uses, and special area identifications will be designed to help achieve the desired conditions. While plans will identify the general suitability of lands for various uses, they typically will not approve projects or activities with accompanying environmental effects. Decisions approving projects or activities with environmental effects that can be meaningfully evaluated will typically be made subsequent to the plan. In essence, a plan simply is a description of a vision for the future that coupled, with evaluation, provides a starting point for project and activity NEPA analysis. Therefore, under this rule approval of a plan, plan amendment, or plan revision typically will not have environmental effects.

The formulation of plans under the final rule as being merely strategic rather than prescriptive is further evident in the five components of plans under the final rule. As described above, none of the five components is intended to directly dictate on the ground decisions which have impacts on the environment. Rather, they state general guidance and goals to be considered in project and activity decisions. These five components thus do not have any significant effect on the environment.

Notwithstanding their strategic nature, approval of a plan, plan amendment, or plan revision is a final action under the CEQ regulations. Further, such actions may have environmental effects in some extraordinary circumstances, such as when a plan amendment or revision includes final decisions approving projects or activities. For example, an amendment or revision including a decision approving a project to thin

certain trees to reduce fire hazards may have environmental effects that could be significant.

NFMA requires the Secretary of Agriculture to determine how to comply with NEPA during the course of NFMA planning. Section 106(g)(1) of NFMA directs the Secretary to specify in land management regulations procedures to insure that plans are prepared in accordance with NEPA, including direction on when and for what plans an EIS is required (16 U.S.C. 1604(g)(1)). The CEQ regulations direct Federal agencies to adopt procedures that designate major decision points for the agency's principal programs likely to have a significant effect on the human environment and ensuring that the NEPA process corresponds with them (40 CFR 1505.1(b)).

Under NEPA and the CEQ regulations, an EIS is required for every report or recommendation on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment (16 U.S.C. 4321 *et seq.*, 40 CFR 1502.3). CEQ regulations define "major Federal action" as including "actions with effects that may be major." The regulations explain that "Federal actions" generally tend to fall within several categories. Although these categories include adoption of formal agency plans within the definition of "federal action," not all federal actions are major federal actions. As applied to the final rule, land management plans under this final rule, as evidenced by their five components, are strategic and aspirational in nature and generally will not include decisions with on-the-ground effects that can be meaningfully evaluated and that may be major. During plan development, amendment, or revision, the agency generally is not at the stage in National Forest planning of proposing actions to accomplish the goals in land management plans. CEQ regulations define "proposals" that can trigger the requirement for an EIS as "that stage in development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (40 CFR 1508.23). Proposals for action to accomplish plan goals and desired conditions, with effects that can be meaningfully evaluated and which may be significant, generally are made at the project and activity stage. While a plan includes desired conditions, goals, and objectives, the Forest Service does not actively prepare to make a decision on an action aimed at achieving desired conditions, goals, or

objectives until the agency proposes projects and activities. Thus, the decision to adopt, amend, or revise a plan, therefore, is typically not the point in the decisionmaking process at which the agency is proposing an action likely to have a significant effect on the human environment.

The approach in this final rule is consistent with the nature of Forest Service land management plans acknowledged in *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726 (1998). As described above, in *Ohio Forestry*, the Supreme Court held that the timber management provisions of land management plans are tools for further agency planning and guide, but do not direct future management. When considering the role of land management plans with respect to timber harvesting, the Supreme Court explained that:

Although the Plan sets logging goals, selects the areas of the forest that are suited to timber production, and determines which "probable methods of timber harvest" are appropriate, it does not itself authorize the cutting of any trees. Before the Forest Service can permit the logging, it must: (a) Propose a specific area in which logging will take place and the harvesting methods to be used; (b) ensure that the project is consistent with the Plan; (c) provide those affected by proposed logging notice and an opportunity to be heard; (d) conduct an environmental analysis pursuant to the National Environmental Policy Act of 1969, to evaluate the effects of the specific project and to contemplate alternatives; and (e) subsequently make a final decision to permit logging, which affected persons may challenge in an administrative appeals process and in court.

The Supreme Court repeated its description of plans as merely strategic without any immediate on the ground impact in the recent SUWA decision described above. Both cases reinforce the observations of the FS in reflecting on 25 years of completing EISs for plans, and buttress the approach to planning and NEPA compliance described in the final rule.

In accordance with NFMA, NEPA, and the CEQ regulations, this final rule will ensure that Forest Service NEPA analysis will be timed to coincide with those stages in agency planning and decisionmaking likely to have a significant effect on the human environment. The final rule emphasizes the clear distinction between the mere adoption, revision or amendment of a plan and projects and activities having on-the-ground environmental effects. In this final rule, the Department is clarifying the nature of National Forest land management plans, and based on the nature of plans, specifying that

plans, plan amendments, and plan revisions may be categorically excluded from NEPA documentation as provided in agency NEPA procedures.

The CEQ regulations (40 CFR 1500) require that each agency establish specific criteria for and identification of three types of actions: (1) Those that normally require preparation of an environmental impact statement (EIS); (2) those that normally require the preparation of an environmental assessment (EA); and (3) those that normally do not require either an EA or EIS. Actions qualifying for this third type of action are defined as categorical exclusions because they do not individually or cumulatively have a significant impact on the human environment; therefore, neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4).

A categorical exclusion is not an exemption from the requirements of NEPA. Categorical exclusions are an essential part of NEPA that provide a categorical determination that certain actions do not result in significant impacts, eliminating the need for individual analyses and lengthier documentation for those actions. CEQ regulations at 40 CFR 1500.4(p), 1507.3 and 1508.4 direct agencies to use categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and do not require the preparation of an environmental assessment or an environmental impact statement, thereby reducing excessive paperwork. Current Forest Service procedures for complying with and implementing NEPA are set out in Forest Service Handbook (FSH) 1909.15.

Simultaneously with this rulemaking, the Forest Service is proposing to revise its NEPA procedures to provide a new categorical exclusion for plan development, amendment, and revision. The proposed categorical exclusion describes the extraordinary circumstances that may require preparation of an EIS or an EA. The Forest Service is seeking comment on the proposed categorical exclusion.

The Forest Service presented and sought public comment on this approach to NEPA and NFMA planning in the 2002 proposed rule. The 2002 proposed rule at § 219.6(b) provided that if the Responsible Official determines that a new plan, plan amendment, or plan revision, or a component thereof, would be an action significantly affecting the quality of the human environment, or authorizes an action that commits funding or

resources that could have a significant effect on the quality of the human environment, then an EIS would be required. Otherwise, a new plan, plan amendment, or plan revision may be categorically excluded from documentation in an EA or EIS as provided in agency NEPA procedures. The categorical exclusion proposed in connection with this final rule clarifies that plan development, plan amendment or plan revisions in accordance with this final rule do not significantly affect the environment, and thus are categorically excluded from further NEPA analysis, unless extraordinary circumstances are present. Of course, the FS will comply with all applicable NEPA requirements, including preparation of an EA or an EIS where appropriate, when considering specific projects or making other project-specific decisions affecting the environment.

The public identified three key concerns related to the proposal to categorically exclude plans from documentation. First, many people commented that they were unsure about how they would be involved in planning if an EIS process were not used. Second, they questioned how planning analysis would be documented in the absence of an EIS. Third, some asked how cumulative effects would be accounted for if a Categorical Exclusion (CE) were relied upon. The Department has fully considered the concerns raised by the public and believes the final rule addresses the concerns as follows:

- Public participation.

This final rule provides extensive opportunity for public participation that exceeds requirements for public participation under NEPA and improves the clarity of the process for public notification (§ 219.9).

- Evaluations and documentation.

This final rule requires comprehensive and other evaluations in § 219.6. Evaluation reports will document existing social, economic, and ecological conditions and trends; and will be available to the public and included in the Plan Document or Set of Documents. Evaluations are prepared for plan development, plan amendment, and plan revision (§ 219.6); use a systematic and interdisciplinary approach (§ 219.7(a)); and consider environmental amenities and values along with economic and technical considerations (§ 219.10).

The Plan Document or Set of Documents will be supplemented with annual evaluation reports and with other information as appropriate to form a continually refreshed and current analytical base of information. Because

of this more current information base, evaluations will provide a much stronger and more robust source of information for projects and activities than an EIS prepared under the 1982 planning rule.

- Cumulative effects.

To account for cumulative effects of management and natural events, this final rule requires (§ 219.6(a)): (1) A comprehensive evaluation for the development of a new plan or plan revision; (2) annual plan monitoring and evaluation; and (3) review of the comprehensive evaluations at least every 5 years. These evaluations, as opposed to predictive EIS's that grow increasingly stale over time, will provide more timely and informed consideration of cumulative effects. The Plan Document or Set of Documents provides for a robust information base for the consideration of cumulative effects of management in NEPA documents prepared for projects or activities.

- The relationship between EMS and NEPA.

Implementing EMS will improve the quality of agency NEPA analysis for projects and activities. In a September 2003 report, titled "Modernizing NEPA Implementation," the CEQ NEPA Task Force stated at page 54, "Federal agencies, having made the connection between EMS and adaptive management, would be integrating NEPA-related adaptive management actions into their developing EMSs." The task force also said that NEPA and EMS provide "a synergy that can encourage a robust analysis when the EMS information is extensive, current, and available for use in the NEPA analysis." The Department agrees with the task force's conclusions and believes that requiring each unit to implement an EMS will improve environmental performance and effective land management in addition to enhancing NEPA analysis and documentation.

Under the existing process, information about environmental conditions is collected for the purposes of preparing detailed NEPA analysis and documentation for plan development, plan amendment, or plan revision. There is no effective system for keeping this information current, because the collection and analysis of information often typically ceases when the NEPA analysis and documentation is completed. Therefore, the information collected for the environmental documents for 126 NFS units can grow stale as environmental, social, and economic conditions change. Further, the focus of the information collection and analysis process is on NEPA

analysis and documentation, rather than for use in the ongoing management of the administrative unit. Therefore, the large volume of information and analysis that is so expensively created over a long period is often used as a snapshot for purposes of making a single decision, instead of being integrated into a dynamic, ongoing system to effectively manage units.

This rule will improve this situation by requiring each administrative unit to implement an EMS that includes defined procedures for identifying environmental conditions, keeps that information current, and includes monitoring and measurement procedures for continually evaluating conditions in the unit. The EMS requirement is separate from any obligations to develop EISs, EAs, or CEs. Therefore, the obligation to keep this information current and make it available for public review is separate from the obligation to create any particular NEPA document. This information will be used in formulating the land management plans that are subject of this rule, managing administrative units on an ongoing basis, as well as for specific project and activity proposals that trigger the need for EISs, EAs, or CEs. Therefore, through the implementation of EMS, administrative units will be continually collecting and evaluating the data necessary to create any documents that may be required by NEPA. This will make the creation of accurate and relevant NEPA documents more efficient. More importantly, it will make available to administrative unit managers and the public a "library" of current information, analyses, and research that, through EMS, will be used to manage the administrative unit on an ongoing basis, and better adapt management practices to avoid unwanted environmental effects.

Summary

This final rule represents a paradigm shift in planning. It emphasizes the strategic nature of NFMA land management plans and will permit more flexibility in implementing projects in response to evolving scientific doctrines and changing conditions on the ground, such as unforeseen natural disasters. It requires that each NFS unit develop an EMS that will be used to continually improve environmental performance and conditions. It requires that Responsible Officials take into account the best available scientific information. It requires public involvement and collaboration throughout the entire cycle of planning, plan development, plan amendment, plan revision, project

and activity decisionmaking, and monitoring of environmental performance. The final rule requires plans to focus on the social, economic, and ecological sustainability of the management of the NFS, and it has specific provisions for biological diversity at both the ecosystem and species level. It clarifies the nature of plans and explains how the planning process complies fully with the requirements of NEPA. Plans developed and maintained using the EMS and other processes required by this final rule will improve the performance, accountability, and transparency of NFS land management planning.

4. Department Response to Comments on the 2002 Proposed Rule

The Forest Service received approximately 7,000 original letters and 195,000 total comments from a wide variety of respondents on the 2002 proposed rule. Each comment received consideration in the development of the final rule. The following is a summary of comments and response to issues raised by these comments. A response to less substantive issues may be found in the supplemental response to comments located on the World Wide Web/ internet (see ADDRESSES).

General Issues

The Department received the following comments not specifically tied to a particular section of the 2002 proposed rule.

Comment: Compliance with NFMA. Some respondents thought the 2002 proposed rule would allow more timber harvest and road construction than currently exists and therefore would violate the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*). Other respondents believed the timber industry, other commercial interests, or Forest Service employees unduly influenced the 2002 proposed rule; moreover, they perceived that the 2002 proposed rule would degrade the environment. Some contended the 2002 proposed rule was influenced by campaign contributions.

Response: The final rule is not intended to, and will not, determine the choices among the multiple uses. The NFMA requires the Secretary of Agriculture to develop regulations under the principles of the Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528–531). Congress gave the Secretary broad discretion in interpreting how these principles are applied. This final rule affirms the overall goal of MUSYA and provides a framework for plans to reflect contemporary priorities and values.

Pursuant to MUSYA, this final rule adopts social, economic, and ecological sustainability as the goal of National Forest System (NFS) management. Furthermore, timber production from NFS lands has been reduced dramatically since NFMA was written. The sale of timber has fallen from an annual level of 10 to 12 billion board feet in the 1970s and 1980s to three billion board feet in the early 1990s and below three billion board feet since then. Finally, the final rule does not promote or discourage other uses of NFS lands, such as outdoor recreation, range, wildlife and fisheries, and so forth. The planning process itself will determine the desired conditions and objectives for each NFS unit.

Comment: Plan oversight and resource conservation. Some respondents commented that the 2002 proposed rule would prevent court oversight of plans, eliminate restrictive plan requirements, inappropriately increase Forest Service discretion, and result in decreased conservation of resources such as wildlife. Several respondents wanted the 2002 planning rule to be stricter, attributing the collapse of Enron to inadequate regulatory oversight. Other respondents were concerned about the possibility of increased litigation and thought streamlined planning would shift more of the analysis burden to projects, thus slowing project completion.

Response: The final rule establishes a planning process that complies with NFMA and provides a broad planning framework within which issues specific to a plan area can be resolved in an efficient and reasonable manner informed by the latest data and scientific assessments and public participation and collaboration.

With respect to concerns that Forest Service discretion may be unchecked, there has always been a tension between providing needed detailed direction in the planning rule and discretion of the Responsible Official. However, the decisions of the Responsible Official are constrained and guided by a large body of law, regulation, and policy, as well as public participation and oversight. Because every issue cannot be identified and dealt with in advance for every situation, the Forest Service must rely on the judgment of the Responsible Official to make decisions based on laws, regulation, policy, sound science, public participation, and oversight.

The Department of Agriculture (Department) believes that the final rule is fully compatible with the nature of forest planning as described by the U.S. Supreme Court in *Ohio Forestry Ass'n v. Sierra Club* 523 U.S. 726 (1998) (A

discussion of this case is found in the "Overview of the Final 2004 Rule" section of the preamble.) The Department expects public oversight and legal review of planning, as well as an assessment of the environmental impacts of specific projects under NEPA, to occur under the final rule in accordance with *Ohio Forestry*. As a general matter, and consistent with the *Ohio Forestry Ass'n* decision, a plan by itself is not expected to be reviewable by the courts at the time the plan is developed, revised or amended; but when the agency decides on a specific action, an aggrieved party will be able to challenge that action and, if appropriate, seek review of that part of the plan that is relevant to that action.

After years of experience with previous planning rules, the Department is ready to embrace the latest thinking in management techniques and believes this final rule provides the proper balance of regulatory requirements and flexibility needed to resolve issues on the ground. By streamlining the planning process, requiring environmental management systems (EMS), and emphasizing collaboration and public involvement, the final rule will result in plans that are more up to date, and should have broader public support. Similarly, the continual updating of the evaluations and analyses associated with plans is expected to reduce the amount of analysis needed at the project level. These concepts of collaboration, EMS, evaluations, and public involvement are described in detail in the "Overview of the Final 2004 Final Rule" section of the preamble.

Comment: Consultation with a committee of scientists. Several respondents were concerned that there was no consultation with a committee of scientists in developing the 2002 proposed rule. Several felt that an independent review was necessary. Some respondents also felt that the 2002 proposed rule should reflect current scientific knowledge.

Response: The NFMA does not require a committee of scientists for revision of the planning rule. Nonetheless, the Department based the 2002 proposed rule on the major recommendations from the 1999 Committee of Scientists report. Sustainability, public participation, adaptive management, monitoring and evaluation, the role of science, and the objection process, all concepts in the proposed and final rule, were recommendations of that report. The Department realizes that scientific knowledge will continue to expand. Therefore, the Responsible Official must

take into account the best available science when plans are developed, revised, or amended (§ 219.11).

Comment: Environmental conservation. Several respondents commented that the 2002 planning rule should conserve wildlife, wilderness, historic and cultural sites, special habitat, watersheds, genetic material, and reduce fragmentation. One person commented that planning should be done on whole ecosystems.

Response: The final rule provides the processes through which Responsible Officials conserve and manage resources with regard to the issues relevant in the plan area. Those communities, groups, or persons interested in these important resource issues can influence plan components and monitoring programs by becoming involved in planning efforts throughout the process, including the development and monitoring of the plan, as well as the development and implementation of proposed projects and activities.

The Department agrees that better quality planning is often accomplished when the appropriate scale is used. For species or watersheds, evaluation often needs to be completed at a broader scale than for an individual unit. The Department anticipates that the Forest Service, in its plan evaluations, will continue to look at issues at the appropriate scale.

Comment: The 2000 planning rule was never adequately tested. Some respondents disagreed with the 2002 proposed rule discussion of the difficulty of implementing the 2000 planning rule, since the 2000 planning rule was never used.

Response: The costing study, "A Business Evaluation of the 2000 Planning Rule and the Proposed NFMA Planning Rules," analyzed each of the work activities of the 2000 planning rule and used experienced planners and resource professionals to estimate how those work activities would be carried out. The Department believes that this analysis on the 2000 planning rule was adequate to determine how well that rule could be implemented.

Comment: Costing study of the 2000 Planning Rule. Several respondents said the report on cost and ability to implement the 2000 planning rule was not available.

Response: The **Federal Register** notice for the 2002 proposed rule explained how all associated studies were available for review. These studies have been, and still are, available on the Forest Service's World Wide Web/Internet site (see **ADDRESSES**) and available from the Director, Ecosystem Management Coordination Staff, Forest

Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250-1104, as described in the **ADDRESSES** section.

Comment: Inability to complete revisions. Several respondents said that the inability of the Forest Service to comply with a statutorily mandated revision timeline was due to reasons other than the requirements of the 1982 or 2000 planning rules.

Response: The Forest Service experience showed that the cost and unnecessary complexity of the planning process for the 1982 planning rule were the major causes of plan delays; this experience and the costing study indicated that the 2000 planning rule would exacerbate these concerns.

Comment: Cost study and the cost-benefit analysis for 1982 planning rule. Some respondents said the cost study of the 2000 planning rule and the 2002 proposed rule should also have considered the 1982 planning rule and that the cost-benefit analysis should have considered the costs of the 1982 planning rule, which is the rule that was actually being implemented at the time of the study.

Response: When the 2000 planning rule was developed, the costs to the Forest Service to implement it were unknown, while the costs associated with the 1982 planning rule were known. The cost-benefit analysis considered the costs of implementing the 1982 planning rule, the anticipated cost of implementing the 2000 planning rule, and the anticipated cost of implementing the 2002 proposed rule. The cost-benefit analysis used information from a business evaluation and costing study for the 2000 planning rule and the 2002 proposed rule. Although the 1982 planning rule was not included in the business evaluation, 1982 planning rule costs were included in the cost-benefit analysis using applicable costs from the business evaluation and historical cost information.

Comment: Biological assessment. Some respondents commented that the rule should consider the "degree to which the action [the rule] may adversely affect an endangered or threatened species or their habitat that has been determined to be critical under the Endangered Species Act (ESA) of 1973." They assert that a biological assessment of the 2002 proposed rule is needed to analyze its impacts on threatened and endangered species and that the agency must also consult on the 2002 proposed rule with the agencies responsible for implementing the ESA.

Response: The ESA, as amended (16 U.S.C. 1531 *et seq.*), requires

consultation for actions authorized, funded, or carried out by a Federal agency. This final rule simply establishes a process for planning. The final rule is not an action having a direct effect on threatened or endangered species. The agency's obligations for conservation of threatened, endangered, and proposed species remains unchanged by this final rule; no consultation is required as part of the final rule's development.

Comment: Planning certification. One organization commented that a nationally recognized third party should certify sustainability of National Forests.

Response: The Department believes that the body of laws that govern management of NFS lands, the Forest Service Strategic Plan (Strategic Plan) required under the Government Performance and Results Act, the planning process itself, the expertise of career professionals, and the opportunity for public participation are adequate to ensure sustainability. Recognizing the point made by the respondent of the value of using recognized standards for forest management, this final rule requires units to develop and implement an EMS that conforms to ISO 14001 to manage natural resources and further the adaptive management approach advocated by other respondents. ISO 14001 is the internationally and nationally recognized standard for EMSs. The Forest Service understands that ISO 14001 is not itself a program for forest sustainability certification and does not contain specific natural resource provisions or requirements. Natural resource management requirements and priorities are properly set by Congress and open public participation, rather than by non-governmental standards setting bodies that are not directly answerable to the citizens of the United States.

ISO 14001 provides a well-accepted management process that will improve the Forest Service's ability to identify and meet the natural resource goals that are set by Congress in the NFMA and MUSYA and the Forest Service's commitments to sustainability, good science, and public involvement in a disciplined, systematic, and transparent manner.

Comment: Benchmarks in the 1982 planning rule were useful. Several respondents said that benchmarks, such as those required in the 1982 planning rule, are useful and should still be required.

Response: The agency's experience with the 1982 planning rule is that benchmarks have not been useful. In theory, benchmarks define the range of

production possibilities and ecosystem limits. In practice, however, they are difficult to develop due to limited data and uncertainty at the time plans are developed. However, the final rule does not prohibit benchmark analysis when it would provide meaningful information.

Comment: Fix the 1982 planning rule. Several respondents thought the agency should consider analyzing and correcting the 1982 planning rule instead of developing an entirely new rule.

Response: In many ways, the final rule reflects the 1982 planning rule. However, it makes improvements based on over 25 years of experience. The final rule includes the basic plan components set out in the 1982 planning rule, includes the provisions required by NFMA, and expands the public involvement requirements in the 1982 planning rule by requiring additional public involvement opportunities and emphasizing collaboration.

Comment: The final rule should be subject to NEPA. Some respondents commented that adoption of the final rule is itself subject to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321–4346), and this rulemaking is a major Federal action having a significant effect on the human environment. Others questioned why previous rulemaking efforts were accompanied by environmental assessments and why this rulemaking was not.

Response: The Department disagrees that this rulemaking is a major Federal action that has significant effects on the environment because the final rule, which sets out a process for developing plans, plan amendments, and plan revisions, does not have environmental effects. The Forest Service Handbook (FSH) 1909.15, section 31.12, paragraph 2, specifically provides that procedures for amending or revising land management plans may be categorically excluded from NEPA documentation.

The Forest Service produced an environmental assessment for the 2000 planning rulemaking efforts, but asserted at the time that it was going beyond the requirements of the law or policy. In the spirit of efficiency and streamlining inherent in this rulemaking effort, it seemed inconsistent to produce a NEPA document that was not required or useful. In summary, this final rule does not significantly affect the quality of the human environment and does not trigger NEPA obligations.

Comment: Integration of planning process requirements. One respondent commented that the 2002 proposed rule listed many requirements and was

unclear how these requirements were to be integrated into a plan.

Response: The Department agrees that it was difficult to track the planning process steps in the 2002 proposed rule. This difficulty is one of the primary reasons the Department substantially reorganized the final rule.

Comment: Research. One professional organization felt that the final rule should support “bold and imaginative” research on NFS lands.

Response: The Department believes that the final rule does support research. The strong emphasis on monitoring, evaluation, and the Department’s recognition of the value of environmental management systems produce an adaptable process where scientific experimentation is encouraged. Topics to be researched, however, are properly not set out in the final rule.

Comment: Forest Service directives. Several respondents expressed concern about placing management direction in the Forest Service Directive System (Forest Service directives) and said that the Forest Service directives have not been subject to rulemaking procedures and do not have the full force and effect of law. They said that NFMA requires direction to be in the planning rule and they are concerned that use of directives will foster distrust and a confusing system of malleable and unenforceable guidelines.

Some respondents were concerned that placing direction in the Forest Service directives instead of in the final rule would reduce meaningful public participation. Others endorsed the idea of using the Forest Service directives for technical details rather than burden the final rule with these “how to” requirements. Some said that the Forest Service should retain greater flexibility and should be able to make decisions more cost effectively. Finally, some respondents said that they would like the Forest Service directives to be updated and published for public review concurrent with the planning rule development.

Response: The Forest Service directives are the primary basis for the internal management and control of all programs and the primary source of administrative direction to Forest Service employees. The Forest Service Manual (FSM) contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute assigned programs and activities. The Forest Service Handbook (FSH) is the

principal source of specialized guidance and instruction for carrying out the direction issued in the FSM. Because the Forest Service directives are easier to change and more easily adopt the latest technology and science, they are the appropriate place for specific technical guidance.

As stated in the “Forest Service Directives” section in the preamble, the Forest Service is developing planning directives to provide overall guidance needed to use this final rule for Forest Service line officers, agency employees, and others. The Forest Service will provide the public with the opportunity to comment on planning directives as soon as they are prepared through notice in the **Federal Register**.

Comment: Other issues. Some respondents commented on a variety of important issues such as roads, recreation, timber harvest, taxes, recycling, access, travel management, public safety, effects on spiritual values, land exchanges and purchases, fire protection, paying for restoration, job creation, certain kinds of motorized use, and roadless areas and they wanted those issues addressed in the final rule.

Response: The Department agrees that the issues raised are important. However, the final rule is intended to guide how plans are developed, revised, and amended. The final rule provides the overall direction for planning. The final rule does not provide direction that is properly found in the plans themselves, or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit.

Issues in Response to Specific Sections

Following are discussions and responses to public comments received on specific sections in 36 CFR part 219 during the Department’s comment period on the 2002 proposed rule, including discussion on the differences between the 2002 proposed rule and the final rule and why these changes were made. The Department reorganized the final rule. As a result, some sections have new titles and/or a new designation as shown in the following table 1. In addition, the heading for subpart A in the 2002 proposed rule, “National Forest System Planning for Land and Resource Management Plans,” has been shortened and simplified in the final rule to “National Forest System Land Management Planning,” which is a term also used in the National Forest Management Act of 1976.

TABLE 1.—SECTION-BY-SECTION COMPARISON OF THE 2002 PROPOSED RULE WITH THE FINAL RULE

[2002 Proposed Rule]	[Final Rule]
Proposed section number and title	Final section number and title
§ 219.1 Purpose and applicability	§ 219.1 Purpose and Applicability. [some direction moved to §§ 219.2 and 219.3]
§ 219.2 Nature and scope of a land and resource management plan ..	[redesignated at § 219.3; planning process requirements incorporated in § 219.7]
§ 219.3 Levels of planning and planning authority	§ 219.2 Levels of planning and planning authority. [redesignated at § 219.2]
§ 219.4 Decisions embodied in plans	§ 219.3 Nature of land management planning. [incorporated in §§ 219.7 and 219.12]
§ 219.5 Indicators of need to amend or revise a plan	§ 219.4 National Environmental Policy Act compliance. [incorporated in § 219.6 or the Directive Systems.]
§ 219.6 Compliance with National Environmental Policy Act	§ 219.5 Environmental management systems. [redesignated at § 219.4]
§ 219.7 Amending a plan	§ 219.6 Evaluations and monitoring. [incorporated in §§ 219.2, 219.7 and 219.9]
§ 219.8 Revising a plan	§ 219.7 Developing, amending, or revising a plan. [incorporated in §§ 219.2, 219.7, 219.8 and 219.9]
§ 219.9 Developing a new plan	§ 219.8 Application of a new plan, plan amendment, or plan revision. [incorporated in §§ 219.2 and 219.7]
§ 219.10 Application of plan direction	§ 219.9 Public participation, collaboration, and notification. [incorporated in § 219.8]
§ 219.11 Monitoring and evaluation.	§ 219.10 Sustainability. [incorporated in § 219.6]
[2002 Proposed Rule]	§ 219.11 Role of science in planning.
Proposed section number and title	[Final Rule]
§ 219.12 Collaboration, cooperation, and consultation	Final section number and title [incorporated in § 219.9]
§ 219.13 Sustainability	§ 219.12 Suitable uses and provisions required by NFMA. [redesignated at § 219.10]
§ 219.14 The consideration of science in planning	[redesignated at § 219.11]
§ 219.15 Special designations	[incorporated in §§ 219.7]
§ 219.16 Determination of lands available for timber harvest and suitable for timber production.	[redesignated at § 219.12]
§ 219.17 Limitation on timber harvest	§ 219.13 Objections to plans, plan amendments, or plan revisions. [redesignated at § 219.12]
§ 219.18 Plan documentation, maintenance, and availability	§ 219.14 Effective dates and transition. [incorporated in §§ 219.6, 219.7, and 219.9]
§ 219.19 Objections to amendments or revisions of plans	§ 219.15 Severability.
§ 219.20 Appeals of plan amendments in site-specific project decisions.	§ 219.16 Definitions. [redesignated at § 219.13]
§ 219.21 Notice of plan decisions and effective dates	[redesignated at § 219.13]
§ 219.22 Transition	[incorporated in §§ 219.9 and 219.14]
§ 219.23 Definitions	[incorporated in § 219.14]
	[redesignated at § 219.16]

In this final rule, the Department reorganized sections of the 2002 proposed rule to improve clarity and reduce redundant material. The discussion of each section follows the numbering and titles adopted in the final rule, with references to where the text was located in the 2002 proposed rule. These new sections are ordered from general to specific. The first section introduces the reader to what is covered in the final rule and acknowledges the multiple-use and sustained yield productivity mandate of the Forest Service (remainder of § 219.1). Section 219.2 describes planning in general and the levels of planning in the agency. Then, the final rule contains a general description of plans (§§ 219.3 and 219.4), followed by the specific plan requirements (§§ 219.5–219.16).

Section 219.1—Purpose and Applicability

This section is coded the same in the final rule as it was in the 2002 proposed rule and introduces the reader to what is covered in the final rule, acknowledges the multiple-use and sustained-yield productivity mandate of the Forest Service, and directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives. The 2002 proposed rule language is retained in the final rule, with some clarification regarding the overall goal to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land.

Comment: Overall goals of planning. There were varied comments on the overall goal of National Forest System (NFS) planning. Some said that the

purpose of planning should reflect sustainability priorities and values. Some respondents stated that the best approach to the purpose and applicability section is to state that ecological sustainability is the desired condition to be achieved through land management. Some requested that the Forest Service's vision statement be changed to reflect a philosophy of preservation and sustainability and that the Forest Service not make management decisions based on a productivity paradigm. They stated that good decisions that restore the forest will be approved quickly without controversy and lawsuits, while bad decisions should be stopped and the decisionmaker held accountable. Others requested that the Forest Service give attention to how plans affect tourism and recreation.

Response: The Department agrees that the mandate under the National Forest Management Act (NFMA) of 1976 and Multiple-Use Sustained Yield Act (MUSYA) of 1960 is not exclusively for production or for preservation because "multiple use and sustained yield" applies to all renewable resources, including outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. These laws direct the management of all the various renewable resources of the lands so that they are used in the combination that will best meet the needs of present and future generations of Americans. Planning for NFS lands is not simple, and often there is little agreement on how these lands should be managed. While relying on the expertise of the Forest Service and taking into account the best available science, this final rule also provides an open process for public collaboration and participation.

Finally, other overarching planning guidance, such as the intent of planning to produce responsible land management and how a plan aids the agency to fulfill its stewardship responsibilities, is discussed in § 219.3.

Comment: Multiple-Use Sustained-Yield Act (MUSYA). Some respondents pointed out that "multiple use" is part of the law and "ecosystem management" is not. Active forest management, they asserted, is necessary for forest health, maintaining biological diversity, and sustaining wildlife populations. These respondents requested that the final rule uphold what they believe are the active forest management principles mandated by the MUSYA. Further, they stated that timber harvesting is a goal of the MUSYA. They asked that the Forest Service provide a high-level sustained yield of renewable timber resources.

Some respondents requested that the Forest Service comply with MUSYA by managing lands according to what they call its "wood, water, wildlife, range, and recreation" formula. Others stated that the 2002 proposed rule violates the MUSYA requirement that NFS lands be used to best meet the needs of the American people. These respondents requested that emphasis be placed on recreation, aesthetics, air and water quality, species habitat, and ecosystem integrity, rather than natural resource development.

Response: The final rule is faithful to NFMA, which requires the use of the MUSYA to provide the substantive basis for forest planning. As used in the final rule, sustainability embodies these Congressional mandates. The interrelated and interdependent elements of sustainability are social,

economic, and ecological as described in § 219.10. The final rule sets the stage for a planning process that can be responsive to the desires and needs of both present and future generations of the Americans for the multiple uses of NFS lands. The final rule does not make choices among the multiple uses; it describes the processes by which those choices will be made as a preliminary step during development of plans. Later, the plan provides guidance for projects and activities.

Comment: Forest planning versus project planning. Some respondents said that, unlike the 2000 planning rule, the 2002 proposed rule correctly focused only on the forest planning level and not on project planning.

Response: The final rule retains the focus of the 2002 proposed rule on land management plans, while at the same time explaining on how plans and projects or activities are linked. Inclusion of an EMS in the land management framework provides a current scientific and informational foundation for the effective development and implementation of projects and activities. This framework ensures the continued relevance of the entire cycle of planning while maintaining the distinction between strategic planning and projects and activities. As previously noted, there will be a comprehensive table in the Forest Service directives that includes guidance on what direction is appropriate for the plan level, what decisions are properly made at the project or activity level, and what scheduling, prioritization, or analysis may take place in between.

Section 219.2—Levels of Planning and Planning Authority

This section was located in the proposed rule at § 219.3, but has been re-designated at § 219.2 as part of the overall reorganization of the final rule. This section describes planning in general, the levels of planning in the agency, and provides the basic authorities and direction for developing, amending, or revising a plan.

Comment: Consistency of decisions across units and the Responsible Official. Some respondents were concerned that plans developed for individual units, each with a different Responsible Official, would not be consistent within larger areas. They said that the planning framework should be similar within each State or ecological region. Some said that without a regional context, the planning efforts of each forest or grassland would seem to take place in a vacuum. Some commented that plans needed to

address species management plans and conservation agreements for wide ranging species in a consistent manner. Some commented that planning needed to use consistent consultation procedures with Tribes.

Several respondents commented on the provision that the Supervisor is usually the Responsible Official. Those in favor of this provision said that local Supervisors and staff are involved with actual hands-on project implementation and can better gauge success or failure of the planning process. Some said that Supervisors are close to the problem areas and are better able than Regional Foresters to seek solutions proactively and act upon them more quickly. These respondents felt that Supervisors are in a better position to facilitate citizen participation and negotiation between competing groups and to coordinate with local or State plans.

Those opposed to this provision were concerned that the local pressure for employment in forest products industry may outweigh the preservation of our national heritage if decisionmaking was left in local hands. They said that Supervisors are susceptible to political pressure or abuse of their authority. Still others said Supervisors sometimes do not have sufficient experience or expertise to make adequate plan decisions. Some said that local staff may not understand how to use inventory data, monitoring, or ecosystem or species evaluations and will simply copy what was done in other locations, causing endless escalation of planning efforts. Several respondents said that the current system has worked well with the Regional Forester as the Responsible Official.

Still others said that both national and local level staffs are necessary, because local staff cannot reasonably understand complex and overlapping policies, regulations, and laws, and national staff cannot efficiently study local conditions or gain local consensus. Finally, one respondent observed that if the planning process becomes so burdensome that local officials do nothing but plan, the system would once again break down. Some respondents wanted the final rule to clarify the conditions under which officials ranking higher than the Supervisor can act as the Responsible Official and to explain the types of decisions that these officials can make.

Response: Supervisors currently coordinate across unit and Regional boundaries and will continue to do so because the evaluations described in §§ 219.6, 219.7, and 219.10 will often cross boundaries of adjacent NFS units. In addition, the final rule provides the option for higher-level officials to act as

the Responsible Official for a plan, plan amendment, or plan revision across a number of plan areas when consistency is needed. Additional procedural guidance will be placed in the Forest Service directives to ensure consistency as needed for Tribal or public consultation or for social, economic, or ecological resource related issues.

The Department intends the final rule be flexible in addressing different issues that may arise at different levels. Therefore, the Department does not believe that the final rule should provide the specific criteria for when a higher-ranking official becomes the Responsible Official.

The final rule retains the provision in the 2002 proposed rule for the Supervisor to be the Responsible Official because the Department believes that the Supervisor is the person most familiar with the resources and the people on their unit and is usually the most appropriate person to make decisions affecting those lands. This provision has not changed from the 2000 planning rule. Together, environmental management systems, science, monitoring, evaluation, interdisciplinary teams, public participation, objection process, and other laws and direction all aid in providing relevant information for the decisionmaker.

However, the final rule retains the provision in the 2002 proposed rule to allow higher-level officials to serve as Responsible Officials. Also, the final rule retains the provision of the 2002 proposed rule for an objection process in which the Reviewing Officer, who is the supervisor of the Responsible Official, must respond to objections before approval of a plan, plan amendment, or plan revision (§§ 219.13 and 219.16).

Comment: Forest Service Strategic Plan. Some respondents observed that the 2002 proposed rule only acknowledges the existence of the Strategic Plan and does not provide guidance about using the Strategic Plan in new plans, plan amendments, or plan revisions.

Response: The Strategic Plan provides an overall vision for management of the NFS. Land management plans, projects, and activities contribute to the vision and Responsible Officials approve them within the context of the Strategic Plan. The Department believes that decisions regarding how plans should use the Strategic Plan are best made at the national forest, grassland, prairie, or other comparable administrative unit level.

Section 219.3—Nature of Planning and Land Management Plans

The direction found in § 219.2 of the 2002 proposed rule has been redesignated at § 219.3 as part of the reorganization of the final rule. The direction found in § 219.3 of the 2002 proposed rule has been moved to § 219.2 of the final rule. Section 219.3 describes the nature of planning, and the force and effect of plans.

Comment: Desired conditions as the purpose of planning. Some respondents believed that the final rule should establish desired conditions as the fundamental purpose of a plan and that this section of the final rule provides a clear statement of what a plan will do. Others said that the focus on desired conditions may be too narrow in light of the overall goals of multiple use and sustained yield. Others commented that the primary purpose should be to integrate human activities and ecological processes. Still others said that the term “desired conditions” was too susceptible to multiple interpretations and the purpose of a plan should be changed to “fulfill multiple-use objectives to ensure ecological sustainability.”

Response: The Department concluded that, while “desired conditions” may drive how the other plan components are developed, “desired conditions” are not the “primary purpose” of a plan. The final rule has been changed at § 219.7(a) to clarify that plans also provide objectives, guidelines, suitability of areas, and special areas. There is further discussion of desired conditions in the preamble to the final rule in the section entitled “The strategic and adaptive nature of land management plans.” Plans are developed in light of the overall goal of managing the NFS lands as described in § 219.1, which is to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land.

Comment: Oil and gas leasing decisions. Some respondents felt that the 2002 proposed rule’s emphasis on the programmatic nature of plans is contrary to the Federal Onshore Oil and Gas Leasing Reform Act (Oil and Gas Leasing Reform Act) of 1987 (Pub. L. 100–203, 101 Stat. 1330–256, 30 U.S.C. 181, 226, 226–3), Forest Service regulations, and the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), which these respondents say, require project or activity decisions to be made in a plan.

Response: The Forest Service directives will include guidance on making an initial availability decision

for oil and gas leasing where there is the geologic potential for the occurrence of such resources or where there has been an expression of interest in leasing. There is no irretrievable or irreversible commitment of resources unless and until the Department of the Interior decides to issue a lease, giving certain exclusive rights to the lessee. Ground-disturbing activity and the final irreversible and irretrievable commitment of resources occur only when a decision approves a surface use plan of operations. Exploration or development of a lease requires additional environmental analysis, public disclosure, and specific project decisions by the appropriate regulatory agencies.

Because plans include plan components that describe which lands are generally suitable for consideration for energy and mineral leasing, they meet the intent of the Oil and Gas Leasing Reform Act, the Forest Service regulations for oil and gas resources, and the Mining and Minerals Policy Act. Specific project decisions to explore or develop a lease or mining claim are properly deferred to the project or activity level.

Comment: Management zone authorities. Some respondents said that only counties have authority to create zoning ordinances. Others said that the zoning system creates a dominant or single use that is contrary to multiple-use.

Response: The Forest Service is responsible for managing the lands of the NFS under NFMA and other laws. The terms “zoning” or “zone” were not in the text of the 2002 proposed rule, nor are they in the text of the final rule. The Forest Service is not issuing zoning ordinances. The preamble to the 2002 proposed rule described plans as creating “zones” in the forest. The Department used the term as a metaphor to help describe how plans may identify suitability of areas.

Section 219.4—National Environmental Policy Act Compliance

Compliance with NEPA was addressed in § 219.6 in the 2002 proposed rule. This section has been redesignated at § 219.4 as part of the overall reorganization of the final rule. This section of the final rule describes how planning will comply with NEPA.

Comment: Applicability of NEPA, NEPA documentation, NEPA “significance,” and the nature of forest plans. Some respondents said that NEPA is not applicable to planning, noting that a plan should provide a framework for future project and activity decisionmaking and that the

disclosure of effects in plan-level NEPA documents is necessarily speculative; some said that plans do not significantly affect the environment. Others said that it might be more advantageous to make as many project-level decisions during the forest planning process as possible, because one NEPA analysis document could be used to make numerous decisions. Another said that failure to make decisions at the plan level would delay implementation of projects.

Some respondents supported categorically excluding plans from NEPA documentation, while others suggested that the criteria for categorically excluding plans were unclear, or that extraordinary circumstances in the plan area would always preclude the use of a categorical exclusion (CE). Some respondents thought the criteria for determining whether a CE is appropriate gives the Responsible Official too much discretion; others thought the degree of discretion appropriate. Some respondents indicated that they did not see the relationship between categorically excluding plans from NEPA documentation and achieving a more streamlined, adaptive planning system and holding the Forest Service accountable for its plans. Some interpreted categorically excluding plans from NEPA documentation as not complying with NEPA, rather than application of a provision of the NEPA regulations.

Many questioned how certain procedures, such as plan analysis and public involvement, would occur if a CE is used. Many people questioned how cumulative effects would be considered if a CE was used, and how monitoring would occur. Some wanted clearer and stronger direction for when a plan might be categorically excluded and when an environmental impact statement (EIS) would be required. Some respondents asked the Forest Service to distinguish between effects to the environment and effects to the human environment.

Respondents stated a number of reasons in support of an EIS for plans. Some respondents commented that plans, by their very nature, are controversial and therefore should require an EIS. Some commented that the requirement of the 1982 and 2000 planning rules to prepare an EIS for plans and revisions was an acknowledgment that plans are major Federal actions having significant effects on the environment. Others suggested that a substantial change in the existing situation on the ground or a substantial change to an existing plan would trigger an EIS. Some respondents said that the 2002 proposed rule

misconstrued the role of a plan and thus the applicability of NEPA, saying that a plan is not just a simple framework, but rather creates changes on-the-ground that have environmental consequences. Some said that if a plan acts as a zoning document and authorizes increased motorized recreational uses, detailed analysis would have to occur in the plan analysis for all affected sites. Some respondents thought that the 2002 proposed rule differentiated between whether an EIS would be required for plan revisions, as opposed to new plan development, arguing that existing plans must need "significant" changes because conditions had changed since the plans were originally adopted.

However, some said that a better approach, instead of focusing on "zones," would be to describe where in the plan area certain uses would have dominance over other uses. Others said that plans should set timber sale schedules; indicate what areas are available for logging, grazing, off-road vehicles use, and mineral extraction; and establish unique areas for protection, and that NEPA documentation would be necessary to make such decisions. They said that plans should establish measurable and enforceable standards and objectives. Others said that management activities must be analyzed on a site-by-site basis in a NEPA document for the plan.

Some respondents thought that in the absence of an EIS, the Forest Service would ignore information that would curb timber harvesting. Some thought that an EIS was needed to ensure ecological sustainability because adequate analysis needs a long-term view that considers science.

Some respondents commented that there is a history of case law that requires the Forest Service to follow not only NEPA, but also the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508. Some respondents raised a number of NEPA regulation requirements for "significance," including the uncertainty of effects; the potential for establishing a precedent for future actions with significant effects; connectivity of actions; potential violations of Federal, State, or local environmental laws; consideration of the 10 "significance" factors in the CEQ regulations; and various other factors.

Response: As described in the "Overview of the Final 2004 Rule," land management plans under this final rule will be strategic and aspirational in nature. They will include decisions with on-the-ground effects only in extraordinary circumstances. If a plan includes on-the-ground decisions, it

will not fall within the categorical exclusion being proposed in connection with this final rule. Otherwise, it will be categorically excluded from NEPA documentation due to the fact that the adoption or amendment of plans containing the five plan components described above is not a major federal action significantly affecting the environment. Simultaneously with this rulemaking, the Forest Service is proposing to revise its NEPA procedures to provide a new categorical exclusion for plan development, amendment, and revision. The Forest Service is seeking comment on the proposed categorical exclusion. Information developed in plan monitoring and evaluation, including those required by § 219.6, may be incorporated by reference in applicable NEPA documents and used as basis for the analysis needed for specific project and activity decisions. The final rule establishes a planning process that complies with NEPA in a manner appropriate for NFMA planning. The final rule does not preclude Forest Service participation in development of an EA or EIS in a joint planning effort with another Federal agency.

The Department emphasizes that project or activity decisions are generally not appropriate for inclusion in a plan level document; experience has shown that including project and activity decisionmaking in planning has actually delayed the planning and project and activity processes without improving natural resource management or public participation. Thus, by sharpening the distinction between planning and project and activity decisions, the Department expects both better planning decisions and more useful and timely environmental analysis for project and activity decisionmaking. Experience has shown the futility of attempting detailed project and activity proposals at the time of plan approval: the NEPA documentation for the proposed projects and activities would be largely speculative and unwieldy and would not account for unforeseen circumstances. Most of the document would be out of date by the time most of the projects or activities would be ready for decisionmaking.

Paragraph (d) of § 219.4 specifies that nothing in this rule alters the application of NEPA to proposed projects and activities. For example, a decision to allow motorized recreational use within the plan area may be made contemporaneously with, but not as a part of, a plan, but such decision can only be made upon the completion of the appropriate level of NEPA analysis.

The Department believes that, in general, an EIS does not need to accompany planning decisions made pursuant to NFMA, particularly given that plans under the final rule will contain five components merely setting forth desired conditions, objectives, guidelines, suitability of areas, and special areas. Until now, the agency's practice under NEPA has been to require programmatic EISs for plan development and revision, and EISs or EAs for proposed plan amendments. Because a plan, in most cases, is a framework for future action, EISs prepared at the plan level had no proposed "action" on which to focus. Similarly, disclosure of effects of a plan included discussions of possible environmental impacts from an array of potential projects and activities whose dimensions and details were far from certain and ranged over a 15-year period for implementation without an ability to predict unforeseen natural events. To conduct a meaningful evaluation of environmental impacts, and to provide helpful information to decisionmakers, the agency must examine the details of proposed activities, the extent of those activities, the specific location of those activities, the environmental conditions at the site when the activities are proposed, past and reasonably foreseeable future actions that might relate to the cumulative impacts of the proposed activities, and reasonable mitigation measures, if appropriate. After 25 years of experience, the Department now knows this information is not generally available at the time of plan approval, and that to provide such specific information at the time of adopting or amending a plan is an inefficient use of resources.

Furthermore, between the time of plan evaluation and the design of projects, the possibilities change. A plan EIS disclosure of potential cumulative impacts and other unit-wide information are speculative to begin with, and therefore, quickly become outdated. The agency has found that a plan EIS typically does not provide useful, current information about potential cumulative impacts at the time of project or activity proposals; therefore, relying upon, or "tiering" to, a plan EIS has not proved to be effective over the long term.

Under the final rule, approval of a plan, plan amendment, or plan revision creates the framework that will lead to projects and activities for which EISs, EAs, or reliance on CEs will be necessary. Accordingly, the Department believes it is appropriate at the time of plan development, plan amendment, or plan revision to begin assembling

appropriate data and other information to be used in those EISs, EAs, and CEs. Much of this information should come from the environmental management system processes described in the other parts of this rule. However, the assembling of data and other information that will be useful in making future project or activity decisions does not itself constitute a proposal for major Federal action. Thus, the process of implementing NEPA is a continuum that begins when the planning framework is established, and moves through scoping for specific project and activity decisions, culminating in a NEPA document for the project and activity proposals.

Moreover, the final rule does provide for extensive analysis, as set out in §§ 219.6 and 219.7. A comprehensive evaluation must be done for plan development and revisions and updated at least every five years (§ 219.6(a)). This evaluation will provide a broad overview of current conditions and trends relevant to the plan area. This overview, along with information from annual evaluations and other sources, will be part of the continually updated Plan Documents or Set of Documents that must be considered in project analysis. These Plan Documents or Set of Documents will provide a better context than had been provided in plan EISs for project cumulative effects disclosures; therefore, the Forest Service will make better informed management decisions at the time it decides to act. The Plan Documents or Set of Documents required by the final rule will make it easier to propose, approve, and carry out projects.

Conditions can and do change between the broad "cumulative effects" analysis the agency has done for plan EIS's and a later, actual project or activity decision. Fires can occur, adjacent landowners can do something that was not predicted, and the agency can be doing actions it had not anticipated at the time it developed the plan and not undertake projects or activities it thought it would. Under this final rule, the Forest Service uses monitoring and the results of the comprehensive evaluation with the most up-to-date site-specific information to provide a basis for the consideration of cumulative effects for projects and activities. Again, cumulative effects like project or activity specific impacts are best studied in the context of a concrete proposal.

The process outlined in the final rule retains and improves upon the important planning elements the public has come to expect, such as public involvement; taking into account the

best available science; integrated analysis of social, economic, and ecological systems; monitoring and evaluation. An EIS is not necessary to ensure that the public is given an opportunity to participate in the planning process, or that the agency obtains high quality information, considers the best available science, and considers the long-term view. Under the final rule, the opportunities for the public will be greater than those opportunities required by regulation for an EIS, because the final rule mandates public involvement opportunities in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. Additionally, by requiring an EMS, combined with the procedures in the Forest Service directives, the final rule provides for agency accountability through impartial and objective audits, management reviews, and public disclosure of the results of those reviews.

Plans under this final rule will not contain final decisions that approve projects and activities except under extraordinary circumstances. Guidelines, which are intended to provide some direction in how to implement decisions, have no influence until they are applied in a project or activity. The identification of an area as generally suitable for a use is not a commitment or decision approving projects and activities. Any proposed use in an area identified as suitable for that use must be separately considered under agency NEPA procedures at the time of a project decision. Desired conditions and objectives are not commitments or final decisions approving projects and activities in the plan area. Special areas may be designated by statute or through plan development, plan amendment, or plan revision or a separate administrative process under NEPA and other applicable laws. In summary, none of these component parts of a plan is permanent, or final, in that all are subject to reconsideration and change through plan amendment or plan revision at any time. Should a Responsible Official nevertheless choose to include projects or activities within the context of a plan, plan revision, or plan amendment, extraordinary circumstances may be present such that an EIS or an EA may be required.

From more than 25 years of NFMA planning experience, the Department concluded that it can most efficiently and appropriately evaluate and analyze the environmental consequences of an

array of potential projects and activities when those matters reach the status of a proposal. Making planning a more continuous process, not dependent on environmental impact statements that only give a prediction at one point in time, will actually make plans more relevant to projects by collecting, evaluating, and monitoring data on an ongoing basis, thereby maintaining a current base of information that Forest Service can use at the project or activity level.

Comment: Alternative or option development. Some respondents questioned how alternatives—when developing plans, amendments, or revisions—would be considered if plans were categorically excluded from NEPA documentation. Others emphasized the importance of forming effective partnerships with government, private landowners, industries, and others to promote consensus and reduce the need for numerous alternatives. Some expressed concern that the agency would consider only its proposed plan and not the comments on, or alternatives to, the plan. Others asserted that NEPA requires a full range of alternatives, while others said only two alternatives are needed.

Response: Requirements for how options may be considered while developing plans, amendments, or revisions are found in § 219.7(a)(6) of this final rule. The Department recognizes that people have many different ideas about how NFS lands should be managed and that the public should be involved in determining what the plan components should provide. Therefore, the final rule provides for participation and collaboration with the public at all stages of plan development, plan amendment, or plan revision. The Responsible Official shall work closely with the public to develop the proposed plan, plan amendment, or plan revision. Key steps in development of the proposed plan shall be documented in the plan set of documents, which will be available to the public. The proposed plans that the Forest Service presents for public comment shall be jointly and collaboratively developed with the public.

Section 219.5—Environmental Management Systems

This section has been added to the final rule to address public comments regarding how planning relates to adaptive management. Adaptive management was addressed in § 219.11, Monitoring and Evaluation, in the 2002 proposed rule. Both the proposed and final rule define adaptive management as an approach to natural resource

management where actions are designed and executed, and effects are monitored for the purpose of learning and adjusting future management actions, which improves the efficiency and responsiveness of management. The “Overview of the Final 2004 Rule” section of the preamble provides a detailed description of the provisions of this section as developed through the response to public comments.

The Department has chosen to require each administrative unit to carry out an EMS based on standards developed by the International Organization for Standards (ISO). Each administrative unit’s EMS will serve as a framework for land management planning, adaptive management and, at the project level, provide information for EISs, EAs, or CEs where required by NEPA. The EMS will provide a structured and documented process for evaluating each unit’s environmental conditions, setting objectives to meet the unit’s legal and public obligations, developing programs and procedures for managing the unit under the land management plan, monitoring and measurement procedures to collect and track information about environmental conditions, and corrective action and review processes to provide a “feedback loop” to push for continual improvement.

Section 219.6—Evaluations and Monitoring

This section has been organized to specify requirements for plan evaluation and plan monitoring. Monitoring and evaluation requirements were found in §§ 219.4(a)(6) and 219.11 of the 2002 proposed rule. The final rule allows the monitoring program to be changed with administrative corrections and public notification, instead of amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. Changes in a monitoring program will be reported annually, and the Responsible Official has flexibility to involve the public in a variety of ways in developing any changes to the program. Discussions of both evaluation and monitoring are found in the “Overview of the Final 2004 Rule” section of the preamble.

One clarification regarding the requirement at § 219.6(b)(2)(i) may be helpful. This paragraph requires that the plan monitoring program shall monitor to determine the effects of management on the productivity of the land. The term “productivity” refers to all of the multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish. Use of this term is broader than just commercial uses.

Comment: General. Several respondents supported the monitoring and evaluation provisions of the 2002 proposed rule, because they observed that the 2002 proposed rule provided the appropriate level of monitoring and evaluation. Others thought the 2002 proposed rule gave too much flexibility to the Responsible Official, weakening monitoring and evaluation requirements. Some respondents wanted the requirements from the 2000 planning rule retained because they felt the 2002 proposed rule did not have sufficient requirements to mandate adequate monitoring and evaluation.

Others thought the Responsible Official was given the appropriate level of flexibility to allow for alteration of monitoring and evaluation strategies and methods. Still others thought the 2002 proposed rule had burdensome requirements that needed to be relaxed. One person suggested the Forest Service establish an independent division to ensure monitoring compliance. Some suggested specific monitoring they believed was needed.

Several respondents submitted suggestions about how the Forest Service evaluates the information obtained from monitoring. One respondent stated that the use of evaluation is fuzzy and needs clarification. Others suggested that evaluation could be used to indicate the need for a new use of the NFS. Another cautioned that any evaluation of the information obtained from monitoring should include an estimate of error reliability of any apparent trend to preclude premature or ill-advised corrections.

Response: The Department believes that monitoring and evaluation are a critical and necessary part of the planning process. As the 2002 proposed rule provided, the final rule requires the Responsible Official to provide for monitoring of degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan (§ 219.6(b)(2)). The Department has strengthened this section in the final rule by adding a requirement for comprehensive evaluation of the area of analysis (§ 219.6(a)(1)) at no longer than 5-year intervals and conducting an evaluation when amending a plan (§ 219.6(a)(2)). In addition, the use of an EMS with impartial and objective audits will address both the concerns expressed in the comments for local flexibility and those for agency accountability and compliance. The Department has also added a provision that the monitoring program take into account the best available science to

improve the evaluation process. These evaluations are an integral part of answering key planning questions such as the state of social, economic, and ecological conditions and trends, and the need for an amendment or revision.

Comment: Involvement of science. Several respondents wanted assurance that science would be involved in monitoring.

Response: The Department believes that the taking into account the best available science is important in monitoring and in evaluating results. The Department added the provision that the monitoring program shall take into account the best available science at § 219.6(b). In addition, the final rule at § 219.11 retains the intent of the 2002 proposed rule (§ 219.14) that requires the consideration of best available science during planning, including the development and implementation of monitoring program.

Section 219.7—Developing, Amending, or Revising a Plan

The provisions in §§ 219.4, 219.7, 219.8, 219.9, 219.15, and 219.18 of the 2002 proposed rule have been combined at § 219.7 of the final rule so that procedural requirements are located in one section. This section includes requirements for plan components; planning authorities; plan process, including review of areas with potential for wilderness recommendation; administrative corrections; Plan Document or Set of Documents; and the plan approval document. The detailed public participation, collaboration, and notification requirements found in §§ 219.7, 219.8, and 219.12 of the 2002 proposed rule have been moved, with additional detail, and consolidated at § 219.9 in the final rule to improve clarity and readability.

Section 219.7(b) provides for administrative corrections. The final rule, at § 219.7(b)(5), adds a new category for administrative corrections to include changes in the Plan Document or Set of Documents, except for changes in the plan components. The Department made this addition because, although an emphasis of the final rule is to allow for continual inclusion of new science and other information into the Plan Document or Set of Documents, the 2002 proposed rule included no specific vehicle for allowing this supplementation and change to occur. Changes to the Plan Document or Set of Documents may also occur when outdated documents are removed, for example, when a new inventory replaces an older one. The addition of this new administrative

correction category fills this procedural gap.

Comment: Desired conditions. Some respondents said that it is unclear what the desired conditions for the plan area will be and who makes the decision on which desired conditions will be included in the plan. Some said specific substantive requirements should be established, such as requiring desired conditions to mimic natural conditions, or employment of a policy such as “limits of acceptable change.”

Response: Desired conditions are one of the plan components (§ 219.7(a)) developed through public collaboration and participation. The Responsible Official is the decisionmaker for the plan. The Responsible Official will consider public participation, the comprehensive evaluation, monitoring information, legal requirements, and assessments in deciding on desired conditions for the plan area. The final rule at § 219.7(a) clarifies that desired conditions are the “social, economic, and ecological attributes” toward which the plan is to be directed.

Because desired conditions are a component of a plan, but not necessarily the primary focus of a plan, the final rule removes the words “primary focus of a plan.” As it will for all plan components, the public will have an opportunity to comment on all aspects of the proposed plan, including desired conditions (§ 219.9), and may object to the plan in whole or in part (§ 219.13) if they have concerns. A discussion of plan components is found in the “Overview of the Final 2004 Rule” section of the preamble.

Comment: Objectives. Some respondents said that plan objectives must be clear and measurable. They said that plans should provide for a good faith commitment to accomplish a plan’s multiple-use and sustained-yield objectives. Others said that it may be counterproductive to write simple objectives when many factors lead to complexity in their implementation. Some said that the 2002 proposed rule lacks policy direction concerning the extent to which investment in resource management activities may support different outputs. Others said the push for clear objectives, where there is no clear science, will lead to direction that is meaningless and simply become a tool of a political agenda. Others said the final rule should explicitly provide for forest plan objectives to be established in accordance with guidelines in the Forest Service directives.

Response: The final rule retains the provision of the 2002 proposed rule stating that objectives are measurable

outcomes intended to guide management toward reaching desired conditions. Objectives can be thought of as a prospectus of outcomes, based on past performance and estimates of future trends. Objectives should be measurable so progress toward attainment of desired conditions can be determined. Variation should be expected due to changes in environmental conditions, available budgets, and other factors. In addition, the Department added the concept of maintenance of desired conditions to the description of objectives, because the desired conditions may already have been met and only need to be maintained.

Comment: Standards. One respondent commented that clear, measurable standards are important. One respondent identified the intent of the proposed regulations to simplify, clarify, and minimize the standards. Some said that only measurable standards allow the public to know what the Forest Service is doing. Some said that NFMA requires enforceable standards and that judicial review would be more difficult without measurable standards. Some said that standards should be defined as “requirements” instead of “limitations.” Others wanted to make clear that standards can be forest-wide or area-specific.

Response: As explained in the “Overview of the Final 2004 Rule” section of the preamble, the Department has replaced the component of “standards” with “guidelines.” The Department believes requiring mandatory standards are too restrictive; however, guidelines will be used and, in many cases, will be measurable. Policy contained in the Forest Service directives will provide the detailed direction for writing plan guidelines. The Forest Service directives will provide criteria for guidelines, requiring they be written clearly, so decision makers and the public know when a project is consistent with the guidelines.

While the final rule will not require standards, the public shall be kept informed about what the Forest Service is doing by procedures such as: (1) Providing opportunities for the public to collaborate and participate (§ 219.9(a)); (2) opportunities to object before approving plans, plan amendments, or plan revisions (§ 219.13(a)); and (3) public notice requirements for land management planning (§ 219.9(b)), NEPA procedures for projects and activities, and annual evaluation of monitoring results. The final rule also allows for forest-wide and area-specific guidelines.

Comment: Special designations. Some respondents suggested that the final rule should contain language that addresses presidential and congressionally designated areas. Respondents stated that the 2000 planning rule gives the Responsible Official too much discretion when evaluating roadless areas for special designation. Some said the final rule should provide standards for the Responsible Official to follow when evaluating and considering special designations of the roadless areas. Some said these standards should ensure that evaluations of roadless areas are completed, taking into account the best available science, and focus on ecological sustainability. One group wanted to ensure that special designations are not determined in a vacuum favoring only ecological values, and the group said that social and economic values must also be addressed. Others felt the effects of special designations should be considered for recreational access and mirror the increasing demand for recreation. Some said the final rule should require that plans set specific goals, such as an amount or a percentage of the forest for special area recommendations.

Response: Special area identification is an integral part of the planning process. The proposed and final rules provide for the identification of special areas in the plan. After reviewing comments, and consideration of the Forest Service's experience with planning over the past 25 years, the Department concluded that guidance about special area concerns, such as roadless area evaluations or social and economic values, are more properly included in the Forest Service directives. Provisions in directives can be more extensive and can be more easily changed as the agency learns how to improve its processes and as new scientific concepts become available.

Comment: Specific uses. Many respondents suggested that the final rule identify specific uses that should be included in plans. One person suggested that the final rule provide for large recreational gatherings. Another said that livestock grazing should be specifically discussed.

Response: Plans establish desired conditions, which include recognition of the type of societal benefits that the NFS provides. The final rule begins with a presumption that lands are available for multiple uses and that plans will identify suitable uses that best fit the local situation.

Comment: Need for amendment or revision. Several respondents were concerned about the discretion the 2002

proposed rule gives the Responsible Official in determining when a plan amendment or plan revision is needed. Some felt the final rule needs clear direction on when to propose a plan amendment or plan revision. Of equal concern was the discretion given to the Responsible Official to decide which issues would be considered in an amendment or revision. They felt that without specific requirements resources, such as flora and fauna, would not be analyzed for every plan amendment or plan revision. One respondent did not want plans to be revised or amended after disturbance events, such as wildfire, insect epidemics, and windstorms. Others supported limiting the analysis required in amending or revising a plan.

Response: The final rule provides the Responsible Official discretion about whether or not to initiate a plan amendment or plan revision (subject to the NFMA requirement that the plan be revised at least every 15 years) and what issues to consider (§ 219.7(a)(4)). The evaluations required by the final rule will document current conditions and trends for social, economic, and ecological systems within the area of analysis (§ 219.6(a)) and aid the Responsible Official in determining if a plan amendment or plan revision is needed and which issues need to be considered. The Responsible Official may amend or revise the plan based on monitoring and evaluation, as well as other factors. The Department believes that the efficiencies of the final rule would be reduced if the final rule identified specific issues that must be considered for every plan revision or plan amendment.

Comment: Interim amendments. Many respondents did not support interim amendments and suggested this provision be removed or at least have additional parameters added. Others supported this concept.

Response: The final rule allows for an efficient plan amendment process. Therefore, there is no need for interim amendments. Accordingly, the interim amendment provision has been removed from the final rule.

Comment: Significant plan amendments. Many respondents were concerned with how "significance" is determined for an amendment. Some wanted significance described, while others suggested certain factors to determine significance. Others wanted to understand the connection between an EIS and NFMA significance with respect to the 2002 proposed rule's provision that every amendment prepared with an EIS would be deemed a significant amendment.

Response: The Department decided not to distinguish between "significant" and "non-significant" amendments. The Department is not requiring an EIS with any plan amendment. The final rule treats all amendments as "significant," except when an amendment would relate only to a proposed project or activity. Plan amendments prepared under the procedures described in this final rule must have a 90-day comment period (required for significant amendments by NFMA) and must have an objection opportunity. Plan amendments associated with a proposed project or activity will follow the NEPA documentation required for the project or activity, as well as notice and comment requirements for the project or activity.

Comment: Roadless area evaluation. Some respondents felt that under the 2002 proposed rule, the requirements for evaluation and protection of the roadless areas' ecological values had been eliminated, allowing the Responsible Official to redefine roadless area boundaries upon a determination of circumstances deemed necessary and appropriate. Some felt this language was too broad, deferred too much authority to the Responsible Official, and would eliminate many lands from consideration for new wilderness, though they still met the physical requirements of a roadless area. Others supported the requirement that the Responsible Official review and validate the maps of inventoried roadless areas and then adjust them as necessary and appropriate.

Response: The Department has moved this provision from § 219.15(b)(3) in the 2002 proposed rule to § 219.7(a)(5)(ii) in the final rule. Because the 2002 proposed rule caused confusion concerning roadless area evaluation, the Department has changed the wording to describe these areas from "inventoried roadless areas" to "lands possessing wilderness characteristics." The final rule at 219.7(a)(5)(ii) directs Responsible Officials to ensure that, unless otherwise provided by law, all NFS lands possessing wilderness characteristics be considered for recommendation as potential wilderness areas during plan development or revision. Policy and guidance contained in the Forest Service directives will provide the detailed direction for the identification of these areas and the evaluation process to follow in carrying out this requirement.

Section 219.8—Application of a New Plan, Plan Amendment, or Plan Revision

This provision, found in § 219.10 in the 2002 proposed rule, has been redesignated at § 219.8 as part of the overall reorganization of the final rule. This section of the final rule describes how and when new plans, plan amendments, or plan revisions are applied to new or ongoing projects or activities. The general outline and intent of this section in the final rule is similar to the corresponding section of the 2002 proposed rule. However, § 219.10(e) of the proposed rule addressing testing and research projects was removed from the final rule because the acknowledgement that these projects are subject to all applicable laws is not necessary. While the 2002 proposed rule required project or activity consistency with standards, the final rule requires consistency with the applicable plan.

Comment: Valid existing rights.

Respondents were both for and against the 2002 proposed rule provision that new plan direction is subject to valid existing rights. Those in favor supported respecting these rights. Those against said that protection of ecological conditions should take precedence.

Response: The final rule at § 219.8(a)(2) is consistent with NFMA (16 U.S.C. 1604(i)) which specifies that any revision in present or future permits, contracts, and other instruments made pursuant to the act shall be subject to valid existing rights.

Comment: Consistency with the desired conditions. Several respondents commented that under the 2002 proposed rule, projects do not need to be consistent with standards; they only have to disclose the project's relationship with desired conditions. Some said that NFMA requires all projects to be consistent with the plan and said that if desired conditions are in the plan, projects need to be consistent with them. They also said the public will be disappointed to find out that plans have no "teeth." Others were concerned that the 2002 proposed rule emphasizes desired conditions and objectives, which by definition may never be attained.

Response: NFMA (16 U.S.C. 1604(i)) requires that resource plans, permits, contracts, and other instruments for the use and occupancy of NFS lands be consistent with land management plans. In response to public comment, § 219.8(b) was added to the final rule to describe how projects or activities developed after approval of the plan must be consistent with applicable plan components. The Department removed

two provisions: (1) the provision limiting consistency to standards and (2) the provision requiring disclosure of the project's relationship to desired conditions.

In the final rule, if an existing or proposed project or activity is not consistent with the applicable plan, the Responsible Official must take one of the following actions: (1) Modify the existing or proposed project; (2) reject the proposal or terminate the existing project; or (3) amend the plan. The Department changed the final rule so the wording conforms to 16 U.S.C. 1604(i).

Comment: Consistency with standards. Several respondents commented on the requirements that projects or activities not consistent with standards be either modified or rejected, or the plan be amended. Some said projects should not be exempted from standards, while others said that the final rule should specify that changes must be considered within the context of NEPA.

Response: The Department changed the final rule so that projects or activities must be consistent with the applicable plan. A project or activity-specific amendment does not "exempt" a project from the plan, but rather, the amendment changes the plan, for that project. If a plan amendment is necessary as part of a project or activity decision, that decision will be considered in accordance with project NEPA procedures.

Section 219.9—Public Participation, Collaboration, and Notification

This section of the final rule consolidates 2002 proposed rule provisions for public notifications and comment periods found in §§ 219.7, Amending a plan; 219.8, Revising a plan; 219.12, Collaboration, cooperation, and consultation; and 219.21, Notice of plan decisions and effective dates. A discussion of public involvement is found in the "Overview of the Final 2004 Rule" section of the preamble.

General comments: Some respondents expressed the belief that the 2002 proposed rule excludes the public from participation in the planning process, and they wanted clarification of what the public's role would be under the final rule. Some were concerned that the 2002 proposed rule no longer requires landscape goals be developed collaboratively. Additionally, some wanted a uniform process for public involvement. One person suggested the agency allow e-mail and other nontraditional forms of public participation and notification. One

respondent said the Forest Service should not allow any public participation in planning. Many supported the 2002 proposed rule requirements for public involvement. Some respondents stressed the need for open and vigorous public participation. One Tribal group supported the requirement for consultation with federally recognized Indian Tribes. Others supported a broader range of media than is currently being used for public notification. Another felt the final rule should be specific about where plans are made available and about local public meetings. Some felt that a Notice of Intent should be placed in the **Federal Register** for all revisions.

Response: The Department strongly supports public involvement in planning. Public participation, collaboration, and notification requirements found in §§ 219.7, 219.8, and 219.12 of the 2002 proposed rule have been moved to § 219.9 in the final rule to improve clarity and readability. The final rule states that the Responsible Official shall use a collaborative and participatory approach to land management planning. The final rule does not exclude the public from participation in the planning process. There is a wide variety of methods for public involvement. For example, where practical, Responsible Officials may give extended notice of public meetings, including the use of unit Internet web sites. It is virtually impossible at the national level to specify details for each type of public involvement used during a planning process; however, the Forest Service is developing techniques that will improve public notification and participation in the planning process. Because planners are constantly improving these techniques, other forms of direction, such as the Forest Service directives, are more appropriate ways to prescribe the "how to" details of public notification.

Neither the 2002 proposed rule nor the final rule used the cooperative development of landscape goals, because this specific activity should not be a requirement of all planning efforts. It may not always be useful and may often be unachievable with participating groups. The Department also believes that one standard process for public involvement would not be effective for every unit in the NFS. The size and scope of issues, the interest level of the public, and the resources vary across the country. Therefore, the final rule requires the Responsible Official to involve the public, but allows discretion for the particular type of public involvement process used.

The final rule retains the requirement of the 2002 proposed rule that the Responsible Official provide opportunities for individuals and entities to participate, consult with federally recognized Indian Tribes, and provide for a 90-day public comment period. The final rule has added requirements that public involvement must occur in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program (§ 219.9(a)).

Other specific methods and timing for public participation and involvement outside of the formal public notice and comment process will be developed and implemented on a unit-specific basis so that they are tailored to the context and the stakeholders. The Department did not believe it appropriate to establish national "one-size-fits-all" requirements. In addition, the Department agrees with comments on the need for publication of a Notice of Intent to revise in the **Federal Register** for all plan revisions. The final rule adds the requirement that notification of new plans and plan revisions be published in both the **Federal Register** and the newspaper(s) of record.

Comment: Advisory Committees. One respondent suggested the use of an advisory committee as a means to improve public involvement. Another wanted a multi-agency review board. Another person wanted to know why the Department had not required advisory committees in the 2002 proposed rule. Several respondents supported the elimination of an advisory committee (required by the 2000 planning rule) as they felt the general public would be left out of the planning process. Two recreation organizations felt that this elimination was a vast improvement and would invigorate the public participation process.

Response: The Department believes that an advisory committee, or something similar, may be the most effective method to engage the public in some situations, but it may not be effective in other cases. As in the 2002 proposed rule, the final rule allows the Responsible Official the discretion to determine the methods of public involvement opportunities, which can include, but does not require, advisory committees.

Comment: Local involvement. Several respondents wanted local input to have priority over other input. Others were concerned that only special interests were being heard.

Response: The NFS lands belong to all citizens of the United States. The

Department values involvement by all interested parties, and understands the particular importance of local citizens and governments in the planning process. Responsible Officials will address local social, economic, and environmental issues in the evaluations for plans, plan amendments, or plan revisions.

Comment: Public comment period. Some respondents suggested the establishment of a required comment period for plans, plan amendments, and plan revisions. Some said that all plans should have a 90-day comment period. Others wanted the public comment period to be longer than the NFMA requirement of 90 days (16 U.S.C. 1604(d)).

Response: The final rule includes a provision that requires a public comment period of 90 days for plans, plan amendments (except for a plan amendment that applies to project or activity decision), and plan revisions. The final rule consolidates the requirements for public notification and comment periods into this section so that it is easier for the public to understand and the agency to follow. Section 6(d) of NFMA requires a comment period "of at least three months." The final rule does not preclude the extension of the comment period beyond 90 days.

Section 219.10—Sustainability

The sustainability provisions found in § 219.13 in the 2002 proposed rule have been redesignated at § 219.10 as part of the overall reorganization of the final rule. This section of the final rule provides provisions for social, economic, and ecological sustainability. The final rule retains sustainability as the overall goal for NFS planning and retains the concept of the interdependent social, economic, and ecological elements of sustainability (§ 219.10) in the 2002 proposed rule. The final rule does not include many of the specific analytical processes and requirements set out in the 2002 proposed rule. These provisions will be placed in the Forest Service directives. A discussion of sustainability is found in the "Overview of the Final 2004 Rule" section of the preamble.

The agency also hosted a workshop to provide an opportunity for public discussion of these options and for identification of other ideas on how to best address the statutory diversity provision. Interested parties expressed an extremely wide range of opinions, both in public comments and in response to the workshop. The Department found these comments useful in developing a scientifically

credible and realistic approach for this final rule to meet legal requirements and to meet the agency's stewardship responsibilities.

Comment: Sustainability definition. While some respondents focused their suggestions on clarification of the actual language of the sustainability section, other respondents suggested that a definition of the term "sustainability" would help clarify this topic. Some suggested using the 2000 planning rule's definition for sustainability, others suggested the Department should seek legislative clarification of definition, and others requested a definition that balances biological productivity, human use, and economically affordable management.

Response: The concept of sustainability is first addressed in this final rule at § 219.1, which provides that, consistent with MUSYA, the overall goal of managing the NFS is to sustain in perpetuity the productivity of the land and the multiple uses of its renewable resources in a manner that best meets the needs of the American people. Section 219.10 further clarifies that the relationship among, social, economic, and ecological sustainability is interrelated and interdependent.

Comment: Biological diversity and species considered. Some respondents requested that the Forest Service maintain biodiversity on NFS land. Similarly, there were a number of comments regarding what categories of species to consider in the final rule. Some respondents wanted to consider the full array of biodiversity as in Option 2 of the 2002 proposed rule and in the 2000 planning rule, and others agreed with the focus in Option 1 of the 2002 proposed rule, that identified only native and desired nonnative vertebrates and vascular plants. Others did not want to go beyond the specific focus in NFMA on plant and animal communities and tree species.

Response: The final rule affirms the commitment of the Forest Service to meet the NFMA requirement that plans provide for diversity of native plant and animal communities by providing for a plan framework for sustaining native ecological systems. The final rule at § 219.10(b)(1) requires that provisions in plan components establish a framework to provide characteristics of ecosystem diversity in the plan area. These characteristics are parameters that describe an ecosystem in terms of the composition (such as major vegetation types, rare communities, aquatic systems, and riparian systems); structure (such as successional stages, water quality, wetlands, and floodplains); principal ecological

processes (such as stream flows and historic and current disturbance regimes); and soil, water, and air resources. Providing characteristics of ecosystem diversity is the primary means by which a plan contributes to sustaining native ecological systems. Thus, plans provide for sustaining systems, the systems provide for diversity, and Forest Service meets NFMA requirements.

The final rule adopts the concept of plant and animal species consistent with terminology in NFMA, as well as ESA. While adoption of the concept of comprehensive biodiversity is a worthy goal, the Department did not deem this necessary to meet the requirements of NFMA. The concept of biodiversity includes the full variety of life and associated processes. The Department did not think it was reasonable or possible to include the full scope and complexity of biological diversity from microbes to processes such as photosynthesis.

Comment: Ecosystem and species sustainability. Respondents offered a variety of suggestions regarding the level at which to evaluate ecosystem sustainability. Some respondents requested that the Forest Service use a hierarchical approach to evaluate ecosystems, while others suggested a more iterative process is needed. Some respondents asked that analytical and evaluation requirements be spelled out in the final rule. Other respondents wanted ecosystem sustainability in the final rule to generate requirements for how ecosystems will be maintained and who will be responsible for their maintenance.

Some respondents commented on the level at which species management decisions should be made. Some respondents requested that species management decisions be mandated by the final rule, while others asked that decisionmaking be left at the level of individual plans. Other respondents said that special provisions to maintain species are unnecessary; they asserted that such provisions are not particularly effective.

Some respondents commented that species maintenance is important and is mandated by NFMA; they requested that the Forest Service retain the requirements from the 2000 planning rule. A number of respondents also requested that the Forest Service work to restore species that have been extirpated from the plan area.

Response: The final rule adopts an overall goal for the ecological element of sustainability to contribute to sustaining native ecological systems by sustaining healthy, diverse, and productive

ecological systems as well as by providing ecological conditions to support diversity of native plant and animal species in the plan area. To carry out this goal, the final rule adopts a two-level approach to sustaining ecological systems: ecosystem diversity and species diversity. The overall goal demonstrates the Department's commitment to ecosystem diversity and species conservation. This two-level approach was part of both Options 1 and 2 of the 2002 proposed rule. The final rule clarifies the two-level approach and leaves the specific detail procedures for the Forest Service directives.

As part of the two-level approach, the plan area will be assessed for remaining species diversity needs after plan components are developed for ecosystem diversity. The Responsible Official would evaluate the framework established by the plan components for specific federally listed threatened and endangered species, species-of-concern, and selected species-of-interest. If needed, the Responsible Official would develop additional provisions for these species to maintain a framework for providing ecological conditions within the plan area that contributes to the conservation of these species. The Department selected federally listed threatened and endangered species, species-of-concern, and species-of-interest for evaluation and conservation because: (1) These species are not secure within their range (threatened, endangered, or species-of-concern), or (2) management actions may be necessary or desirable to achieve ecological or other multiple use objectives (species-of-interest). Species-of-interest may have two elements: (1) Species that may not be secure within the plan area and, therefore, in need of consideration for additional protection, or (2) additional species of public interest including hunted, fished, and other species identified cooperatively with State fish and wildlife agencies.

Comment: Accountability for ecological conditions. Citing a need for accountability for sustainability, a number of respondents requested the final rule require land management plans to "provide measurable progress toward maintenance or restoration of ecological conditions." A recommendation was made to retain the provision of the 2000 planning rule that requires the Responsible Official to be accountable for the long-term maintenance and restoration of ecosystems. A respondent suggested the Forest Service conduct research on validating a broad suite of indicators that can be used to evaluate the efficacy

of planning in achieving the goal of ecological sustainability.

Response: The Department believes that the plan components adopted in the final rule provide accountability for ecological conditions in that: (1) The land management plan's desired condition component provides the overall vision; (2) the objectives component provides measurable intentions for attaining the desired conditions; (3) guidelines provide the recommended technical and scientific specifications so that projects and activities conserve species; and (4) that other provisions and monitoring ensure that the combined parts of the plan are effective. In addition, EMS will ensure that Responsible Officials conduct environmental improvement in a systematic and accountable manner.

Comment: Choosing Option 1 or 2. There were wide varieties of views on the ecological sustainability options in the 2002 proposed rule. In general, the response from the public can be grouped into two categories: those who did not support either option in the 2002 proposed rule and those who supported at least one of the options in the 2002 proposed rule. Many respondents suggested that neither option is adequate in the 2002 proposed rule, citing the lack of clarity, the lack of a Committee of Scientists to assist in the development of the options, and the lack of enforceability.

Other respondents considered either option to be sufficient and remarked that both options uphold the agency's NFMA diversity requirement. Alternative suggestions from respondents included creating a hybrid of Option 1 and 2; retaining the 1982 viability regulation; protecting species through monitoring; or adopting one of the new options presented by participants at the February 2003 diversity workshop.

Response: The final rule conceptually uses the principles of ecological sustainability from both Options 1 and 2 of the 2002 proposed rule. The final rule includes an ecosystem diversity provision that requires the development of plan components to establish a framework to provide the characteristics of ecosystem diversity. These characteristics are descriptions of ecosystem composition, structure, and processes. Responsible Officials may identify these characteristics for multiple spatial scales within the analysis area and characteristics may extend to the larger landscape adjacent to and beyond the plan area. This ecosystem diversity framework provides an essential ecological context and identifies the unique contributions that

NFS lands can make to the three elements of sustainability.

Option 2 required rigorous analysis of ecological conditions in relation to the range of characteristics of native ecosystems within the plan area, the range of natural variability. Forest Service directives will set out the analytical requirements for ecosystem diversity including abundance, distribution, and condition of selected characteristics of ecosystem diversity compared to their range of variation under historical disturbance regimes (or other ecological reference).

An important principle in the framework of this final rule is the concept that the more effective the ecosystem diversity provision is in sustaining species within the ecosystem, the less need there is for species-specific analysis.

Comment: Species-at-risk, management indicator species, or focal species. Some respondents asked that the final rule require species-at-risk and focal species to be identified and maintained. A number of respondents wanted a survey and monitoring requirement for management indicator species (MIS) or focal species in the final rule. There was a suggestion to use reliable historic information to analyze the population viability of focal species. There were comments in favor of requiring species surveys and reviews, as well as comments not to have mandatory survey and monitoring requirements for maintaining populations of wildlife. Other respondents requested that the Forest Service continue to use focal species as a means to analyze and provide for species viability and species diversity.

Response: The concept of MIS was not included in the 2002 proposed rule and is not in the final rule, except for transition provisions at § 219.14, because recent scientific evidence identified flaws in the MIS concept. The concept of MIS was that population trends for certain species that were monitored could represent trends for other species. Through time, this was found not to be the case.

The concept of focal species that was proposed by the Committee of Scientists and adopted in the 2000 planning rule is also not used in the final rule. The focal species concept is untested and it would not be prudent to potentially make the same mistake with focal species as was made with MIS in the 1982 planning rule. However, the concept of focal species as indicators of the ecological conditions may have merit and may be included in the Forest Service directives as a tool to identify monitoring approaches to assess

progress towards achieving the desired condition articulated in a plan.

To focus management attention on the at-risk species, the concepts of “species-at-risk” and “species-of-concern” presented in the 2002 proposed rule were further developed in the final rule to make the provision for species-level analysis clearer and efficient in the planning process. However, the Department changed the terms used. “Species-of-concern” are those species for which their continued existence is a concern and listing under the ESA may occur (§ 219.16). “Species-of-interest” are species for which the Responsible Official determines that management actions may be necessary or desirable to achieve ecological or other multiple use objectives (§ 219.16). The Forest Service directives will describe a systematic, scientifically credible, and efficient approach, using existing information, to identify species-of-concern and species-of-interest.

Comment: Protection of water supply, water quality, wetlands, and riparian areas. Various respondents stated the need to protect the nation’s water supply and require land management plans to address water quality restoration for those areas identified as water quality limited under the Clean Water Act. Other respondents believed the final rule should mandate the protection of wetland and riparian areas, which are essential for environmental quality and human health.

Response: The Department agrees that water quality is important, as is restoration of impaired watersheds. The final rule provides specific provisions at § 219.10(b)(1) for development of plan components that establish a framework to provide the characteristics of ecosystem diversity, which include water quality, wetlands, riparian areas, and floodplains. It is not necessary for the final rule to repeat direction in the Clean Water Act; in addition, water related issues are not the same on every unit of the NFS. Forest Service directives will provide additional provisions as needed.

Section 219.11—Role of Science in Planning

This provision was contained in § 219.14 in the 2002 proposed rule, and was redesignated as § 219.11 as part of the reorganization of the final rule. The final rule requires the Responsible Official to take into account the best available science. The final rule puts the burden on the Responsible Official rather than on the plan. The words “consistent with” has been replaced by “take into account” because this term

better expresses that formal science is just one source of information for the Responsible Official and only one aspect of decisionmaking.

The final rule, like the 2002 proposed rule, states that the Responsible Official may use independent peer reviews, science advisory boards, or other review methods to evaluate science used in the planning process. Forest Service directives will provide specific procedures for conducting science reviews. The “Overview of the Final 2004 Rule” section of the preamble discusses the role of science in planning.

Comment: Role of science. Some respondents felt that the 2002 proposed rule should add emphasis to the role of science, while others felt that the 2002 proposed rule provided a welcome relief from the 2000 planning rule by eliminating excessive process requirements. Some felt that the 2002 proposed rule made the use of science and the review of science consistency optional. Others thought that the use of science in the 2002 proposed rule appeared to be budget driven. Several respondents suggested that public involvement should include science and scientists. They thought that the Responsible Official should not make a decision without the input of science and scientists. However, one respondent felt that there should be no consultation with a panel of scientists when drafting a plan.

Response: The Department is committed to taking into account the best available science in developing plans, plan amendments, and plan revisions as well as documenting the consideration of science information. The final rule retains the emphasis in the 2002 proposed rule on the consideration of science in planning, on documenting how science was interpreted and applied, and on evaluating the associated risks and uncertainties of using that science. In response to public comment regarding the Responsible Official’s obligation to “demonstrate” consideration of science, the final rule requires the Responsible Official to “document” such consideration. The Department believes that this change gives clearer and stronger direction as to what is expected of the Responsible Official in developing the Plan Document or Set of Documents and in considering the best available science.

Under the final rule, the Responsible Official must: (1) Document how the best available science was considered in the planning process within the context of the issues being considered; (2) evaluate and disclose any substantial

uncertainties in that science; (3) evaluate and disclose substantial risks associated with plan components based on that science; and (4) document that the science was appropriately interpreted and applied. Additionally, the Responsible Official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process. Any interested scientists can be involved at any of the public involvement stages.

Section 219.12—Suitable Uses and Provisions Required by NFMA

This section (§ 219.12), which was not in the 2002 proposed rule, addresses the provisions found in §§ 219.4(a)(3), 219.4(a)(4), 219.16, and 219.17 of the 2002 proposed rule. The final rule requires the Chief of the Forest Service to include in the Forest Service directives procedures to address the provisions of NFMA that were addressed by §§ 219.4(a)(3), 219.16, and 219.17 of the 2002 proposed rule.

Guidance for suitable uses, located in paragraph (a) in the final rule, has been moved from § 219.4(a)(4) of the 2002 proposed rule. In addition, the Department reorganized this guidance to better describe the overall nature of identifying suitable land uses. Overall, NFS lands are generally suitable for a variety of multiple uses, including timber harvest and timber production, unless administratively withdrawn or prohibited by statute, Executive order, or regulation. On lands generally suitable for timber, the Forest Service may harvest timber for a variety of purposes, such as to create openings for wildlife or for fuels reduction and restoration. If timber production is not an objective for lands generally suitable for timber, the Responsible Official must identify these lands as not suitable for timber production. Provisions concerning not suitable for timber production have been moved with modifications from § 219.16 of the 2002 proposed rule to § 219.12(a)(2). Additional guidance for identification of lands not suitable for timber harvest and guidance for timber harvest that the proposed rule addressed at § 219.4(a)(3) will be placed in the Forest Service directives. A request for public comment on the Forest Service directives will be published in the **Federal Register** as soon as possible after adoption of the final rule.

In addition, Forest Service directives will address additional NFMA requirements. These requirements include limitations on timber harvest (§ 219.17 of proposed rule) and provisions for plans to determine forest

management systems, restocking requirements, harvesting levels in light of the multiple uses, and the potential suitability of lands for resource management, as well as projections of proposed and possible actions, including the planned timber sale program. The Department made this change to provide a better balance between the specific procedures for timber and the provisions for other sections of the final rule.

Comment: Culmination of mean annual increment. Some respondents said that the culmination of mean annual increment (CMAI) requirement should not be limited to even-aged harvests and that the protection provided by a CMAI requirement on uneven-aged harvests would protect against over-zealous logging.

Response: CMAI is the age in the growth cycle of an even-aged stand where average annual growth is at its maximum. By definition, CMAI applies only to even-aged timber stands and not to uneven-aged stands. However, detailed guidance for CMAI is moved to the Forest Service directives because NFMA does not require this guidance to be in the rule itself. NFMA requires establishment of guidance so that stands of timber, not individual trees, generally have reached CMAI. The Forest Service directives will clarify the technical limits of the CMAI concept.

Comment: Restocking. A respondent said the rule is inconsistent with NFMA because it does not require restocking of lands within five years after final regeneration harvest.

Response: Section 219.16(a)(3) of the 2002 proposed rule has been removed in the final rule. Forest Service directives will address restocking requirements. Forest Service directives will meet the requirement of NFMA to ensure that timber will be harvested from NFS lands only where there is assurance that such lands can be adequately restocked within five years after harvest. Adequate restocking may vary depending on the purpose of a harvest and the objectives and desired conditions for the area. Restocking is not required for lands harvested to create openings for fuel breaks and vistas, to prevent encroaching conifers, and other similar purposes. This will apply to all timber harvest, including final regeneration harvest. Therefore, Responsible Officials will include in land management plans guidance for adequate restocking depending on the purpose of a harvest, the desired conditions, and objectives for the area.

Comment: Suitability. Respondents both agreed and disagreed with the presumption that lands are suitable for

all uses unless identified and determined to be not suitable. Those who agreed liked this presumption. Those who disagreed stated that more lands are not suitable for all uses than are suitable, so the process would be easier to start with the presumption that lands are not suitable. Some said that this presumption places commercial uses ahead of other considerations like fish and wildlife.

One respondent stated that local planners should have the discretion to manage the range of opportunities offered by the forest and the flexibility to manage new uses unforeseen in the planning process.

Response: The Department agrees with the Committee of Scientists report, which holds the basic philosophy that these are the people's lands; and therefore, it is appropriate to have a presumption in the final rule that lands are suitable for a variety of uses. The Department removed the declaration that lands are suitable, unless identified and determined to be not suitable. Forest Service directives may use that analytical and philosophical assumption. The final rule removes the word "determine" and replaces it with "identify" to conform to the NFMA. In the overall adaptive management process, the starting point for identifying general suitability of land uses will likely be the existing suitable or not-suitable use identifications in current plans, and incremental changes will be based on public input, review of inventory, monitoring, evaluation, and assessment information. The final rule uses the expression "generally suitable" because identification of suitability is guidance and must be approved through project and activity decisionmaking. In response to public comment and to clarify the criteria for identifying suitability, the final rule has changed the resources to outdoor recreation, range, timber, watershed, and wildlife and fish purposes so that the resources listed agree with the Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528–531). Energy resource development and mining activities were removed from § 219.12(a)(1) of the final rule because, even though allowable uses on many of the NFS lands, they are not renewable surface resources listed in MUSYA.

Comment: Suitable lands. Some respondents felt that social, economic, ecological, physical, and other factors should not be considered when determining suitability of land for timber production. Others felt that the Forest Service should analyze the effects on these factors when no logging is proposed, because they felt that the

fiscal support of their communities is not being adequately addressed due to the fact that there is no requirement to supply timber. One respondent felt that the 2002 proposed rule would allow "timber sales that are not justified by their social, economic, or ecological benefits."

Response: The 2002 proposed rule language is based on the NFMA that requires the Responsible Official to consider "physical, economic, and other pertinent factors to the extent feasible" when identifying lands which are not suited for timber production. However, the wording has been changed to "would not be compatible with the achievement of desired conditions and objectives," because desired conditions and objectives reflect the social, economic, and ecological attributes toward which management is to be directed. In addition, the NFMA does allow salvage sales and sales necessitated to protect other multiple-use values on lands identified as not suited for timber production.

Comment: Salvage logging. There were concerns expressed by some about salvage harvest and about timber harvest in general. While some respondents felt there should not be any salvage logging on any lands, others felt that salvage logging is important to improve the health of National Forest System lands.

Response: Salvage harvest of timber is a legitimate management practice, acknowledged by Congress in NFMA (16 U.S.C. 1604(k), 1611(b)). The Department believes that the language in this section of the final rule on suitability and salvage is an appropriate reflection of the intent of NFMA. The Department believes that specific decisions on the size of salvage units, and on where salvage logging would or would not occur, should be made at a project level and not at the national level.

Comment: Prohibitions for logging. Some suggested that the final rule should include more prohibitions for logging, including a prohibition on all commercial logging on NFS lands involving riparian areas, virgin forests, and old growth forests. Others suggested harvesting should be limited to selective logging, salvage harvest, or helicopter logging. One person suggested that the agency be required to justify logging for ecological reasons.

Response: The Department believes that broad-based prohibitions on timber harvest or timber harvest practices are not appropriate at the national level, given the range of ecological conditions that exist across the units of the NFS and the multiple-use mandates of MUSYA and NFMA. Such restrictions

may be put in place at the plan or project level, but should not be part of the planning regulations.

Comment: Timber harvest. Many comments were made regarding logging. Many respondents felt that there should be more restrictions placed on logging and that social and economic analysis should eliminate areas from timber harvest if such harvests would produce below-cost sales. Conversely, some felt that profit was emphasized too much and there needed to be more emphasis placed on the effects to the environment. One person felt there should be a minimum mean annual increment threshold of timber growth, such as 50 cubic feet per acre per year, to determine if lands were suitable for timber. Some felt that there should be more requirements for evaluation of effects that timber harvests have on fish, woody debris, watershed, and wildlife habitat. Another felt that timber sales should be made affordable to local purchasers. Still others wanted analysis to consider the social and economic effects on timber-dependent communities.

Response: Consistent with NFMA (16 U.S.C. 1604(k)), the final rule (§ 219.12(a)(2)) requires the Responsible Official to identify lands as not suitable for timber production, if timber production would not be compatible with the achievement of desired conditions and objectives. These provisions give the Responsible Official the flexibility to develop criteria that are appropriate for the specific plan area. The Department feels that detailed national direction would not meet the social, economic, and ecological concerns of the individual NFS unit. The final rule establishes parameters that provide for conscientious decisions to be made at the local level.

Comment: Suitability for off-highway vehicle use. Many respondents were particularly concerned about management for off-highway vehicle (OHV) use, because of the presumption that lands are open for use unless determined to be closed. Others said that the travel management component of plans has been particularly challenging. They said that plans have often failed to regulate OHV as new technology has enabled expanded use. Other commentators wrote that land management plans need to clearly establish limits to OHV use while others said the Forest Service should inventory and evaluate lands declared unsuitable for OHV and other recreational uses to determine if restoration or mitigation measures could make them suitable.

Response: As a general matter, responsible and carefully managed OHV

travel is an appropriate use of NFS lands. Under this final rule, travel management guidance will be expressed in desired conditions, objectives, guidelines, and identification of general suitability of areas for various uses. That guidance, in and of itself, would not close those lands to these uses; such a restriction would require a subsequent travel management decision and closure order pursuant to 36 CFR part 261, subpart B. Additionally, if a plan identifies an area as generally suitable for OHV travel where currently restricted, the plan would not open those lands to these uses; a subsequent project and activity NEPA analysis and decision would be necessary to effect the preliminary identification of the plan. Guidance for resource conservation is established in the plan and will be considered in the subsequent travel management decision. The final rule allows for levels and trends of OHV use to be monitored and changed as appropriate.

Comment: Fuels treatment. Several respondents, citing recent fire seasons, suggested that the final rule should allow for more timber harvest than is currently being harvested to reduce fuels, and they felt that the final rule would accomplish that goal. There was a concern that much of the dead and down material was being wasted and that this biomass could be used to meet energy and wood supply needs. Others, however, felt that logging of commercial-size trees was not necessary for fuels reduction and the final rule would do a disservice by allowing it. One respondent suggested that the fuels problem could be solved by using prescribed fire only. Others felt that fuels treatment should be allowed only in areas near urban centers to protect structures.

Response: The Department believes that the final rule, which is national in application, should not set out direction so specific that it cannot take into account the widely varying conditions found across the NFS. Such direction is better developed at the local level.

Comment: Allowable sale quantity. Some respondents request that the Forest Service retain the use of Allowable Sale Quantity (ASQ) to inform timber purchasers, communities who support timber industry, and the public what the future timber production forecast will be.

Response: This concept has long caused confusion for those concerned with the management of the NFS lands. While under the 1982 rule, ASQ was the upper limit of timber that the Responsible Official may sell from the lands suitable for timber production,

ASQ has commonly been misinterpreted as an absolute commitment to a timber production target. Neither the 2002 proposed rule nor this final rule provide for ASQ. Forest Service directives will address the upper limit of timber and will likely use the concept of long-term sustained yield as proposed in the 2002 proposed rule as the upper limit of timber that the Forest Service may harvest during the planning period. The 2002 proposed rule used long-term sustained yield because this requirement is adequate, and removing the provision that planning establish an ASQ reduces the risk of misperception that ASQ is a target to be achieved, rather than a limit to harvest.

Comment: Sustained yield. Most respondents agreed that the concept of sustained yield is, in principle, a positive goal. However, some took exception to how this requirement will actually be implemented. They felt that salvage logging and other types of timber sales not undertaken for timber production purposes should be included in the sustained-yield calculations. Others felt that the use of "multiple-use objectives" gives too much flexibility in determining sustained yield, and there is actually no real limit. One person felt the harvest limits should mirror forest mortality rates.

Response: This provision for estimating the quantity of timber that can be removed annually in perpetuity is tied directly to NFMA (16 U.S.C. 1611(a)). The final rule moves detailed instructions on how sustained yield is calculated (found in the 2002 proposed rule at § 219.17) to the Forest Service directives.

Section 219.13—Objections to Plans, Plan Amendments, or Plan Revisions

This provision found in § 219.19 of the 2002 proposed rule has been redesignated at § 219.13 as part of the overall reorganization of the final rule. This section establishes the objection process by which the public can challenge plans, plan revisions, or plan amendments.

The Committee of Scientists, in their 1999 report, recommended that the Forest Service seek to harmonize its administrative appeal process with those of other Federal agencies. The Committee of Scientists said a pre-decisional process would encourage internal Forest Service discussion, encourage multi-agency collaboration, and encourage public interest groups to collaborate and work out differences. Therefore, to be more consistent with the Bureau of Land Management (BLM) and to improve public participation

efforts, the Department is adopting the pre-decisional objection process (§ 219.13) to replace the appeals process. The objection process complements the public participation process because the objectors and the Reviewing Officer can collaboratively work through concerns before a Responsible Official approves a plan.

The 30-day objection period specified in this final rule is the same amount of time provided in the BLM protest process. The final rule does not specify a time limit for agency responses; the final rule has adopted the BLM requirement that the Reviewing Officer promptly render a decision on the objection. It is in the interest of the agency to render a decision promptly to move forward. Because Responsible Officials would not typically develop plans, plan amendments, or plan revisions using EISs, EAs, the Department removed unnecessary language in the final rule concerning NEPA documents. The final rule also eliminates details on responding to objections because this information is more appropriate in the Forest Service directives. The final rule also removes the requirement that objectors may only submit original substantive comments as objections. These changes make the final rule easier to read and follow.

References to appeals of plan amendments in site-specific decisions, previously at § 219.20 of the 2002 proposed rule, have been moved to § 219.13(a)(1) in the final rule to have requirements for objections and the reference to appeals in the same section. Specific requirements for administrative review of plan amendments approved contemporaneously with a project or activity decision are addressed in 36 CFR 215 and 218, subpart A.

Comment: Objection and appeals process. Some respondents felt that the final rule should include provisions to allow post-decisional appeals of plans. Some wanted both a pre-decisional objection process and a post-decisional appeals process. One person felt that the rule should require an objection process for plan amendments made in conjunction with site-specific project decisions and that the rule should require an appeals process for other plan amendments.

Some respondents were concerned that the objection process would reduce the influence that the current appeals process provides, and they claimed the 30-day objection period is insufficient time to identify issues and to prepare an objection. Although some respondents felt that the objection process is an inadequate protection of public interests, others supported the objection

process and felt that requirements for standing to object should be much more stringent to prevent what they characterized as needless obstruction. Some respondents were concerned that there was no time limit for the agency to respond to objections.

Response: The objection process in the final rule retains the 2002 proposed rule's application of the objection process to plans, plan amendments, or plan revisions not associated with a project or activity decision (§ 219.13(a)). Unlike the provisions at 36 CFR, part 217, applicable to plan development, plan amendment, and plan revision under the 1982 planning rule, this final rule, like the 2002 proposed rule, integrates the objection process with public participation prior to plan approval. The objection process is expected to resolve many potential conflicts by encouraging resolution before a plan, plan amendment, or plan revision is approved.

Under the 36 CFR part 217 appeal process, the agency and the public expend significant human and financial resources in fulfillment of procedural requirements. Often an appeal leads to a polarized relationship where there is no real incentive to address natural resource issues and there is a squandering of human and financial capital, often without long-lasting solutions to problems.

Under this final rule, as in the 2002 proposed rule, the Responsible Official, the Reviewing Officer, and the objector have the opportunity to seek reasonable solutions to conflicting views of plan components before a Responsible Official approves a plan, plan amendment, or plan revision. The objection process allows discretion for joint problem solving to resolve issues.

Comment: Public participation.

Several respondents expressed the opinion that the final rule should require participation in the planning process as a qualification for objection.

Response: The 2002 proposed rule did not require participation in the planning process to file an objection; however, the Department agrees that participation should be a prerequisite to submitting an objection. Therefore, the final rule at § 219.13(a) requires participation in the planning process through the submission of a written comment to have standing to submit an objection.

Comment: Consistency with law. Some respondents supported the requirement in the 2002 proposed rule that objectors must explain their position that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy as well as provide any recommendation for

change. Others felt this requirement curtailed public input and required legal advice to object.

Response: The Department agrees that a person should be able to object to a plan, plan amendment, or plan revision even if the plan is consistent with law, regulation, or policy. Therefore, the final rule allows persons to object if they otherwise disagree with the decision. Accordingly, § 219.13(b)(3) of the final rule retains the main elements of this requirement from the 2002 proposed rule, so that the Reviewing Officer will know why an objector objects as well as what the objector recommends for change. The term "Executive order" has been removed from the final rule because Executive orders are already covered under the term "policy." The Forest Service directives will set forth the specific requirements of the Reviewing Officer working with the objector(s) to resolve their issue(s).

Section 219.14—Effective Dates and Transition

This direction found in §§ 219.21 and 219.22 of the 2002 proposed rule has been combined at § 219.14 to organize similar concepts in one location. This section specifies when a plan, plan amendment, or plan revision will take effect as well as how Responsible Officials may modify ongoing planning efforts to conform to the requirements of the final rule. The Department modified this section from the transition language in the 2002 proposed rule, primarily to account for integration of EMS into land management planning.

With this rule, the Department is simultaneously repealing the 2000 rule and including the transition provisions of the former rule. Recently, the Department clarified that projects were subject to the requirements of the former transition rule during the transition period until the completion of the plan revision process under the 2000 rule (69 FR 58055, September 29, 2004). The transition period of the former rule thus terminates with its repeal. This section defines, for purposes of pending or future plan documents, the applicable rules during the transition period. During the transition period, pending or proposed projects remain subject to the applicable forest plan.

This section also contains new direction on application of management indicator species (MIS) for units that will continue to use the 1982 planning rule for plans, plan amendments, and plan revisions during transition. There has been uncertainty regarding the application of provisions of the 1982 planning rule, particularly with respect

to obligations regarding MIS (69 FR 58055, September 29, 2004). For those units with plans developed, amended, or revised under the 1982 planning rule, including those amended or revised during the transition period for the 2000 planning rule, § 219.14(f) provides that MIS obligations may be met by considering data and analysis relating to habitat unless the plan specifically requires population monitoring or population surveys. Other tools can often be useful and more appropriate in predicting the effects of projects that implement a land management plan (such as examining the effect of proposed activities on the habitat of specific species); using information identified, obtained, or developed through a variety of methods (such as assessments, analysis, and monitoring results); or using information obtained from other sources (such as State fish and wildlife agencies and organizations like The Nature Conservancy). The final rule also clarifies the appropriate scale for MIS monitoring which is the plan area.

Providing explicitly for MIS monitoring flexibility will allow for monitoring of habitat conditions as a surrogate for population trend data. It is appropriate for a range of methods to be available to estimate, or approximate, population trends for MIS. The Responsible Official will determine the which monitoring method or combination of monitoring methods to use for a given MIS.

Where Responsible Officials conduct actual population monitoring for MIS, population trend data are most efficiently collected using a sampling program rather than a total enumeration. In a sampling program, population data are collected at a selection of sites throughout the geographic range of the population. These sites might be systematically designated (for example, using a grid of specific dimension), established randomly, or selected in some other way. For species that use distinct seasonal ranges (for example, elk that use winter ranges distinct from their summer ranges), data may be collected primarily on the winter range.

The area over which sampling is conducted should relate to the geographic range occupied by the population, and will generally far exceed the area of a single management project. Because of using sampling procedures within the overall geographic area used by a population, individual project areas might or might not be part of a sampling program designed to estimate the overall population trend of a population. Based on the foregoing, for most species it

would be technically and practically inappropriate to conduct population trend sampling at the scale of individual project areas. Consequently, where Responsible Officials conduct actual population monitoring for MIS, that monitoring should be carried out at the scale most appropriate to the species within the overall national forest, grassland, prairie, or other administrative comparable unit. Monitoring populations at the sites of individual projects is not part of this requirement. Therefore, the transition language at § 219.14 clarifies that MIS monitoring is appropriate at the times and places appropriate to the specific species, and is not required within individual project or activity areas.

Comment: Effective date. One respondent was concerned that there was a difference in the effective date of plan amendments depending on whether or not they were significant amendments and suggested the final rule should not differentiate between the types of amendments when determining an effective date.

Response: In the final rule, the only difference related to the effective date of plan amendments is dependent on if a plan amendment is approved contemporaneously with a project or activity decision and the plan amendment applies only to the project or activity; in which case, 36 CFR, part 215 or part 218, subpart A applies, not the planning regulations at part 219. All other amendments have a 30-day effective date.

Section 219.15—Severability

The Department has chosen to add a new section to address the issue of severability, in the event that portions of this rule are separately challenged in litigation. It is the Department's intent that the individual provisions of this rule be severable from each other.

Section 219.16—Definitions

This direction was found in § 219.23 in the 2002 proposed rule, but has been redesignated at § 219.16 as part of overall reorganization of the final rule. This section sets out and defines the special terms used in the final rule. A detailed discussion on definitions removed, added, or unchanged is found in the supplemental response to public comments located on the World Wide Web/Internet (see **ADDRESSES**).

Comment: Collaboration. A few respondents asked that collaboration be defined. They said that a "collaborative" process is generally a specific type of planning process involving shared power and total stakeholder involvement. One person

wanted the process of collaboration to be distinguished from processes authorized under the Federal Advisory Committee Act.

Response: The Forest Service cannot "share" its administrative authority over the NFS and must make the decisions for NFS management, including approval of plans, plan amendments, and plan revisions. The agency and the Department are committed to stakeholder involvement in planning; however, the Department does not believe it is necessary to set the boundaries of how this process may operate in planning through a definition of the process.

Comment: Silvicultural terminology. Some respondents said that the 2002 proposed rule (§ 219.4) confuses silvicultural objectives (for example, achieving an even-aged stand condition) with harvesting methods. They said that silvicultural definitions should be taken from the Society of American Foresters handbook.

Response: The Dictionary of Forestry reflects current professional acceptance and use of terms and definitions. Because the Dictionary of Forestry has wide acceptance, it was reviewed and the silvicultural definitions of the final rule at § 219.16, and other silvicultural terminology in the final rule are largely consistent with definitions found in the Dictionary of Forestry (Bethesda, MD, Society of American Foresters, 1998).

5. Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993 (E.O. 12866) on Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will neither interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decisionmaking, this final rule has been designated as significant and, therefore, is subject to Office of Management and Budget review under E.O. 12866.

A cost-benefit analysis was conducted to compare the costs and benefits of implementing this final rule to the baseline, 1982 planning rule. This analysis is posted on the World Wide Web/Internet at <http://www.fs.fed.us/emc/nfma/>, along with other documents associated with this final rule. The 1982 planning rule was used as the baseline because all the land management plan revisions completed to date have used the requirements of the 1982 planning rule. Quantitative differences among the final rule, the 2000 rule, and the 2002 proposed rule were also estimated. Primary sources of data used to estimate the costs and benefits of the 2000 planning rule and the 2002 proposed rule are from the results of a 2002 report entitled "A Business Evaluation of the 2000 and Proposed NFMA Rules" produced by the Inventory and Monitoring Institutes of the Forest Service. The report is also identified as the "2002 NFMA Costing Study," or simply as the "Costing Study." The Costing Study used a business modeling process to identify and compare major costs for both the 2000 planning rule and the 2002 proposed rule. The main source of data used to approximate costs under the 1982 planning rule is from a recent report to Congress on planning costs, along with empirical data and inferences from the Costing Study.

The cost-benefit analysis focuses on key activities in land management planning for which costs can be estimated under the 1982 planning rule, the 2000 planning rule, the 2002 proposed rule, and this final rule. The key activities include regional guides, collaboration, consideration of science, evaluation of the sustainability of decisions and diversity requirements under the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*), monitoring, evaluation, and the resolution of disputes regarding the proposed plan decisions through the administrative processes of appeals and objections.

The final rule would reduce the cost of producing a plan or revision by shortening the length of the planning process and providing the Responsible Official with more flexibility to decide the scope and scale of the planning process. The final rule, by requiring inclusion of environmental management systems into the land management framework, requires a comprehensive evaluation during plan development and plan revision that will be updated at least every five years. Some upfront planning costs, such as analyzing and developing plan components, and documenting the land management planning process, are anticipated to

shift to monitoring and evaluation to better document cumulative effects of management activities and natural events when preparing a comprehensive evaluation of the plan under the final rule.

Based on costs that can be quantified, implementation of this final rule is expected to have an estimated annual average cost savings of \$4.6 million when compared to the 1982 planning rule, and an estimated annual average savings of \$36.9 million when compared to estimates of implementation of the 2000 planning rule. When compared to the 2002 proposed rule, implementation of the final rule is estimated to cost \$19 million less than the 2002 proposed rule with Option 1 and \$24.9 million more than the 2002 proposed rule with Option 2. The higher cost over the 2002 proposed rule is due to increased monitoring and evaluation requirements in the final rule.

From this cost-benefit analysis, the estimated total costs for implementing the final rule are expected to be lower than the 2000 planning rule; however, the estimated cost savings are less than that predicted on the 2002 proposed rule because costs for monitoring and evaluation are expected to be higher. In other words, although the final rule is expected to be less costly than the 2000 planning rule, some of those saved costs are expected to be shifted to monitoring and evaluation.

This final rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small business entities as defined by the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this final rule. The final rule imposes no requirements on either small or large entities. Rather, the final rule sets out the process the Forest Service will follow in land management planning for the NFS. The final rule should provide opportunities for small businesses to become involved in the national forest, grassland, prairie, or other comparable administrative unit plan approval. Moreover, by streamlining the land management planning process, the final rule should benefit small businesses through more timely decisions that affect outputs of products and services.

Environmental Impacts

This final rule establishes the administrative procedures to guide developing, amending, and revising NFS land management plans. This final rule, like earlier planning rules, does

not dictate how administrative units of the NFS are to be managed. The Department does not expect that this final rule will directly affect the mix of uses on any or all units of the NFS. Section 31.12 of FSH 1909.15 excludes from documentation in an EA or EIS "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." This final rule clearly falls within this category of actions and the Department has determined that no extraordinary circumstances exist that would require preparation of an EA or an EIS.

Energy Effects

This final rule has been reviewed under Executive Order 13211 issued May 18, 2001 (E.O. 13211), "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this final rule does not constitute a significant energy action as defined in E.O. 13211. Procedural in nature, this final rule would guide the development, amendment, and revision of NFS land management plans. These plans are strategic documents that provide the guidance for making future project or activity-level resource management decisions. As such, these plans will address access requirements associated with energy exploration and development within the framework of multiple-use, sustained-yield management of the surface resources of the NFS lands. These land management plans may identify major rights-of-way corridors for utility transmission lines, pipelines, and water canals. While these plans consider the need for such facilities, they do not authorize construction of them; therefore, the final rule and the plans developed under it do not have energy effects within the meaning of E.O. 13211. The effects of the construction of such lines, pipelines, and canals are, of necessity, considered on a case-by-case basis as specific construction proposals are made. Consistent with E.O. 13211, direction to incorporate consideration of energy supply, distribution, and use in the planning process is being included in the agency's administrative directives for implementing the final rule.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements for the objection process were previously approved by the Office of Management and Budget (OMB) and assigned control number

0596-0158, expiring on October 31, 2003 for the 2000 planning rule.

The OMB has extended this approval through December 31, 2006 for this final planning rule, using the same control number. This extension was made after the Forest Service provided the public an opportunity to comment on the extension as required by the Paperwork Reduction Act (68 FR 50512, August 21, 2003). The Forest Service received no comments regarding extension.

The information required by 36 CFR 219.13 is needed for an objector to explain the nature of the objection being made to a proposed land management plan, plan amendment, or plan revision. This final rule retains but simplifies the objection process established in the 2000 planning rule. The final rule removes the requirements previously provided in the 2000 planning rule for interested parties, publication of objections, and formal requests for meetings (36 CFR 219.32). These changes will result in a minor reduction in the number of burden hours approved by OMB.

Federalism

The agency has considered this final rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), "Federalism." The agency has made an assessment that the final rule conforms with the Federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the agency concludes that the final rule does not have Federalism implications. Moreover, § 219.9 of this final rule shows sensitivity to Federalism concerns by requiring the Responsible Official to meet with and provide opportunities for involvement of State and local governments in the planning process.

In the spirit of E.O. 13132, the agency consulted with State and local officials, including their national representatives, early in the process of developing the proposed regulation. The agency has consulted with the Western Governors' Association and the National Association of Counties to obtain their views on a preliminary draft of the 2002 proposed rule. The Western Governors' Association supported the general intent to create a regulation that works, and placed importance on the quality of collaboration to be provided when the agency implements the regulation.

Agency representatives also contacted the International City and County Managers Association, National Conference of State Legislators, The Council of State Governments, Natural Resources Committee of the National Governors Association, U.S. Conference of Mayors, and the National League of Cities to share information about the 2002 proposed rule prior to its publication. Based on comments received on the 2002 proposed rule, the agency has determined that additional consultation was not needed with State and local governments.

Civil Rights Impact Analysis

A civil rights impact analysis was conducted for this final rule. This analysis is posted on the World Wide Web/Internet at <http://www.fs.fed.us/emc/nfma/>, along with other documents associated with this final rule. The analysis found that there no adverse civil rights or environmental justice impacts anticipated to the delivery of benefits or other program outcomes on a national level for any under-represented population or to other United States populations or communities.

Consultation With Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," the agency has assessed the impact of this final rule on Indian Tribal governments and has determined that the final rule does not significantly or uniquely affect communities of Indian Tribal governments. The final rule deals with the administrative procedures to guide the development, amendment, and revision of NFS land management plans and, as such, has no direct effect regarding the occupancy and use of NFS land. At § 219.9(a)(3), the final rule requires consultation with federally recognized Tribes when conducting land management planning.

The agency has also determined that this final rule does not impose substantial direct compliance cost on Indian Tribal governments. This final rule does not mandate Tribal participation in NFS planning. Rather, the final rule imposes an obligation on Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988, and it has

been determined that the final rule does not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 of February 7, 1996, "Civil Justice Reform." The Department has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this final rule. Nevertheless, in the event that such a conflict was to be identified, the final rule would preempt State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this final rule; and (2) the final rule does not require the use of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the agency has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, add subpart A to part 219 of title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

- Sec.
- 219.1 Purpose and applicability.
 - 219.2 Levels of planning and planning authority.
 - 219.3 Nature of land management planning.
 - 219.4 National Environmental Policy Act compliance.
 - 219.5 Environmental management systems.
 - 219.6 Evaluations and monitoring.
 - 219.7 Developing, amending, or revising a plan.
 - 219.8 Application of a new plan, plan amendment, or plan revision.
 - 219.9 Public participation, collaboration, and notification.

- 219.10 Sustainability.
- 219.11 Role of science in planning.
- 219.12 Suitable uses and provisions required by NFMA.
- 219.13 Objections to plans, plan amendments, or plan revisions.
- 219.14 Effective dates and transition.
- 219.15 Severability.
- 219.16 Definitions.

Subpart B [Reserved]

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

§ 219.1 Purpose and applicability.

(a) The rules of this subpart set forth a process for land management planning, including the process for developing, amending, and revising land management plans (also referred to as plans) for the National Forest System, as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), hereinafter referred to as NFMA. This subpart also describes the nature and scope of plans and sets forth the required components of a plan. This subpart is applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531), the overall goal of managing the National Forest System is to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land. Resources are to be managed so they are utilized in the combination that will best meet the needs of the American people. Maintaining or restoring the health of the land enables the National Forest System to provide a sustainable flow of uses, benefits, products, services, and visitor opportunities.

(c) The Chief of the Forest Service shall establish planning procedures for this subpart for plan development, plan amendment, or plan revision in the Forest Service Directive System.

§ 219.2 Levels of planning and planning authority.

Planning occurs at multiple organizational levels and geographic areas.

(a) *National.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service Strategic Plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by

the NFMA. The Strategic Plan establishes goals, objectives, performance measures, and strategies for management of the National Forest System, as well as the other Forest Service mission areas.

(b) *Forest, grassland, prairie, or other comparable administrative unit.* (1) Land management plans provide broad guidance and information for project and activity decisionmaking in a national forest, grassland, prairie, or other comparable administrative unit. The Supervisor of the National Forest, Grassland, Prairie, or other comparable administrative unit is the Responsible Official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the Supervisor, unless a Regional Forester, the Chief, or the Secretary chooses to act as the Responsible Official.

(2) When plans, plan amendments, or plan revisions are prepared for more than one administrative unit, a unit Supervisor identified by the Regional Forester, or the Regional Forester, the Chief, or the Secretary may be the Responsible Official. Two or more Responsible Officials may undertake joint planning over lands under their respective jurisdictions.

(3) The appropriate Station Director must concur with that part of a plan applicable to any experimental forest within the plan area.

(c) *Projects and activities.* The Supervisor or District Ranger is the Responsible Official for project and activity decisions, unless a higher-level official chooses to act as the Responsible Official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as specifically provided, none of the requirements of this subpart applies to projects or activities.

(d) *Developing, amending, and revising plans.* (1) *Plan development.* If a new national forest, grassland, prairie, or other administrative unit of the National Forest System is established, the Regional Forester, or a forest, grassland, prairie, or other comparable unit Supervisor identified by the Regional Forester must either develop a plan for the unit or amend or revise an existing plan to apply to the lands within the new unit.

(2) *Plan amendment.* The Responsible Official may amend a plan at any time.

(3) *Plan revision.* The Responsible Official must revise the plan if the Responsible Official concludes that conditions within the plan area have significantly changed. Unless otherwise provided by law, a plan must be revised at least every 15 years.

§ 219.3 Nature of land management planning.

(a) *Principles of land management planning.* Land management planning is an adaptive management process that includes social, economic, and ecological evaluation; plan development, plan amendment, and plan revision; and monitoring. The overall aim of planning is to produce responsible land management for the National Forest System based on useful and current information and guidance. Land management planning guides the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the needs of the American people.

(b) *Force and effect of plans.* Plans developed in accordance with this subpart generally contain desired conditions, objectives, and guidance for project and activity decisionmaking in the plan area. Plans do not grant, withhold, or modify any contract, permit, or other legal instrument, subject anyone to civil or criminal liability, or create any legal rights. Plans typically do not approve or execute projects and activities. Decisions with effects that can be meaningfully evaluated (40 CFR 1508.23) typically are made when projects and activities are approved.

§ 219.4 National Environmental Policy Act compliance.

(a) In accordance with 16 U.S.C. 1604(g)(1) this subpart clarifies how the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4346) (hereinafter referred to as NEPA) applies to National Forest System land management planning.

(b) Approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accordance with the Forest Service NEPA procedures and may be categorically excluded from NEPA documentation under an appropriate category provided in such procedures.

(c) Nothing in this subpart alters the application of NEPA to proposed projects and activities.

(d) Monitoring and evaluations, including those required by § 219.6, may be used or incorporated by reference, as appropriate, in applicable NEPA documents.

§ 219.5 Environmental management systems.

The Responsible Official must establish an environmental management system (EMS) for each unit of the National Forest System. The scope of an EMS will include, at the minimum, the land management planning process

defined by this subpart. An EMS for any unit may include environmental aspects unrelated to the land management planning process under this subpart.

(a) Plan development, plan amendment, or plan revision must be completed in accordance with the EMS and § 219.14. An EMS may be established independently of the planning process.

(b) The EMS must conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as “ISO 14001: Environmental Management Systems—Specification With Guidance For Use” (ISO 14001). The ISO 14001 describes EMSs and outlines the elements of an EMS. The ISO 14001 is available from the ANSI website at <http://webstore.ansi.org/ansidocstore/default.asp>.

(c) Pursuant to § 219.1(c), the Chief of the Forest Service shall establish procedures in the Forest Service Directive System to ensure that appropriate EMSs are in place. The Responsible Official may determine whether and how to change and improve an EMS for the plan area, consistent with applicable Forest Service Directive System procedures.

§ 219.6 Evaluations and monitoring.

(a) *Evaluations.* The Responsible Official shall keep the Plan Set of Documents up to date with evaluation reports, which will reflect changing conditions, science, and other relevant information. The following three types of evaluations are required for land management planning: comprehensive evaluations for plan development and revision, evaluations for plan amendment, and annual evaluations of monitoring information. The Responsible Official shall document evaluations in evaluation reports, make these reports available to the public as required in § 219.9, and include these reports in the Plan Set of Documents (§ 219.7(a)(1)). Evaluations under this section should be commensurate to the level of risk or benefit associated with the nature and level of expected management activities in the plan area.

(1) *Comprehensive evaluations.* These evaluate current social, economic, and ecological conditions and trends that contribute to sustainability, as described in § 219.10. Comprehensive evaluations and comprehensive evaluation reports must be updated at least every five years to reflect any substantial changes in conditions and trends since the last comprehensive evaluation. The Responsible Official must ensure that

comprehensive evaluations, including any updates necessary, include the following elements:

(i) *Area of analysis.* The area(s) of analysis must be clearly identified.

(ii) *Conditions and trends.* The current social, economic, and ecological conditions and trends and substantial changes from previously identified conditions and trends must be described based on available information, including monitoring information, surveys, assessments, analyses, and other studies as appropriate. Evaluations may build upon existing studies and evaluations.

(2) *Evaluation for a plan amendment.* An evaluation for a plan amendment must analyze the issues relevant to the purposes of the amendment and may use the information in comprehensive evaluations relevant to the plan amendment. When a plan amendment is made contemporaneously with, and only applies to, a project or activity decision, the analysis prepared for the project or activity satisfies the requirements for an evaluation for an amendment.

(3) *Annual evaluation of the monitoring information.* Monitoring results must be evaluated annually and in accordance with paragraph (b)(2) of this section.

(b) *Monitoring.* The plan must describe the monitoring program for the plan area. Monitoring information in the Plan Document or Set of Documents may be changed and updated as appropriate, at any time. Such changes and updates are administrative corrections (§ 219.7(b)) and do not require a plan amendment or revision.

(1) The plan-monitoring program shall be developed with public participation and take into account:

(i) Financial and technical capabilities;

(ii) Key social, economic, and ecological performance measures relevant to the plan area; and

(iii) The best available science.

(2) The plan-monitoring program shall provide for:

(i) Monitoring to determine whether plan implementation is achieving multiple use objectives;

(ii) Monitoring to determine the effects of the various resource management activities within the plan area on the productivity of the land;

(iii) Monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan; and

(iv) Adjustment of the monitoring program as appropriate to account for unanticipated changes in conditions.

(3) The Responsible Official may conduct monitoring jointly with others, including but not limited to, Forest Service units, Federal, State or local government agencies, federally recognized Indian Tribes, and members of the public.

§ 219.7 Developing, amending, or revising a plan.

(a) *General planning requirements.*

(1) *Plan Documents or Set of Documents.* The Responsible Official must maintain a Plan Document or Set of Documents for the plan. A Plan Document or Set of Documents includes, but is not limited to, evaluation reports; documentation of public involvement; the plan, including applicable maps; applicable plan approval documents; applicable NEPA documents, if any; the monitoring program for the plan area; and documents relating to the EMS established for the unit.

(2) *Plan components.* Plan components may apply to all or part of the plan area. A plan should include the following components:

(i) *Desired conditions.* Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources of the plan area is to be directed. Desired conditions are aspirations and are not commitments or final decisions approving projects and activities, and may be achievable only over a long time period.

(ii) *Objectives.* Objectives are concise projections of measurable, time-specific intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions. Like desired conditions, objectives are aspirations and are not commitments or final decisions approving projects and activities.

(iii) *Guidelines.* Guidelines provide information and guidance for project and activity decisionmaking to help achieve desired conditions and objectives. Guidelines are not commitments or final decisions approving projects and activities.

(iv) *Suitability of areas.* Areas of each National Forest System unit are identified as generally suitable for various uses (§ 219.12). An area may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. The identification of an area as generally suitable for a use is guidance for project and activity decisionmaking and is not a commitment or a final decision approving projects and activities. Uses of specific areas are

approved through project and activity decisionmaking.

(v) *Special areas.* Special areas are areas within the National Forest System designated because of their unique or special characteristics. Special areas such as botanical areas or significant caves may be designated, by the Responsible Official in approving a plan, plan amendment, or plan revision. Such designations are not final decisions approving projects and activities. The plan may also recognize special areas designated by statute or through a separate administrative process in accordance with NEPA requirements (§ 219.4) and other applicable laws.

(3) *Changing plan components.* Plan components may be changed through plan amendment or revision, or through an administrative correction in accordance with § 219.7(b).

(4) *Planning authorities.* The Responsible Official has the discretion to determine whether and how to change the plan, subject to the requirement that the plan be revised at least every 15 years. A decision by a Responsible Official about whether or not to initiate the plan amendment or plan revision process and what issues to consider for plan development, plan amendment, or plan revision is not subject to objection under this subpart (§ 219.13).

(5) *Plan process.* (i) Required evaluation reports, plan, plan amendments, and plan revisions must be prepared by an interdisciplinary team; and

(ii) Unless otherwise provided by law, all National Forest System lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development or revision.

(6) *Developing plan options.* In the collaborative and participatory process of land management planning, the Responsible Official may use an iterative approach in development of a plan, plan amendment, and plan revision in which plan options are developed and narrowed successively. The key steps in this process shall be documented in the Plan Set of Documents.

(b) *Administrative corrections.* Administrative corrections may be made at any time and are not plan amendments or revisions. Administrative corrections include the following:

(1) Corrections and updates of data and maps;

(2) Corrections of typographical errors or other non-substantive changes;

(3) Changes in the monitoring program and monitoring information (§ 219.6(b));

(4) Changes in timber management projections; and

(5) Other changes in the Plan Document or Set of Documents, except for substantive changes in the plan components.

(c) *Approval document.* The Responsible Official must record approval of a new plan, plan amendment, or plan revision in a plan approval document, which must include:

(1) The rationale for the approval of the plan, plan amendment, or plan revision;

(2) Concurrence by the appropriate Station Director with any part of the plan applicable to any experimental forest within the plan area, in accordance with § 219.2(b)(3);

(3) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities, in accordance with § 219.8;

(4) Science documentation, in accordance with § 219.11; and

(5) The effective date of the approval (§ 219.14(a)).

§ 219.8 Application of a new plan, plan amendment, or plan revision.

(a) *Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects or activities.* (1) The Responsible Official must include in any document approving a plan amendment or revision a description of the effects of the plan, plan amendments, or plan revision on existing occupancy and use, authorized by permits, contracts, or other instruments implementing approved projects and activities. If not expressly excepted, approved projects and activities must be consistent with applicable plan components, as provided in paragraph (e) of this section. Approved projects and activities are those for which a Responsible Official has signed a decision document.

(2) Any modifications of such permits, contracts, or other instruments necessary to make them consistent with applicable plan components as developed, amended, or revised are subject to valid existing rights. Such modifications should be made as soon as practicable following approval of a new plan, plan amendment, or plan revision.

(b) *Application of a new plan, plan amendment, or plan revision to authorizations and projects or activities subsequent to plan approval.* Decisions approving projects and activities

subsequent to approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (e) of this section.

(c) *Application of a plan.* Plan provisions remain in effect until the effective date of a new plan, plan amendment, or plan revision.

(d) *Effect of new information on projects or activities.* Although new information will be considered in accordance with agency NEPA procedures, nothing in this subpart requires automatic deferral, suspension, or modification of approved decisions in light of new information.

(e) *Ensuring project or activity consistency with plans.* Projects and activities must be consistent with the applicable plan. If an existing (paragraph (a) of this section) or proposed (paragraph (b) of this section) use, project, or activity is not consistent with the applicable plan, the Responsible Official may take one of the following steps, subject to valid existing rights:

(1) Modify the project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity, subject to valid existing rights; or

(3) Amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.

§ 219.9 Public participation, collaboration, and notification.

The Responsible Official must use a collaborative and participatory approach to land management planning, in accordance with this subpart and consistent with applicable laws, regulations, and policies, by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, State or local governments, or other interested or affected communities, groups, or persons.

(a) *Providing opportunities for participation.* The Responsible Official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the Responsible Official shall involve the public in developing and updating the comprehensive

evaluation report, establishing the components of the plan, and designing the monitoring program. The Responsible Official has the discretion to determine the methods and timing of public involvement opportunities.

(1) *Engaging interested individuals and organizations.* The Responsible Official must provide for and encourage collaboration and participation by interested individuals and organizations, including private landowners whose lands are within, adjacent to, or otherwise affected by future management actions within the plan area.

(2) *Engaging State and local governments and Federal agencies.* The Responsible Official must provide opportunities for the coordination of Forest Service planning efforts undertaken in accordance with this subpart with those of other resource management agencies. The Responsible Official also must meet with and provide early opportunities for other government agencies to be involved, collaborate, and participate in planning for National Forest System lands. The Responsible Official should seek assistance, where appropriate, from other State and local governments, Federal agencies, and scientific and academic institutions to help address management issues or opportunities.

(3) *Engaging Tribal governments.* The Forest Service recognizes the Federal Government's trust responsibility for federally recognized Indian Tribes. The Responsible Official must consult with, invite, and provide opportunities for federally recognized Indian Tribes to collaborate and participate in planning. In working with federally recognized Indian Tribes, the Responsible Official must honor the government-to-government relationship between Tribes and the Federal Government.

(b) *Public notification.* The following public notification requirements apply to plan development, amendment, or revision, except when a plan amendment is approved contemporaneously with approval of a project or activity and the amendment applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, applies:

(1) *When formal public notification is provided.* Public notification must be provided at the following times:

(i) Initiation of development of a plan, plan amendment, or plan revision;

(ii) Commencement of the 90-day comment period on a proposed plan, plan amendment, or plan revision;

(iii) Commencement of the 30-day objection period prior to approval of a plan, plan amendment, or plan revision;

(iv) Approval of a plan, plan amendment, or plan revision; and

(v) Adjustment to conform to this subpart of a planning process for a plan, plan amendment, or plan revision initiated under the provisions of a previous planning regulation.

(2) *How public notice is provided.* Public notice must be provided in the following manner:

(i) All required public notices applicable to a new plan, plan revision, or adjustment of any ongoing plan revision as provided at § 219.14(e) must be published in the **Federal Register** and newspaper(s) of record.

(ii) Required notifications that are associated with a plan amendment or adjustment of any ongoing plan amendment as provided at § 219.14(e) and that apply to one plan must be published in the newspaper(s) of record. Required notifications that are associated with plan amendments and adjustment of any ongoing plan amendments (as provided at § 219.14(e)) and that apply to more than one plan must be published in the **Federal Register**.

(iii) Public notification of evaluation reports and monitoring program changes may be made in a manner deemed appropriate by the Responsible Official.

(3) *Content of the public notice.*

Public notices must contain the following information:

(i) *Content of the public notice for initiating a plan development, plan amendment, or plan revision.* The notice must inform the public of the documents available for review and how to obtain them; provide a summary of the need to develop a plan or change a plan; invite the public to comment on the need for change in a plan and to identify any other need for change in a plan that they feel should be addressed during the planning process; and provide an estimated schedule for the planning process, including the time available for comments, and inform the public how to submit comments.

(ii) *Content of the public notice for a proposed plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the proposed plan, plan amendment, or plan revision, including any relevant evaluation report; the commencement of the 90-day comment period; and the process for submitting comments.

(iii) *Content of the public notice for a plan, plan amendment, or plan revision prior to approval.* The notice must inform the public of the availability of the plan, plan amendment, or plan revision; any relevant evaluation report; and the commencement of the 30-day

objection period; and the process for objecting.

(iv) *Content of the public notice for approval of a plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the approved plan, plan amendment, or plan revision, the approval document, and the effective date of the approval (§ 219.14(a)).

(v) *Content of the public notice for an adjustment to an ongoing planning process.* The notice must state how a planning process initiated before the transition period (§ 219.14(b) and (e)) will be adjusted to conform to this subpart.

§ 219.10 Sustainability.

Sustainability, for any unit of the National Forest System, has three interrelated and interdependent elements: social, economic, and ecological. A plan can contribute to sustainability by creating a framework to guide on-the-ground management of projects and activities; however, a plan by itself cannot ensure sustainability. Agency authorities, the nature of a plan, and the capabilities of the plan area are some of the factors that limit the extent to which a plan can contribute to achieving sustainability.

(a) *Sustaining social and economic systems.* The overall goal of the social and economic elements of sustainability is to contribute to sustaining social and economic systems within the plan area. To understand the social and economic contributions that National Forest System lands presently make, and may make in the future, the Responsible Official, in accordance with § 219.6, must evaluate relevant economic and social conditions and trends as appropriate during plan development, plan amendment, or plan revision.

(b) *Sustaining ecological systems.* The overall goal of the ecological element of sustainability is to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area. This will satisfy the statutory requirement to 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 U.S.C. 1604(g)(3)(B)). Procedures developed pursuant to § 219.1(c) for sustaining ecological systems must be consistent with the following:

(1) *Ecosystem diversity.* Ecosystem diversity is the primary means by which a plan contributes to sustaining ecological systems. Plan components

must establish a framework to provide the characteristics of ecosystem diversity in the plan area.

(2) *Species diversity.* If the Responsible Official determines that provisions in plan components, in addition to those required by paragraph (b)(1) of this section, are needed to provide appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species, consistent with the limits of agency authorities, the capability of the plan area, and overall multiple use objectives.

§ 219.11 Role of science in planning.

(a) The Responsible Official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the Responsible Official must:

(1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;

(2) Evaluate and disclose substantial uncertainties in that science;

(3) Evaluate and disclose substantial risks associated with plan components based on that science; and

(4) Document that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the Responsible Official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.

§ 219.12 Suitable uses and provisions required by NFMA.

(a) *Suitable uses.* (1) *Identification of suitable land uses.* National Forest System lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The Responsible Official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area. Such identification is guidance for project and activity decisionmaking, is not a permanent land designation, and is subject to change through plan amendment or plan revision. Uses of specific areas are approved through project and activity decisionmaking.

(2) *Identification of lands not suitable for timber production.* (i) The Responsible Official must identify lands within the plan area as not suitable for timber production (§ 219.16) if:

(A) Statute, Executive order, or regulation prohibits timber production on the land; or

(B) The Secretary of Agriculture or the Chief of the Forest Service has withdrawn the land from timber production; or

(C) The land is not forest land (as defined at § 219.16); or

(D) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands.

(ii) This identification is not a final decision compelling, approving, or prohibiting projects and activities. A final determination of suitability for timber production is made through project and activity decisionmaking. Salvage sales or other harvest necessary for multiple-use objectives other than timber production may take place on areas that are not suitable for timber production.

(b) *NFMA requirements.* (1) The Chief of the Forest Service must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis in accordance with 16 U.S.C. 1611.

(2) The Chief of the Forest Service must include in the Forest Service Directive System procedures to ensure that plans include the resource management guidelines required by 16 U.S.C. 1604(g)(3).

(3) Forest Service Directive System procedures adopted to fulfill the requirements of this paragraph shall provide public involvement as described in 36 CFR part 216.

§ 219.13 Objections to plans, plan amendments, or plan revisions.

(a) *Opportunities to object.* Before approving a plan, plan amendment, or plan revision, the Responsible Official must provide the public 30 calendar days for pre-decisional review and the opportunity to object. Federal agencies may not object under this subpart. During the 30-day review period, any person or organization, other than a Federal agency, who participated in the planning process through the submission of written comments, may object to a plan, plan amendment, or plan revision according to the procedures in this section, except in the following circumstances:

(1) When a plan amendment is approved contemporaneously with a project or activity decision and the plan amendment applies only to the project or activity, in which case the administrative review process of 36 CFR part 215 or part 218, subpart A, applies

instead of the objection process established in this section; or

(2) When the Responsible Official is an official in the Department of Agriculture at a level higher than the Chief of the Forest Service, in which case there is no opportunity for administrative review.

(b) *Submitting objections.* The objection must be in writing and must be filed with the Reviewing Officer within 30 days following the publication date of the legal notice in the newspaper of record of the availability of the plan, plan amendment, or plan revision. Specific details will be included in the Forest Service Directive System. An objection must contain:

(1) The name, mailing address, and telephone number of the person or entity filing the objection. Where a single objection is filed by more than one person, the objection must indicate the lead objector to contact. The Reviewing Officer may appoint the first name listed as the lead objector to act on behalf of all parties to the single objection when the single objection does not specify a lead objector. The Reviewing Officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection;

(2) A statement of the issues, the parts of the plan, plan amendment, or plan revision to which the objection applies, and how the objecting party would be adversely affected; and

(3) A concise statement explaining how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy or how the objector disagrees with the decision and providing any recommendations for change.

(c) *Responding to objections.* (1) The Reviewing Officer (§ 219.16) has the authority to make all procedural determinations related to the objection not specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies. The Reviewing Officer must promptly render a written response to the objection. The response must be sent to the objecting party by certified mail, return receipt requested.

(2) The response of the Reviewing Officer shall be the final decision of the Department of Agriculture on the objection.

(d) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency

effort that would otherwise be subject to objection under this subpart, the Reviewing Officer may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the Responsible Official for the Forest Service must have agreement with the Responsible Official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort.

(e) *Compliance with the Paperwork Reduction Act.* The information collection requirements associated with submitting an objection have been approved by the Office of Management and Budget and assigned control number 0596-0158.

§ 219.14 Effective dates and transition.

(a) *Effective dates.* A plan, plan amendment, or plan revision is effective 30 days after publication of notice of its approval (§ 219.9(b)), except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, apply.

(b) *Transition period.* For each unit of the National Forest System, the transition period begins on January 5, 2005 and ends on the unit's establishment of an EMS in accordance with § 219.5 or on January 7, 2008 whichever comes first.

(c) *Initiation of plans, plan amendments, or plan revisions.* For the purposes of this section, initiation means that the agency has provided notice under § 219.9(b) or issued a Notice of Intent or other public notice announcing the commencement of the process to develop a plan, plan amendment, or plan revision.

(d) *Plan development, plan amendments, or plan revisions initiated during the transition period.* (1) Plan development and plan revisions initiated after January 5, 2005 must conform to the requirements of this subpart.

(2) Plan amendments initiated during the transition period may continue using the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000) or may conform to the requirements of this subpart if the Responsible Official establishes an EMS in accordance with § 219.5.

(3) Plan amendments initiated after the transition period must conform to the requirements of this subpart.

(e) *Plan development, plan amendments, or plan revisions previously initiated.* Plan development, plan amendments, or plan revisions initiated before the transition period may continue to use the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or may conform to the requirements of this subpart, in accordance with the following:

(1) The Responsible Official is not required to halt the process and start over. Rather, upon the unit's establishment of an EMS in accordance with § 219.5, the Responsible Official may apply this subpart as appropriate to complete the plan development, plan amendment, or plan revision process.

(2) The Responsible Official may elect to use either the administrative appeal and review procedures at 36 CFR part 217 in effect prior to November 9, 2000, (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or the objection procedures of this subpart, except when a plan amendment is approved contemporaneously with a project or activity and applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, apply.

(f) *Management indicator species.* For units with plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000, the Responsible Official may comply with any obligations relating to management indicator species by considering data and analysis relating to habitat unless the plan specifically requires population monitoring or population surveys for the species. Site-specific monitoring or surveying of a proposed project or activity area is not required, but may be conducted at the discretion of the Responsible Official.

§ 219.15 Severability.

In the event that any specific provision of this rule is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.16 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order.

Adaptive management: An approach to natural resource management where actions are designed and executed and effects are monitored for the purpose of learning and adjusting future management actions, which improves the efficiency and responsiveness of management.

Area of analysis: The geographic area within which ecosystems, their

components, or their processes are evaluated during analysis and development of one or more plans, plan revisions, or plan amendments. This area may vary in size depending on the relevant planning issue. For a plan, an area of analysis may be larger than a plan area. For development of a plan amendment, an area of analysis may be smaller than the plan area. An area of analysis may include multiple ownerships.

Diversity of plant and animal communities: The distribution and relative abundance or extent of plant and animal communities and their component species, including tree species, occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect diversity of plant and animal communities and the productive capacity of ecological systems. These components could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive, exotic species.

Ecosystem diversity: The variety and relative extent of ecosystem types, including their composition, structure, and processes within all or a part of an area of analysis.

Environmental management system: The part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining the environmental policy of the planning unit.

Federally recognized Indian Tribe: An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized

Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Forest land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest uses. Lands developed for non-forest use include areas for crops; improved pasture; residential or administrative areas; improved roads of any width and adjoining road clearing; and power line clearings of any width.

ISO 14001: A consensus standard developed by the International Organization for Standardization and adopted by the American National Standards Institute that describes environmental management systems and outlines the elements of an environmental management system.

Newspaper(s) of record: The principal newspapers of general circulation annually identified and published in the **Federal Register** by each Regional Forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

Plan: A document or set of documents that integrates and displays information relevant to management of a unit of the National Forest System.

Plan area: The National Forest System lands covered by a plan.

Productivity: The capacity of National Forest System lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart it is an ecological, not an economic, term.

Public participation: Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Responsible Official: The official with the authority and responsibility to oversee the planning process and to approve plans, plan amendments, and plan revisions.

Reviewing Officer: The supervisor of the Responsible Official. The Reviewing Officer responds to objections made to a plan, plan amendment, or plan revision prior to approval.

Species: Any member of the currently accepted and scientifically defined plant or animal kingdoms of organisms.

Species-of-concern: Species for which the Responsible Official determines that management actions may be necessary to prevent listing under the Endangered Species Act.

Species-of-interest: Species for which the Responsible Official determines that management actions may be necessary or desirable to achieve ecological or other multiple use objectives.

Timber production: The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Visitor opportunities: The spectrum of settings, landscapes, scenery, facilities, services, access points, information, learning-based recreation, wildlife, natural features, cultural and heritage sites, and so forth available for National Forest System visitors to use and enjoy.

Wilderness: Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

Dated: December 22, 2004.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 05–21 Filed 1–4–05; 8:45 am]

BILLING CODE 3410–11–P